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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2007–0142]

Addition of Armenia to the List of Regions Where African Swine Fever Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning the importation of animals and animal products by adding Armenia to the list of regions where African swine fever exists. We took that action because outbreaks of African swine fever had been confirmed in various locations in the northern portion of Armenia. The interim rule was necessary to prevent the introduction of African swine fever into the United States.

DATES: Effective on March 27, 2008, we are adopting as a final rule the interim rule published at 73 FR 1043–1044 on January 7, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Animal Scientist, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–0756.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever (ASF). These are dangerous and destructive diseases of ruminants and swine.

Section 94.8 of the regulations lists regions of the world where ASF exists or is reasonably believed to exist and imposes restrictions on the importation of pork and pork products into the United States from those regions.

In an interim rule [1] effective and published in the **Federal Register** on January 7, 2008 (73 FR 1043–1044, Docket No. APHIS–2007–0142), we amended the regulations by adding Armenia to the list in § 94.8 of regions where ASF exists or is reasonably believed to exist. As a result of that action, the importation into the United States of pork and pork products from Armenia is restricted.

Comments on the interim rule were required to be received on or before March 7, 2008. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 73 FR 1043–1044 on January 7, 2008.

Done in Washington, DC, this 21st day of March 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–6242 Filed 3–26–08; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0142.*

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–57526; File No. S7–06–07]

RIN 3235–AJ80

Proposed Rule Changes of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting rule amendments to require Self-Regulatory Organizations (''SROs'') that submit proposed rule changes pursuant to Section 19(b)(7)(A) of the Securities Exchange Act of 1934 (''Act'') to file these rule changes electronically. In addition, the Commission is adopting rule amendments to require SROs to post all such proposed rule changes on their Web sites. Together, the amendments are designed to expand the electronic filing by SROs of proposed rule changes, making it more efficient and cost effective, and to harmonize the process of filings made under Section 19(b)(7)(A) with that for filings made by SROs under Section 19(b)(1) of the Act.

DATES: Effective Date: April 28, 2008.

FOR FURTHER INFORMATION CONTACT: John Roeser, Assistant Director, at (202) 551–5630, Michou Nguyen, Special Counsel, at (202) 551–5634, or Sherry Moore, Paralegal, at (202) 551–5549, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 23, 2007, the Commission proposed to require SROs that submit proposed rule changes pursuant to Section 19(b)(7)(A) of the

Act[1] to file these rule changes electronically.[2] The Commission proposed amending Rule 19b–7 and Form 19b–7 to: (1) Require SROs to file proposed rule changes submitted pursuant to Section 19(b)(7)(A) of the Act electronically, rather than in paper format; and (2) require SROs to post all such proposed rule changes on their Web sites. The Commission also proposed making certain conforming changes to Rule 19b–4 and Form 19b–4.

Under Section 19(b)(7) of the Act and Rule 19b–7 thereunder, securities futures exchanges registered with the Commission under Section 6(g) of the Act and associations registered with the Commission under Section 15A(k) of the Act[3] for the limited purpose of regulating activities of members who are registered as broker-dealers in security futures products[4] are required to file certain categories of proposed rule changes with the Commission.[5] These proposed rule changes are published for comment and may take effect: (1) When a written certification has been filed with the Commodity Futures Trading Commission (''CFTC'') under Section 5c(c) of the Commodity Exchange Act; (2) when the CFTC determines that review of the proposed rule change is not necessary; or (3) when the CFTC approves the proposed rule change.[6] Rule 19b–7 and Form 19b–7 under the Act set forth the process for SROs to file proposed rule changes under Section 19(b)(7) of the Act.

Currently, SROs are required to electronically file proposed rule changes submitted to the Commission under Section 19(b)(1) of the Act.[7] SROs are also required to post such proposed rule changes on their Web sites.[8]

Proposed rule changes submitted by SROs under Section 19(b)(7) of the Act, in contrast, are submitted to the Commission in paper.[9] In addition, SROs are not currently required to post proposed rule changes filed under Section 19(b)(7) on their Web sites. The Commission proposed to amend Rule 19b–7 and Form 19b–7 to require electronic filing and Web posting of proposed rule changes filed under Section 19(b)(7) of the Act. These proposals were designed to conform to the requirements already in place for proposed rule changes filed pursuant to Rule 19b–4 and Form 19b–4.

The Commission received two comment letters in response to its request for comments.[10] The commenters were generally supportive of the proposed amendments but offered a few suggestions for refinements to the proposal. In addition, commenters commended the Commission's efforts to improve the rule filing process and make it less costly and more efficient. One commenter also offered suggestions relating to matters outside the scope of this rulemaking.[11] The Commission has determined to adopt the amendments substantially as proposed, with modifications to address the comments of the NFA and with some clarifications.

II. Amendments

A. Electronic Filing

The Commission proposed to amend Rule 19b–7 and Form 19b–7 to require that Form 19b–7, and any amendments thereto, be submitted electronically to the Commission. The Commission is adopting these amendments as proposed.

Based on the Commission's experience receiving electronic Rule 19b–4 filings from SROs, the Commission believes that requiring SROs to file proposed rule changes on Form 19b–7 electronically will have many benefits. First, the Commission believes electronic filing will reduce the amount of time required by SROs to submit SRO rule filings by eliminating paper delivery, photocopying, and distribution. Under the current system, SROs send paper copies of proposed rule changes on Form 19b–7 to the Commission via messenger, overnight delivery, or U.S. mail. Electronic filing will reduce costs for the SROs[12] because the SROs will no longer incur costs for delivery of paper filings or for the SRO staff time currently devoted to preparing filing packages. The Commission also will benefit from reducing the personnel time currently associated with manually processing paper filings.

Second, electronic filing will allow for a more efficient use of Commission resources by integrating the SRO electronic filing technology with SRO Rule Tracking System (''SRTS''), the internal Commission database that tracks these filings, enabling Commission staff to more easily monitor and process proposed rule changes. Pertinent information regarding proposed rule changes, as well as amendments, will be captured automatically by SRTS. As a result, Commission staff will be able to monitor electronically the progress of proposed rule changes filed on Form 19b–7 from initial receipt through final disposition and thereby enhance its management of the rule filing process.

As of 5:30 p.m. Eastern Daylight Saving Time on April 25, 2008, the Commission will no longer accept SRO proposed rule changes in paper format. Beginning at 9 a.m. Eastern Daylight Saving Time on April 28, 2008, SROs will be required to file all Forms 19b–7 and any amendments to Forms 19b–7 electronically, according to the procedures and in the format described in Rule 19b–7 and Form 19b–7, as amended. SROs will gain access to a secure Web site known as the EFFS, which enables authorized individuals at the SRO to file proposed rule changes with the Commission electronically.[13] Proposed rule changes will be deemed filed on the business day the Commission receives the proposed rule change electronically, provided the Commission receives the filing before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect at the time of filing, and it is filed in accordance with Rule 19b–7 and Form 19b–7, as amended. The Commission has eliminated the requirement that SROs submit multiple, paper copies of proposed rule changes.[14]

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[1] 15 U.S.C. 78s(b)(7)(A).

[2] Securities Exchange Act Release No. 55341 (February 23, 2007), 72 FR 9412 (March 1, 2007) (''Electronic 19b–7 Proposing Release'').

[3] 15 U.S.C. 78*o*–1(k).

[4] *See* Section 15(b)(11) of the Act. 15 U.S.C. 78*o*(b)(11).

[5] Section 19(b)(7) of the Act. 15 U.S.C. 78s(b)(7). Specifically, under Section 19(b)(7), these SROs submit those proposed rule changes that relate to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating the SRO's obligation to enforce the securities laws.

[6] Section 19(b)(7)(B) of the Act. 15 U.S.C. 78s(b)(7)(B). Proposed rule changes that relate to margin, except for those that result in higher margin levels, must be filed pursuant to Sections 19(b)(1) of the Act. 15 U.S.C. 78s(b)(1).

[7] 17 CFR 240.19b–4. *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287 (October 8, 2004) (File No. S7–18–04) (''Electronic 19b–4 Adopting Release'').

[8] 17 CFR 240.19b–4(*l*).

[9] *See* Securities Exchange Act Release No. 44692 (August 13, 2001), 66 FR 43721 (August 20, 2001) (Paper Form 19b–7 Adopting Release).

[10] *See* letters to Nancy M. Morris, Secretary, Commission, from: Thomas W. Sexton, Vice President and General Counsel, National Futures Association (''NFA''), dated April 23, 2007 (''NFA Letter'') and James J. Angel, PhD, CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated April 30, 2007 (''Angel Letter'').

[11] *See* Angel Letter, *supra* note 10 at 1–2.

[12] *See infra* notes 65–69 and accompanying text.

[13] The SRO will determine which individuals would be supplied with User IDs and passwords to access the secure Web site. *See infra* note 17 and accompanying text.

[14] Occasionally, an SRO may find it necessary to file documents that cannot be submitted electronically, such as comment letters submitted to the Exchange before filing, or other exhibits. In

As had been proposed, the adopted amendment to Form 19b–7 requires SROs to file their proposed rule changes with an electronic signature.[15] Form 19b–7 requires that a filing be signed on the SRO's behalf by a person ''duly authorized'' to sign a proposed rule change.[16] Each duly authorized signatory will be required to obtain a ''digital ID,'' which provides both the Commission and the SRO with assurances of the authenticity and integrity of the electronically-submitted Form 19b–7.[17] In addition, each signatory will be required to manually sign a hard copy of the Form 19b–7, authenticating, acknowledging, or otherwise adopting his or her electronic signature that is attached to or logically associated with the filing. In accordance with Rule 17a–1 under the Act,[18] the SRO is required to retain that manual signature page of the rule filing, authenticating the signatory's electronic signature, for not less than five years after the Form 19b–7 is filed with the Commission and, upon request, furnish a copy of it to the Commission or its staff.[19]

One commenter suggested that the Commission use its exemptive authority to eliminate the requirement that SROs file proposed rule changes with the Commission pursuant to Section 19(b)(7) of the Act.[20] The Commission believes that this comment is outside the scope of the proposed amendments and therefore is not making any changes to the proposal in this regard.

B. Posting of Rule 19b–7 Proposed Rule Changes on SRO Web Sites

The Commission also proposed to amend Rule 19b–7 to require each SRO to post proposed rule changes filed pursuant to that Rule, and any amendments thereto, on its public Web site no later than two business days after filing with the Commission. The Commission also proposed to require SROs to continue to post such proposed rule changes until 60 days after the SRO files a written certification with the CFTC, the CFTC determines that review of the proposed rule change is not necessary, or the CFTC approves the proposed rule change. The Commission is adopting these amendments as proposed.

The Commission believes the Web site posting requirement provides interested persons with easy access to proposed rule changes, while at the same time providing SROs with sufficient time to comply with the posting requirement.[21] Based on the Commission's experience with respect to SROs' obligation to post proposed rule changes under Rule 19b–4, the Commission believes that the two business day timeframe strikes an appropriate balance between promoting the public interest of having proposed rule changes posted quickly and the need for the SROs to have adequate time to perform the technological tasks necessary to post the proposed rule change.[22] The Commission believes all market participants, investors, and other interested parties should have access to SRO proposed rule changes filed with the Commission, and any amendments, as soon as practicable. Moreover, the Commission believes that Web site accessibility of SRO proposed rule changes filed under Section 19(b)(7) of the Act will: (1) Provide interested persons with faster access to proposed rule changes; (2) facilitate the ability of interested persons to comment on the proposals; (3) save SRO resources currently used to monitor the Commission's Public Reference Room for competitors' proposed rule changes; and (4) enhance the transparency of the rule filing process by providing ready access to proposed rule changes and facilitating public comment on them.

The Commission is also adopting as proposed amendments requiring SROs to remove proposed rule changes filed under Section 19(b)(7) of the Act that are deemed not properly filed and returned to SROs or withdrawn by SROs from their Web sites within two business days from the Commission's notification to the SRO that such proposed rule change was not properly filed,[23] or of the SRO's withdrawal of the proposed rule change.

The NFA requested clarification on whether it could keep proposed rule changes on its Web site for longer than the 60-day period provided in the proposed rule, and whether it could maintain on its Web site the letter submitted to the CFTC in connection with a proposed rule change that it withdraws from filing with the Commission or is notified was not properly filed. NFA also noted that leaving the letter submitted to the CFTC on the NFA Web site may provide useful historical information regarding NFA rule changes or other matters.[24] In this regard, the Commission notes that the amended rule only establishes minimum periods for which an SRO must post its proposed rule changes. An SRO may maintain a Form 19b–7 filing on its Web site after the 60-day period has ended. In addition, Rule 19b–7 does not apply to any filing other than those made under Section 19(b)(7)(A). Thus, an SRO may post on its Web site submissions to the CFTC or other materials, as it chooses.

Finally, Dr. Angel, suggested that all SROs be required to describe the status of rule filings (*e.g.*, ''effective,'' ''under review at the Commission,'' ''rejected,'' ''superseded by a new proposal,'' etc.) on their Web sites.[25] In addition, Dr. Angel suggested that the Commission require SROs to post all filings submitted to the Commission, including Form 1 and Form PILOT, and that the Commission require alternative trading systems to post their Forms ATS on their respective Web sites.[26] The Commission believes these suggestions are outside the scope of the proposed amendments, which relate exclusively to electronic filing by securities futures exchanges under Section 19(b)(7) of the

addition, it may not be appropriate to require proprietary and other information subject to a request for confidential treatment to be filed electronically. Accordingly, the amendments to Rule 19b–7 and Form 19b–7 will retain the flexibility to permit portions of a rule filing to be made in paper form under limited circumstances. For example, the Commission will permit SROs to file materials for which confidential treatment is requested in paper format.

[15] The Commission notes that the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, *et seq.* does not apply in this regard.

[16] The Commission is clarifying on amended Form 19b–7 that this individual must be an officer of the SRO, who has been authorized by the SRO's governing body to sign proposed rule changes on behalf of the SRO. *See* Instruction E to Form 19b–7.

[17] A digital ID, sometimes called a ''digital certificate,'' is a file on the computer that identifies the user. Computers can use a digital ID to create a digital signature that verifies both that the message originated from a specific person and that the message has not been altered either intentionally or accidentally. The user obtains a digital ID from a ''Certificate Authority'' (''CA'') for a modest sum (currently approximately $20 per year). When the SRO electronically sends the Form 19b–7 to the Commission, the digital ID will encrypt the data through a system that uses ''key pairs.'' With key pairs, the SRO's software application uses one key to encrypt the document. When the Commission receives the SRO's electronic document, the Commission's software will use a matching key to decrypt the document.

[18] 17 CFR 240.17a–1.

[19] *See* Rule 19b–7(d). These requirements are substantially consistent with the requirements for Form 19b–4 filings, which were adapted from Section 232.302 of Regulation S–T, 17 CFR 232.302 for EDGAR filers.

[20] *See* Angel Letter, *supra* note 10 at 1.

[21] The complete proposed rule change will also be available electronically in the Commission's Public Reference Room.

[22] An SRO controls the timing of filing proposed rule changes and amendments and can assure that its technology staff is prepared to post the proposed rule change on the SRO's public Web site within two business days of filing with the Commission.

[23] A screen within EFFS will indicate that a rule filing has not been properly filed and has been returned to the SRO.

[24] *See* NFA Letter, *supra* note 10 at 2.

[25] *See* Angel Letter, *supra* note 10 at 1.

[26] *See* Angel Letter, *supra* note 10 at 2.

Act, and therefore is not modifying the proposal in response to these comments.[27]

C. Requirement To Update Rule Text on SRO Web Sites

Currently, Rule 19b–4(m) under the Act[28] requires all SROs to post and maintain on their Web sites a complete and accurate copy of their rules. In addition, an SRO must update its Web site to reflect rule changes within two business days after being notified of the Commission's approval of a proposed rule change filed pursuant to Section 19(b)(2) of the Act or of the Commission's notice of a proposed rule change filed pursuant to 19(b)(3)(A) or 19(b)(7) of the Act. As adopted, all SROs will continue to be required to post and maintain a complete and accurate copy of their rules and to update their Web sites to reflect their proposed rule changes.

1. New Paragraph (g) of Rule 19b–7

The Commission proposed to add paragraph (g) to Rule 19b–7 to move the requirement that an SRO filing a proposed rule change under Section 19(b)(7): (1) Post and maintain a current and complete version of its rules on its Web site; and (2) update the rules posted on its Web site within two days after a rule change becomes effective.[29] The Commission is adopting new paragraph (g) to Rule 19b–7 as proposed, with certain minor changes to reflect comments from the NFA.[30]

The NFA asked the Commission to modify the proposed language in Rule 19b–7(g) so that an SRO's obligation to update its rules on its Web site would apply no sooner than two days after the SRO's *receipt* of notice from the CFTC that it had determined that review of the proposal was not necessary or that it had approved the proposal.[31] The NFA states that the CFTC does not have an electronic filing system and, therefore, the NFA does not always receive immediate notification of CFTC action.

In response to the NFA's comment, the Commission is amending Rule 19b–7(g) to require an SRO to update its Web site to reflect rule changes filed under Section 19(b)(7) within two business days of the later of: (1) The Commission's notice of the proposed rule change; or (2) the filing by the SRO of a certification with the CFTC under Section 5c(c) of the Commodities Exchange Act, receipt of notice from the CFTC that it has determined that review of such proposed rule change is not necessary, or receipt of notice from the CFTC that it has approved such proposed rule change. The Commission believes these changes are appropriate because they do not impose an obligation on an SRO to update its Web site until the SRO has notice of the CFTC action and no sooner than SROs are obligated to update their rule text for proposals submitted pursuant to Section 19(b)(3)(A) of the Act, which are effective upon filing with the Commission.

2. Amendments to Paragraph (m) of Rule 19b–4

The Commission also proposed to make a conforming change to Rule 19b–4 to remove the requirement in paragraph (m) that SROs update their Web sites to reflect proposed rule changes filed pursuant to Section 19(b)(7) of the Act. As discussed above, the Commission has moved this requirement to Rule 19b–7. The Commission is adopting the conforming changes to Rule 19b–4 as proposed.[32]

In addition, in response to comments from the NFA, the Commission is modifying Rule 19b–4(m) as it applies to an exchange registered with the Commission under Section 6(g) or a limited purpose national securities association registered under Section 15A(k) with regard to the period within which it must update its rule text on its Web site. An Exchange registered with the Commission under Section 6(g) of the Act[33] or a limited purpose national securities association registered under Section 15A(k) of the Act,[34] may be required to file certain proposed rule changes under Section 19(b)(2) of the Act. Such proposed rule changes do not become effective until: (1) The Commission approved the proposal; and (2) the SRO filed with the CFTC a written certification, the CFTC determined that review of the proposed rule change is not necessary, or the CFTC approved the proposed rule change. Accordingly, the final rule the Commission is adopting provides that an exchange that is registered with the Commission under Section 6(g) of the Act or a limited purpose national securities association registered under Section 15A(k) of the Act, is required to update its rule text on its Web site to reflect rule changes filed under Section 19(b)(2) of the Act within two business days of the later of: (1) The Commission's approval of the proposed rule change; or (2) the SRO's filing of a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act, notice from the CFTC that it has determined that review of the proposed rule change is not necessary, or notice from the CFTC that it has approved the proposed rule change.[35]

The Commission believes these modifications to the proposal are appropriate because they reflect the practical effect of the fact that exchanges registered under Section 6(g) of the Act and national securities association registered under Section 15A(k) of the Act are also regulated by the CFTC. Under this dual regulatory scheme, proposed rule changes must become effective under both the Act and the CEA. The final rule makes clear that such an SRO's obligation to update its Web site to reflect rule changes arises only after such rule changes have become effective under both the Act and the CEA.

D. Form 19b–7 Amendments

1. Form 19b–7 Amendments

The Commission proposed to amend the instructions to Form 19b–7 to eliminate the requirement to submit nine paper copies and instead to require electronic filing of Form 19b–7. The Commission is adopting this amendment as proposed. To access the secure Internet site for Web-based filing of the Form 19b–7, an SRO will submit to the Commission an External Application User Authentication Form (''EAUF'') to register each individual at the SRO who will be submitting Forms 19b–7 on behalf of the SRO. Upon receipt and verification of the information in the EAUF process, the Commission will issue each such person a User ID and Password to permit access to the Commission's secure Web site. As

[27] The Commission notes that it proposed to require SROs to post amendments to their Form 1s on their Web sites. *See* Securities Release Act No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004). The Commission has not taken action on this proposal.

[28] 17 CFR 240.19b–4(m).

[29] Section 19(b)(7)(B) of the Act requires a proposed rule change filed with the Commission under Section 19(b)(7) of the Act to be filed concurrently with the CFTC. Such proposed rule change is effective upon filing of a written certification with the CFTC, upon a determination by the CFTC that review of the proposed rule change is not necessary, or upon approval of the proposed rule change by the CFTC. 15 U.S.C. 78s(b)(7)(B).

[30] Dr. Angel suggested that the Commission require SROs to post their rulebooks on their Web site in one Adobe pdf file for ease of searching. See Angel Letter, *supra* note 10 at 1. While the Commission encourages the SROs to employ technology on their Web sites which facilitates research of their rules, the Commission does not believe it is necessary or appropriate to require SROs to use a particular application to publish their rules.

[31] *See* NFA Letter, *supra* note 10 at 2–3.

[32] *See* Rule 19b–4(m)(2). The final rule also clarifies that the two-day time period is *business* days.

[33] 15 U.S.C. 78f(g).

[34] 15 U.S.C. 78*o*–1(k).

[35] *See* Rule 19b–4(m)(3).

Form 19b–7 will be electronic, initially the authorized user at an SRO will access a screen containing a filing template, referenced as Page 1, in which it can identify the SRO, enter a brief description of the proposed rule change, and enter a brief description of the SRO governing body action approval.[36] The SRO will provide contact information and place the electronic signature of a duly authorized officer on this Page 1 initial screen.[37] The second screen of the electronic Form 19b–7 will provide the SRO with a means to attach the proposed rule change and related exhibits in Microsoft Word format.[38] EAUF users will have electronic access to a mechanism to fulfill the requirements of the Form, as adapted for electronic filing.[39] Finally, the SRO will use the electronic Form 19b–7 to amend or withdraw a rule filing pending with the Commission.

The Commission also proposed a number of changes to Form 19b–7, unrelated to electronic filing, that are modeled after certain provisions in Form 19b–4, which the Commission believed would facilitate an SRO's proper filing of Form 19b–7. The Commission is adopting the changes to Form 19b–7 substantially as proposed. For example, the format of the Instructions to Form 19b–7 will be organized according to the sections currently used for Form 19b–4 Instructions, instead of the combination of questions and titles that serve as subject heads in the existing Instructions to Form 19b–7 currently. The amended Form 19b–7 will require the SRO to describe the purpose of the proposed rule change in sufficient detail to enable the public to provide meaningful public comment.[40] The Form 19b–7 will direct the SRO to relevant sections of the Act that are appropriate for discussion in the Statutory Basis section of the Form 19b–7 and will clarify that a mere assertion that the proposed rule change is consistent with the Act is not sufficient to describe why the proposed rule change is consistent with the Act. The amended Form 19b–7 will also provide updated instructions related to the solicitation of comments from interested persons regarding the proposed rule change. These updated instructions will include the new address where interested parties may direct comments to Form 19b–7 filings in hard copy and describe the manner in which comments may be submitted on the Commission Web site.

The changes to Form 19b–7 will alter the way that the Exhibits are organized and the Instructions to such Exhibits are presented. For example, the amended Instructions will direct an SRO to include the completed notice of the proposed rule change (''Form 19b–7 Notice'' or ''Notice'') as Exhibit 1, whereas such notice is not assigned to an Exhibit in the existing Form 19b–7. The instructions for the Form 19b–7 Notice will be amended to include more detailed guidance on the current requirement that the Notice must be formatted to comply with the requirements for **Federal Register** publication. For example, the amended Instructions will provide guidance regarding **Federal Register** requirements relating to margin spacing, page numbering, and line spacing.

The subject of existing Exhibit 1, relating to communications with third parties on the subject of the proposed rule change, will move to Exhibit 2. The guidance in the existing Instructions to Exhibit 2 will be replaced, in Exhibit 3, with more detailed guidance as to how the SRO should present forms, reports, and questionnaires that the SRO proposes to use to implement the terms of the proposed rule change. The requirement to include the text of the proposed rule change will remain in Exhibit 4, but the requirement for the SRO to describe the anticipated effect of the proposed rule change would have on the application of other rules of the SRO will move to Section II(A)(1)(b) of the Form 19b–7 Notice.

The Commission is adopting as proposed, a requirement that an SRO submitting a Form 19b–7 attach, in Exhibit 5, a document reflecting the certificate of effectiveness of a proposed rule change, an SRO's request or the CFTC's determination that review of the proposed rule change is not necessary, or an SRO's request for CFTC approval or an indication from the CFTC that the proposed rule change has been approved. Page 1 of Form 19b–7 will provide a space for SROs to indicate which of these actions, noted in the preceding sentence, has been taken by the SRO or the CFTC. After further consideration of the issue, the Commission is modifying Page 1 to provide greater specificity as to the status of the effectiveness of the proposed rule change. Accordingly, Page 1 will have separate boxes for the SRO to mark indicating whether it is attaching a copy of its request that the CFTC determine that review of the proposed rule change is not necessary or a copy of the CFTC's determination that review of the proposed rule change is not necessary. Similarly, an SRO will be able to mark separate boxes indicating whether the SRO is attaching a document reflecting the SRO's request that the CFTC approve the proposed rule change or to indicate that the SRO is attaching the CFTC's approval of the proposed rule change. Page 1 will also indicate that the SRO may submit more than one document in Exhibit 5.

As amended, the Instructions to Form 19b–7 describe circumstances under which an SRO must file an amendment to a proposed rule change and the procedures an SRO must follow when submitting an amendment electronically. The Instructions for Form 19b–7 state, in relevant part, that if ''any information on this form or exhibit thereto is or becomes inaccurate before the proposed rule change becomes effective, the [SRO] shall file amendments correcting any such inaccuracy.'' This instruction, for example, will require an SRO to file an amended Exhibit 5 when the SRO receives notice from the CFTC that review of the proposed rule change is not necessary or that the CFTC has approved the proposed rule change, if the SRO receives such notice following the submission of the original proposed rule change.

The Commission believes that the changes to Form 19b–7, which are designed generally to conform to the updated Form 19b–4, will promote uniformity among SRO proposed rule change filings. This uniformity should facilitate SROs' compliance with the rule filing requirements under section 19(b) and the Commission's review of proposed rule changes. The changes are also expected to facilitate a speedy migration to electronic filing for SROs submitting proposed rule changes under section 19(b)(7).

As noted above, the Commission recognizes that in rare circumstances SROs may be unable to file certain documents electronically with the

[36] The authorized user also will be able to indicate if there will be a separate filing of any hard copy exhibits that are unable to be submitted electronically.

[37] As noted *supra* notes 15–17, and accompanying text, a person that is a ''duly authorized officer'' at the SRO will be required to place his or her ''electronic signature'' on the Form 19b–7 before it is transmitted electronically to the Commission.

[38] An SRO may also submit Exhibits 2, 3, and 5 in another acceptable electronic format, including Microsoft Excel, Microsoft PowerPoint, Adobe Acrobat, or Corel WordPerfect, if Microsoft Word is not available to the SRO or the document is not compatible with Microsoft Word.

[39] For example, the SRO will click separate boxes on the second screen to attach documents containing the various exhibits; notices, written comments, transcripts, other communications; form, report, or questionnaire; proposed rule text; CFTC certification; the completed notice of the proposed rule change for publication in the **Federal Register**; and, marked copies of amendments if applicable.

[40] *See also* General Instructions for Form 19b–4, which establish a similar requirement for Form 19b–4.

Commission. Therefore, under these limited circumstances, the Commission would consider whether to allow SROs to file documents in paper format within five days of the electronic filing of all other required documents.[41] In the Electronic 19b–7 Proposing Release, the Commission solicited comment on whether there would be a need for an exception to the electronic filing requirement of Exhibit 5 to Form 19b–7. In response, the NFA suggested that while an explicit exception from the electronic filing requirement of Exhibit 5 was not necessary, the Commission should reserve the general exemptive authority to allow paper filings for all or part of a rule filing in unusual situations.[42] The Commission believes that the proposed rule changes filed pursuant to Section 19(b)(7) of the Act are usually not so time-sensitive that failure to file them with the Commission on a particular date will result in negative consequences to SROs, their members, or investors. In the rare situation where an SRO can demonstrate to the Commission that its inability to file a proposed rule change electronically on that particular date will cause harm to the SRO, its members, or investors, the Commission would consider appropriate relief. In such emergency situations, the Commission could consider an SRO's exemption request from the electronic rule filing requirements of Section 19(b) of the Act pursuant to Rule 0–12 of the Act[43] and Section 36(a)(1) of the Act[44] ''to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' In making such findings, the Commission generally would consider important the existence of factors such as: (1) An extended electronic outage at the SRO facility or at the Commission; (2) a pressing need for implementation of the proposed rule change; and (3) a failure of back-up facilities. The Commission notes that SROs, in their business continuity planning, should ensure that they have appropriate back-up facilities to accommodate electronic filing of proposed rule changes. Accordingly, the Commission is adopting the rule as originally proposed, without a specific exception to permit SROs to file Exhibit 5 on paper.

2. Accurate, Consistent, and Complete Forms 19b–7

The Commission firmly believes that, to provide the public with a meaningful opportunity to comment, a proposed rule change must be accurate, consistent, and complete. Form 19b–7 states that the form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether abrogation of the proposal is appropriate because it unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and protection of investors.[45] The SRO must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner.

Currently, Commission staff devotes significant time to processing proposed rule changes, reviewing them for accuracy and completeness, and preparing them for publication. SRO staff must ensure that the filings: (1) Contain a properly completed Form 19b–7; (2) contain a clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition; (3) contain a summary of any written comments received by the SRO; (4) contain the proper certification submitted to the CFTC, any other appropriate determination made by the CFTC that a review of the proposed rule change is not necessary, or an indication that the CFTC has approved the proposed rule change; and (5) describe the impact of the proposed rule change on the existing rules of the SRO, including any other rules proposed to be amended. As described in the current Form 19b–7, filings that do not comply with the foregoing are deemed not filed and returned to the SRO. Under these amendments the Commission is adopting, electronically filed proposed rule changes that do not comply with the foregoing will continue to be returned to the SRO, but in electronic format, and, consistent with current practice, will be deemed not filed with the Commission until all required information has been provided.

E. Amendments to Form 19b–4

The Commission proposed to clarify on Form 19b–4 that an individual who signs the Form 19b–4 digitally must be an officer authorized by the SRO's governing body to sign proposed rule changes on behalf of the SRO. Accordingly, the Commission proposed to amend Page 1 of Form 19b–4 to add the word ''officer'' to follow the phrase ''duly authorized'' in the Signature Box appearing on that page.[46] The Commission notes that this change does not create any new obligation. Section F of the Instructions to Form 19b–4 provides that a ''duly authorized officer'' sign Form 19b–4 submissions, but the word ''officer'' was inadvertently omitted from the signature box when the electronic Form 19b–4 was adopted.[47] The Commission is adopting this amendment as proposed.

F. Date of Effectiveness of the Proposal

One commenter requested a 30 day delay before implementation of the proposed amendments.[48] The Commission believes that the SROs will benefit from an effective date that provides them with time to familiarize themselves with the EFFS and to make the technological changes to the procedures for updating their Web sites necessary to comply with the new obligations under this proposal. Accordingly, these amendments will become effective on April 28, 2008, 30 days following publication in the **Federal Register**.

III. Paperwork Reduction Act

Certain provisions of the amendments to Rule 19b–7 and Form 19b–7 and Rule 19b–4 and Form 19b–4 contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[49] Accordingly, the Commission submitted the information to the Office of Management and Budget (''OMB'') for review revisions to the current collection of information titled ''Rule 19b–7 Under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0553). The Commission also submitted revisions to the current collection of information titled ''Form 19b–7 Under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0553). In addition, the Commission has submitted

[41] This exception from electronic filing would not apply to Page 1 to Form 19b–7 or Exhibits 1 and 4 thereto but would only be applicable to Exhibits 2 and 3, and any documents filed pursuant to a request for confidential treatment pursuant to the Freedom of Information Act, 5 U.S.C. 552.

[42] *See* NFA Letter at 2.

[43] 17 CFR 240.0–12.

[44] 15 U.S.C. 78mm(a)(1).

[45] Section 19(b)(7)(C) of the Act grants to the Commission, after consultation with the CFTC, the authority to summarily abrogate a proposed rule change that has taken effect pursuant to Section 19(b)(7)(B) of the Act if it appears to the Commission that such a rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors.

[46] The proposed amendment to Form 19b–4 is attached as Appendix B.

[47] *See* Electronic 19b–4 Adopting Release, *supra* note 7.

[48] *See* NFA Letter at 3.

[49] 44 U.S.C. 3501 *et seq.*

revisions to the current collection of information titled ''Rule 19b–4 Under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0045). Finally, the Commission submitted revisions to the current collection of information titled ''Form 19b–4 Under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0045). 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. In the Electronic 19b–7 Proposing Release, the Commission solicited comments on the collection of information requirements, but received no response to the solicitation. Accordingly, the Commission is making no adjustments to the burden estimates provided in the Electronic 19b–7 Proposing Release.[50]

A. Summary of Collection of Information

Prior to these amendments, Rule 19b–7 required an SRO that proposes to add, delete, or amend its rules relating to certain subjects[51] to submit such proposed rule change to the Commission on Form 19b–7. Form 19b–7 required the respondent: (1) To state the purpose of the proposed rule change; (2) to state the authority and statutory basis for the proposed rule change; (3) to describe the proposal's impact on competition; (4) to provide a summary of any written comments on the proposed rule change received by the SRO; and (5) to describe the date upon which the proposed rule change becomes effective and provide supporting documentation relevant to the effectiveness date. The amendments add a requirement to Form 19b–7 that an SRO provide on Page 1 of Form 19b–7 more information about a staff member prepared to answer questions about the filing, such as the SRO staff member's title, e-mail address and fax number. The amendments also require Web site posting of all proposed rule changes, and any amendments thereto. In addition, the amendments codify in Rule 19b–7 the requirement previously located in Rule 19b–4(m) that SROs submitting Form 19b–7 post a current and complete set of their rules on their Web sites. In response to a commenter's concerns, the Commission modified the amendment so that a security futures exchange or a limited purpose national securities association will be required to update its Web site within two business days after it files a written certification with the CFTC under Section 5c(c) of the Commodities Exchange Act, within two business days after the SRO's receipt of notice from the CFTC that it has determined that review of the proposed rule change is not necessary, or within two business days after the SRO receives an indication from the CFTC that it has approved the proposed rule change, or within two business days of the Commission's notice of the proposed rule change, if such notice occurs after the CFTC certification, determination, or approval. The amendments also clarify that a mere assertion that the proposed rule change is consistent with the Act is not sufficient to describe why the proposed rule change is consistent with the Act. Rule 19b–4(m) will continue to require SROs to update their rules on their Web sites to reflect proposed rule changes filed pursuant to Section 19(b)(2) and 19(b)(3)(A) of the Act. Proposed Rule 19b–7(g) will require SROs to update their rule texts on their Web sites to reflect rule changes filed pursuant to Section 19(b)(7) of the Act following the Commission's notice of such proposed rule change, within two business days after such rule change takes effect. All SROs that file Form 19b–4 and Form 19b–7 currently post this information on their Web sites. Therefore, SROs will not be required to provide additional information to comply with proposed Rule 19b–7(g) and current Rule 19b–4(m).

B. Use of Information

The information provided via EAUF, as required by the amendments to Form 19b–7, will be used by the Commission to verify the identity of the individual representing the SRO and provide such individual access to a secure Commission Web site for filing of the Form 19b–7. The amendment will require that SROs post their proposed rule changes filed pursuant to Section 19(b)(7) of the Act on their Web sites, so that these proposals could be viewed by the general public, SRO members, competing SROs, other market participants, and Commission staff. The information will enable interested parties to more easily access SRO rules and rule filings, which will facilitate public comment on proposed SRO rules. In addition, SRO staff, members, industry participants, and Commission staff will utilize the accurate and current version of SRO rules that are posted on the SRO Web site to facilitate compliance with such rules.

C. Respondents

There are currently five SROs[52] registered with the Commission as national securities exchanges under Section 6(g) of the Act or as a national securities association registered with the Commission under Section 15A(k) of the Act subject to the collection of information for Rule 19b–7, though that number may vary owing to the consolidation of SROs or the introduction of new entities. In a fiscal year, these respondents filed an average of 12 rule change proposals and 3 amendments to those proposed rule change proposals, for an average of 15 filings per fiscal year that are subject to the current collection of information.[53] Of the 12 proposed rule changes filed by SROs, all 12 ultimately became effective because the SROs did not withdraw any proposed rule changes.

D. Total Annual Reporting and Recordkeeping Burden

1. Background

The amendments to Rule 19b–7 and Form 19b–7 are designed to modernize the SRO rule filing process and to make the process more efficient by conserving both SRO and Commission resources. Rule 19b–7 and Form 19b–7 are amended to require SROs to electronically file their proposed rule changes. Form 19b–7 is revised to accommodate electronic submission. In addition, SROs will be required to post on their Web sites proposed rule changes submitted on Form 19b–7 to the Commission and amendments thereto. A conforming amendment codifies in Rule 19b–7 the current requirement in Rule 19b–4(m) for SROs to maintain a current and complete set of their rules on their Web site.

2. Rule 19b–7 and Form 19b–7

The Commission does not expect that the amendments to Rule 19b–7 and Form 19b–7 relating to electronic filing of proposed rule changes and amendments will impose any material upfront cost on SROs. The technology for electronic filing will be Web-based; therefore, the SROs are not expected to have any material upfront technology expenditures for electronic filing because all SROs currently have access to the Internet.

[50] *See supra* note 2, 72 FR 9412, 9418.

[51] *See* 15 U.S.C. 78f(g)(4)(B)(i) and 78*o*–3(k)(3)(A).

[52] The Board of Trade of the City of Chicago, Inc. (''CBOT''), Chicago Mercantile Exchange, Inc. (''CME''), CBOE Futures Exchange LLC (''CFE''), NFA, and OneChicago LLC (''OC'').

[53] Since the implementation of the CFMA in 2001 to September 30, 2006, SROs have filed 62 proposed rule changes pursuant to Section 19(b)(7) of the Act and 13 amendments.

However, each SRO will be required to obtain a digital ID from a certificating authority. The Commission estimates the annual cost of the ID to be approximately $20 for each SRO.[54] The Commission estimates that each SRO will purchase five such digital IDs for its staff. Thus, the annual cost of the ID for all SROs is expected to be approximately $500 (5 SROs × $20 × 5). The Commission included these estimates in its proposal and received no comments on them.

In addition, the Commission believes that SROs may incur some costs associated with training their personnel about the procedures for submitting proposed rule changes electronically via EFFS. However, the Commission believes that such costs will be one-time costs and relatively insubstantial since the SROs are already familiar with the information required in filing a proposed rule change with the Commission and will be required to submit the same information they currently submit in electronic form under these amendments. Based on the experience of the Commission staff in training SROs for the implementation of electronic Form 19b–4 filings, the Commission estimates that each SRO will spend approximately two hours training each staff member who will use the EFFS to submit the proposed rule changes electronically. Accordingly, the Commission estimates that the upfront cost of training SRO staff members to use EFFS will be 50 hours (5 SROs × 2 hours × 5 staff members). The Commission included these estimates in its proposal and received no comments on them.

An SRO rule change proposal is generally filed with the Commission after an SRO's staff has obtained approval from its Board. The time required to complete a filing varies significantly and is difficult to separate from the time an SRO spends in developing internally the proposed rule change. However, the Commission estimates that 15.5 hours is the amount of time required to complete an average rule filing using present Form 19b–7.[55] This figure includes an estimated 11.5 hours of in-house legal work and four hours of clerical work. The amount of time required to prepare amendments varies because some amendments are comprehensive, while other amendments are submitted in the form of a one-page letter. The Commission estimates that, under current rules, seven hours is the amount of time required to prepare an amendment to the rule proposal. This figure includes an estimated two hours of in-house legal work and five hours of clerical work. The Commission included these estimates in its proposal and received no comments on them.

Based upon the experience of electronic filing of proposed rule changes on Form 19b–4, the Commission expects that an electronic Form 19b–7 and new requirements to Form 19b–7 will reduce by three hours the amount of SRO clerical time required to prepare the average proposed rule change and by four hours for an amendment thereto. The Commission does not believe that the new instruction specifying that an SRO describe the purpose of the proposed rule change in sufficient detail to enable the Commission to determine whether abrogation is appropriate will add any additional burden to the Form 19b–7 filing process because the existing Instructions to Form 19b–7 already required that all information in the Form must be presented in a manner which will enable the Commission to make such a determination. The Commission does not believe that the additional contact information of an SRO staff member on Page 1 of the Form will add any measurable burden to an SRO submitting a Form 19b–7, because the information is so readily accessible to the party submitting the filing. The Commission does not believe that requiring the SROs to indicate on Page 1 of Form 19b–7 whether the CFTC has determined that review of the proposed rule change is not necessary or that the CFTC has approved the proposed rule change, as proposed herein, will create any addition burden to the SROs because the SROs are already required to indicate such information in Exhibit 1 to Form 19b–7. With the proposed electronic filing, the Commission staff estimates that 12.5 hours is the amount of time that will be required to complete an average rule filing and that three hours is the amount of time required to complete an average amendment. These figures reflect the three hours in savings in clerical hours that would result from the use of an electronic form for rule filings and four hours for amendments.[56] The Commission estimates that the reporting burden for filing rule change proposals and amendments with the Commission under the proposed amendments will be 159 hours (12 rule change proposals × 12.5 hours + 3 amendments × 3 hours). The Commission included these estimates in its proposal and received no comments on them.

3. Posting of Proposed Rule Changes Filed Under Rule 19b–7 on SRO Web Sites

The amendments also require SROs to post proposed rule changes filed under Rule 19b–7, and any amendments thereto, on their Web sites. The Commission estimates that 30 minutes is the amount of time that will be required to post a proposed rule on an SRO's Web site and that 30 minutes is the amount of time that will be required to post an amendment on an SRO's Web site.[57] The Commission estimates that the reporting burden for posting rule change proposals and amendments on the SRO Web sites will be approximately eight hours (12 rule change proposals × 0.5 hours + 3 amendments × 0.5 hours). The Commission included these estimates in its proposal and received no comments on them.

4. SRO Rule Text

Currently, all SROs are required to post their current rules on their Web sites pursuant to Rule 19b–4(m). The Commission estimates, based upon its analysis in the Electronic 19b–4 Adopting Release, that the amount of the time required to update an SRO's rule text on its Web site after a proposed rule change becomes effective to be four hours. Proposed rule changes submitted under Section 19(b)(7)(A) become effective an average of 12 times a year. Therefore, the Commission estimates that the reporting burden for updating the posted SRO rules on the SRO Web site will be 48 hours (12 proposed rule changes submitted pursuant to Section 19(b)(7)(A) × 4 hours). The Commission included these estimates in its proposal and received no comments on them.

The amendment will move the burden associated with complying with this provision from Rule 19b–4(m) to Rule 19b–7(g). Based upon the Commission's reporting burden estimate described above, the Commission estimates that the amendments will reduce the burden associated with SROs' compliance with the requirement provided in Rule 19b–4 that SROs post current and complete rule text on their Web sites and update that rule text after it changes following the effectiveness of a proposed rule

[54] This estimate is based upon the $19.95 price displayed for the ID on VeriSign's Web site as of October 2, 2007.

[55] *See* Electronic 19b–7 Proposing Release, *supra* note 2.

[56] The SROs' four hour time savings would result from the elimination of tasks, such as making multiple copies of the Form 19b–7 and amendments, arranging for couriers, and making follow-up telephone calls to ensure Commission receipt.

[57] This estimate is based on information from the Commission's Office of Information Technology.

change by 48 hours annually and increase the corresponding burden for compliance with Rule 19b–7 by 48 hours. The Commission anticipates that the amendments to Rule 19b–7(g) proposed herein, relating to the timing of updates to SRO rules do not impact the compliance burden for this rule. The Commission included these estimates in its proposal and received no comments on them.

In addition, in response to comments from the NFA, the Commission is also modifying Rule 19b–4(m) as it applies to an exchange registered with the Commission under Section 6(g) or a limited purpose national securities association registered under Section 15A(k). In its comment letter, the NFA noted that receipt of notification of CFTC action is not always immediate and requested that the Commission change the period within which an exchange registered with the Commission under Section 6(g) or a limited purpose national securities association registered under Section 15A(k) is required to update its Web site to be based on receipt of CFTC action and not the date the CFTC action occurs.[58] In response to this comment, Rule 19b–7(g) will now require that an exchange registered with the Commission under Section 6(g) or a limited purpose national securities association registered under Section 15A(k) to update its rule text on its Web site to reflect rule changes filed under Section 19(b)(2) of the Act within two business day of the later of: (1) Commission approval of the proposed rule change; or (2) the SRO's filing of a written certification with the CFTC under Section 5c(c) of the Commodities Exchange Act, notice from the CFTC that it has determined that review of the proposed rule change is not necessary, or notice from the CFTC that it has approved the proposed rule change. The Commission does not believe this amendment will create any additional burden to SROs because the SROs are already required to update their Web sites following the Commission's approval of rule changes submitted to the Commission pursuant to Section 19(b)(2) of the Act.

5. Total Annual Reporting Burden

The Commission estimates that the total annual reporting burden under the proposed rule will be 167 hours (159 hours for filing proposed rule changes and amendments + 8 hours for posting proposed rule changes and amendments on the SROs' Web sites + 48 hours for posting and updating complete sets of SRO rule text pursuant to Rule 19b–7—48 hours for posting and updating complete sets of SRO rule text pursuant to Rule 19b–4).

In addition to the 167 hour annual burden, the Commission believes that SROs may incur some costs associated with training their personnel about the procedures for submitting proposed rule changes electronically and submission of the information via EFFS. However, the Commission believes that such costs will be one-time costs and relatively insubstantial since the SROs are already familiar with the information required in filing a proposed rule change with the Commission and will be required to submit the information (already required to be submitted) electronically under this proposal. The Commission estimates that each SRO will spend approximately two hours training each staff member who will use the EFFS to submit the proposed rule changes electronically. Accordingly, the Commission estimates that the upfront cost of training SRO staff members to use EFFS will be 50 hours (5 SROs × 2 hours × 5 staff members).

The Commission does not expect that the amendments with regard to electronic filing will impose any material additional costs on SROs. Instead, the Commission believes that the amendments to Rule 19b–7 and Form 19b–7, on balance, will reduce paperwork costs related to the submission of SRO proposed rule changes. The technology for electronic filing will be Web-based; therefore, the SROs are not expected to have any technology expenditures for electronic filing because all SROs currently have access to the Internet.

As previously stated, the SROs may incur costs of eight hours annually to post on their Web site their proposed rules, and amendments thereto, no later than two business days after filing with by the Commission. With regard to posting of and updating of accurate and complete text of SRO final rules, the Commission believes that the amendments will increase the burden associated with complying Rule 19b–7 by 48 hours and reduce the burden associated with complying with Rule 19b–4 by 48 hours. In addition, the Commission does not anticipate that SROs will incur any additional costs in complying with the change to Form 19b–4, which adds the word ''officer'' to the Signature Box because the addition of the word simply provides transparency to an obligation that already exists.[59] Accordingly, the Commission does not believe that SROs will incur any additional costs in posting this information on their Web sites.

E. Retention Period of Recordkeeping Requirements

The SROs will be required to retain records of the collection of information (the manually signed signature page of the Form 19b–7) for a period of not less than five years, the first two years in an easily accessible place, according to the current recordkeeping requirements set forth in Rule 17a–1 under the Act.[60] The SROs will be required to retain proposed rule changes, and any amendments, on their Web sites until 60 days after effectiveness of the proposed rule that is filed with both the Commission and the CFTC or within two business days of withdrawal of the proposed rule change or notification that it is improperly filed.[61] The SRO will be required at all times to maintain an accurate and up-to-date copy of all of its rules on its Web site.[62]

F. Collection of Information Is Mandatory

Any collection of information pursuant to the amendments to Rule 19b–7 and Form 19b–7 to require electronic filing with the Commission of SRO proposed rule changes will be a mandatory collection of information filed with the Commission as a means for the Commission to review, and, as required, take action with respect to SRO proposed rule changes. Any collection of information pursuant to amendments to require Web site posting by the SROs of their proposed and final rules will also be a mandatory collection of information.

G. Responses to Collection of Information Will Not Be Kept Confidential

Other than information for which an SRO requests and obtains confidential treatment in accordance with the provisions of 5 U.S.C. 522, the collection of information pursuant to amendments to Rule 19b–7 and Form 19b–7 under the Act will not be confidential and will be publicly available.[63]

[58] *See* NFA Letter, *supra* note 10 at 2–3.

[59] *See* Section F of the Instructions to Form 19b–4.

[60] SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a–5 under the Act. 17 CFR 240.17a–5.

[61] *See* Rule 19b–7(f).

[62] *See* Rule 19b–7(g).

[63] Consistent with applicable law, proposed SRO rule changes containing proprietary or otherwise sensitive information may be accorded confidential treatment, including requests submitted pursuant to the protection afforded for such information in the Freedom of Information Act, 5 U.S.C. 552.

IV. Costs and Benefits of the Rulemaking

In the Electronic 19b–7 Proposing Release, the Commission identified certain costs and benefits of the amendments to Rule 19b–7 and Form 19b–7.[64] As noted, the Commission estimates that the total annual paperwork reporting burden under the proposed rule will be 167 hours. The Commission, however, believes that there will be an overall reduction of costs based on the amendments.[65] The Commission received one comment letter relating to the cost and benefits of the proposed amendments.[66] The commenter expressed its belief that the amendment will reduce the costs and burdens associated with compliance with Rule 19b–7 and Form 19b–7. Thus, after careful consideration, the Commission is not modifying its costs and benefits analysis from that presented in the Electronic 19b–7 Proposing Release[67] and believes that the benefits of the amendments justify the costs that they will impose.

A. Benefits

The amendments are designed to modernize the filing, receipt, and processing of SRO proposed rule changes and to make the SRO rule filing process more efficient by conserving both SRO and Commission resources. The Commission believes that the changes to Rule 19b–7 and Form 19b–7 will permit SROs to file proposed rule changes with the Commission more quickly and economically. For example, SROs are currently required to pay for delivery costs of multiple paper copies to the Commission and incur costs associated with monitoring the Commission's Public Reference Room for competitors' rule filings. Requiring SROs to electronically file proposed rule changes under Rule 19b–7 is expected to reduce expenses associated with clerical time, postage, and copying and to increase the speed, accuracy, and availability of information beneficial to investors, other SROs, and financial markets.

The Commission does not expect that the amendments will impose additional costs on SROs. Instead, the Commission believes that the amendments to Rule 19b–7 and Form 19b–7, on balance, will reduce costs related to the submission of SRO proposed rule changes. The technology for electronic filing will be Web-based; therefore, the SRO is not expected to have any material increase in technology expenditures for electronic filing because all SROs currently have access to the Internet. Accordingly, the Commission believes that the amendments to Rule 19b–7 and Form 19b–7, by requiring the SROs to submit proposed rule changes electronically, will reduce their costs.

Because Commission staff will no longer manually process the receipt and distribution of SRO rule filings submitted on Form 19b–7, electronic filing will also expedite the Commission's receipt of SRO proposed rule changes filed under Rule 19b–7 and provide the SROs with the certainty that the Commission has received the proposed rule changes and has captured pertinent information about the rule changes in SRTS. Based on the Commission's experience with electronic filing of Form 19b–4, the Commission believes that integrating this electronic filing technology with SRTS will also enhance the Commission's ability to monitor and process SRO proposed rule changes filed on Form 19b–7.

Moreover, requiring SROs to post proposed rule changes filed under Rule 19b–7 on their Web sites no later than two business days after filing with the Commission is designed to increase availability of SRO proposed rules and thereby facilitate the ability of interested parties to comment on proposed rule changes. For instance, the posting of these proposed rule changes will provide the public with access to the filings on the SROs' Web sites and thereby reduce the burden on SRO and Commission staff related to providing information about proposed rule changes to interested parties. The Commission believes that the posting of the proposed rule changes submitted on Form 19b–7 will also save SRO resources that are currently being used to monitor the Commission's Public Reference Room for competitors' proposed rule changes.

B. Costs

As previously noted, the Commission estimates that the annual paperwork reporting costs will be 167 hours under the proposed rule. The Commission believes that SROs may incur some costs associated with training their personnel about the procedures for submitting proposed rule changes electronically and submission of the information via EFFS. However, the Commission believes that such costs will be one-time costs and insubstantial since the SROs are already familiar with the information required in filing a proposed rule change with the Commission and will be required to submit the same information electronically under these amendments. In the Electronic 19b–7 Proposing Release, the Commission estimated that the total amount of one-time costs that SROs will incur in training personnel how to use EFFS is 50 hours and received no comments on this estimate. The Commission believes that the SROs may also incur some minimal costs (currently $20 per year) associated with purchasing digital IDs for each duly authorized officer electronic signatories.[68] The Commission also believes that the SROs will have to make temporary adjustments to their recordkeeping procedures since the SROs will be required to print out the Form 19b–7 signature block, manually sign proposed rule changes, and retain the manual signature for not less than five years. However, there are not expected to be additional costs associated with such recordkeeping as SROs are currently required to retain the Form 19b–7 for not less than five years.

Moreover, the Commission believes that the requirement that SROs post proposed rule changes on their Web sites will impose some but not substantial costs on most SROs. The Commission notes that no new costs will be associated with posting a current and complete version of their rules on their Web site because currently all SROs promptly post this information on their Web sites pursuant to Rule 19b–4(m). In addition, the Commission does not anticipate that SROs will incur any material additional costs in complying with the change to Form 19b–4, which adds the word ''officer'' to the Signature Box because the addition of the word simply provides transparency to an obligation that already exists.[69] Therefore, at all times, each SRO must maintain a current and complete set of its rules to facilitate compliance with this requirement. Accordingly, the Commission does not believe that SROs will incur substantial costs in simply posting this information on their Web

[64] *See supra* note 2, 72 FR 9412, 9418.

[65] As noted in the Paperwork Reduction Act analysis, the Commission staff based this total reporting burden of 159 hours for filing proposed rule changes and amendments + 8 hours for posting proposed rule changes and amendments on the SROs' Web sites + 48 hours for posting and updating complete sets of SRO rule text pursuant to Rule 19b–7—48 hours for posting and updating complete sets of SRO rule text pursuant to Rule 19b–4.

[66] *See* NFA Letter, *supra* note 10.

[67] *See* Proposing Release, *supra* note 2 at 27–30.

[68] In the Electronic 19b–7 Proposing Release, the Commission estimated that each SRO will purchase five of their staff such digital IDs. Thus, the annual cost of the digital ID for all SROs will be $500 (5 SROs × $20 × 5). The Commission received no comments on this estimate.

[69] *See* Section F of the Instructions to Form 19b–4.

sites because they are already required to do so.

V. Consideration of the Burden on Competition, Promotion of Efficiency, and Capital Formation

Section 3(f) of the Act[70] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Act[71] requires the Commission, when promulgating rules under the Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In the Electronic 19b–7 Proposing Release, the Commission considered how the proposed amendments to Rule 19b–7 and Form 19b–7 would impact competition among SROs, and whether they would promote efficiency and capital formation.[72] The Commission requested comment on the competitive or anticompetitive effects of the amendments to Rule 19b–7 and Form 19b–7 on any market participants if adopted as proposed. The Commission also requested comment on what impact the amendments, if adopted, would have on efficiency and capital formation. The Commission requested commenters to provide empirical data to support their views. The NFA and Dr. Angel both commented that they believed that the proposal would increase the efficiency of the 19b–7 rule filing process.[73]

The amendments are intended to modernize the receipt and review of SRO proposed rule changes and to make the SRO rule filing process more efficient by conserving both SRO and Commission resources. As a result of the new requirement to file proposed rule changes electronically, the Commission anticipates that SROs will save time and resources currently devoted to corresponding under a paper-based system. As discussed in further detail in Section IV (''Costs and Benefits of the Rulemaking''), the Commission anticipates that SROs will save staff time in the preparation and transmission of Form 19b–7 as well as associated preparation and delivery costs.

The amendments also are intended to improve the transparency of the SRO rule filing process and facilitate access to current and complete sets of SRO rules. The Commission believes that the Web site posting of rule filings submitted on Form 19b–7 will promote competition among SROs because they will be able to determine the proposed rules of their competitors more easily. Further, because the proposal does not impact a significant number of businesses or investors, the Commission believes it will have minimal impact on capital formation.

VI. Regulatory Flexibility Act Certifications

The Commission has certified, pursuant to Section 605(b) of the Regulatory Flexibility Act,[74] that the amendments to Rule 19b–7 and Form 19b–7 and Rule 19b–4 and Form 19b–4 will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons supporting the certification, was incorporated into the Electronic 19b–7 Proposing Release.[75] The Commission solicited comments as to the nature of any impact on small entities. No comments were received.

VII. Statutory Basis and Text of Proposed Amendments

The amendments to Rule 19b–7 and Form 19b–7 under the Act are being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(b), 6, 15A, 19(b), and 23(a) of the Act.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.19b–4 is amended by revising paragraph (m) to read as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(m) (1) Each self-regulatory organization shall post and maintain a current and complete version of its rules on its Web site.

(2) A self-regulatory organization, other than a self-regulatory organization that is registered with the Commission under section 6(g) of the Act (15 U.S.C. 78f(g)) or pursuant to section 15A(k) of the Act (15 U.S.C. 78*o*–1(k)), shall update its Web site to reflect rule changes filed pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) within two business days after it has been notified of the Commission's approval of a proposed rule change, and to reflect rule changes filed pursuant to section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)) within two business days of the Commission's notice of such proposed rule change.

(3) A self-regulatory organization that is registered with the Commission under section 6(g) of the Act (15 U.S.C. 78f(g)) or pursuant to section 15A(k) of the Act (15 U.S.C. 78*o*–1(k)), shall update its Web site to reflect rule changes filed pursuant to section 19(b)(2) of the Act by two business days after the later of:

(A) Notification that the Commission has approved a proposed rule change; and

(B) (i) The filing of a written certification with the Commodity Futures Trading Commission under section 5c(c) of the Commodity Exchange Act (7 U.S.C. 7a–2(c));

(ii) Receipt of notice from the Commodity Futures Trading Commission that it has determined that review of the proposed rule change is not necessary; or

(iii) Receipt of notice from the Commodity Futures Trading Commission that it has approved the proposed rule change.

(4) If a rule change is not effective for a certain period, the self-regulatory organization shall clearly indicate the effective date in the relevant rule text.

* * * * *

■ 3. Section 240.19b–7 is amended by:

■ a. Adding a preliminary note;

■ b. Revising paragraphs (a) and (b)(1); and

■ c. Adding paragraphs (d), (e), (f) and (g).

The additions and revisions read as follows:

[70] 15 U.S.C. 78c(f).

[71] 15 U.S.C. 78w(a)(2).

[72] *See supra* note 1, 72 FR 9412, 9419.

[73] *See* Angel Letter and NFA Letter, *supra* note 10.

[74] 5 U.S.C. 605(b).

[75] *See supra* note 2, 72 FR 9412, 9419–20.

§ 240.19b–7 Filings with respect to proposed rule changes submitted pursuant to Section 19(b)(7) of the Act.

Preliminary Note: A self-regulatory organization also must refer to Form 19b–7 (17 CFR 249.822) for further requirements with respect to the filing of proposed rule changes.

(a) Filings with respect to proposed rule changes by a self-regulatory organization submitted pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)) shall be made electronically on Form 19b–7 (17 CFR 249.822).

(b) * * *

(1) A completed Form 19b–7 (17 CFR 249.822) is submitted electronically; and

* * * * *

(d) Filings with respect to proposed rule changes by a self-regulatory organization submitted on Form 19b–7 (17 CFR 249.822) electronically shall contain an electronic signature. For the purposes of this section, the term electronic signature means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. The signatory to an electronically submitted rule filing shall manually sign a signature page or other document, in the manner prescribed by Form 19b–7, authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the rule filing is electronically submitted and shall be retained by the filer in accordance with 17 CFR 240.17a–1.

(e) If the conditions of this section and Form 19b–7 (17 CFR 249.822) are otherwise satisfied, all filings submitted electronically on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on a business day, shall be deemed filed on that business day, and all filings submitted after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the next business day.

(f) The self-regulatory organization shall post the proposed rule change, and any amendments thereto, submitted on Form 19b–7 (17 CFR 249.822), on its Web site within two business days after the filing of the proposed rule change, and any amendments thereto, with the Commission. Unless the self-regulatory organization withdraws the proposed rule change or is notified that the proposed rule change is not properly filed, such proposed rule change and amendments shall be maintained on the self-regulatory organization's Web site until 60 days after:

(1) The filing of a written certification with the Commodity Futures Trading Commission under section 5c(c) of the Commodity Exchange Act (7 U.S.C. 7a–2(c));

(2) The Commodity Futures Trading Commission determines that review of the proposed rule change is not necessary; or

(3) The Commodity Futures Trading Commission approves the proposed rule change; and

(4) In the case of a proposed rule change, or any amendment thereto, that has been withdrawn or not properly filed, the self-regulatory organization shall remove the proposed rule change, or any amendment, from its Web site within two business days of notification of improper filing or withdrawal by the self-regulatory organization of the proposed rule change.

(g)(1) Each self-regulatory organization shall post and maintain a current and complete version of its rules on its Web site.

(2) The self-regulatory organization shall update its Web site to reflect rule changes filed pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)), by two business days after the later of:

(A) The Commission's notice of such proposed rule change; and

(B)(i) The filing of a written certification with the Commodity Futures Trading Commission under section 5c(c) of the Commodity Exchange Act (7 U.S.C. 7a–2(c));

(ii) Receipt of notice from the Commodity Futures Trading Commission that it has determined that review of the proposed rule change is not necessary; or

(iii) Receipt of notice from the Commodity Futures Trading Commission that it has approved the proposed rule change.

(3) If a rule change is not effective for a certain period, the self-regulatory organization shall clearly indicate the effective date in the relevant rule text.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

■ 5. Section 249.822 is revised to read as follows:

§ 249.822 Form 19b–7, for electronic filing with respect to proposed rule changes by self-regulatory organizations under Section 19(b)(7)(A) of the Securities Exchange Act of 1934.

This form shall be used by self-regulatory organizations, as defined in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25)), to file electronically proposed rule changes with the Commission pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)) and § 240.19b–7 of this chapter.

■ 6. Form 19b–7 (referenced in § 249.822) is revised to read as follows:

Note: Form 19b–7 is attached as Appendix A to this document.

Note: The text of Form 19b–7 will not appear in the Code of Federal Regulations.

By the Commission.

Dated: March 19, 2008.

Florence E. Harmon,

Deputy Secretary.

Appendix A

General Instructions for Form 19b–7

A. Use of the Form

All self-regulatory organization proposed rule changes submitted pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''), shall be filed electronically through the Electronic Form Filing System (''EFFS''), a secure Web site operated by the Commission. This form shall be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b)(7) of the Act. National securities exchanges registered pursuant to Section 6(g) of the Act and limited purpose national securities associations registered pursuant to Section 15A(k) of the Act are self-regulatory organizations for purposes of this form.

B. Need for Careful Preparation of the Completed Form, Including Exhibits

This form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether abrogation of the proposal is appropriate because it unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors. The self-regulatory organization must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner.

The proposed rule change shall be considered filed with the Commission on the date on which the Commission receives the proposed rule change if the filing complies with all requirements of this form. Any filing that does not comply with the requirements of this form may be returned to the self-regulatory organization at any time before the issuance of the notice of filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. See

also Rule 0–3 under the Act (17 CFR 240.0–3).

C. Documents Comprising the Completed Form

The completed form filed with the Commission shall consist of the Form 19b–7 Page 1, numbers and captions for all items, responses to all items, and exhibits required in Instruction H. In responding to an item, the completed form may omit the text of the item as contained herein if the response is prepared to indicate to the reader the coverage of the item without the reader having to refer to the text of the item or its instructions. Each filing shall be marked on the Form 19b–7 with the initials of the self-regulatory organization, the four-digit year, and the number of the filing for the year (*i.e.*, SRO–YYYY–XX). If the self-regulatory organization is filing Exhibit 2 or 3 via paper, the exhibits must be filed within 5 business days of the electronic submission of all other required documents.

D. Amendments

If information on this form or exhibit thereto is or becomes inaccurate before the proposed rule change becomes effective, the self-regulatory organization shall file amendments correcting any such inaccuracy. Amendments shall be filed as specified in Instruction E.

Amendments to a filing shall include the Form 19b–7 Page 1 marked to number consecutively the amendments, numbers and captions for each amended item, amended response to the item, and required exhibits. The amended description in Section II. A. 1. of Exhibit 1 shall explain the purpose of the amendment and, if the amendment changes the purpose of or basis for the proposed rule change, the amended response shall also provide a revised purpose and basis statement for the proposed rule change. Exhibit 1 shall be re-filed if there is a material change from the immediately preceding filing in the language of the proposed rule change or in the information provided.

If the amendment alters the text of an existing rule, the amendment shall include the text of the existing rule, marked in the manner described in Section I. of Exhibit 1 using brackets to indicate words to be deleted from the existing rule and underscoring to indicate words to be added. The purpose of this marking requirement is to maintain a current copy of how the text of the existing rule is being changed.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission staff's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (*i.e.*, partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

If, after the rule change is filed but before it becomes effective, the self-regulatory organization receives or prepares any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, the communications shall be filed as Exhibit 2. If information in the communication makes the rule change filing inaccurate, the filing shall be amended to correct the inaccuracy. If such communications cannot be filed electronically in accordance with Instruction E, the communications shall be filed in accordance with Instruction F.

E. Signature and Filing of the Completed Form

All proposed rule changes, amendments, extensions, and withdrawals of proposed rule changes shall be filed through the EFFS. In order to file Form 19b–7 through EFFS, self-regulatory organizations must request access to the SEC's External Application Server by completing a request for an external account user ID and password for the use of the External Application User Authentication Form.

Initial requests will be received by contacting the Division of Trading and Markets Administrator located on our Web site (*http://www.sec.gov*). An e-mail will be sent to the requestor that will provide a link to a secure Web site where basic profile information will be requested.

A duly authorized officer of the self-regulatory organization shall electronically sign the completed Form 19b–7 as indicated on Page 1 of the Form. In addition, a duly authorized officer of the self-regulatory organization shall manually sign one copy of the completed Form 19b–7, and the manually signed signature page shall be maintained pursuant to Section 17 of the Act.

F. Procedures for Submission of Paper Documents for Exhibits 2 and 3

To the extent that Exhibit 2 or 3 cannot be filed electronically in accordance with Instruction E, four copies of Exhibit 2 or 3 shall be filed with the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628. Page 1 of the electronic Form 19b–7 shall accompany paper submissions of Exhibit 2 or 3. If the self-regulatory organization is filing Exhibit 2 or 3 via paper, they must be filed within five days of the electronic filing of all other required documents.

G. Withdrawals of Proposed Rule Changes

If a self-regulatory organization determines to withdraw a proposed rule change, it must complete Page 1 of the Form 19b–7 and indicate by selecting the appropriate check box to withdraw the filing.

H. Exhibits

List of exhibits to be filed, as specified in Instructions C and D:

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the **Federal Register**. It is the responsibility of the self-regulatory organization to prepare Items I, II and III of the notice. Leave a 1-inch margin at the top, bottom, and right hand side, and a 1½ inch margin at the left hand side. Number all pages consecutively. Double space all primary text and single space lists of items, quoted material when set apart from primary text, footnotes, and notes to tables. Amendments to Exhibit 1 should be filed in accordance with Instructions D and E.

Exhibit 2. (a) Copies of notices issued by the self-regulatory organization soliciting comment on the proposed rule change and copies of all written comments on the proposed rule change received by the self-regulatory organization (whether or not comments were solicited), presented in alphabetical order, together with an alphabetical listing of such comments. If such notices and comments cannot be filed electronically in accordance with Instruction E, the notices and comments shall be filed in accordance with Instruction F.

(b) Copies of any transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a copy of the summary of comments on the proposed rule change made at such meeting. If such transcript of comments or summary of comments cannot be filed electronically in accordance with Instruction E, the transcript of comments or summary of comments shall be filed in accordance with Instruction F.

(c) Any correspondence or other communications reduced to writing (including comment letters and e-mails) concerning the proposed rule change prepared or received by the self-regulatory organization. All correspondence or other communications should be presented in alphabetical order together with an alphabetical listing of the authors, and shall be filed in accordance with Instruction E. If such communications cannot be filed electronically in accordance with Instruction E, the communications shall be filed in accordance with Instruction F.

(d) If after the proposed rule change is filed but before it becomes effective, the self-regulatory organization prepares or receives any correspondence or other communications reduced to writing (including comment letters and e-mails) to and from such self-regulatory organization concerning the proposed rule change, the communications shall be filed in accordance with Instruction E. All correspondence or other communications should be presented in alphabetical order together with an alphabetical listing of the authors. If such communications cannot be filed electronically in accordance with Instruction E, the communications shall be filed in accordance with Instruction F.

Exhibit 3. If any form, report, or questionnaire is—

(a) Proposed to be used in connection with the implementation or operation of the proposed rule change, or

(b) Prescribed or referred to in the proposed rule change,

then the form, report, or questionnaire must be attached and shall be considered as part of the proposed rule change. If completion of the form, report or questionnaire is voluntary or is required pursuant to an existing rule of the self-regulatory organization, then the form, report, or questionnaire, together with a statement identifying any existing rule that requires completion of the form, report, or questionnaire, shall be attached as Exhibit 3. If the form, report, or questionnaire cannot be filed electronically in accordance with

Instruction E, the documents shall be filed in accordance with Instruction F.

Exhibit 4. The self-regulatory organization must attach as Exhibit 4 proposed changes to its rule text. Changes in, additions to, or deletions from, any existing rule shall be set forth with brackets used to indicate words to be deleted and underscoring used to indicate words to be added. Exhibit 4 shall be considered part of the proposed rule change.

Exhibit 5. The self-regulatory organization must attach one of the following:

Certificate of Effectiveness of Proposed Rule Change: Attach a copy of the certification submitted to the CFTC pursuant to Section 5c(c) of the Commodity Exchange Act.

CFTC Request or Determination that Review of the Proposed Rule Change is Not Necessary: Attach a copy of any request submitted to the CFTC for determination that review of the proposed rule change is not necessary and any indication from the CFTC that it has determined that review of the proposed rule change is not necessary.

Request for CFTC Approval of Proposed Rule Change: Attach a copy of any request submitted to the CFTC for approval of the proposed rule change and any indication received from the CFTC that the proposed rule change has been approved.

BILLING CODE 8011–01–P

OMB APPROVAL

OMB Number: 3235-0553
Expires: June 30, 2010
Estimated average burden hours per response.....17.7

Page 1 of

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-7

File No. SR - -
Amendment No.

Proposed Rule Change by Select SRO

Pursuant to Rule 19b-7 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal

Exhibit 2 Sent As Paper Document Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name

Title

E-mail

Telephone Fax

SRO Governing Body Action

Describe action on the proposed rule change taken by the members or board of directors or other governing body of the SRO (limit 250 characters).

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By

(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally Sign and Lock Form

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-7 instructions please refer to the EFFS website.

Exhibit 1- Notice of Proposed Rule Change

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal.

The Notice section of this Form 19b-7 must comply with the guidelines for publication in the Federal Register, as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC and CFTC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases and Commodities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction E, they shall be filed in accordance with Instruction F.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. If such documents cannot be filed electronically in accordance with Instruction E, they shall be filed in accordance with Instruction F.

Exhibit 4 - Proposed Rule Text

Add Remove View

The self-regulatory organization must attach as Exhibit 4 proposed changes to rule text. Exhibit 4 shall be considered part of the proposed rule change.

Exhibit 5 - Date of Effectiveness of Proposed Rule Change

The self-regulatory ogranization must attach one of the following:

☐ CFTC Certification

☐ CFTC Request that Review of Proposed Rule Change is not Necessary

☐ Request for CFTC Approval of Proposed Rule Change

☐ CFTC Determination that Review of Proposed Rule Change is not Necessary

☐ Indication of CFTC Approval of Proposed Rule Change

Exhibit Sent As Paper Document

☐

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission staff's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

BILLING CODE 8011–01–C

Information To Be Included in the Completed Exhibit 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34– ; File No. SR–[SRO Name]–[YYYY]–[XX])

SELF-REGULATORY ORGANIZATIONS; [SRO Name]; Proposed Rule Change Relating to [brief description of the subject matter of the proposed rule change].

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[76] notice is hereby given that on [date[77]], the [name of self-regulatory organization] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. [Name of self-regulatory organization] also has filed this proposed rule change concurrently with the Commodity Futures Trading Commission (''CFTC''). [Section 19(b)(7)(B) provides that a proposed rule change may take effect upon the occurrence of one of three events. The self-regulatory organization should include one of the following sentences, whichever is applicable:]

The [name of self-regulatory organization] filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act on [date]; or

The [name of self-regulatory organization] on [date], has requested that the CFTC make a determination that review of the proposed rule change of the [self-regulatory organization] is not necessary. The CFTC has [made such determination on [date]]; or [has not made such determination]; or

The [name of self-regulatory organization] on [date] submitted the proposed rule change to the CFTC for approval. The CFTC [approved the proposed rule change on [date]]; or [has not approved the proposed rule change].

I. Self-Regulatory Organization's Description and Text of the Proposed Rule Change

[Supply a brief statement of the terms of substance of the proposed rule change. If the proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate the changes in the rule by brackets for words to be deleted and underscoring for words to be added.]

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 self-regulatory organization 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 self-regulatory organization 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

[Provide a statement of the purpose of the proposed rule change. The statement must describe the text of the proposed rule change in a sufficiently detailed and specific manner as to enable the public to provide meaningful comment on the proposal. At a minimum, the statement should:]

(a) [Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will resolve those problems, the manner in which the proposed rule change will affect various persons (*e.g.* brokers, dealers, issuers, and investors), and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change; and]

(b) [Describe how the proposed rule change relates to existing rules of the self-regulatory organization. If the self-regulatory organization reasonably expects that the proposed rule change will have any direct effect, or significant indirect effect, on the application of any other rule of the self-regulatory organization, set forth the designation or title of any such rule and describe the anticipated effect of the proposed rule change on the application of such other rule. Include the file numbers for prior filings with respect to any existing rule specified.]

2. Statutory Basis

[Explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.

Note 1. *National Securities Exchanges.* Under Section 6 of the Act, rules of a national securities exchange may not permit unfair discrimination between customers, issuers, brokers, or dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the self-regulatory organization.

Note 2. *Limited Purpose National Securities Associations.* Under Section 15A(k) of the Act, rules of a national securities association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest, including rules governing sales practices and the advertising of security futures products reasonably comparable to those of other national securities associations registered pursuant to Section 15A(a) that are applicable to security futures products. The rules may not be designed to regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the association.]

B. Self-Regulatory Organization's Statement on Burden on Competition

[The information required by this section must be sufficiently detailed and specific to support the premise that the proposed rule change does not unduly burden competition. In responding to this section, the self-regulatory organization must:

- State whether the proposed rule change will have an impact on competition and, if so

(i) State whether the proposed rule change will impose any burden on competition or whether it will relieve any burden on, or otherwise promote, competition, and

(ii) Specify the particular categories of persons and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them.

- Explain why any burden on competition is not undue; or, if the self-regulatory organization does not believe that the burden on competition is significant, explain why.

In providing those explanations, set forth and respond in detail to written comments as to any significant impact or burden on competition perceived by any person who has made comments on the proposed rule change to the self-regulatory organization.]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

[If written comments were received (whether or not comments were solicited) from members of or participants in the self-regulatory organization or others, summarize the substance of all such comments received and respond in detail to any significant issues that those comments raised about the proposed rule change.

If an issue is summarized and responded to in detail under Section II.A.1. or Section II.B. of this Form 19b–7 Notice, that response need not be duplicated if appropriate cross-reference is made to the place where the response can be found. If comments were not or are not to be solicited, so state.]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

[The self-regulatory organization shall include the following with the applicable phrase on the proposed rule change's effectiveness:]

The proposed rule change has become effective on [insert date of filing of written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act; or the date of determination by the CFTC that

[76] 15 U.S.C. 78s(b)(7).

[77] To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. *See* General Instructions for Form 19b–7.

review of the proposed rule change is not necessary; or the date of approval of the proposed rule change by the CFTC]. [or]

The proposed rule change is not effective because the CFTC [has not determined that review of the proposed rule changes is not necessary or has not approved the proposed rule change].

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) 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–[SRO]–[YYYY]–[XX] on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–[SRO]–[YYYY]–[XX]. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the [SRO]. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–[SRO]–[YYYY]–[XX] and should be submitted on or before April 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[1]

Secretary

BILLING CODE 8011–01–P

[1] 17 CFR 200.30–3(a)(73).

Appendix B

OMB APPROVAL

OMB Number: 3235-0045
Expires: June 30, 2010
Estimated average burden hours per response.....23.2

Page 1 of

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - -
Amendment No.

Proposed Rule Change by Select SRO

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal

Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

Pilot

Extension of Time Period for Commission Action

Date Expires

Rule

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date
By
(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally Sign and Lock Form

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

[FR Doc. E8–5998 Filed 3–26–08; 8:45 am]
BILLING CODE 8011–01–C

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 384

[Docket No. 2007–1 CRB DTRA–BE]

Determination of Rates and Terms for Business Establishment Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations that set the rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period 2009–2013.

DATES: These regulations become effective on January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1995, Congress enacted the Digital Performance in Sound Recordings Act, Public Law No. 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The Digital Millennium Copyright Act of 1998 (''DMCA''), Public Law No. 105–304, expanded the scope of the section 114 license to allow for the public performance of a sound recording when made in accordance with the terms and rates of the statutory license, 17 U.S.C. 114(d), by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission. The DMCA also created a statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for a later transmission. *Id.* The license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than the one phonorecord permitted under the exemption set forth in section 112(a). 17 U.S.C. 112(e).

The current rates and terms for the making of ephemeral recordings of sound recordings by a business establishment service were set by the Librarian of Congress and appear in 37 CFR Part 262. The Copyright Royalty and Distribution Reform Act of 2004 (''CRDRA''), Public Law No. 108–419, transferred the jurisdiction over these rates and terms to the Copyright Royalty Judges (''CRJs'') and prescribed that the rates and terms found in 37 CFR Part 262 would remain in effect until December 31, 2008. *See* Section 6(b)(3) of the CRDRA; 17 U.S.C. 804(b)(2).

This Proceeding

On January 5, 2007, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(II), the Copyright Royalty Judges published a notice in the **Federal Register** announcing commencement of the proceeding to determine rates and terms of royalty payments for the making of ephemeral recordings by business establishment services under section 112(e) and requesting interested parties to submit their petitions to participate. 72 FR 584. Petitions to Participate were received from Music Choice, Royalty Logic, Inc. (''RLI''), Muzak, LLC, SoundExchange, Inc., Sirius Satellite Radio, Inc. (''Sirius''), and XM Satellite Radio (''XM''). The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than October 31, 2007.

On October 31, 2007, the Judges received a notice of settlement entered into by all parties to the proceeding, with the exception of Muzak, which had withdrawn from the proceeding on October 5, 2007, and RLI. Accompanying the notice of settlement was a motion by SoundExchange requesting that the Judges adopt the proposed rates and terms. SoundExchange also filed its written direct statement, since RLI had not agreed to the proposed settlement. RLI did not file a written direct statement or an opposition to SoundExchange's motion.

Prior to a ruling on this motion, SoundExchange filed a motion to dismiss RLI from this proceeding for failure to file a written direct statement and renewed its request for publication of the proposed rates and terms for notice and comment. See Motion filed November 28, 2007. The Judges received no opposition to this motion from RLI. Consequently, the Judges granted SoundExchange's motion and dismissed RLI from this proceeding. *See,* Order Granting SoundExchange's Motion to Dismiss Royalty Logic, Inc. in Docket No. 2007–1 CRB DTRA–BE (December 6, 2007). With RLI's dismissal, all of the remaining parties agreed to the proposed settlement.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

> (i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Accordingly, on January 30, 2008, the Judges published a Notice of Proposed Rulemaking (''NPRM'') requesting comment on the proposed rates and terms submitted to the Judges. 73 FR 5466. Comments were due by February 29, 2008. In response to the NPRM, the Judges received only one comment, which was submitted by SoundExchange, supporting the adoption of the proposed regulations.

Having received no objections from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings, the Copyright Royalty Judges, by this notice, are adopting final regulations which set the rates and terms for the making of ephemeral recordings by business establishment services for the license period 2009–2013.

List of Subjects in 37 CFR Part 384

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are adding part 384 to Chapter III of title

37 of the Code of Federal Regulations to read as follows:

PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES

Sec.
384.1 General.
384.2 Definitions.
384.3 Royalty fees for Ephemeral Recordings.
384.4 Terms for making payment of royalty fees and statements of account.
384.5 Confidential information.
384.6 Verification of royalty payments.
384.7 Verification of royalty distributions.
384.8 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 801(b)(1).

§ 384.1 General.

(a) *Scope.* This part 384 establishes rates and terms of royalty payments for the making of Ephemeral Recordings by a Business Establishment Service, as defined in § 384.2(a), in accordance with the provisions of 17 U.S.C. 112(e), during the period 2009–2013 (the ''License Period'').

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 shall comply with the requirements of that section, the rates and terms of this part and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services shall apply in lieu of the rates and terms of this part to the making of Ephemeral Recordings within the scope of such agreements.

§ 384.2 Definitions.

For purposes of this part, the following definitions shall apply:

Business Establishment Service means a service making transmissions of sound recordings under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv).

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the License Period, the Collective is SoundExchange, Inc.

Copyright Owner is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory license under 17 U.S.C. 112(e).

Ephemeral Recording is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), and subject to the limitations specified in 17 U.S.C. 112(e).

Licensee is a Business Establishment Service that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings.

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a certified public accountant.

§ 384.3 Royalty fees for Ephemeral Recordings.

(a) *Basic royalty rate.* For the making of any number of Ephemeral Recordings in the operation of a service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), a Licensee shall pay 10% of such Licensee's ''Gross Proceeds'' derived from the use in such service of musical programs that are attributable to copyrighted recordings. ''Gross Proceeds'' as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(b) *Minimum fee.* Each Licensee shall pay a minimum fee of $10,000 for each calendar year in which it makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year. These minimum fees shall be nonrefundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(c) *Other royalty rates and terms.* This part 384 does not apply to persons or entities other than Licensees, or to Licensees to the extent that they make other types of ephemeral recordings beyond those set forth in paragraph (a) of this section. For ephemeral recordings other than those governed by paragraph (a) of this section, persons making such ephemeral recordings must pay royalties, to the extent (if at all) applicable, under 17 U.S.C. 112(e) or as prescribed by other law, regulation or agreement.

§ 384.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to Collective.* A Licensee shall make the royalty payments due under § 384.3 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under § 384.3 and to distribute such royalty payments to each Copyright Owner, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners entitled to receive royalties under 17 U.S.C. 112(e) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments.* A Licensee shall make any payments due under § 384.3(a) by the 45th day after the end of each month for that month, except that if the Copyright Royalty Judges issue their final determination adopting these rates and terms after the commencement of the License Period, then payments due under § 384.3(a) for the period from the beginning of the License Period through the last day of the month in which the Copyright Royalty Judges issue their final determination adopting these rates and terms shall be due 45 days after the end

of such period. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any payment due under § 384.3(b) by January 31 of the applicable calendar year, except that:

(1) If the Copyright Royalty Judges issue their final determination adopting these rates and terms after the commencement of the License Period, then payment due under § 384.3(b) for 2009 shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Copyright Royalty Judges and published in the **Federal Register**; and

(2) Payment for a Licensee that has not previously made Ephemeral Recordings pursuant to the license under 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Collective after the due date. Late fees shall accrue from the due date until payment is received by the Collective.

(f) *Statements of account.* For any part of the period beginning on the date the Copyright Royalty Judges issue their final determination adopting these rates and terms and ending on December 31, 2013, during which a Licensee operates a Business Establishment Service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Collective a statement of account containing the information set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Collective. If a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall contain only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

> I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.* The Collective shall distribute royalty payments directly to Copyright Owners; Provided that the Collective shall only be responsible for making distributions to those Copyright Owners who provide the Collective with such information as is necessary to identify and pay the correct recipient of such payments. The Collective shall distribute royalty payments on a basis that values all Ephemeral Recordings by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing reports of use of sound recordings by Licensees; Provided, however, that Copyright Owners that authorize the Collective may agree with the Collective to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Copyright Owners entitled to receive payments may agree with the Collective upon payment protocols to be used by the Collective that provide for alternative arrangements for the payment of royalties.

(h) *Permitted deductions.* The Collective may deduct from the payments made by Licensees under § 384.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) may agree to permit the Collective to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Collective relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

§ 384.5 Confidential information.

(a) *Definition.* For purposes of this part, ''Confidential Information'' shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The Collective shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective or any other person or entity authorized to have access to Confidential Information pursuant to paragraph (d) of this section use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) Board members of the Collective, and members of Collective committees whose primary functions are directly related to royalty collection and distribution, subject to an appropriate confidentiality agreement and for the sole purpose of performing their duties as board or committee members of the Collective, as applicable, provided that the sole confidential information that may be shared pursuant to this paragraph (d)(2) is confidential information contained in monthly statements of accounts provided pursuant to § 384.4(f) that accompany royalty payments;

(3) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to the verification of a Licensee's royalty payments pursuant to § 384.6 or on behalf of a Copyright Owner with respect to the verification of royalty distributions pursuant to § 384.7;

(4) Copyright owners whose works have been used under the statutory license set forth in 17 U.S.C. 112(e) by the Licensee whose Confidential Information is being supplied, or agents thereof, subject to an appropriate confidentiality agreement, provided that the sole confidential information that may be shared pursuant to paragraph (d)(4) of this section are monthly statements of account provided pursuant to § 384.4(f) that accompany royalty payments;

(5) In connection with future proceedings under 17 U.S.C. 112(e) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts; and

(6) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 384.6 or § 384.7, and under an appropriate confidentiality agreement or protective order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) *Safeguarding of Confidential Information.* The Collective and any person or entity identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Collective, person, or entity.

§ 384.6 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Judges a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 384.7 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner may verify the royalty distributions made by the Collective; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners.

(d) *Acquisition and retention of records.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Copyright Owner requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 384.8 Unclaimed funds.

If a Collective is unable to identify or locate a Copyright Owner who is entitled to receive a royalty payment

under this part, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of payment. No claim to such payment shall be valid after the expiration of the 3-year period. After the expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: March 20, 2008.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E8–6174 Filed 3–26–08; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–0AR–2007–1176; A–1–FRL–8546–9]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Diesel Anti-Idling Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted on November 29, 2007 by the State of Rhode Island. This SIP revision includes a regulation that prohibits the unnecessary idling of diesel engines and vehicles in Rhode Island. The regulation sets limits for the amount of time and under what conditions diesel engines may idle. EPA is approving the rule because the standards and requirements set by the rule will strengthen the Rhode Island SIP. The intended effect of this action is to approve this rule into the Rhode Island SIP. EPA is approving this rule pursuant to the Clean Air Act.

DATES: This direct final rule will be effective May 27, 2008, unless EPA receives adverse comments by April 28, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–0AR–2007–1176 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–0AR–2007–1176,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023, or
5. *Hand Delivery or Courier:* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–0AR–2007–1176. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* 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 *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.govindex.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document (TSD) are also available for public inspection during normal business hours, by appointment at the State Air Agency; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, Office of Ecosystem Protection, EPA New England, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023; 617–918–1045 (phone); 617–918–0045 (fax); e-mail at *judge.robert@epa.gov.*

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

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What Action Is EPA Taking?
II. What are the Requirements of Rhode Island's Regulation Number 45?
III. Why is EPA Approving Rhode Island's Rule?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is approving Rhode Island's Regulation Number 45, ''Rhode Island Diesel Engine Anti-Idling Program,'' and incorporating this rule into the Rhode Island SIP.

Regulation Number 45 was adopted by the State of Rhode Island following the passage of a State law prescribing that such a rule be adopted to minimize the adverse health effects of unnecessary idling. The regulation was effective in the State of Rhode Island on July 19, 2007, and on November 29, 2007, the State submitted this rule to EPA as a SIP revision.

II. What Are the Requirements of Rhode Island's Regulation Number 45?

Pursuant to Regulation Number 45, with specified exceptions, diesel motor vehicles may not idle for longer than 5 minutes in any 60 minute period (per section 45.3), and nonroad engines may not idle unnecessarily (per section 45.4). Exceptions to these requirements are specified in section 45.5 of the rule and include: temperature based exemptions for excessively hot or cold days; allowances for vehicle repair; vehicle inspections; emergency vehicles in emergency operations; vehicles which are stuck in traffic; and the use of sleeper berths during federally mandated rest periods. The TSD prepared for this action includes more detail on these exemptions, or the regulation itself can be reviewed for details on how these exemptions apply.

Per section 45.2 of this rule, this rule applies ''to any person, entity, owner or operator with control over the operations of diesel engines.'' Persons violating this rule may be fined under State law in accordance with penalty provisions of State law, as described in section 45.6 of the regulation. This rule was adopted pursuant to Rhode Island General Laws Section 31–16.1–2, and applies throughout the entire State of Rhode Island.

III. Why Is EPA Approving Rhode Island's Rule?

Rhode Island's Regulation Number 45 will result in emission reductions of volatile organic compounds, nitrogen oxides, carbon monoxide, and fine particulate matter. The approval of this rule will strengthen the Rhode Island SIP and assist the state in meeting and maintaining compliance with air quality standards, including the standard for ground level ozone.

Rhode Island's Regulation Number 45 is generally consistent with EPA's ''Model State Idling Law'' (EPA420–S–06–001, April 2006). This model rule was developed with input from the States and industry to address idling issues in a consistent and understandable manner from state to state, to aid in compliance.

IV. Final Action

EPA is approving Rhode Island's Air Pollution Control Regulation Number 45, entitled ''Rhode Island Diesel Engine Anti-Idling Program,'' and incorporating this rule into the Rhode Island SIP. The rule is intended to eliminate unnecessary idling from diesel motor vehicle engines and non-road diesel engines in Rhode Island. This rule is being approved because EPA has found that the rule will help prevent emissions of volatile organic compounds, nitrogen oxides, carbon monoxide, and fine particles and will strengthen the Rhode Island SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 27, 2008 without further notice unless the Agency receives relevant adverse comments by April 28, 2008.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 27, 2008 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 2008. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 14, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

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

PART 52—[AMENDED]

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

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

Subpart OO—Rhode Island

■ 2. In § 52.2070 (c), the table entitled ''EPA Approved Rhode Island Regulations,'' is amended by adding a new entry, ''Air Pollution Control Regulation Number 45'' in numerical order to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Air Pollution Control Regulation Number 45.	Rhode Island Diesel Engine Anti-Idling Program.	July 19, 2007	March 27, 2008; [Insert **Federal Register** page number where the document begins].	Limits idling for diesel on-highway and non-road engines.
*	*	*	*	*

[FR Doc. E8–6183 Filed 3–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA–HQ–OAR–2007–1173, FRL–8545–6]

RIN 2060–APO3

Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding concerning whether or not each State has submitted a complete State Implementation Plan (SIP) that provides the basic program elements specified in Clean Air Act (Act or CAA) section 110(a)(2) necessary to implement the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). By this action, EPA is identifying those States that: Have failed to make a complete submission for all requirements; have failed to make a complete submission for specific requirements; or have made a complete submission. The findings of failure to submit for all or a portion of a State's SIP establish a 24-month deadline for EPA to promulgate Federal Implementation Plans (FIPs) to address the outstanding SIP elements unless, prior to that time, the affected States submit, and EPA approves, the required SIPs. The findings that all, or portions of a State's SIP submission, are complete establish a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k).

DATES: The effective date of this rule is April 28, 2008.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Mr. Larry D. Wallace, PhD, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504–2, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone (919) 541–0906.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement by the statutory date. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

For questions related to a specific State please contact the appropriate regional office:

Regional offices	States
Dave Conroy, Acting Branch Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02203–2211.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 21st Floor, New York, NY 10007–1866.	New Jersey, New York, Puerto Rico, and the Virgin Islands.
Christina Fernandez, Acting Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Dick A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nunn, Atlanta Federal Center, 61 Forsyth Street, SW., 12th Floor, Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Tom Diggs, Acting Associate Director Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2907.	Iowa, Kansas, Missouri, and Nebraska.
Cynthia Cody, Unit Leader, Air Quality Planning Unit, EPA Region VIII Air Program, 1595 Wynkoop St. (8P–AR), Denver, CO 80202–1129.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Lisa Hanf, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Guam, Hawaii, and Nevada.
Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Idaho, Oregon, and Washington.

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I. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 ppm to 0.08 ppm (62 FR 38,856).

The CAA section 110(a) requires States to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon States to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the State develops and submits the SIP for a new or revised NAAQS necessarily affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the State's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, States typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

Section 110(a)(2) lists specific elements that States must meet in these SIP submissions. The requirements include SIP infrastructure elements such as requirements for modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this action are listed in EPA's October 2, 2007 memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM–2.5 National Ambient Air Quality Standards.''

Two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Therefore, this action does not cover these specific SIP elements. This action also does not pertain to section 110(a)(2)(D), because EPA has previously addressed that requirement.[1]

As of 2004, States had not submitted complete SIPs to satisfy all of the section 110(a)(2) requirements for the 1997 8-hour ozone NAAQS revision. On March 4, 2004, Earth Justice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to these requirements. Subsequently, EPA entered into a Consent Decree with Earth Justice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each State has made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon an

[1] EPA published a finding that all States had failed to submit SIPs addressing interstate transport for the 8-hour ozone and $PM_{2.5}$ NAAQS, as required by section 110(a)(2)(D)(i). *See* 70 FR 21,147 (April 25, 2005).

agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the Consent Decree, EPA is making completeness findings for each State based upon what the Agency received from each State as of January 7, 2008. This notice reflects EPA's determinations with respect to the section 110(a)(2) requirements, based upon the submissions made by the States, either certifying that they have already met the requirements, making a submission to meet any outstanding requirements, or both.

For those States that have not yet made a submittal, or that made a submittal that was not complete with respect to each element of section 110(a)(2), EPA is making a finding of failure to submit. For those States that did not make any submittal by January 7, 2008, EPA is making a finding with respect to all of the section 110(a)(2) SIP elements. For those States that did not make a submittal that addressed all of the section 110(a)(2) elements, EPA is making these findings only with respect to those specific section 110(a)(2) SIP elements which a State has not certified that it has met, or not made a SIP submission to meet, as of January 7, 2008. These findings establish a 24 month deadline for the promulgation by EPA of a FIP, in accordance with section 110(c)(1). These findings of failure to submit do not impose sanctions, or set deadlines for imposing sanctions as described in section 179 of the CAA, because these finding do not pertain to the elements of a Title I part D plan for nonattainment areas as required under section 110(a)(2)(I), and because this action is not a SIP call pursuant to section 110(k)(5).

With respect to the remaining section 110(a)(2) SIP elements in those States in which EPA has identified specific findings of failure to submit, EPA is by this action making a finding that the remainder of such SIPs are complete. Likewise, with respect to those States for which EPA has not made any finding of failure to submit concerning the section 110(a)(2) SIP elements, EPA is by this action making a finding that such SIPs are complete for all such elements. These full and partial completeness findings establish a 12-month deadline for EPA to take action upon such SIPs in accordance with section 110(k).

II. This Action

The EPA is making a finding concerning whether each State has submitted or failed to submit a complete SIP that provides the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. For those States that have not yet made a complete submission, or that have not made a submission that is complete for each element of section 110(a)(2), these findings establish a 24-month deadline for the promulgation by EPA of a FIP addressing these specific SIP elements, in accordance with section 110(c)(1). For those States that have submitted a complete SIP, and for those elements of SIPs in States for which EPA has identified only partial incompleteness, these findings establish a 12-month deadline for action upon the SIP, in accordance with section 110(k). This action will be effective on April 28, 2008.

A. Finding of Failure To Submit for States That Failed to Make a Submittal

The following States failed to make a complete submittal to satisfy the requirements of section 110(a)(2) by January 7, 2008. EPA is by this action starting a 24-month deadline by which time EPA must promulgate a FIP for the affected States to address section 110(a)(2) requirements, if the affected States fail to submit, and obtain EPA approval of, the SIP revisions necessary to address these requirements. The States and territories that are affected by this finding of failure to submit are the following:

Region I: Vermont
Region VI: Texas
Region VIII: North Dakota
Region IX: Arizona, Hawaii, Nevada,[2] Guam, American Samoa, Commonwealth of the Northern Mariana Islands.
Region X: Alaska, Idaho, Oregon, Washington.

B. Finding of Failure To Submit Specific Elements of Section 110(a)(2)

The following States made submissions that address some, but not all of the section 110(a)(2) requirements, by January 7, 2008. EPA is by this action identifying the specific elements for which States have not made a complete submission:

Region I:

Massachusetts: The State of Massachusetts has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Region II:

New York: The State of New York has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

New Jersey: The State of New Jersey has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Puerto Rico: The Commonwealth of Puerto Rico has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Virgin Islands: The Virgin Islands has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Region III:

Maryland: As required by sections 110(a)(2)(C) and (J), the State of Maryland has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Pennsylvania: The Commonwealth of Pennsylvania has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program) for only the Allegheny County portion of the Commonwealth. However, this requirement has already been addressed by a FIP (Implementation of the Federal PSD program has been delegated to the Allegheny County Health Department) that remains in place, and therefore this action will not trigger any additional FIP obligation. All other areas of the Commonwealth, exclusive of Allegheny County, has a SIP approved PSD program in place.

Virginia: The Commonwealth of Virginia has failed to submit a SIP addressing the part C PSD permit program, which consists of changes required by the November 29, 2005 (70 FR 71612 page 71699) final rule that

[2] It should be noted that, while the State of Nevada did not make the submittal addressing the requirements of section 110(a)(2) by the January 7, 2008 timeframe specified in the amended Consent Decree with Earth Justice, the State has subsequently made a submittal to address these requirements on February 1, 2008 and EPA is currently reviewing the submittal for completeness and approvability.

made NO_X a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Washington, DC: The District of Columbia has failed to submit a SIP addressing sections 110(a)(2)(B), (C) (the Part C PSD permit program), (E)(i), (F) (the public availability of reports), (H), and (J) (with respect to a part C Prevention of Significant Deterioration (PSD) permit program and to public notification under section 127).[3] The section 110(a)(2)(C) (the Part C PSD permit program) requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation with respect to this requirement.

West Virginia: The State of West Virginia has failed to make a submittal with respect to sections 110(a)(2)(B), (E)(i), (G) (with respect to authority comparable to section 303), (H) and (J) (relating to public notification under section 127) and (M). The State of West Virginia has also failed to submit a SIP addressing changes to the part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Delaware: As required by sections 110(a)(2)(C) and (J), the State of Delaware has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Region IV:

Florida: The State of Florida has failed to submit a SIP addressing the emergency episode plan requirement of section 110(a)(2)(G).

Georgia: The State of Georgia has failed to submit a SIP addressing the emergency episode plan requirements of section 110(a)(2)(G).

North Carolina: As required by sections 110(a)(2)(C) and (J), the State of North Carolina has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.[4]

Tennessee: As required by sections 110(a)(2)(C) and (J), the State of Tennessee has failed to submit a SIP addressing changes to its part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.[5]

Region V:

Illinois: The State of Illinois has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Minnesota: The State of Minnesota has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program). However, this requirement has already been addressed by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation.

Region VI:

Arkansas: As required by section 110(a)(2)(C) and (J), the State of Arkansas has failed to submit a SIP addressing changes to the part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

New Mexico: As required by section 110(a)(2)(C) and (J), the State of New Mexico has failed to submit a SIP addressing changes to the part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Oklahoma: As required by section 110(a)(2)(C) and (J), the State of Oklahoma has failed to submit a SIP addressing changes to the part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21.

Region IX:

California: The State of California has failed to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program) that applies to some Air Districts within the State. However, this requirement has already been addressed for these Air Districts by a FIP that remains in place, and therefore this action will not trigger any additional FIP obligation. All other areas of the State, exclusive of these Air Districts have an approved PSD program in place.

C. List of States That Submitted Complete Submissions to Satisfy the Section 110(a)(2) Requirements

The following States have been determined by EPA to have made complete SIP submissions that address all of the section 110(a)(2) requirements by January 7, 2008:

Region I: Maine, Rhode Island, Connecticut, and New Hampshire.
Region IV: Alabama, Kentucky, Mississippi, and South Carolina.
Region V: Indiana, Ohio, Michigan, and Wisconsin.
Region VI: Louisiana.
Region VII: Iowa, Kansas, Nebraska, and Missouri.
Region VIII: Colorado, Montana, South Dakota, Utah, and Wyoming.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the

[3] While the District of Columbia did not make the submittal addressing the aforementioned requirements by the January 7, 2008 timeframe called for under the Consent Decree with Earth Justice, the District of Columbia subsequently made a submittal on January 11, 2008 that addresses the requirements related to sections 110(a)(2)(B), (E)(i), (F) (with respect to the public availability of reports), (H), and (J) (with respect to public notification under section 127). The EPA is currently reviewing the submittal for completeness. The District of Columbia has not submitted a part C PSD permit program required under sections 110(a)(2)(C) and (J). It should be noted, however, that the District of Columbia is already subject to a FIP for a PSD permit program pursuant to 40 CFR 52.499.

[4] The State of North Carolina is currently going through the rulemaking process to approve the requirements to meet this element of section 110(a)(2) and anticipates making the submittal to address the requirement by May 2008.

[5] The State of Tennessee is currently going through the rulemaking process to approve the requirements to meet this element of section 110(a)(2) and anticipates making the submittal to address the requirement by May 2008.

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule relates to the requirement in the CAA for States to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a)(1) of the CAA requires that States submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide. The present final rule does not establish any new information collection requirement apart from that already required by law. Burden means that 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 the CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act (APA) 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 the purpose of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the U.S. Small Business Administration (SBA) size standards (*See* 13 CFR 121); (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 independently owned and operated is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

Title II of the Unfunded Mandate 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 mandate'' 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 1 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 of 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 to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements.

EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any 1 year. It does not create any additional requirements beyond those of the 1997 8-hour ozone NAAQS (62 FR 38652; 62 FR 38856, July 18, 1997). This rule responds to the requirement in the CAA for States to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a)(1) of the CAA requires that States submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as EPA may provide. The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this action is not subject to the requirements of section 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by

Tribal officials in the development of regulatory policies that have Tribal implications.'' This final rule does not have Tribal implications, as specified in Executive Order 13175. This rule responds to the requirement in the CAA for States to submit SIPs under section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a)(1) of the CAA requires that States submit SIPs that provide for implementation, maintenance, and enforcement of a new or revised NAAQS, and which satisfy the applicable requirements of section 110(a)(2), within 3 years of promulgation of such standard, or within shorter period as EPA may provide. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations clarify the statutory obligations of States and Tribes that develop plans to implement this rule. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt.

This rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented an air quality management program related to the 1997 8-hour ozone NAAQS. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is making findings concerning whether or not each State has submitted a complete SIP that provides the basic program elements specified in CAA section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. The findings of failure to submit for all or a portion of a State's SIP establish a 24-month deadline for EPA to promulgate FIPs to address the outstanding SIP elements unless, prior to that time, the affected States submit, and EPA approves, the required SIPs.

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

This rule is 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. At the time of proposal of the implementation rule for the 1997 8-hour ozone standard, information on the methodology and data regarding the assessment of potential energy impacts regarding implementation of the 1997 8-hour standard was addressed in Chapter 6 of U.S. EPA 2003, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 1997 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003. Subsequently, EPA issued an Addendum 1 to that analysis for the Phase 1 final rule (April 30, 2004 (69 FR 33951)) and designated nonattainment areas. By adopting the more flexible approaches while providing for attainment and maintenance of the 8-hour NAAQS as required by the CAA for the areas covered by this rulemaking, additional energy cost associated with more extensive use of less flexible approaches would be averted.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

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

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is making a finding concerning whether each State has submitted or failed to submit a complete SIP that provides the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS.

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 April 28, 2008.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date final action is published in the **Federal Register**. Filing a petition for review 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 must be filed, and shall not postpone the effectiveness of such rule or action.

Thus, any petitions for review of this action related to a finding of failure to submit related to the requirements of section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: March 17, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator.

[FR Doc. E8–6176 Filed 3–26–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XG65

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by American Fisheries Act Catcher Processors 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 prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2008 Pacific cod total allowable catch (TAC) specified for AFA trawl catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 24, 2008, though 1200 hrs, A.l.t., April 1, 2008.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 A season allowance of the 2008 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI is 2,630 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008). See § 679.20(c)(3)(iii), § 679.20(c)(5), § 679.20(a)(7)(ii)(A)(*7*), and § 679.20(a)(7)(iv)(A)(*1*)(*ii*).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2008 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher processors 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 Pacific cod by AFA trawl catcher processors 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 March 21, 2008.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 24, 2008.

Emily H. Menashes,

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

[FR Doc. 08–1079 Filed 3–24–08; 3:51 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XG70

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels in the Amendment 80 Limited Access Fishery 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 prohibiting directed fishing for Pacific cod for vessels participating in the Amendment 80 limited access fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2008 Pacific cod allowable catch (TAC) specified for vessels participating in the Amendment 80 limited access fishery in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2008, through 1200 hrs, A.l.t., June 10, 2008.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 B season allowance of the 2008 Pacific cod TAC allocated to vessels

participating in the Amendment 80 limited access fishery in the BSAI is 824 metric tons as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the entire B season allowance of the 2008 Pacific cod TAC allocated to vessels participating in the Amendment 80 limited access fishery in the BSAI will be caught as incidental catch in directed fisheries for other groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 824 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels participating in the Amendment 80 limited access fishery 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 Pacific cod by vessels participating in the Amendment 80 limited access fishery 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 March 21, 2008.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 24, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8–6295 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 60
Thursday, March 27, 2008

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[FNS–2007–0022]

RIN 0584–AD15

Child and Adult Care Food Program: At-Risk Afterschool Meals in Eligible States

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Child and Adult Care Food Program (CACFP) regulations to implement provisions from the Agriculture Risk Protection Act of 2000, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, and the Consolidated Appropriations Act of 2008, that authorize reimbursement to eligible States for a meal (normally a supper) served by at-risk afterschool care programs. The eligible States are Delaware, Illinois, Michigan, Missouri, New York, Oregon, Pennsylvania, and West Virginia. The intent of this proposed rule is to conform CACFP regulations to statutory amendments that provide an additional meal for at-risk children through age 18 who are participating in afterschool programs in the eligible States. The Food and Nutrition Service (FNS) implemented the statutory mandates through written policy guidance upon enactment of the statutory provisions.

DATES: To be assured of consideration, written comments must be received or postmarked on or before May 27, 2008.

ADDRESSES: FNS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Room 640, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.
- *Fax:* Submit comments by facsimile transmission to: (703) 305–2879. Please address your comments to Mr. Eadie and identify your comments as ''CACFP: At-Risk Afterschool Meals''.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Comments submitted in response to this rule will be included in the record and will be available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov*.

All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

1. What are at-risk afterschool meals?

Afterschool meals in the CACFP are served to at-risk children participating in eligible afterschool care programs in selected States as authorized by law. At-risk afterschool meals were authorized by section 243(i) of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), which amended section 17(r) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)) (NSLA).

This provision followed an earlier authorization for afterschool snack reimbursements through the CACFP by the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336). Public Law 105–336 expanded the availability of snacks to children ages 13 through 18 in the CACFP through at-risk afterschool care centers that are located in the attendance area of a school where 50 percent or more of the enrolled children are certified as eligible to receive free or reduced price school meals. Public Law 105–336 also provided for the nationwide availability of snacks in the National School Lunch Program (NSLP). A proposed rule to implement the statutory provisions for afterschool snacks in the NSLP and CACFP was published on October 11, 2000 (65 FR 60502). The proposal had a 90-day comment period; 33 comment letters were received. A final rule, Afterschool Snacks in the Child and Adult Care Food Program, was published on July 31, 2007 (72 FR 41591). A final rule on serving afterschool snacks in the NSLP is expected to be published in 2008.

As stipulated by law, at-risk meals and snacks are available to children through age 18 (or any age if disabled) who are participating in an afterschool care program under the CACFP. The afterschool care program must be located in the geographical area of a school in which at least 50 percent of the children who are enrolled are certified eligible for free or reduced price meals. Although at-risk afterschool snacks are available in all States, at-risk afterschool meals are only available in States authorized by section 17(r)(5) of the NSLA—currently, Delaware, Illinois, Michigan, Missouri, New York, Oregon, Pennsylvania, and West Virginia. To be eligible, afterschool care programs must be organized primarily to provide care to at-risk school children after school, or on weekends, holidays, or school vacations and must provide educational or enrichment activities. At-risk meals and snacks must be served free of charge to the participants and are reimbursed at the applicable free rates for meals and snacks.

2. How were the States selected for at-risk afterschool meals?

Initially, only six States were authorized to be reimbursed for meals served in at-risk afterschool programs. Four of the six States were named in the law (Delaware, Michigan, Missouri, and Pennsylvania); two remaining States were to be selected by the Secretary based upon competitive applications. As described in the following paragraph, the Department selected New York and Oregon through the competitive application process. The seventh State, Illinois, was added by section 771(3) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies

Appropriations Act, 2002 (Pub. L. 107–76, 115 Stat. 745, November 28, 2001), and the eighth State, West Virginia was added by section 744, division A of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, December 26, 2007). Both laws amended section 17(r)(5) of the NSLA (42 U.S.C.1766(r)).

3. How did USDA select the other two States?

Acting on the statutory requirement to select two States competitively, FNS distributed applications to all CACFP State agencies in August 2000. Eleven State agencies submitted applications by the October 2000 deadline. FNS rated the submissions using the following criteria: demonstration of need; State support of afterschool care programs; and status of at-risk afterschool care programs in CACFP.

The applicants were notified in December 2000 of the Department's selections.

4. When were these States authorized to begin at-risk afterschool meal operations?

The four States initially named in the statute, Delaware, Michigan, Missouri, and Pennsylvania, were eligible to reimburse at-risk afterschool care centers for meals beginning on June 20, 2000. The two additional States selected by USDA, New York and Oregon, were eligible to receive reimbursement for afterschool meals in January 2001. The seventh State, Illinois, was notified in November 2001 of its eligibility. The eighth State, West Virginia, was notified in December 2007 of its eligibility.

5. How did USDA help the States implement the at-risk afterschool meal provision?

FNS convened a meeting of the original six at-risk ''supper'' States (Delaware, Michigan, Missouri, New York, Oregon, and Pennsylvania) on April 4, 2001, at FNS headquarters' offices in Alexandria, Virginia. The meeting focused on providing technical assistance and exchanging implementation strategies for at-risk suppers. The exchange of information revealed wide variations in the implementation of the at-risk supper component by the eligible State agencies. For example, strict licensing requirements in one State prevented aging public school buildings from being used as afterschool care centers while other States had no licensing requirements for afterschool care centers. Some jurisdictions even lacked health or safety requirements for afterschool programs.

In 2002 and 2003, FNS continued to provide technical assistance through conference calls with administrators from the eligible at-risk afterschool ''supper'' States.

Comments and suggestions made by the participants of the April 2001 meeting and subsequent conference calls in 2002 and 2003 provided FNS with valuable insight into operational issues that contributed to the development of policy in the at-risk afterschool care component of the Program as reflected in policy and guidance issued by FNS and in the development of this proposed rule.

6. Why does the proposed rule use the term ''at-risk meals'' instead of ''at-risk suppers''?

To emphasize the eligibility for reimbursement of any one meal served to children attending at-risk afterschool care centers in eligible States when they are not in school, we have dropped the use of the term ''at-risk afterschool suppers'' in favor of the more accurate term, ''at-risk afterschool meals.''

The issue was raised whether at-risk afterschool centers in the eligible States are limited to suppers or whether other meals may be served and reimbursed at the free rate under the at-risk provisions. It was pointed out that the statutory language specifies the provision of at-risk meals, not suppers, and that use of the term ''at-risk suppers'' may inadvertently restrict eligible at-risk programs that operate on weekends and school holidays to seek reimbursement for or serve only the supper meal. However, the at-risk meal reimbursement is not limited exclusively to suppers when an eligible at-risk afterschool center provides care when school is closed, such as on the weekends or vacations during the regular school year.

7. What is USDA's approach to implementing at-risk afterschool meals in the CACFP regulations?

We propose to track the provisions for at-risk afterschool meals as closely as possible to the regulatory requirements already in place for at-risk afterschool snacks; the CACFP at-risk afterschool snack provisions were published in a final rule on July 31, 2007 (72 FR 41591). This is consistent with the treatment of at-risk meals in the statute; both at-risk snacks and meals are authorized under the same at-risk provisions in the NSLA at section 17(r) (42 U.S.C. 1766(r)). In addition, most of the provisions contained in this rule would propose the continuation of requirements that FNS has previously provided to the eligible States on the implementation of at-risk afterschool meals.

8. What proposed provisions are similar to at-risk afterschool snack provisions?

This rule proposes to extend the at-risk snack provisions located in 7 CFR 226.17a and in other sections of the CACFP regulations to include at-risk meals. These requirements include payments to at-risk afterschool care centers, eligible organizations and afterschool care programs, application procedures, participant eligibility for at-risk meals, licensing requirements, State agency approval, data requirements for determining area eligibility, reporting and recordkeeping requirements, and monitoring. The following is a table that provides a summary of the regulatory provisions that we propose to extend to at-risk afterschool meals in the eligible States.

AT-RISK AFTERSCHOOL CARE PROVISIONS TO INCLUDE AFTERSCHOOL MEALS AND SNACKS

Provision	Description
Eligible organizations 7 CFR 226.2 and 226.17a(a).	For snacks, at-risk afterschool centers must be located in eligible areas and provide afterschool care. For meals, at-risk afterschool centers must be located in eligible areas in one of the eligible States and provide afterschool care.
Restrictions on for-profit center participation 7 CFR 226.2, 226.10(c), 226.11(b)(3), 226.11(c)(4), 226.17(b)(4), 226.17a(a)(2).	For-profit centers may not count at-risk children toward meeting the monthly eligibility criteria (25 percent of the children (enrolled or licensed capacity, whichever is less) must be eligible for free or reduced price meals or Title XX benefits).
Eligible afterschool care programs 7 CFR 226.17a(b).	The primary purpose of the eligible afterschool care program is to provide afterschool care, and it must provide education or enrichment activities.
Eligible children 7 CFR 226.2, 226.17a(c)	Children must be 18 and under or meet the CACFP definition of ''Persons with disabilities''.
Eligible area 7 CFR 226.2, 226.17a(i)	Eligible area is defined as the attendance area of a school in which at least 50 percent of enrolled children are eligible for free or reduced price school meals.

AT-RISK AFTERSCHOOL CARE PROVISIONS TO INCLUDE AFTERSCHOOL MEALS AND SNACKS—Continued

Provision	Description
Licensing/approval requirements 7 CFR 226.6(d)(1), 226.17a(d).	The center must be licensed or approved if required by State or local licensing authority; otherwise, it must meet State, local, or Federal health and safety requirements.
Application procedures 7 CFR 226.6(b)(1), 226.17a(e).	The organization must submit written application to sponsoring organization or to the State agency (if it is an independent center) and must provide documentation of area eligibility.
Handling renewals or changes 7 CFR 226.6(b)(2), 226.6(f)(2)(ii), 226.6(f)(3)(ii), 226.17a(g).	At-risk afterschool centers must submit changes to sponsor or State agency as appropriate and reapply every 3 years. Area eligibility is valid for 5 years, unless the State agency chooses to incorporate area eligibility decisions into the three-year application cycle.
Cost of at-risk snacks and meals 7 CFR 226.17a(j).	Snacks and meals must be served free of charge.
Limit on daily reimbursements 7 CFR 226.17a(k).	Benefits under the at-risk provisions are one at-risk snack and one at-risk meal (in eligible States) per child per day, which count toward the maximum benefit in CACFP of two meals and one snack or one meal and two snacks per child per day.
Meal pattern requirements 7 CFR 226.17a(l), 226.20(b), 226.20(c).	At-risk afterschool snacks and meals must meet CACFP meal pattern requirements.
Time periods for meals or snacks 7 CFR 226.17a(m).	A snack and/or meal is served after a child's school day. On weekends and holidays, with State agency approval, one snack may be served anytime, and in the eligible States, any one meal (breakfast, lunch, or supper) may be served.
Reimbursement rates 7 CFR 226.17a(n)	Centers are reimbursed at the applicable free rate for snacks or meals.
Recordkeeping requirements 7 CFR 226.17a(o)	In addition to other recordkeeping requirements for CACFP centers, at-risk afterschool centers must take daily attendance and count the number of snacks and/or meals served.
Reporting requirements 7 CFR 226.17a(p)	In addition to other reporting requirements for CACFP centers, at-risk afterschool centers must report the number of snacks and/or meals served each day.
Monitoring requirements 7 CFR 226.17a(q), 226.6(m), 226.16(d)(4).	Monitoring is the same as for other CACFP center-based programs.

9. What new provisions affecting at-risk meals and/or snacks are proposed in this rule?

This rule proposes to add definitions at 7 CFR 226.2 for *At-risk afterschool meal* and *At-risk afterschool snack.* We propose these definitions to distinguish the snacks and meals served under the at-risk afterschool component of the Program from the meals and snacks served under the other components of the Program, such as day care homes, adult day care centers, outside-school-hours care centers, and traditional child care centers. At-risk afterschool meals and snacks must meet the same meal pattern requirements as all other meals and snacks served under the CACFP (as described at 7 CFR 226.20(a)(1) through (a)(4)). However, the at-risk meal and/or snack services differ from other meals and snacks because they are served free to all participants through age 18 and are reimbursed at the applicable free rate. At-risk afterschool meals are further distinguished from at-risk afterschool snacks by being limited to the eligible States. These distinguishing factors necessitate the need for separate definitions of at-risk snacks and at-risk meals.

In addition, we propose to clarify in 7 CFR 226.17a(m) the times when an at-risk snack or meal may be served. When school is in session, at-risk afterschool care centers must serve the snack or meal after school hours. On each day of a weekend or holiday program during the regular school year, State agencies may approve reimbursement of a snack served at any time of the day and, in the eligible States, any one meal (breakfast, lunch, or supper). The prohibition of at-risk afterschool snack or meal services during summer vacation (except for centers located in the attendance area of a school operating on a year-round schedule) is unchanged.

II. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Impact Analysis

The Regulatory Impact Analysis completed for this proposed rule is available from: Julie Brewer, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590. The analysis is summarized below.

Need for Action

The CACFP at-risk afterschool meal component was authorized by the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), and modified by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. 107–76), and the Consolidated Appropriations Act, 2008 (Pub. L. 110–161). The at-risk meal component has been implemented through FNS guidelines since its creation. FNS guidelines also govern the CACFP at-risk afterschool snack component; the guidelines for the afterschool snack and meals components of CACFP are largely the same. A final rule for the afterschool snack component was published on July 31, 2007 (72 FR 41591). Relatively minor changes to the regulations as amended by that rule are needed to make the regulations fully applicable to both the snack and meal components of the at-risk afterschool care program. This rule proposes those changes. This rule also contains language that would, when published as a final rule, codify the elements of current guidelines unique to the afterschool meal component.

Benefits

Among the motivating factors to establish the at-risk afterschool snack program was a desire to support educational and enriching afterschool care programs for children up to 18 years of age in at-risk neighborhoods in order to reduce juvenile crime and educational underachievement. FNS cannot quantify the impact of the at-risk meals program on juvenile crime or educational achievement. However, participation in these programs is growing and thus these outcomes are to some extent fostered. In the first four years of the program, growth in afterschool meals served by the seven at-risk States eligible at that time ranged from 2 to 8 percent higher than afterschool meals served by non-participating States. However, data

reported since 2004 suggests that this disparity in growth has ended, at least temporarily, and it is too soon to credit the program with a sustained long-term impact on afterschool program attendance.

Although some at-risk meals served afterschool replaced meals served by outside-school-hours care centers, there is also considerable evidence that the total number of children reached by CACFP has increased, to date, as a result of this program. The percentage of at-risk meals that would have been served in traditional child care centers in the absence of the at-risk program is, of course, uncertain. However, it may be as high as 70 percent. That figure suggests that 30 percent of total at-risk participants, or roughly 37,000 children on an average school day during FY 2006, would not have received a federally-reimbursable supper if not for the at-risk program. The program benefits those 37,000 children by providing them with a meal that conforms to USDA meal patterns. In addition, all children served by the at-risk program, approximately 123,000 per day during FY 2006, benefit from the program's structured educational or enrichment elements.

Costs

This proposed rule would, when published as a final rule, codify guidelines governing an existing program component that started in 2001 as mandated by statute. As a result, there are no new reimbursement costs associated with the rule. The at-risk afterschool meals program cost the Federal government a total of $139.8 million in FY 2002 to FY 2006, and is projected to cost a total of $224.6 million from FY 2007 to FY 2011. Costs include both the reimbursement rate that the Federal government pays for each meal, as well as the commodity assistance given to the program. State reporting data do not clearly detail how many additional meals are being served to new participants of the at-risk afterschool meals program that would not have participated in the outside-school-hours care center program, thus the incremental costs of the at-risk meals program are likely small but cannot be determined.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. At-risk afterschool care centers in the eligible States choose whether they wish to participate in this additional meal service. Most of these institutions that will choose to add a meal service are already providing snacks under the at-risk component of the CACFP. The additional meal service will not have a significant paperwork or reporting burden because it is incorporated under the existing agreement and Claim for Reimbursement.

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, the Department 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule when published in final is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the CACFP, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures, and at 7 CFR 226.22, 3016, and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impact the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in the CACFP as non-protected individuals. The regulations at 7 CFR 226.6(b)(4)(iv) require that CACFP institutions agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a, and 15b). At 7 CFR 226.6(m)(1), State agencies are required to monitor CACFP

institution compliance with these laws and regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this proposed rule have been previously approved under OMB #0584–0055. There is no new burden associated with this proposed rule.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 226 is proposed to be amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.2:

a. Add new definitions of ''At-risk afterschool meal'' and ''At-risk afterschool snack'' in alphabetical order; and

b. Amend the last sentence of the introductory text of the definition of ''For-profit center'' by adding the words ''and/or meal'' after the words ''at-risk afterschool snack''.

The additions read as follows:

§ 226.2 Definitions.

* * * * *

At-risk afterschool meal means a meal that meets the requirements described in § 226.20(b)(6) and/or (c)(1), (c)(2), or (c)(3), that is reimbursed at the appropriate free rate and is served by an *At-risk afterschool care center* as defined in this section, which is located in a State designated by law or selected by the Secretary as directed by law.

At-risk afterschool snack means a snack that meets the requirements described in § 226.20(b)(6) and/or (c)(4) that is reimbursed at the free rate for snacks and is served by an *At-risk afterschool care center* as defined in this section.

* * * * *

3. In § 226.4, paragraph (d) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 226.4 Payments to States and use of funds.

* * * * *

(d) * * * For at-risk afterschool meals and at-risk afterschool snacks served to children, funds will be made available to each eligible State agency in an amount equal to the total calculated by multiplying the number of at-risk afterschool meals and the number of at-risk afterschool snacks served in the Program within the State by the national average payment rate for free meals and free snacks, respectively, under section 11 of the Richard B. Russell National School Lunch Act.

* * * * *

§ 226.9 [Amended]

4. In § 226.9, amend paragraph (b)(2) by removing the words ''at-risk afterschool snack component'' and adding in their place the words ''at-risk afterschool care component''.

5. In § 226.10, revise the fourth sentence of the introductory text of paragraph (c) to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) * * * However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. * * *

* * * * *

6. In § 226.11:

a. Revise the second sentence of paragraph (b)(3);

b. Revise paragraph (c)(2); and

c. Revise the second sentence of paragraph (c)(4).

The revisions read as follows:

§ 226.11 Program payments for centers.

* * * * *

(b) * * *

(3) * * * However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. * * *

(c) * * *

(2) *At-risk afterschool care institutions.* Except as provided in paragraph (c)(4) of this section, State agencies must base reimbursement to each at-risk afterschool care center on the number of at-risk afterschool snacks and/or at-risk afterschool meals that are served to children.

* * * * *

(4) * * * However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. * * *

* * * * *

7. In § 226.17, revise the third sentence of paragraph (b)(4) to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b)* * *

(4) * * * However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be included in this percentage. * * *

* * * * *

8. In § 226.17a:

a. Revise the heading of paragraph (a) and revise paragraph (a)(1) introductory text;

b. Add a new paragraph (a)(1)(v);

c. Revise paragraph (a)(2);

d. Revise paragraphs (c), (j), (k), (l), (m), and (n);

e. Revise paragraphs (o)(2), (o)(3), and (o)(4); and

f. Revise paragraph (p).

The addition and revisions read as follows:

§ 226.17a At-risk afterschool care center provisions.

(a) *Organizations eligible to receive reimbursement for at-risk afterschool snacks and at-risk afterschool meals.*

(1) *Eligible organizations.* To receive reimbursement for at-risk afterschool snacks, organizations must meet the criteria in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. To receive reimbursement for at-risk afterschool meals, organizations must meet the criteria in paragraphs (a)(1)(i) through (a)(1)(v) of this section.

* * * * *

(v) Organizations eligible to be reimbursed for at-risk afterschool meals must be located in one of the eligible States designated by law or selected by the Secretary as directed by law.

(2) *Limitations.* (i) To be reimbursed for at-risk afterschool snacks and/or at-risk afterschool meals, all organizations must:

(A) Serve the at-risk afterschool snacks and/or at-risk afterschool meals

to children who are participating in an approved afterschool care program; and

(B) Not exceed the authorized capacity of the at-risk afterschool care center.

(ii) In any calendar month, a for-profit center must be eligible to participate in the Program as described in the definition of For-profit center in § 226.2. However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility.

* * * * *

(c) *Eligibility requirements for children.* At-risk afterschool snacks and/or at-risk afterschool meals are reimbursable only if served to children who are participating in an approved afterschool care program and who either are age 18 or under at the start of the school year or meet the definition of *Persons with disabilities* in § 226.2.

* * * * *

(j) *Cost of at-risk afterschool snacks and meals.* All at-risk afterschool snacks and at-risk afterschool meals served under this section must be provided at no charge to participating children.

(k) *Limit on daily reimbursements.* Only one at-risk afterschool snack and (in eligible States) one at-risk afterschool meal per child per day may be claimed for reimbursement. A center that provides care to a child under another component of the Program during the same day may not claim reimbursement for more than two meals and one snack, or one meal and two snacks, per child per day, including the at-risk afterschool snack and the at-risk afterschool meal. All meals and snacks must be claimed in accordance with the requirements for the applicable component of the Program.

(l) *Meal pattern requirements for at-risk afterschool snacks and at-risk afterschool meals.* At-risk afterschool snacks must meet the meal pattern requirements for snacks in § 226.20(b)(6) and/or (c)(4); at-risk afterschool meals must meet the meal pattern requirements for meals in § 226.20(b)(6) and/or (c)(1), (c)(2), or (c)(3).

(m) *Time periods for snack and meal services*—(1) *At-risk afterschool snacks.* When school is in session, the snack must be served after the child's school day. With State agency approval, the snack may be served at any time on weekends and vacations during the regular school year. Afterschool snacks may not be claimed during summer vacation, unless an at-risk afterschool care center is located in the attendance area of a school operating on a year-round calendar.

(2) *At-risk afterschool meals.* When school is in session, the meal must be served after the child's school day. With State agency approval, any one meal may be served (breakfast, lunch, or supper) per day on weekends and vacations during the regular school year. Afterschool meals may not be claimed during summer vacation, unless an at-risk afterschool care center is located in the attendance area of a school operating on a year-round calendar.

(n) *Reimbursement rates.* At-risk afterschool snacks are reimbursed at the free rate for snacks. At-risk afterschool meals are reimbursed at the respective free rates for breakfast, lunch, or supper.

(o) * * *

(2) The number of at-risk afterschool snacks prepared or delivered for each snack service and/or (in eligible States) the number of at-risk afterschool meals prepared or delivered for each meal service;

(3) The number of at-risk afterschool snacks served to participating children for each snack service and/or (in eligible States) the number of at-risk afterschool meals served to participating children for each meal service; and

(4) Menus for each at-risk afterschool snack service and each at-risk afterschool meal service.

(p) *Reporting requirements.* In addition to other reporting requirements under this part, at-risk afterschool care centers must report the total number of at-risk afterschool snacks and/or (in eligible States) the total number of at-risk afterschool meals served to eligible children based on daily attendance rosters or sign-in sheets.

* * * * *

Dated: March 18, 2008.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. E8–6235 Filed 3–26–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[Docket No. AMS–LS–07–0143]

Pork Promotion, Research and Consumer Information Program; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This action announces the Agricultural Marketing Service's (AMS) review of the Pork Promotion, Research, and Consumer Information Program (Program), which is conducted under the Pork Promotion, Research, and Consumer Information Order (Order), under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice must be received by May 27, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Fax: (202) 720–1125; or, online at *www.regulations.gov.* All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the internet at *www.regulations.gov* or during regular business hours at the address above.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch; Telephone: (202) 720–1115; Fax: (202) 720–1125, or E-mail *Kenneth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION: The Order (7 CFR part 1230) is authorized under the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801 *et seq.*). As part of a comprehensive strategy to strengthen the pork industry's position in the marketplace, this national pork program maintains and expands existing domestic and foreign markets and develops new markets for pork and pork products. The program is funded by a mandatory assessment of $0.40 per-hundred-dollars of market value. All producers owning and marketing swine, regardless of the size of their operation or the value of their swine, must pay the assessment. A comparable assessment is collected on all imported swine, pork, and pork products. Assessments collected under this program are used for promotion, research, consumer information, and industry information.

The national program is administered by the National Pork Board (Board), which is composed of 15 producer members. Board members serve 3-year terms, but no individual may serve more than two consecutive 3-year terms. Producer members are selected by the National Pork Producers Delegate Body, a group of 163 producer and importer members that represent all 50 States and importers. The program became

effective on September 5, 1986, when the Order was issued. Assessments began on November 1, 1986.

On February 18, 1999, AMS published in the **Federal Register** (64 FR 8014) its plan to review certain regulations. On January 4, 2002, AMS published in the **Federal Register** (67 FR 525) an update to its plan to review regulations, including the Pork Promotion and Research Program, which is conducted under the Order, under criteria contained in section 610 of the 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 that, although may not meet the threshold requirement under section 610 of the RFA, warrant review. Accordingly, this notice and request for comments concerns the Order.

The purpose of the review is to determine whether the Order should continue without change or whether it should be amended or rescinded (consistent with the objectives of the Act) to minimize the impact on small entities. AMS will consider the following 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 governmental rules; 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.

Written comments, views, opinions, and other information regarding the Order's impact on small businesses are invited.

Dated: March 21, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–6246 Filed 3–26–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0362; Directorate Identifier 2007–NM–308–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

At least one incident has occurred where, immediately after take-off, the passenger door of a Dornier 328 completely opened. * * * Substantial damage to the door, handrails, door hinge arms and fuselage skin were found.

* * * Although final proof could not be obtained, the most likely way in which the door opened was that the door handle was inadvertently operated during the take-off run.

* * * * *

[T]his Airworthiness Directive (AD) aims to prevent further incidents of inadvertent opening and possible detachment of a passenger door in-flight, likely resulting in damage to airframe and systems and, under less favorable circumstances, loss of control of the aircraft.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 28, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0362; Directorate Identifier 2007–NM–308–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0199, dated July 25, 2007 (corrected July 26, 2007; referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

At least one incident has occurred where, immediately after take-off, the passenger door of a Dornier 328 completely opened. The flight crew reportedly had no cockpit indication or audible chime prior to this event. The aircraft returned to the departure airfield and made an uneventful emergency landing. Substantial damage to the door, handrails, door hinge arms and fuselage skin were found.

The subsequent investigation could not find any deficiency in the design of the main cabin door locking mechanism. In addition, no technical failure could be determined that precipitated the event. The flight data recorder showed that the door was closed and locked before take-off and opened shortly afterward. Although final proof could not be obtained, the most likely way in which the door opened was that the door handle was inadvertently operated during the take-off run.

In response to the incident, AvCraft (the TC (type certificate) holder at the time) developed a placard set to warn the occupants against touching the door handle, as well as a structural modification of the passenger door hinge supports to make certain that the door does not separate from the aircraft when inadvertently opened during flight, allowing a safe descent and landing.

Although the event described above did not prevent the flight crew from landing the aircraft safely, the condition of the aircraft immediately after the opening of the door has been determined to have been unsafe. [T]his Airworthiness Directive (AD) aims to prevent further incidents of inadvertent opening and possible detachment of a passenger door in-flight, likely resulting in damage to airframe and systems and, under less favorable circumstances, loss of control of the aircraft.

* * * * *

Corrective actions include installing warning placards on the doors, and doing a modification that includes replacing the hinge supports and support struts of the passenger doors with new, improved hinge supports and support struts. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

AvCraft Aerospace GmbH has issued the service information described in the following table.

SERVICE INFORMATION

AvCraft Dornier Service Bulletin	Dated
SB–328–11–454	May 3, 2004.
SB–328–52–460	February 4, 2005.
SB–328J–11–209	May 3, 2004.
SB–328J–52–213	February 4, 2005.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 106 products of U.S. registry. We also estimate that it would take about 38 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $11,961 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,590,106, or $15,001 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

328 Support Services GmbH (Formerly AvCraft Aerospace GmbH): Docket No. FAA–2008–0362; Directorate Identifier 2007–NM–308–AD.

Comments Due Date

(a) We must receive comments by April 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dornier Model 328–100 airplanes, having serial numbers (S/Ns) 3005 through 3098, 3100, 3101, 3106, 3107, 3109, 3110, 3112, 3113, 3115, 3117 and 3119;

and Model 328–300 airplanes, having S/Ns 3102, 3105, 3108, 3111, 3114, 3116, 3118, and 3120 through 3224; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 11: Placards and Markings; and Code 52: Doors.

Reason

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

At least one incident has occurred where, immediately after take-off, the passenger door of a Dornier 328 completely opened. The flight crew reportedly had no cockpit indication or audible chime prior to this event. The aircraft returned to the departure airfield and made an uneventful emergency landing. Substantial damage to the door, handrails, door hinge arms and fuselage skin were found.

The subsequent investigation could not find any deficiency in the design of the main cabin door locking mechanism. In addition, no technical failure could be determined that precipitated the event. The flight data recorder showed that the door was closed and locked before take-off and opened shortly afterward. Although final proof could not be obtained, the most likely way in which the door opened was that the door handle was inadvertently operated during the take-off run.

In response to the incident, AvCraft (the TC (type certificate) holder at the time) developed a placard set to warn the occupants against touching the door handle, as well as a structural modification of the passenger door hinge supports to make certain that the door does not separate from the aircraft when inadvertently opened during flight, allowing a safe descent and landing.

Although the event described above did not prevent the flight crew from landing the aircraft safely, the condition of the aircraft immediately after the opening of the door has been determined to have been unsafe. [T]his Airworthiness Directive (AD) aims to prevent further incidents of inadvertent opening and possible detachment of a passenger door in-flight, likely resulting in damage to airframe and systems and, under less favorable circumstances, loss of control of the aircraft.

* * * * *

Corrective actions include installing warning placards on the doors, and doing a modification that includes replacing the hinge supports and support struts of the passenger doors with new, improved hinge supports and support struts.

Actions and Compliance

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

(1) Within 30 days after the effective date of this AD, install warning placards on the inside of the passenger door and service doors, in accordance with AvCraft Dornier Service Bulletin SB–328–11–454 (for Model 328–100 airplanes) or SB–328J–11–209 (for Model 328–300 airplanes), both dated May 3, 2004, as applicable.

(2) Within 12 months after the effective date of this AD, modify the hinge supports and support struts of the passenger doors, in accordance with the Accomplishment Instructions of AvCraft Dornier Service Bulletin SB–328–52–460 (for Model 328–100 airplanes) or SB–328J–52–213, (for Model 328–300 airplanes), both dated February 4, 2005, as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0199, dated July 25, 2007 (corrected July 26, 2007), and the service bulletins described in Table 1 of this AD, for related information.

TABLE 1.—SERVICE INFORMATION

AvCraft Dornier Service Bulletin	Dated
SB–328–11–454	May 3, 2004.
SB–328–52–460	February 4, 2005.
SB–328J–11–209	May 3, 2004.
SB–328J–52–213	February 4, 2005.

Issued in Renton, Washington, on March 20, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–6296 Filed 3–26–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0363; Directorate Identifier 2008–NM–020–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

* * * * *

This assessment showed that the electrical harness of the Fuel Quantity Gauging System (FQGS) is installed in the same routing as the 28 Volts AC, 28 Volts DC, and 115 Volts AC electrical harnesses. A chafing condition between these electrical harnesses and the FQGS harness could increase the surface temperatures of fuel quantity probes and high level sensors inside the fuel tank, resulting in potential ignition source[s] and consequent fuel tank explosion.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 28, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7304; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0363; Directorate Identifier 2008–NM–020–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2007–36, dated December 21, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.
>
> This assessment showed that the electrical harness of the Fuel Quantity Gauging System (FQGS) is installed in the same routing as the 28 Volts AC, 28 Volts DC, and 115 Volts AC electrical harnesses. A chafing condition between these electrical harnesses and the FQGS harness could increase the surface temperatures of fuel quantity probes and high level sensors inside the fuel tank, resulting in potential ignition source[s] and consequent fuel tank explosion.
>
> To correct the unsafe condition, this directive mandates the modification of FQGS electrical harness routing.

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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation Number 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Bombardier has issued Service Bulletin 601R–28–059, Revision E, dated October 29, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 709 products of U.S. registry. We also estimate that it would take about 83 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $15,552 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties,

some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $15,734,128, or $22,192 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0363; Directorate Identifier 2008–NM–020–AD.

Comments Due Date

(a) We must receive comments by April 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; certificated in any category; serial numbers 7003 through 7067 inclusive, and 7069 through 7982 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

This assessment showed that the electrical harness of the Fuel Quantity Gauging System (FQGS) is installed in the same routing as the 28 Volts AC, 28 Volts DC, and 115 Volts AC electrical harnesses. A chafing condition between these electrical harnesses and the FQGS harness could increase the surface temperatures of fuel quantity probes and high level sensors inside the fuel tank, resulting in potential ignition source[s] and consequent fuel tank explosion.

To correct the unsafe condition, this directive mandates the modification of FQGS electrical harness routing.

Actions and Compliance

(f) Within 10,000 flight hours after the effective date of this AD, unless already done, do the following actions.

(1) Modify the FQGS harness routing according to the Accomplishment Instructions of Bombardier Service Bulletin 601R–28–059, Revision E, dated October 29, 2007.

(2) Actions done before the effective date of this AD in accordance with the Bombardier Service Information specified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 1.—SERVICE INFORMATION

Service Bulletin No.	Revision	Date
601R–28–059	Original	October 19, 2004.
601R–28–059	A	July 28, 2005.
601R–28–059	B	November 17, 2005.
601R–28–059	C	March 8, 2007.
601R–28–059	D	May 10, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), 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: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7304; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–36, dated December 21, 2007, and Bombardier Service Bulletin 601R–28–059, Revision E, dated October 29, 2007, for related information.

Issued in Renton, Washington, on March 18, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–6299 Filed 3–26–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 080302355–8413–01]

RINs 0648 AT14, 0648 AT15, 0648 AT16

Office of National Marine Sanctuaries Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) previously published proposed revised management plans, revised Designation Documents, and revised regulations for the Cordell Bank National Marine Sanctuary (CBNMS), Gulf of the Farallones National Marine Sanctuary (GFNMS), and Monterey Bay National Marine Sanctuary (MBNMS). The currently pending proposed regulations would revise and provide greater clarity to existing regulations.

After reviewing public comments on the proposed rules, including a request from the California State Water Resources Control Board to prohibit discharges from certain vessels in national marine sanctuaries offshore of California, and further analyzing vessel discharge issues, NOAA now proposes additional discharge regulations for the CBNMS, GFNMS, and MBNMS consistent with the request of the California State Water Resources Control Board. This proposed rule would prohibit discharge of treated waste from vessels 300 gross registered tons (GRT) or more with sufficient holding tank capacity to hold treated sewage while within the sanctuary and limit the exception for graywater discharges to vessels less than 300 GRT, and vessels 300 GRT or more without sufficient holding tank capacity to hold graywater while within the MBNMS.

DATES: Comments will be considered if received by May 9, 2008.

ADDRESSES: Written comments should be sent by mail to: Sean Morton, JMPR Management Plan Coordinator, NOAA's Office of National Marine Sanctuaries, 1305 East-West Highway, N/ORM–6, Silver Spring, MD 20910, by e-mail to: *jointplancomments@noaa.gov,* or by fax to (301) 713–0404. Copies of the DMP/DEIS are available from the same address and on the Web at: *http://www.sanctuaries.nos.noaa.gov/jointplan.* Comments can also be submitted to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Sean Morton, NOAA Office of National Marine Sanctuaries, 301–713–7264 or *sean.morton@noaa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 *et seq.*) (NMSA), the ONMS conducted a review of the management plans for the CBNMS, GFNMS, and MBNMS. The review resulted in proposed new management plans for the sanctuaries, some proposed revisions to existing regulations, some proposed new regulations, and some proposed changes to the designation documents. Certain discharges or deposits of material or other matter from within or into the sanctuaries from vessels in general and certain discharges or deposits from cruise ships were among regulations proposed for modification or addition.

For the CBNMS, proposed new regulations (71 FR 59039, October 6, 2006) included prohibitions on:

- Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship, except vessel engine and generator cooling water.

For the CBNMS, proposed revisions to existing regulations (71 FR 59039, October 6, 2006) would:

- Clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and all vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- Remove an exception for discharging or depositing food waste resulting from meals on board vessels; and
- Revise language for discharges and deposits from beyond the boundary of the sanctuary that subsequently enter the Sanctuary and injure Sanctuary resources.

For the GFNMS, proposed new regulations (71 FR 59338, October 6, 2006) included prohibitions on:

- Discharging or depositing from within or into the sanctuary any material or other matter from a cruise ship, except vessel engine and generator cooling water; and
- Discharging or depositing, from beyond the boundary of the sanctuary, any material or other matter that subsequently enters the sanctuary and injures a sanctuary resource or quality.

For the GFNMS, proposed revisions to existing regulations (71 FR 59338, October 6, 2006) would:

- Clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices, and that the vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage; and
- Remove exceptions to the discharging or depositing prohibition that pertain to discharge of municipal sewage.

For the MBNMS, proposed new regulations (71 FR 59050, October 6, 2006) included prohibitions on:

- Discharging or depositing any material or other matter from a cruise ship other than vessel engine cooling water, vessel generator cooling water, or anchor wash.

For the MBNMS, proposed revisions to existing regulations (71 FR 59050, October 6, 2006) would:

- Clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- Clarify that the prohibition against discharges/deposits applies to discharges/deposits both within and into the sanctuary;
- Clarify that discharges/deposits resulting from cruise ship generator cooling water, anchor wash, and clean bilge water (defined as not containing detectable levels of harmful matter) are excepted from the cruise ship discharge/deposit prohibition.

NOAA published these proposals in 2006 in the CBNMS, GFNMS, and MBNMS Draft Management Plans

(DMPs) and Draft Environmental Impact Statement (DEIS), available online at: *http://sanctuaries.noaa.gov/jointplan/*. On October 6, 2006 NOAA issued notices of availability of the DMPs and DEIS, and published the associated proposed rules.

With regard to vessel discharges/deposits from marine sanitation devices, NOAA's proposed action only allowed discharges from Type I and Type II marine sanitation devices and required vessel operators to lock marine sanitation devices in a manner preventing discharge of untreated sewage. NOAA's proposed action prohibited most discharges/deposits from within or into the sanctuaries from cruise ships.

After receiving comments on the DEIS and proposed rules, in particular from the California State Water Resources Control Board, NOAA proposes to expand the range of vessels subject to the discharge requirements to better address potential impacts of sewage and graywater discharges from large vessels other than cruise ships. The impact of the regulations is within the range of the alternatives discussed in the original DEIS. Additional analysis related to these proposed regulations is included in Supplemental Draft Environmental Impact Statement (SDEIS).

Background

NOAA distributed the draft management plans and DEIS, and published the proposed rules, on October 6, 2006 and accepted comments through January 5, 2006. During public review, NOAA received a wide range of comments, including substantial public and agency comments about changes proposed for sanctuary regulation of sewage and graywater discharges/deposits from vessels of 300 GRT or more. Comments included a request that NOAA expand the cruise ship discharge regulation to prohibit sewage discharges from other large vessels. In addition, comments from California state agencies and environmental non-governmental organizations indicated that NOAA's proposed exception for graywater discharges is inconsistent with the California Clean Coast Act (California Public Resources Code sec. 72420–72422) prohibiting graywater discharges from vessels 300 GRT or more within state waters.

On May 11, 2007, NOAA also received a request from the California State Water Resources Control Board to prohibit discharges from certain vessels in national marine sanctuaries offshore of California. The California Clean Coast Act requires the State Water Resources Control Board to request the appropriate federal agencies to prohibit the release of wastes from cruise ships and oceangoing ships into state marine waters and the four national marine sanctuaries in California. The request referenced the California Clean Coast Act [California Senate Bill 771 (Chapter 588, Statutes of 2006)], and specifically requested NOAA prohibit release from large passenger vessels (cruise ships) and other oceangoing ships (300 gross tons or more) of hazardous waste, oily bilgewater, other waste, and sewage sludge into the marine waters of the state and marine sanctuaries. These proposed rules include prohibitions consistent with the request from the State of California for the CBNMS, GFNMS, and MBNMS.

Existing or currently pending regulations published in October 2006 (71 FR 59039, 71 FR 59050, 71 FR 59338) already prohibit discharge of hazardous waste, oil bilge water and sewage sludge.

The revised proposed discharge/deposit regulations: (1) Provide an exception for treated sewage discharges only applicable to vessels less than 300 GRT, and vessels greater than 300 GRT without sufficient holding tank capacity to hold sewage while within the sanctuary and (2) provide an exception for graywater discharges applicable to vessels less than 300 GRT, and vessels 300 GRT or more without sufficient holding tank capacity to hold graywater while within the MBNMS. Discharge of graywater is already prohibited, without exception, in the CBNMS and GFNMS.

The graywater discharge exception for vessels without sufficient holding tank capacity to hold graywater while within the MBNMS is proposed because many vessels are designed without the ability to retain graywater, and as such must discharge graywater directly as it is produced. Some vessels mix graywater with untreated sewage where it is treated in the vessel marine sanitation device (MSD). If graywater is retained in an MSD and, consequently, mixed with any sewage, it is considered blackwater.

The primary purpose of these revised regulations is to reduce potentially harmful effects of large-vessel sewage and graywater discharges on sanctuary qualities and resources. The revisions described herein affect two of the exceptions to the prohibition on discharging or depositing material or other matter into the sanctuary: the exception for treated sewage for the CBNMS, GFNMS, and MBNMS, and the exception for biodegradable matter including sewage for the MBNMS. Proposed revisions would result in substantive changes regarding sewage and graywater.

NOAA will publish any final regulations for the CBNMS, GFNMS, and MBNMS after reviewing all comments to the currently pending proposed rules and this proposed rule.

Environment

The CBNMS protects an area of 526 square miles (399 square nautical miles) off the northern California coast. The main feature of the Sanctuary is Cordell Bank, an offshore granite bank located on the edge of the continental shelf, about 43 nautical miles (nmi) northwest of the Golden Gate Bridge and 20 nmi west of the Point Reyes lighthouse. CBNMS is entirely offshore and shares its southern and eastern boundary with the GFNMS. The CBNMS eastern boundary is six miles from shore and the western boundary is the 1000 fathom isobath on the edge of the continental slope. CBNMS is located in one of the world's four major coastal upwelling systems. The combination of oceanic conditions and undersea topography provides for a highly productive environment in a discrete, well-defined area. The vertical relief and hard substrate of the Bank provide benthic habitat with near-shore characteristics in an open ocean environment 20 nmi from shore. The Cordell Bank National Marine Sanctuary was established in 1989 to protect and preserve the extraordinary ecosystem, including marine birds, mammals, and other natural resources of Cordell Bank and its surrounding waters.

The GFNMS lies off the coast of California, to the west and north of San Francisco. The GFNMS is composed of offshore waters extending out to and around the Farallon Islands and nearshore waters (up to the mean high tide line) from Bodega Head to Rocky Point in Marin. The GFNMS is characterized by the widest continental shelf on the west coast of the contiguous United States. In the Gulf of the Farallones, the shelf reaches a width of 32 nautical miles (59 km). Shoreward of the Farallon Islands, the continental shelf is a relatively flat sandy/muddy plain, which slopes gently to the west and north from the mainland shoreline. The Farallon Islands lie along the outer edge of the continental shelf, between 13 and 19 nautical miles (24 and 35 km) southwest of Point Reyes and approximately 26 nautical miles (48 km) due west of San Francisco. In addition to sandy beaches, rocky cliffs, small coves, and offshore stacks, the GFNMS includes open bays (Bodega Bay, Drakes Bay) and enclosed bays or estuaries (Bolinas Lagoon, Tomales Bay, Estero Americano, and Estero de San Antonio). The Gulf of the Farallones National

Marine Sanctuary was established in 1981 to protect and preserve this unique and fragile ecological community.

The MBNMS is located offshore of California's central coast, adjacent to and south of the GFNMS. It encompasses a shoreline length of approximately 268 miles between Marin in Marin County and Cambria in San Luis Obispo County and approximately 4,016 square nautical miles of ocean and coastal waters, and the submerged lands thereunder, extending an average distance of 30 miles from shore. Supporting some of the world's most diverse marine ecosystems, it is home to numerous mammals, seabirds, fishes, invertebrates, and plants in a remarkably productive coastal environment. The MBNMS was established in 1992 for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area.

According to Lloyds Maritime Information Services, in 2000, 3,575 cargo vessels called at ports on San Francisco Bay, including 1,936 container vessels, 787 tankers, 626 dry bulk vessels, and 226 other types (Bureau of Transportation Statistics 2002). Approximately half of these vessels transit south off the coast of California, while the other half transit north or west of San Francisco. Data from the U.S. Army Corps of Engineers show a similar level of movement, with approximately 3,600 vessels (including foreign and domestic vessels, tugs, and barges) entering San Francisco Bay from the Pacific Ocean each year (USACE 2002a). In addition, approximately 3,000 large vessels transit along the northern/central California coast every year (Pacific States/British Columbia Oil Spill Task Force 2002), passing through the three sanctuaries.

Summary of the Proposed Regulatory Amendments

Regulation of Vessel Sewage

The proposed regulations would revise the prohibition to address sewage discharges/deposits from within or into the CBNMS, GFNMS, and MBNMS from vessels of 300 GRT or more. The prohibitions would only apply to vessels with sufficient holding tank capacity to hold sewage while within the sanctuary.

The revised regulations would better address NOAA's concerns about possible impacts from large volumes of treated sewage discharges within the sanctuaries from large vessels in addition to cruise ships. Untreated sewage discharges are prohibited within the national marine sanctuaries. Vessel sewage discharges are more concentrated than domestic land-based sewage. They may contain bacteria or viruses that can cause disease in humans and wildlife, may contain high concentrations of nutrients that can lead to eutrophication (the process that can cause oxygen-depleted ''dead zones'' in aquatic environments), and may yield unpleasant esthetic impacts to the sanctuary environment (diminishing sanctuary resources and their ecological, conservation, esthetic, recreational and other qualities). Large vessels may have either Type II marine sanitation devices (MSDs) that treat sewage, or Type III MSDs that hold sewage until it can be legally pumped out or discharged.

In 2006, approximately 75% of the large oceangoing vessels that called on California ports were using a Type II MSD. While these devices are designed to lower fecal coliform bacteria counts (to a standard of 200 fecal coliform per 100 milliliter of sample) and reduce total suspended solids (to a standard of 150 milligrams per liter), studies in Alaska of cruise ship wastewater discharges have shown high rates of failure in the ability of conventional MSDs to meet legal discharge standards (Alaska Department of Environmental Conservation 2004). Furthermore, monitoring and testing of MSD discharges (outside of Alaska) is not legally required of large vessel operators, so reductions in treatment effectiveness may go undetected.

Regulation of Vessel Graywater

The proposed action would also amend the exception to the prohibition on discharging or depositing graywater from within or into the MBNMS. The revised regulation would provide an exception for discharging or depositing graywater from vessels less than 300 GRT, and vessels 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the MBNMS.

The revised regulation would better address NOAA's concerns about the potential impacts of graywater discharges from large vessels in the MBNMS. Graywater from vessels includes wastewater from showers, baths, and galleys. Graywater can contain a variety of substances including (but not limited to) detergents, oil and grease, pesticides and food wastes (Eley 2000). Very little research has been done on the impacts of graywater on the marine environment, but many of the chemicals commonly found in graywater are known to be toxic (Casanova *et al.* 2001). These chemicals have been implicated in the occurrence of cancerous growths in bottom-dwelling fish (Mix 1986). Furthermore, studies of graywater discharges from large cruise ships in Alaska (prior to strict state effluent standards for cruise ship graywater discharges) found very high levels of fecal coliform in large cruise ship graywater (well exceeding the federal standards for fecal coliform from Type II MSDs). These same studies also found high mean total suspended solids in some graywater sources (exceeding the federal standards for total suspended solids from Type II MSDs).

In summary, the revised proposed discharge regulations would prohibit the following discharges: (1) Within or into the CBNMS, GFNMS, and MBNMS all treated sewage/deposits from vessels 300 GRT or more with sufficient holding tank capacity to hold sewage while within the sanctuary and (2) within or into the MBNMS, all graywater from vessels 300 GRT or more with sufficient holding tank capacity to hold graywater while within the MBNMS.

Miscellaneous Rulemaking Requirements

National Environmental Policy Act

NOAA has prepared a Supplemental Draft Environmental Impact Statement (SDEIS) to evaluate the proposed revisions to the discharge/deposit regulations analyzed in the DEIS. Copies are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the Final Environmental Impact Statement and preamble to the final rule.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. The ONMS consulted with a number of entities within the State who participated in development of this proposed rule, including but not limited to the California Coastal Commission, California Regional Water Quality Control Board, California Department of Fish and Game, and California Resources Agency.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Based primarily on recent socioeconomic studies, and on-site surveys of visitor use, NMSP has identified the following small entities as defined by the Regulatory Flexibility Act. Small business concerns operating within the CBNMS, GFNMS, and MBNMS (sanctuaries) include over 500 commercial fishing operations, six mariculture operations, more than 30 consumptive recreational charter businesses, over 30 non-consumptive recreational charter businesses, approximately 3 motorized personal watercraft businesses, and approximately 10 marine salvage companies.

Small organizations operating within the sanctuaries include non-governmental organizations (NGOs) and/or non-profit organizations (NPOs) dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. There are approximately 50 small organizations active in the sanctuaries including non-profit organizations (NPOs) involved in education, research, restoration, and conservation activities. Cambria, Carmel-by-the-Sea, Pacific Grove, City of Monterey, City of Seaside, Del Rey Oaks, Marina, Castroville, Pajaro, Soquel, Capitola, Rio Del Mar, Aptos, Pacifica, Half Moon Bay, San Mateo County Harbor District, Santa Cruz Port District and Moss Landing Harbor District would qualify as ''small governmental jurisdictions'' directly adjacent to the sanctuaries.

The proposed modifications to the sanctuaries' discharge/deposit regulation prohibiting waste discharges from vessels 300 GRT or greater is applicable to any small entities that operate vessels of this size in the Sanctuary. However, no small entities among those identified above operate vessels 300 GRT or more within the sanctuaries. Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis is required, and none was prepared.

Request for Comments

NOAA requests comments on this proposed rule concerning vessel discharges and deposits of sewage and graywater, which supplements the currently pending proposed rules published on October 2006 (71 FR 59039, 71 FR 59050, 71 FR 59338).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Boats and Boating safety, Coastal zone, Education, Environmental protection, Fish, Harbors, Marine mammals, Marine pollution, Marine resources, Marine safety, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research, Water pollution control, Water resources, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 21, 2008.

Steve Kozak,

Chief of Staff for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. In § 922.82 revise paragraphs (a)(2) introductory text and (a)(2)(ii) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

(a)* * *

(2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

* * * * *

(ii) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, biodegradable effluents incidental to vessel use and generated by: An operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322.

Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

* * * * *

3. In § 922.111 revise paragraphs (a)(1)(i) introductory text and (a)(1)(i)(B) to read as follows:

§ 922.111 Prohibited or otherwise regulated activities.

(a) * * *

(1) * * *

(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

* * * * *

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, biodegradable effluents incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

* * * * *

4. In § 922.132 revise paragraphs (a)(2)(i) introductory text and (a)(2)(i)(B) through (E), and add paragraph (a)(2)(i)(F) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(2)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter, except:

* * * * *

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, biodegradable effluent incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Biodegradable vessel deck wash down, vessel engine cooling water, vessel generator cooling water, anchor wash, clean bilge water (meaning not containing detectable levels of harmful matter as defined);

(D) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold graywater

while within the Sanctuary, graywater as defined by section 312 of the FWPCA that is biodegradable;

(E) Vessel engine or generator exhaust; or

(F) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation (January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993. Authorized disposal sites within the Sanctuary are described in appendix C to this subpart.

* * * * *

[FR Doc. E8–6189 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM07–1–000]

Standards of Conduct for Transmission Providers

March 21, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its Standards of Conduct for transmission providers to make them clearer and to refocus the rules on the areas where there is the greatest potential for affiliate abuse. By doing so, we will make compliance less elusive and facilitate Commission enforcement. We also propose to conform the Standards to the decision of the U.S. Court of Appeals for the D.C. Circuit in *National Fuel Gas Supply Corporation* v. *FERC*, 468 F.3d 831 (D.C. Cir. 2006). On January 18, 2007, the Commission issued a Notice of Proposed Rulemaking (initial NOPR), and received both initial and reply comments from interested persons. After giving consideration to these comments and to our own experience in enforcing the Standards, the Commission believes it to be necessary and appropriate to modify the approach proposed in the initial NOPR. The Commission is therefore issuing a new NOPR, and invites all interested persons to submit comments in response to the regulations proposed herein.

DATES: Comments are due May 12, 2008.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web Site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kathryn Kuhlen, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Kathryn.Kuhlen@FERC.gov*, (202) 502–6855.

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I. Introduction

1. The Federal Energy Regulatory Commission is proposing to reform its Standards of Conduct for Transmission Providers. The primary purpose of our proposed reforms is to strengthen the Standards by making them clearer and by refocusing the rules on the areas where there is the greatest potential for affiliate abuse. By doing so, we also will make compliance less elusive and subjective for regulated entities, and facilitate enforcement of the Standards by the Commission. We also propose to reform our regulations to comply with the U.S. Court of Appeals for the D.C. Circuit decision in *National Fuel Gas Supply Corp.* v. *FERC*, 468 F.3d 831 (D.C. Cir. 2006).

2. On January 18, 2007, the Commission issued a Notice of Proposed Rulemaking (initial NOPR) to modify the Standards. The primary purpose of the initial NOPR was to remedy the defects identified by the D.C. Circuit in *National Fuel,* particularly the court's rejection of the Standards' treatment of Energy Affiliates of natural gas pipelines. The Commission also sought to remedy other specific flaws in the Standards, such as by removing impediments to integrated resource planning. In proposing these reforms we did not, however, undertake a broader review of the Standards to determine whether they were continuing to prevent affiliate abuse in the manner most likely to foster compliance and enhance enforcement. Based on comments received on the NOPR, as well as the comments received at our recent

enforcement conference,[1] we now believe that such a broader review is necessary. We therefore propose further reforms herein and seek comment on them from all interested persons.

3. Our revised NOPR proposes to combine the best elements of the Standards adopted in Order Nos. 497 and 889 with those adopted by the Commission in Order No. 2004.[2] Order Nos. 497[3] and 889[4] established a functional separation between transmission and merchant personnel for natural gas and electric transmission providers that was relatively clear and that worked well for many years. Order No. 2004 altered this approach in three main ways: (i) First, to expand the scope of the Standards to include Energy Affiliates, (ii) second, to adopt a corporate separation approach to accommodate the addition of Energy Affiliates, and (iii) third, to adopt a single set of standards applicable to both natural gas and electric industries. The *National Fuel* court rejected the first reform as applied to the natural gas industry and, by doing so, undercut the need for the second reform. The court did not upset the third reason for reform and we continue to believe there is no reason why separate standards should apply to each industry, although our proposed regulations do take into account differences between the industries in discrete areas.

4. Nevertheless, we believe this single set of standards should more closely resemble the functional approach that was adopted in Order Nos. 497 and 889. Our experience with implementing and enforcing the Standards, as well as the record of this proceeding, demonstrates that this approach is the one most likely to foster compliance and strengthen enforcement of the Standards. The ''corporate separation'' adopted by Order No. 2004 has not proven workable and was adopted to facilitate the regulation of Energy Affiliates,[5] a step that is no longer appropriate given the decision in National Fuel.

5. In addition to combining the best elements of Orders 497, 889 and 2004, we also, as explained below, propose to simplify and streamline the Standards to facilitate compliance and enhance enforcement. With our new civil penalty authority, we are mindful of the fact that our regulations must be as clear as possible, as participants in the enforcement conference repeatedly noted. We also propose to strengthen enforcement of the Standards by proposing additional transparency to aid in the detection of affiliate abuse. Although we believe many of the existing elements of the Standards should be retained, the reforms we are proposing, together with the simplification and clarification we believe to be imperative, necessitate reissuing the entire part 358 of the Code of Federal Regulations as a stand-alone document.

II. Background

6. The Commission first adopted Standards of Conduct in 1988, in Order No. 497. These initial Standards prohibited interstate natural gas pipelines from giving their marketing affiliates or wholesale merchant functions undue preference over non-affiliated customers. Citing demonstrated record abuses, the U.S. Court of Appeals for the D.C. Circuit upheld these Standards in 1992.[6] The Commission adopted similar Standards for the electric industry in 1996, in Order No. 889, prohibiting public utilities from giving undue preference to their marketing affiliates or wholesale merchant functions. Both the electric and gas Standards sought to deter undue preference by: (i) Separating a transmission provider's employees engaged in transmission services from those engaged in its marketing services, and (ii) requiring that all transmission customers, affiliated and non-affiliated, be treated on a non-discriminatory basis.

7. Changes in both the electric and gas industries, in particular the unbundling of sales from transportation in the gas industry and the increase in the number of power marketers in the electric industry, led the Commission in 2003 to issue Order No. 2004, which broadened the Standards to include a new category of affiliate, the Energy Affiliate.[7] The new Standards were made applicable to both the electric and gas industries, and provided that the transmission employees of a transmission provider[8] must function independently not only from the company's marketing affiliates but from its Energy Affiliates as well, and that transmission providers may not treat either their Energy Affiliates or their marketing affiliates on a preferential basis. Order No. 2004 also imposed requirements to publicly post information concerning a transmission provider's Energy Affiliates.

8. On appeal by members of the natural gas industry, the U.S. Court of Appeals for the D.C. Circuit overturned the Standards as applicable to gas transmission providers, on the grounds that the evidence of abuse by Energy Affiliates cited by the Commission was not in the record.[9] The court noted that the dissenting Commissioners in Order No. 2004 had expressed the concern that the Order would diminish industry

[1] Conference on Enforcement Policy, Docket No. AD07–13–000 (Nov. 16, 2007) (enforcement conference).

[2] *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,155 (2003), *order on reh'g*, Order No. 2004–A, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,161 (2004), *order on reh'g*, Order No. 2004–B, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,166 (2004), *order on reh'g*, Order No. 2004–C, FERC Stats. & Regs., Regulations Preambles 2001–2005 ¶ 31,172 (2004), *order on reh'g*, Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines* sub nom. *Nat'l Fuel Gas Supply Corporation* v. *FERC*, 468 F.3d 831 (D.C. Cir. 2006); *Standards of Conduct for Transmission Providers*, Order No. 690, 72 FR 2427 (Jan. 19, 2007), FERC Stats. & Regs ¶ 31,237, *order on reh'g,* Order No. 690–A, 72 FR 14235 (Mar. 27, 2007), FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers,* Notice of Proposed Rulemaking, 72 FR 3958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007).

[3] *Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines,* Order No. 497, 53 FR 22139 (1988), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on reh'g*, 54 FR 52781 (1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (1990), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815 (1992), 58 FERC ¶ 61,139 (1992); *aff'd in part and remanded in part sub nom. Tenneco Gas* v. *FERC*, 969 F.2d 1187 (D.C. Cir. 1992) (collectively, Order No. 497).

[4] *Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct,* Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles Jan. 1991–June 1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889–A, *order on reh'g,* 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889–B, *reh'g denied,* 62 FR 64715 (Dec. 9, 1997), 81 FERC ¶ 61,253 (Nov. 25, 1997) (collectively, Order No. 889).

[5] Order No. 2004 at P 92.

[6] *Tenneco Gas* v. *FERC*, 969 F.2d 1187 (D.C. Cir. 1992) (*Tenneco*).

[7] The new Standards defined an Energy Affiliate as an affiliate of a Transmission Provider that (1) engages in or is involved in transmission transactions in U.S. energy or transmission markets; or (2) manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or (3) buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets. 18 CFR 358.3(d). Certain categories of entities were excluded from this definition in following subsections of the regulations.

[8] A Transmission Provider was defined as (1) any public utility that owns, operates or controls facilities used for transmission of electric energy in interstate commerce; or (2) any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of the same chapter of the regulations. 18 CFR 358.3(a).

[9] *National Fuel* at 841.

efficiencies without advancing the FERC policy of preventing unduly discriminatory behavior.[10]

9. The Commission issued an Interim Rule on January 9, 2007,[11] and set about developing new Standards that would cure the defects identified by the D.C. Circuit in *National Fuel.* On January 18, 2007, the Commission issued its initial NOPR,[12] requesting comment on whether the concept of Energy Affiliates should be retained for the electric industry, proposing the creation of two new categories of employees denominated as Competitive Solicitation Employees and Planning Employees, carrying over the Interim Rule's new definition of marketing to cover asset managers, and making numerous other proposals. The Commission received thousands of pages of both initial and reply comments from some 95 individuals, companies, and organizations, which are listed in Appendix A.

10. As noted above, consideration of these comments, coupled with our own experience in administering the Standards, has persuaded us to modify the approach advanced in the initial NOPR. For that reason, we now issue a new NOPR, and invite comment both on its general approach and on its specific provisions.

III. Discussion

A. The Need for Reform

11. The purpose of this revised NOPR is to strengthen the Standards by making our rules clearer and refocusing them on the areas where there is the greatest potential for affiliate abuse. In so doing, we will facilitate compliance by regulated entities and enhance Commission enforcement. We propose to accomplish this objective by combining the best elements of Order Nos. 497 and 889, on the one hand, and Order No. 2004, on the other. In particular, we propose to return to the approach of separating, by function, the transmission personnel from the marketing personnel that was adopted in Order Nos. 497 and 889 and worked well for many years, while also retaining a single set of standards for both natural gas and electric industries, as envisioned by Order No. 2004. We also propose to further clarify and streamline the Standards to enhance compliance and enforcement of our rules, and to increase transparency in the area of transmission/affiliate interactions to aid in the detection of any undue discrimination.

12. We believe these broader reforms are superior to the incremental reforms proposed in our initial NOPR for two principal reasons. First, we propose to return to the functional separation of transmission and merchant personnel adopted in Order Nos. 497 and 889, because it worked well for many years. Although Order No. 2004 abandoned this approach in favor of a ''corporate separation,'' it did so because of jurisdictional concerns created by the addition of Energy Affiliates to our regulations, *not* because the functional approach had proven inadequate in preventing affiliate abuse.[13]

13. Now that the D.C. Circuit has rejected the addition of Energy Affiliates for lack of evidence (and no commenter has provided sufficient evidence to reinstate it), it is no longer appropriate to retain the corporate separation approach adopted in Order No. 2004. Furthermore, there is good reason to rescind it. The corporate separation approach has proven so difficult to implement that it has generated scores of ''waiver'' requests (most of which were granted) and has otherwise frustrated compliance by diverting the industry's focus from the very reason why the Standards were necessary in the first place—the conflict of interest between the *functions* of transmission and merchant activities.

14. The initial NOPR was itself evidence of the problem we now seek to remedy. Since the adoption of Order No. 2004, the corporate separation approach had, as we found in the initial NOPR, impeded legitimate integrated resource planning and competitive solicitations.[14] To address this problem, we proposed there to create two new exemptions for these activities. Yet, by failing to address the underlying cause of that problem—the corporate separation approach—we, again, created additional exemptions and complexity to a rule already burdened with so many waivers, exemptions and complexity that both compliance and enforcement have been frustrated. By proposing to return to the functional approach that had proven effective prior to Order No. 2004, we can accommodate such legitimate activities without creating yet another set of exemptions.

15. Second, we believe this broader reform of our existing Standards is necessary to make them clearer in an era where the Commission possesses substantial civil penalty authority. Soon after the adoption of the Energy Policy Act of 2005 (EPAct 2005),[15] the Commission heard significant concerns from the regulated community that the existing Standards contained so many ambiguities that they impeded compliance and left companies—including those with the best cultures of compliance—exposed to significant civil penalties. We responded to those concerns by holding a public technical conference in Phoenix, Arizona, attended by all of the Commissioners serving at the time. The consistent message from regulated entities at this conference was best captured by an energy attorney who stated that ''there is no area [besides the Standards] where I practice law where there is a greater number of times I am asked the question and I don't have the answer, and that is a real problem when you are talking about corporate governance.'' [16]

16. Nearly two years later, we heard the same concerns at our enforcement conference in Washington, DC. Several panelists expressed concern about the ambiguities in our Standards. These concerns were also supported in comments submitted on behalf of six industry trade groups, who placed the Standards at the top of their list of ambiguous rules that hinder compliance.[17] As these six groups and another trade association emphasized, a ''[l]ack of clarity sows confusion, creates unnecessary risk and chills legitimate

[10] *Id.* at 838.

[11] *Standards of Conduct for Transmission Providers,* Order No. 690, 72 FR 2427 (Jan. 19, 2007); FERC Stats. & Regs. ¶ 31,237 (Jan. 9, 2007) (Interim Rule); *clarified by, Standards of Conduct for Transmission Providers,* Order No. 690–A, 72 FR 14235 (Mar. 27, 2007); FERC Stats. & Regs. ¶ 31,243 (2007) (Order on Clarification and Rehearing).

[12] *Standards of Conduct for Transmission Providers,* 72 FR 3958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007) (initial NOPR).

[13] The Commission stated: ''While it may be less costly for some companies to implement the [functional] approach * * * the Commission is concerned that it does not have the jurisdiction to direct unregulated Energy Affiliates on how to structure their functions, operations and communications.'' Order No. 2004 at P 93.

[14] Southern Company Services, Inc., among other commenters in the Order No. 2004 docket, described the difficulties that arise when all the employees of a marketing affiliate, including its planning employees, are prohibited from receiving transmission information: ''Planning new generation and transmission capacity requires selecting the right combination and location of both generation and transmission. Coordinated and integrated planning is required because the siting of new generation is integrally related to transmission considerations and vice versa * * *. Accordingly, the costs, characteristics and locations of generation and transmission must be considered together in order to ensure the provision of service to customers on a reliable and least cost basis.'' Comments of Southern Company Services, Inc., Docket No. RM01–10–000 at p. 16 (Dec. 20, 2001).

[15] Pub. L. No. 109–58, 119 Stat. 594 (2005).

[16] Standards of Conduct Conference and Workshop (April 7, 2006), transcript at p. 61.

[17] Comments at 20, submitted by The American Gas Association, Edison Electric Institute, Electric Power Supply Association, Independent Petroleum Association of America, Interstate Natural Gas Association of America, and Natural Gas Supply Association, Docket No. AD07–13–000 (Dec. 17, 2007).

market behavior because market participants are reticent to engage in certain types of transactions where the rules are unclear.'' [18]

17. We agree, and we have more than an adequate record to support the conclusion that the existing Standards are too complex to facilitate compliance or support our enforcement efforts. Since issuance of the NOPR in Order No. 2004, the Commission has held no less than four conferences devoted to explication and discussion of the Standards.[19] Of the ten requests for No Action Letters submitted to the Commission since 2005, seven have involved the Standards.[20] And Commission staff has received so many calls regarding the interpretation and application of the Standards, that the Commission has posted on its public Web site a 30-page document entitled ''Frequently Asked Questions about Order No. 2004.''

18. The complexity and unworkability of the current Standards is also evident in the fact that since issuance of Order No. 2004, the Commission has received 107 requests for waiver from various aspects of the Standards, the vast majority of which have been granted. Interpretation of the Standards has thus consumed thousands of hours of staff time. It has also proven so elusive to the industry that it has engendered numerous conferences by law firms and trade associations, greatly outstripping comparable areas of Commission compliance in resources and money.

19. The complexity and over breadth of the current Standards has also made it more difficult for transmission providers to reasonably manage their business, an effect which the Commission never intended. As the court in *Tenneco* noted, vertical integration can produce efficiencies of operation, and advantages given to an affiliate are not improper if they do not amount to exercises of market power.[21] Unnecessarily balkanizing employees one from another and erecting barriers to the free flow of information can thwart perfectly legitimate efficiencies, a consequence which disadvantages not only the companies involved but ultimately consumers as well, in the form of higher rates. Executives of transmission providers can also be impeded in making necessary business decisions for fear they may transgress the Standards by assembling needed data or by meeting to discuss the merits of potential investments. This fear has been exacerbated by the Commission's civil penalty authority, granted by Congress in EPAct 2005. As we explained above, the regulated community has consistently argued that the Standards are too ambiguous to facilitate compliance, particularly in an era where significant civil penalties may attach to violations.

20. Therefore, in this NOPR we take the approach of structuring the Standards to establish *per se* rules that address the greatest prospect for undue preference. However, this streamlined approach does not diminish our ability to rectify and sanction, where necessary, instances of undue discrimination and preference.[22] The core prohibitions against undue preference are rooted in sections 205 and 206 of the FPA and sections 4 and 5 of the NGA,[23] and the Commission possesses the full panoply of statutory remedies to address violations of these statutes, whether or not they are specifically addressed in the *per se* regulations of the Standards. Since enforcement of both the Standards and the statutory prohibitions against undue discrimination and preference will be greatly assisted by transparency, we also include in the proposed Standards provisions to make apparent any instances of communication and undue preference between transmission function employees and marketing function employees. These provisions require either the public posting of information regarding such communications or the maintenance of contemporaneous records for review by the Commission.

21. We propose regulations that adopt the three core elements which we believe to be appropriate for *per se* rules: The independent functioning rule, the no conduit rule, and the transparency rule. We address these below.

B. The Independent Functioning Rule

22. Order No. 2004 continued the policy, established in Order Nos. 497 and 889, of requiring transmission providers to function independently from their marketing employees or marketing affiliates. This practice has been well-established for close to twenty years, and it is our sense that both pipelines and public utilities understand the general concept of independent functioning. We continue to believe this policy is the most effective manner of preventing undue preference by a transmission provider, and we will carry forward the requirement of independent functioning in these proposed Standards.[24]

23. Nevertheless, we believe a basic alteration in its methodology is warranted. The Standards' existing method for separating transmission function employees from marketing function employees relies on the corporate functional approach,[25] under which a transmission provider must function independently from an affiliate which engages in marketing.[26] This is a departure from the method adopted in Order Nos. 497 and 889. Order No. 497 required that interstate natural gas pipelines, to the maximum extent practicable, ensure that their operating employees and the operating employees of their marketing affiliates function independently of each other.[27] Order No. 889 required that, except in emergency circumstances, the employees of the transmission provider engaged in transmission system operations must function independently of its employees, or the employees of any of its affiliates, who engage in wholesale merchant functions (*i.e.*, wholesale sales and purchases of electric energy).[28] Thus, the prohibition keyed off the job function of the employee, rather than by whom he or she was employed.

24. This approach was altered in Order No. 2004, which required transmission function employees to function independently of personnel employed by the transmission provider's marketing affiliates or Energy

[18] White Paper at 6, submitted by The American Gas Association, Edison Electric Institute, Electric Power Supply Association, Independent Petroleum Association of America, Interstate Natural Gas Association of America, Natural Gas Supply Association and Process Gas Consumers Group, Docket No. AD07–13–000 (Nov. 14, 2007).

[19] May 21, 2002 in Washington, DC; May 10, 2004 in Houston, Texas; May 6, 2005 in Chicago, Illinois; and April 7, 2006 in Scottsdale, Arizona.

[20] No Action Letters can be sought for matters involving the Standards of Conduct, Codes of Conduct (now Affiliate Restrictions), Market Behavior Rules, and the Anti-Manipulation Rules.

[21] *Tenneco* at 1201.

[22] Whereas failure to comply with a *per se* rule of the Standards automatically establishes a sanctionable violation, an alleged violation of the Federal Power Act (FPA), 16 U.S.C. 824d–824e (2000) or the Natural Gas Act (NGA), 15 U.S.C. 717c–717d (2000) would require an investigation into both the facts and the surrounding circumstances to determine if, in fact, an undue discrimination occurred.

[23] Sections 205 and 206 of the FPA state that no public utility shall make or grant an undue preference with respect to any transmission or sale of electric energy subject to the Commission's jurisdiction. Similarly, sections 4 and 5 of the NGA state that no natural gas company shall make or grant an undue preference or advantage with respect to any transportation or sale of natural gas subject to the Commission's jurisdiction.

[24] *See* proposed 18 CFR 358.5(a).

[25] Order No. 2004 designates this approach as the Energy Affiliate approach. Order No. 2004 at P 92–94.

[26] *Id.* P 92–94.

[27] Order No. 497, formerly codified at 18 CFR 161.3(g).

[28] Order No. 889, formerly codified at 18 CFR 37.4(a).

Affiliates.[29] Because there are many individuals employed by transmission providers' marketing affiliates who are not involved in the core activities that give rise to the potential for undue preference, we have over the years exempted whole categories of employees from this restriction and allowed them to be shared between the transmission provider and its marketing affiliate. These include officers and members of the board of directors, support employees, field and maintenance employees, and risk management employees.[30] We observed that these employees are not generally in a position to give a marketing affiliate an undue preference, and that the sharing of these employees has allowed the transmission provider to realize efficiencies not otherwise available to it.[31] Carrying forward this approach in the initial NOPR, we suggested the creation of two new categories of exempted employees, the Planning Employee and the Competitive Solicitation Employee.[32]

25. This proliferation of exemptions has had the unfortunate side effect of removing the certainty that might otherwise be enjoyed as to which persons an employee may properly interact with and which persons he or she may not. Furthermore, it undermines the legitimacy of the Standards, as employees may find nonsensical the prohibition against interacting with personnel who have nothing to do with sensitive marketing or transmission information.

26. The crux of the problem is that currently the prohibited category of marketing affiliate includes *all* employees of the affiliate, whether engaged in sales or not. To avoid such broad inclusion, many commenters have proposed that the Commission adopt an ''employee functional approach'' rather than a corporate functional approach, whereby the Standards would apply to each individual employee based on that employee's job function, not on the company or division where the employee is employed.[33]

27. This proposal was also advanced by commenters in Order No. 2004. It was rejected at that time because the Standards were being expanded to cover Energy Affiliates, and it was felt that the employee functional approach might require a shared responsibility on the part of potentially non-jurisdictional entities.[34] That reason no longer exists. We believe the D.C. Circuit's reason for overturning the prohibitions relating to natural gas Energy Affiliates applies equally to electric Energy Affiliates, and we propose abandoning the concept of Energy Affiliate, as discussed more fully below. Therefore, the concerns of Order No. 2004 regarding jurisdictional access to Energy Affiliates are rendered moot.

28. The employee functional approach accomplishes directly the goal of identifying which employees ought not to interact with one another, whereas the corporate functional approach attempts to accomplish that objective indirectly, by focusing on the nature of the employing entity. This casts too wide a net and ensnares employees who do not perform sensitive functions. Commission staff has expended much effort in attempting to clarify for companies which employees may interact with one another and which may not. In one case, for example, coordination of generation dispatch and transmission service reservations were both conducted out of the same system operating center, in order to realize cost and communication efficiencies. This necessitated a series of orders by the Commission to deal with employee classification problems under the Standards.[35] In another instance, marketing affiliate employees who ran a generating plant needed access to a transmission substation but were barred from doing so under the Standards, even though they performed no marketing functions. A waiver was needed in this case,[36] and questions as to precisely which employees were covered by the waiver consumed a good deal of staff's attention.[37] Personnel in the nuclear power industry were so confused about permitted communications that the Commission, in order for companies to comply with the requirements of the U.S. Nuclear Regulatory Commission, had to issue an order granting permission for transmission providers to communicate with affiliated nuclear power plants.[38] The Commission has also expended considerable effort in clarifying for companies whether given entities qualify as Energy Affiliates, a status that barred their employees from interacting with transmission function employees.[39]

29. The employee functional approach, by pinpointing precisely which employees need to function independently one from another, has the added benefit of making the purpose of the prohibition more readily apparent. It should also make it easier for employees to comply with the Standards, since they will likely know an individual's job function, whereas they may not know by which subsidiary of an umbrella organization a given individual is employed.

30. Therefore, we propose adopting the employee functional approach, and define the two groups of employees who must function independently of each other as ''transmission function employees'' [40] and ''marketing function employees'' [41] (whether employed within the corporate structure of the transmission provider or by an affiliate of the transmission provider). The definitions of these terms are discussed in the following sections. We also propose to continue the general prohibition against marketing function employees conducting transmission functions, or having discriminatory access to the transmission provider's system control center.[42] Furthermore, we add the converse prohibition, that a

[29] Order No. 2004, formerly codified at 18 CFR 358.4(a)(1). In its comments, Edison Electric Institute describes the difficulty with this approach: ''The corporate functional approach * * * uses the evaluation of individual employees to determine what a whole corporation (or division, etc.) does. If an employee performs Energy or Marketing Affiliate Activities, the whole corporation (or division) is deemed an Energy or Marketing Affiliate, and every other employee within the corporation is then subject to the rules by association, regardless of what they do and the function they perform, unless they fit into an exempt category. Because these exempt categories are vague and difficult to implement the corporate-functional approach ends up with restrictions that apply to more employees than necessary to meet the objectives of the rules.'' Comments of the Edison Electric Institute, Docket No. RM07–1–000 at pp. 20–21 (Mar. 30, 2007).

[30] Much debate has also been engendered as to whether employees such as lawyers, accountants, and rate design personnel should be exempted. *See* initial NOPR at P 278–98.

[31] *See, e.g.,* Order No. 2004 at P 97.

[32] Initial NOPR at P 42 and 54.

[33] *See* EEI at 19 for a discussion of this approach. EEI was supported by Tucson Electric at 4, APS at 3, PSC of New Mexico at 1–2, Entergy at 1–2, E.ON at 7, Portland General at 1, Northwestern at 1. Other commenters support a similar functional approach: Idaho Power at 3, Southern Co. Services at 4–8, Keyspan at 3–4, SCE at 3–5, Western Utilities Compliance Group at 2–3. TAPS is in accord, providing the meaning of marketing is expanded. TAPS Reply at 7–8.

[34] Order No. 2004 at P 92.

[35] *See Audit of Standards of Conduct, Code of Conduct, OASIS & Transmission Practices, Duke Energy Corporation,* Docket No. PA03–15–000 at pp. 6–8 (Jan. 21, 2005).

[36] *Algonquin Gas Transmission, L.L.C.,* 111 FERC ¶ 61,099, at P 21–32 (2005).

[37] *See Audit of Standards of Conduct, Code of Conduct, and Open Access Transmission Tariff Requirements at Florida Power and Light Company,* Docket No. PA05–7–000 at pp. 6–10 (May 12, 2006).

[38] *Interpretive Order Relating to the Standards of Conduct,* 114 FERC ¶ 61,155 (2006) (Interpretive Order), clarified in 115 FERC ¶ 61,202 (2006).

[39] *See, e.g., Alcoa Power Generating Inc.,* 108 FERC ¶ 61,243, at P 29–35, 42–56, 136–46 (2004), reh'g granted in part as to unrelated issue, *Nat'l Fuel Gas Supply Corp.,* 116 FERC ¶ 61,048 (2006); *High Island Offshore System, L.L.C.,* 116 FERC ¶ 61,047, at P 59–68 (2006).

[40] *See* proposed section 358.3(i).

[41] *See* proposed section 358.3(d).

[42] *See* proposed 18 CFR 358.5(c)(1).

transmission function employee may not conduct marketing functions.[43]

1. Transmission Function Employee

31. We propose defining a transmission function employee as an employee, contractor, consultant or agent of a transmission provider who engages in transmission functions.[44] ''Transmission functions'' are defined as the conduct of transmission system operations and the planning, directing, organizing or carrying out of transmission operations, including the granting and denying of transmission service requests.[45]

32. We believe this definition, when coupled with the definition of ''marketing functions'' discussed below, addresses the concerns raised by the industry regarding the obstacles the Standards place in the way of system planning. We stressed in Order Nos. 890 and 890–A not only the critical importance of long-range planning, but also the desirability of a coordinated and open planning process.[46] Unnecessary restrictions on employee interactions militate against that objective. However, because we are returning to the functional separation approach adopted in Order No. 889, and because a marketing function employee is one who is actively and personally engaged in marketing activities, an employee who performs merely a planning function and is not ''engaged in'' making wholesale offers, bids or sales does not fall within the prohibited category. He or she is therefore free to discuss system planning, including state-mandated Integrated Resource Planning, with transmission function employees.

33. With respect to employee interactions regarding reliability functions, we deem it the first order of business on the part of a transmission provider to ensure reliability of operations. Indeed, pursuant to Congressional mandate in EPAct 2005, Reliability Standards have been promulgated by the Commission-certified Electric Reliability Organization[47] and approved by the Commission, violation of which can subject a transmission provider to substantial civil penalties of up to $1 million a day.[48] Several Reliability Standards require an electric transmission provider to coordinate operations with entities that may include marketing affiliates and, thus, marketing function employees.[49] We therefore provide an exception to the independent functioning rule for the exchange of information necessary to maintain or restore operation of the transmission system. Exchanges of information pursuant to this exception should be made only to the same extent that a transmission provider would exchange information with similarly situated marketing function employees of a non-affilated entity. We also propose requiring that a contemporaneous record be made of exchanges pursuant to this exception, except in emergency situations, when a record may be prepared after the fact.[50] Furthermore, transmission function employees will still be subject to the no conduit rule discussed below, and thus will be required to distinguish between information concerning reliability activities and other transmission function information.

34. If an employee spends any but a *de minimis* amount of time engaged in transmission functions, he or she will be considered a transmission function employee. However, a supervisor, officer or director who is not actively and personally engaged in transmission functions will not be considered a transmission function employee.[51] Such an individual will, of course, have access to transmission function information, and will be barred from sharing it with marketing function employees under the no conduit rule discussed below. Inasmuch as different organizations use different titles for the same job function, we decline to propose a cutoff for supervisory personnel based on job title, and instead propose a functional approach based on actual involvement in the activities themselves. For instance, if a transmission department supervisor is charged with the general responsibility of overseeing system control center personnel, but does not himself engage in system operations or grant or deny transmission service requests, he would not be a transmission function employee. But if he is involved in system operations or the processing of transmission service requests, or engages in decision-making regarding system operations or the processing of transmission service requests, he would be a transmission function employee even if he also has supervisory responsibilities.

2. Marketing Function Employee

35. The current Standards do not contain a definition of marketing function employee, although they do define ''marketing affiliate,'' ''marketing, sales or brokering,'' and ''marketing or brokering.'' We propose to simplify these concepts and, in accordance with our employee functional approach, eliminate the definition of marketing affiliate. We propose to define a marketing function employee as an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who engages in marketing functions.[52] ''Marketing functions'' are defined as the sale for resale in interstate commerce, or the submission of offers or bids to buy or sell natural gas or electric energy or capacity, demand response, virtual electric or gas supply or demand, or financial transmission rights in interstate commerce, all as subject to certain exemptions.[53] We also propose to revise the existing definition of ''affiliate'' to conform to the current definition set forth in 18 CFR 35.43(a)(1).[54]

36. In the past, the following categories have been exempted from the definition of marketing: (i) Bundled retail sales, (ii) incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities, (iii) sales of natural gas solely from the transmission provider's own production, (iv) sales of natural gas solely from the transmission provider's

[43] *See* proposed 18 CFR 358.5(c)(2).

[44] *See* proposed 18 CFR 358.3(i).

[45] *See* proposed 18 CFR 358.3(h).

[46] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 425 (2007), *order on reh'g and clarification,* Order No. 890–A, FERC Statutes and Regulations ¶ 31,261, at P 171 (2007).

[47] The North American Electric Reliability Corporation was certified as the Electric Reliability Organization, pursuant to section 215 of the FPA, in *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006).

[48] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Statutes and Regulations ¶ 31,242 (2007), *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007), codified at 18 CFR part 40.

[49] *See, e.g.,* Reliability Standard TOP–003–0 (balancing authorities, transmission operators and generator operators shall plan and coordinate scheduled outages of system voltage regulating equipment and telemetering and control equipment); Reliability Standard TOP–002–2 (generator operator shall coordinate current-day, next-day and seasonal operations with its host balancing authority and transmission service provider).

[50] *See* proposed section 358.7(h).

[51] *See* proposed 18 CFR 358.3(i).

[52] *See* proposed 18 CFR 358.3(d).

[53] *See* proposed 18 CFR 358.3(c). This definition is a variant of a suggestion by TAPS. We note that it is unnecessary to include in the list of products another item mentioned by TAPS, that of ancillary services, as these are included in the definition of sales of electric energy. TAPS Reply at 8. We decline to include the suggested category of sites for generating capacity, as this category is far afield from the concept of marketing energy.

[54] *See* proposed 18 CFR 358.3(a). This definition was promulgated in *Cross-Subsidization Restrictions on Affiliate Transactions,* Order No. 707, 73 Fed. Reg. 11,013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,263 (2008).

own gathering or processing facilities, or (v) sales by an intrastate natural gas pipeline or local distribution company making an on-system sale. The comments did not suggest deleting these exemptions, and we propose to carry them forward in this reissued NOPR.[55]

37. We also note that a question has arisen whether providers of last resort (POLR), which are transmission providers that are charged with serving retail customers when the customers choose not to purchase from other suppliers, should likewise be exempted. We declined to accord POLRs a generic exemption in Order No. 2004–C, instead stating we would consider their status on a case-by-case basis. Commenters supporting the exemption pointed out that POLR service constitutes bundled retail sales, and thus should fall within the exemption for that category.[56] Commenters opposing the exemption presented theoretical instances of abuse, but not actual instances.[57] In the absence of actual evidence of abuse, we believe the general exemption for bundled retail sales should also apply to transmission providers acting as POLRs, and therefore propose to include POLRs in the list of exempt marketing functions.[58]

38. Similarly as with respect to transmission function employees, if an employee spends any but a *de minimis* amount of time engaged in marketing functions, he or she will be considered a marketing function employee. However, a supervisor, officer or director who is not actively and personally engaged in marketing functions will not be considered a marketing function employee.[59] For instance, if a manager has supervisory responsibility over employees engaged in making offers or sales of electric energy or natural gas, but does not engage in making offers or sales himself, he would not be a marketing function employee. However, if he both supervises others and engages in making offers or sales himself, or engages in decision-making regarding offers or sales, he would be a marketing function employee.

39. We note that our revised approach to the independent functioning rule resolves the question of whether asset managers should be subject to the Standards. In the initial NOPR, the Commission proposed expanding the definition of ''marketing, sales or brokering'' to include entities that manage or control transmission capacity, such as asset managers or agents. A number of comments were received on this subject, and several commenters noted that no evidence of abuse by asset managers had been presented in the initial NOPR record. These commenters point out that in the absence of such evidence, inclusion of asset managers in the category of proscribed affiliates would run afoul of the infirmity noted in National Fuel regarding Energy Affiliates.[60]

40. It is not necessary to reach this issue under our proposal, as our definition of marketing function employee reaches only those employees of an asset manager, whether that asset manager is a contractor, consultant, agent or affiliate, who may be directly engaged in wholesale marketing. Therefore, it is only those specific employees of an asset manager who must function independently of a transmission provider's transmission function employees. This simplification regarding asset managers illustrates another advantage to our proposed employee functional approach. If a company finds it more efficient to have fewer subsidiaries and combine multiple functions in a given affiliate, it need not avoid doing so simply to shield the affiliate's non-marketing employees from the restrictions imposed by the Standards.

3. Shared Employees

41. Employees such as attorneys, accountants, risk management personnel and rate design employees do not fall within the scope of the independent functioning rule, so long as they are acting in their roles as attorneys, accountants, risk management personnel or rate design employees, rather than as transmission function employees or marketing function employees. Thus, there is no longer a need for the concept of ''shared employees.'' Of course, as discussed below, such employees remain subject to the no conduit rule and may not pass non-public transmission function information to marketing function employees.

42. Furthermore, field employees will no longer need to be exempt from the independent functioning rule, as such employees, while qualifying as transmission function employees by virtue of being engaged in transmission system operations, will not be in a position to interact with marketing function employees. In those rare cases where marketing function employees may also operate generation and need to confer with transmission function employees, we propose a specific exception to the no conduit rule, as discussed below.

4. Permitted Interactions

43. We recognize, based on lengthy experience of our Audits and Investigations staff in the Office of Enforcement, that there may be instances where transmission function employees must communicate with marketing function employees.[61] For instance, it is not infrequently the case that the merchant function of a public utility not only engages in marketing the company's electric power, but also operates its generating plants. Under our proposal, the number of operational employees who would qualify as marketing function employees will be greatly reduced. However, it is possible, as noted above, that there may be some overlap between sales and operations. In such cases, it is essential that the employees who supervise the operation of the generating plants be able to discuss the plants' operational status with transmission function employees, as such information will affect flows and availability on the company's transmission system. Therefore, for these occasions as well as for the reliability situations discussed above, we include an exception to the independent functioning requirement for communications between transmission function employees and marketing function employees.[62] Exchanges of information pursuant to this exception, as in the case of exchanges regarding reliability, should be made only to the same extent that a transmission provider would exchange information with similarly situated marketing function employees of a non-affiliated entity. In order to prevent and monitor for potential abuse, we also include a requirement that contemporaneous records of such dispatch or reliability communications between transmission function employees and marketing function employees be maintained by the company and made available to Commission staff on request, as described in our discussion below on the transparency rule.[63] It will be the responsibility of the Chief Compliance

[55] *See* proposed 18 CFR 358.3(c)(1)–(5).

[56] Northwestern at 5–6, Ameren at 25–28.

[57] Illinois Commerce Commission Reply at 6–7, Retail Energy Supply Association at 5–7.

[58] *See* proposed 18 CFR 358.3(c)(1).

[59] *See* proposed 18 CFR 358.3(d).

[60] Nevada Companies at 13, citing P 21 of the NOPR. *See also* National Fuel Companies at 5–6, Spectra at 10–13, Williston at 9–10, Sequent at 4–5.

[61] As noted, we have already provided for necessary communications between employees of a transmission provider and its affiliated nuclear power plant in the Interpretive Order.

[62] *See* proposed 18 CFR 358.5(b).

[63] *See* proposed 18 CFR 358.7(h).

Officer to ensure that such records are made and retained.

5. Energy Affiliates

44. The concept of Energy Affiliates was added to the Standards in Order No. 2004. In that Order, we required pipelines and public utilities to function independently from their Energy Affiliates as well as from their marketing affiliates, and restricted the sharing of information by transmission providers with their Energy Affiliates. It was this addition which led the court in *National Fuel* to vacate the order with respect to the gas industry, on the grounds there was no record evidence of abuse by Energy Affiliates.

45. Our proposed adoption of the employee functional approach renders moot the question of whether the concept of Energy Affiliates should be retained for the electric industry. We no longer propose separating employees from transmission activities by virtue of their being employed by either a marketing affiliate or an Energy Affiliate, but rather by their job as a marketing function employee. Moreover, we note that commenters who supported retention of the concept of Energy Affiliates did not provide the Commission with evidence of actual abuse. That being the case, the same reasoning as was employed in *National Fuel* with respect to the natural gas industry would likely prevail on appeal of any order that restricted communications between public utilities and their Energy Affiliates. For that reason as well, we decline to apply the concept of Energy Affiliates to the electric industry.

C. The No Conduit Rule

46. We propose strengthening the proscriptions against the exchange of prohibited information in several ways. In addition to the current prohibition against transmission function employees disclosing non-public transmission function information to marketing function employees,[64] we propose prohibiting marketing function employees from receiving non-public transmission function information from any source.[65] And in addition to the current prohibition against a transmission provider using anyone as a conduit for the improper disclosure of non-public transmission function information, we propose prohibiting both an employee of a transmission provider and also an employee of an affiliate engaged in marketing functions from disclosing non-public transmission function information to marketing function employees.[66] The expansion of the no conduit rule[67] is designed to reach all sources of a prohibited informational exchange. It also encompasses many employees who do not fall within the scope of the independent functioning rule. For instance, although under our proposal there is no requirement that lawyers employed by a transmission provider need to function independently of the company's marketing function employees, such lawyers must avoid serving as a conduit for passing transmission function information to a marketing function employee.

47. As a safety valve, we also include an exemption to the no conduit rule that parallels the exemption provided under the independent functioning rule. Thus, the exchange of transmission function information with marketing function employees is permitted where the information regards generation necessary to perform generation dispatch, or is necessary to maintain or restore operation of the transmission system.[68] In such cases, a contemporaneous record is to be made of the exchange, except in emergency circumstances, when the record can be made after the fact.[69]

48. Compliance with proscriptions on the exchange of information should be greatly facilitated by the existing requirement that transmission providers designate a Chief Compliance Officer. Such officers are responsible, in the first instance, for fielding any questions from employees regarding the nature of transmission function information or the persons to whom it may be passed, for preventing prohibited exchanges of information, and for curing any prohibited exchanges by public posting of the information. We proposed in the initial NOPR that a transmission provider post the name of its Chief Compliance Officer on its OASIS or Internet Web site, due to difficulties Commission staff had experienced in identifying the Chief Compliance Officers of several transmission providers. We carry forward that proposal here.[70]

49. We also propose retaining from the existing regulations the requirement that transmission providers train their employees on compliance with the Standards, and propose carrying forward from the initial NOPR the requirement that completion of such training be certified. We also propose that such training be conducted annually.[71] Most employees should received some training, as all employees are forbidden from passing designated information to prohibited employees, but the bulk of the training will need to be concentrated on transmission function employees, marketing function employees, and those employees who are privy to transmission function information. Such employees would include lawyers, accountants, risk management personnel, and members of the rate design department. Since the actual restrictions in the Standards will now match the abuses sought to be avoided, such training should be relatively straightforward and easy for employees to comprehend.

D. The Transparency Rule

50. The reason behind the no conduit rule's prohibitions on receipt and disclosure of information is to prevent undue discrimination and undue preference by a transmission provider towards its marketing affiliate or division. But undue preferences can occur only if the prohibited information is not generally available to the competitors of such affiliates or divisions. Therefore, a transmission provider may comply with the prohibitions on passing transmission function information to marketing function employees by making such information publicly available. As EPSA remarks in its comments, the simultaneous disclosure of non-public transmission-related information to affiliates and to the public provides a ''Gordian Knot'' solution to undue discrimination in the provision of sensitive information.[72]

51. As currently provided in the regulations, in the event prohibited information is inadvertently passed to a prohibited employee, the violation can be cured by immediately posting such information on the transmission provider's Open Access Same-time Information System (OASIS) in the case of the electric industry, or on its Internet website, in the case of the natural gas

[64] The current Standards prohibit transmission provider's employees from disclosing non-public information about the transmission system to marketing or Energy Affiliates. 18 CFR 358.5(b).

[65] *See* proposed § 358.6(a)(2).

[66] *See* proposed § 358.6(a)(4).

[67] In the current Standards, the no conduit prohibition refers only to the use of another person by the transmission provider or its employees to pass prohibited information to a marketing affiliate or Energy Affiliate. 18 CFR 358.5(b)(7). In the proposed Standards, the term ''no conduit rule'' refers to the entire set of prohibitions on informational exchanges, including transmission provider employees, marketing affiliate employees and employees of other entities.

[68] *See* proposed 18 CFR 358.6(b).

[69] *See* proposed 18 CFR 358.7(h).

[70] *See* proposed 18 CFR 358.8(c)(2).

[71] *See* proposed 18 CFR 358.8(c)(1).

[72] EPSA at 4–5.

industry.[73] However, if the unauthorized disclosure includes non-public transmission customer information (a subset of transmission function information), we propose that the posting consist only of a notice that such information has been disclosed, in order to preserve its confidentiality and prevent further potential harm to that customer.[74] We also propose to carry forward from the existing regulations the exceptions for a marketing employee's specific requests for transmission service and for situations where a transmission customer voluntarily consents to the release of its information.[75] In those cases where, despite the independent functioning rule, transmission function employees must interact with marketing function employees, as where the latter are also responsible for the maintenance and dispatch of generating units or need to be involved in maintaining reliability, we have proposed requiring the contemporaneous recording of such conversations, so that the Commission may ascertain that no prohibited information was passed in the course of otherwise permissible discussions. Depending on the circumstances, such recordation could consist of hand-written or typed notes, electronic recording such as e-mails and text messages, telephone recordings, or the like. It is recommended that for all planned communications, the Chief Compliance Officer designate one of the attendees to such conversations as the person charged with the responsibility for recording the conversation or taking notes. The Chief Compliance Officer must be responsible for retaining these records in an accessible form, and the transmission provider must make them available to Commission staff upon request. The Commission proposes that the records be maintained for a period of five years.[76]

52. In accordance with the general aim of preventing undue preference, we propose retaining the existing regulation that a log be kept of any exercises of discretion or acts of waiver on the part of transmission providers. These should also be made available to Commission staff upon request.[77] Similarly, we proposed to retain the existing requirement that any offer of a discount must be posted on the transmission provider's OASIS or Internet Web site.[78]

53. We also propose certain modifications to the posting requirements for transmission providers. We propose the elimination of an organizational chart, which is no longer necessary in the absence of a requirement to bring Energy Affiliates within the scope of the Standards. However, affiliates that employ marketing function employees still need to be listed.[79] Another proposed modification is to provide for a temporary suspension of posting requirements in the case of emergencies.[80] Commission staff has received requests for waivers in the wake of Hurricane Katrina and other natural disasters, when transmission providers found it impossible to keep up with their normal posting requirements. At such times, they should not be further burdened with the necessity of seeking a waiver.

54. We also propose to continue the existing requirements concerning the posting of written implementation procedures for the Standards, certain merger information (modifying the information to account for the deletion of the concept of Energy Affiliates), and employee transfer information.[81]

55. The combination of public disclosure and contemporaneous recording required by the transparency rule should go a long way toward providing the Commission and market participants with the information needed to identify violations of the *per se* rules of the Standards, for which no further investigation would be needed. It also should enhance the ability of the Commission to monitor other behavior which may not be covered by the Standards themselves but which could be considered undue discrimination or preference under the FPA or NGA.

E. Miscellaneous

1. General Principles

56. We propose to modify the statement of general principles currently found in 18 CFR 358.2 to reflect statutory language regarding the prohibition against undue discrimination and undue preference.[82] We also propose to include statements of principle that reflect the three core rules we propose here, those being the independent functioning rule, the no conduit rule, and the transparency rule.[83]

2. Non-Discrimination Requirements

57. We propose to carry forward the existing regulations regarding the non-discrimination and non-preference requirements imposed on transmission providers, with some minor wording changes and combining of sections for simplicity and clarity.[84] While these requirements are in large part self-evident, as they reiterate statutory provisions, we believe that reiteration is helpful to emphasize the relationship of the Standards to the statutory prohibition against undue discrimination.

3. Applicability

58. In the paragraphs concerning applicability of the standards, we propose modifying § 358.1(a) to conform to the definitions proposed here, but otherwise to retain the restriction on applicability only to those pipelines that conduct transportation transactions with their marketing affiliates. We request comment as to whether this section and the following § 358.1(b), dealing with electric transmission providers, should be made parallel by deleting this provision (or in some other way). While a pipeline might conceivably have marketing affiliates with which it does not conduct transportation transactions, we note that pipelines need no longer be concerned with the inability to share information with the officers of such marketing affiliates, under our proposed reform of the independent functioning rule.

59. We propose to continue the existing exemption from the Standards for regional transmission organizations (RTOs) and independent system operators (ISOs). We also propose to continue the present ability of transmission owners that are members of RTOs and ISOs to apply for a waiver from the Standards if they do not operate or control their transmission facilities and have no access to transmission function information.[85]

60. The initial NOPR raised the question as to when a new natural gas transmission provider should become subject to the Standards. Under Order No. 497, a natural gas transmission provider became subject to the Standards when it commenced transportation transactions with its marketing or brokering affiliate.[86] In Order No. 2004–B, the Commission stated that a new interstate pipeline should observe the Standards when the pipeline is granted and accepts a certificate of public convenience and

[73] *See* proposed 18 CFR 358.7(a)(1).

[74] *See* proposed 18 CFR 358.7(a)(2).

[75] *See* proposed 18 CFR 358.7(b)–(c).

[76] *See* proposed 18 CFR 358.7(h).

[77] *See* proposed 18 CFR 358.4(4).

[78] *See* proposed 18 CFR 358.4(b).

[79] *See* proposed 18 CFR 358.7(e)(l).

[80] *See* proposed 18 CFR 358.7(g)(2).

[81] *See* proposed 18 CFR 358.7(d)–(f).

[82] The statutory language is contained in sections 205 and 206 of the FPA and sections 4 and 5 of the NGA.

[83] *See* proposed 18 CFR 358.2.

[84] *See* proposed 18 CFR 358.4.

[85] *See* proposed 18 CFR 358.1(c).

[86] Former 18 CFR 161.3.

necessity and becomes subject to the Commission's jurisdiction under the NGA.[87] This was one of the items appealed by the gas industry, and although it was not addressed in the *National Fuel* decision, it was vacated *sub silencio.* In the Interim Rule, the Commission did not require natural gas transmission providers to observe the Standards until such time as they commenced transportation transactions with their marketing affiliates.[88]

61. As we observed in the initial NOPR, we do not have any evidence that affiliate abuse has occurred in the time period before transportation commences. Therefore, we propose not to require new natural gas transmission providers to observe the Standards until the earlier of the date they have a rate on file with the Commission, or the date on which they commence transportation transactions. We propose to apply the same rule to electric transmission providers.[89]

4. Updates and Ministerial Corrections

62. We carry forward proposals from the initial NOPR to delete outdated references, such as those referring to the date for submitting a plan and a schedule for implementing the Standards.[90] We also revise language from the existing regulations where necessary to correct such ministerial matters as grammar and punctuation, and to account for the new definitions we propose here. Finally, we propose to reorganize sections where necessary to place related provisions in their logical sequence. For example, provisions regarding Energy Affiliates have been deleted, and provisions involving posting requirements have been gathered together in § 358.7, the transparency rule.

63. We propose modifying the section on definitions by providing new definitions that conform with the reforms proposed in this NOPR, deleting existing definitions no longer needed in light of our new proposals, and placing the definitions in alphabetical order.[91] We propose to carry forward the current definitions of ''transmission provider,'' but request comment on whether the separate definitions for electric and gas should be made parallel by referring to the applicable sections of the Code of Federal Regulations in each definition.[92]

64. Except as noted above, we propose retaining the bulk of the existing requirements for posting notices on the OASIS or Internet Web site, with minor wording revisions for clarity.[93] We propose retaining the requirement regarding the maintenance of books and records.[94] With minor wording changes to reflect our proposed new definitions, we also propose to retain the requirement that written procedures be posted on the OASIS or Internet Web site and be distributed to selected employees.[95] However, we propose to delete the current requirement that such written procedures also be filed with the Commission.

IV. Applicability of the Proposed Rule and Compliance Procedures

65. The Commission has a responsibility under FPA sections 205 and 206 and NGA sections 4 and 5 to ensure that the rates, charges, classifications, and service of public utilities (and any rule, regulation, practice, or contract affecting any of these) are just and reasonable and not unduly discriminatory or preferential, and to remedy undue discrimination and undue preference in the provision of such services. In fulfilling its responsibilities under FPA sections 205 and 206 and NGA sections 4 and 5, the Commission is required to address, and has the authority to remedy, undue discrimination and undue preference. Our action in this NOPR proposes to fulfill those responsibilities by proposing reforms to the Standards, which are designed to provide *per se* rules preventing undue discrimination and undue preference by transmission providers in the sale for resale of natural gas and electric energy.

66. The Commission proposes to apply the Final Rule in this proceeding to all transmission providers, who will be required to abide by its provisions, including the designation of a Chief Compliance Officer and the provision of training to its employees. Records of compliance are required to be maintained by the transmission provider for inspection by the Commission.

V. Information Collection Statement

67. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[96]

68. Previously, the Commission submitted to OMB the information collection requirements arising from the Standards of Compliance adopted in Order No. 2004. OMB approved those requirements.[97] The revisions to the Standards proposed in this issuance are modifications of already approved information collection procedures, and do not impose any significant additional information collection burden on industry participants. Many of the changes consist merely of the rewording of definitions and the reordering of the various information collection requirements. Some information collection requirements have been deleted, such as the posting of organizational charts. A requirement has been added concerning the maintenance of records regarding certain informational exchanges between transmission function employees and marketing function employees, as well as a requirement regarding the posting of contact information regarding the identification of the Chief Compliance Officer. Neither of these should impose a significant burden on the transmission providers. In fact, by proposing that the Standards will no longer govern the relationship between transmission providers and their Energy Affiliates, the overall information collection burden will likely decrease.

69. The Commission is submitting notification of the information collection requirements imposed in the NOPR to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[98] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods of minimizing respondent's burden, including the use of automated information techniques.

70. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–592 and 717.

Action: Proposed Collection.

OMB Control No.: 1902–0157–1902–173.

Respondents: Business or other for profit.

[87] Order No. 2004–B at P 137.

[88] Interim Rule at P 26.

[89] *See* proposed 18 CFR 358.8(a).

[90] *See* proposed 18 CFR 358.8(b).

[91] *See* proposed 18 CFR 358.3.

[92] *See* proposed 18 CFR 358.3(k).

[93] *See* proposed 18 CFR 358.7(d)–(g).

[94] *See* proposed 18 CFR 358.8 (d).

[95] *See* proposed 18 CFR 358.7(d) and 358.8(b).

[96] 5 CFR 1320.11.

[97] Letter from OMB to the Commission (Jan. 20, 2004) (OMB Control Number 1902–0157); ''Notice of Action'' letter from OMB to the Commission (Jan. 20, 2004) (OMB Control Number 1902–0173).

[98] 44 U.S.C. 3507(d) (2000 and Supp. V 2005).

Frequency of Responses: On occasion.

Necessity of the Information: The information is necessary to ensure that all regulated transmission providers treat all transmission customers on a non-discriminatory basis.

Internal Review: The Commission has reviewed the requirements pertaining to natural gas pipelines and transmitting electric utilities and determined the proposed revisions are necessary to clarify the Standards, enhance compliance, increase efficiencies, and conform with a recent court decision.

71. These requirements conform to the Commission's plan for efficient information collection, communication, and management with the natural gas and electric utility industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

72. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, phone: (202) 502–8415, fax: (202) 208–2425, e-mail: *Michael.Miller@FERC.gov.*] Comments on the requirements of the proposed rule also may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention Desk Officer for the Federal Energy Regulatory Commission].

VI. Environmental Analysis

73. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[99] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under § 380.4 of the Commission's regulations for certain actions. The actions proposed here fall within the categorical exclusions because this rule is clarifying and corrective, does not substantially change the effect of the regulations being amended and calls for information gathering and dissemination.[100] Therefore, an environmental assessment is unnecessary and has not been prepared for this rulemaking.

VII. Regulatory Flexibility Act

74. The Regulatory Flexibility Act of 1980 (RFA)[101] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Because most transmission providers do not fall within the definition of ''small entity,''[102] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, small entities may seek a waiver of these requirements, and those small entities that have already received a waiver of the Standards would be unaffected by the requirements of this proposed rulemaking.

VIII. Comment Procedures

75. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due May 12, 2008. Comments must refer to Docket No. RM07–1–000, and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

76. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at: *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

77. Commenters who are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

78. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this reissued NOPR are not required to serve copies of their comments on other commenters.

IX. Document Availability

79. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

80. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

81. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at: *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at: *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 358

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to revise part 358, Chapter I, Title 18, *Code of Federal Regulations,* to read as follows:

PART 358—STANDARDS OF CONDUCT

Sec.
358.1 Applicability.
358.2 General principles.
358.3 Definitions.
358.4 Non-discrimination requirements.
358.5 Independent functioning rule.
358.6 No conduit rule.
358.7 Transparency rule.
358.8 Implementation requirements.

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter and conducts transmission transactions with an affiliate that engages in marketing functions.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

[99] Order No. 486, Regulations Implementing the National Environmental Policy Act of 1969, FERC Stats. & Regs. ¶ 30,783 (1987).

[100] 18 CFR 380.4(a)(2)(ii) and 380.4(a)(5) (2007).

[101] 5 U.S.C. 601–612 (2000 and Supp. V 2005).

[102] *See* 5 U.S.C. 601(3) and (6) (2000 and Supp. V 2005).

(c) This part does not apply to a public utility transmission provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission system and has no access to transmission function information, it may request an exemption from this part.

(d) A transmission provider may file a request for an exemption from all or some of the requirements of this part for good cause.

§ 358.2 General principles.

(a) A transmission provider must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of natural gas or transmission of electric energy in interstate commerce, or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce.

(b) A transmission provider's transmission function employees must function independently from its marketing function employees, except as permitted in this part or otherwise permitted by Commission order.

(c) Transmission function information may not be passed to or received by a transmission provider's marketing function employees, unless such information has been made public, except as permitted in this part or otherwise permitted by Commission order.

(d) A transmission provider must create, and maintain for a period of five years, records of permitted communications between transmission function employees and marketing function employees.

§ 358.3 Definitions.

(a) *Affiliate* of a specified company means:

(1) A division that operates as a functional unit of the specified company or, for any person other than an exempt wholesale generator:

(i) Any person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company;

(ii) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company;

(iii) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate; and

(iv) Any person that is under common control with the specified company.

(v) For purposes of paragraph (a)(1)(iv) of this section, owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

(2) For any exempt wholesale generator (as defined under § 366.1 of this chapter), consistent with section 214 of the Federal Power Act (16 U.S.C. 824m), which provides that ''affiliate'' shall have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(11)):

(i) Any person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the specified company;

(ii) Any company 5 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company;

(iii) Any individual who is an officer or director of the specified company, or of any company which is an affiliate thereof under paragraph (a)(2)(i) of this section; and

(iv) any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate.

(b) *Internet Web site* refers to the Internet location where an interstate natural gas pipeline posts the information, by electronic means, required by §§ 284.12 and 284.13 of this chapter.

(c) *Marketing functions* means the sale for resale in interstate commerce, or the submission of offers or bids to buy or sell natural gas or electric energy or capacity, demand response, virtual electric or gas supply or demand, or financial transmission rights in interstate commerce, subject to the following exemptions:

(1) Bundled retail sales, including sales of electric energy made by providers of last resort (POLRs),

(2) Incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities,

(3) Sales of natural gas solely from the transmission provider's own production,

(4) Sales of natural gas solely from the transmission provider's own gathering or processing facilities, and

(5) Sales by an intrastate natural gas pipeline or local distribution company making an on-system sale.

(d) *Marketing function employee* means an employee, contractor, consultant or agent of a transmission provider or of an affiliate of a transmission provider who actively and personally engages in marketing functions. An officer, director or other supervisory employee is not considered to be a marketing function employee if he or she does not actively and personally engage in marketing functions.

(e) *Open Access Same-time Information System* or *OASIS* refers to the Internet location where a public utility posts the information, by electronic means, required by part 37 of this chapter.

(f) *Transmission* means electric transmission, network or point-to-point service, ancillary services or other methods of electric transmission, or the interconnection with jurisdictional transmission facilities, under part 35 of this chapter; and natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(g) *Transmission customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

(h) *Transmission functions* means transmission system operations and the planning, directing, organizing or carrying out of transmission operations, including the granting and denying of transmission service requests.

(i) *Transmission function employee* means an employee, contractor, consultant or agent of a transmission provider who actively and personally engages in transmission functions. An officer, director or other supervisory employee is not considered to be a transmission function employee if he or

she does not actively and personally engage in transmission functions.

(j) *Transmission function information* means information relating to transmission functions.

(k) *Transmission provider* means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(3) A transmission provider does not include a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power.

(l) *Transmission service* means the provision of any transmission as defined in § 358.3(f).

§ 358.4 Non-discrimination requirements.

(a) *Implementing tariffs.* (1) A transmission provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if the tariff provisions do not permit the use of discretion. (2) A transmission provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a not unduly discriminatory manner, if the tariff provisions permit the use of discretion.

(3) A transmission provider may not, through its tariffs or otherwise, give undue preference to any person in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

(4) A transmission provider must process all similar requests for transmission in the same manner and within the same period of time.

(5) A transmission provider must post on the OASIS or Internet Web site, as applicable, notice of each waiver of a tariff provision that it grants, and notice of each exercise of discretion that it exercises, detailing the circumstances and manner under which the waiver or exercise of discretion occurred. The posting must be made within one business day of the act of a waiver or exercise of discretion. The transmission provider must also maintain a log of the acts of waiver and exercises of discretion, and must make it available to the Commission upon request. The records must be kept for a period of five years from the date of each act of waiver or exercise of discretion.

(b) *Discounts.* A transmission provider must post any offer of a discount for any transmission service made on the OASIS or Internet Web site, as applicable, contemporaneous with the time that the offer is contractually binding. The posting must remain on the OASIS or Internet Web site for 60 days from the date of posting. The posting must include:

(1) The name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction;

(2) The rate offered;

(3) The maximum rate;

(4) The time period for which the discount would apply;

(5) The quantity of power or gas upon which the discount is based;

(6) The delivery points under the transaction; and

(7) Any conditions or requirements applicable to the discount.

§ 358.5 Independent functioning rule.

(a) *General rule.* Except as permitted in this part or otherwise permitted by Commission order, a transmission provider's transmission function employees must function independently of its marketing function employees.

(b) *Exemption for permitted information exchanges.* Notwithstanding the requirements of paragraph (a) of this section, a transmission provider's transmission function employees and marketing function employees may exchange certain information, in which case the transmission provider must make a contemporaneous record of the information exchange, subject to an exception for emergency circumstances, as provided in § 358.7(h). The permitted information is as follows:

(1) Information regarding generation necessary to perform generation dispatch, or

(2) Information necessary to maintain or restore operation of the transmission system.

(c) *Separation of functions.* (1) A transmission provider is prohibited from permitting its marketing function employees to:

(i) Conduct transmission functions; or

(ii) Have access to the system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers.

(2) A transmission provider is prohibited from permitting its transmission function employees to conduct marketing functions.

§ 358.6 No conduit rule.

(a) *Prohibited disclosure and receipt.* (1) A transmission provider's transmission function employees are prohibited from disclosing non-public transmission function information to their transmission provider's marketing function employees.

(2) A transmission provider's marketing function employees are prohibited from receiving non-public transmission function information from any source.

(3) A transmission provider is prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to its marketing function employees.

(4) An employee of a transmission provider, and an employee of an affiliate of a transmission provider that is engaged in marketing functions, is prohibited from disclosing non-public transmission function information to any of the transmission provider's marketing function employees.

(b) *Exemption for permitted information exchanges.* Notwithstanding the requirements of paragraph (a) of this section, a transmission provider's transmission function employees and marketing function employees may exchange certain information, in which case the transmission provider must make a contemporaneous record of the information exchange, subject to an exception for emergency circumstances, as provided in § 358.7(h). The permitted information is as follows:

(1) Information regarding generation necessary to perform generation dispatch, or

(2) Information necessary to maintain or restore operation of the transmission system.

§ 358.7 Transparency rule.

(a) *Contemporaneous disclosure.* (1) If a transmission provider discloses non-public transmission function information, other than non-public transmission customer information, in a manner contrary to the requirements of § 358.6(a), the transmission provider must immediately post the information that was disclosed on the OASIS or Internet Web site, as applicable.

(2) If a transmission provider discloses non-public transmission customer information in a manner contrary to the requirements of § 358.6(a), the transmission provider must immediately post notice on the OASIS or Internet website, as applicable, that non-public transmission customer information was disclosed.

(b) *Exception for specific transaction information.* A transmission provider is

not required to contemporaneously disclose information covered by § 358.6(a) if the information relates solely to a marketing function employee's specific request for transmission service.

(c) *Voluntary consent provision.* A transmission customer may voluntarily consent, in writing, to allow the transmission provider to disclose the transmission customer's information to the transmission provider's marketing function employees. If the transmission customer authorizes the transmission provider to disclose its information to marketing function employees, the transmission provider must post notice on the OASIS or Internet website of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

(d) *Posting written procedures on the public Internet.* A transmission provider must post on the OASIS or Internet website, as applicable, current written procedures implementing the standards of conduct.

(e) *Identification of affiliate information on the public Internet.*

(1) A transmission provider must post on its OASIS or Internet website, as applicable, the names and addresses of all its affiliates that employ or retain marketing function employees.

(2) A transmission provider must post on its OASIS or Internet website, as applicable, a complete list of the employee-staffed facilities shared by the transmission provider and any of its affiliates that employ or retain marketing function employees. The list must include the types of facilities shared and the addresses of the facilities.

(3) The transmission provider must post information concerning potential merger partners as affiliates that may employ or retain marketing function employees, within seven days after the potential merger is announced.

(f) *Identification of employee information on the public Internet.*

(1) A transmission provider must post on its OASIS or Internet website, as applicable, the job titles and job descriptions of its transmission function employees, with the exception of clerical, maintenance, and field positions.

(2) A transmission provider must post a notice on the OASIS or Internet website, as applicable, of any transfer of a transmission function employee to a position as a marketing function employee, or any transfer of a marketing function employee to a position as a transmission function employee. The information posted under this section must remain on the OASIS or Internet Web site, as applicable, for 90 days. No such job transfer may be used as a means to circumvent any provision of this part. The information to be posted must include:

(i) The name of the transferring employee,

(ii) The respective titles held while performing each function (i.e., as a transmission function employee and as a marketing function employee), and

(iii) The effective date of the transfer.

(g) *Timing and general requirements of postings on the public Internet.*

(1) A transmission provider must update on its OASIS or Internet Web site, as applicable, the information required by § 358.7 within seven business days of any change, and post the date on which the information was updated.

(2) In the event an emergency, such as a flood, fire or hurricane, severely disrupts a transmission provider's normal business operations, the posting requirements in this part may be suspended by the transmission provider. If the disruption lasts longer than one month, the transmission provider must so notify the Commission and may seek a further exemption from the posting requirements.

(3) All OASIS or Internet Web site postings required by this part must comply, as applicable, with the requirements of § 37.6 or § 284.12(a) and (b)(3)(v) of this chapter, and must be sufficiently prominent as to be readily accessible.

(h) *Recordation of permitted information exchanges.* Notwithstanding the requirements of §§ 358.5(a) and 358.6(a), a transmission provider's transmission function employees and marketing function employees may exchange certain information, in which case the transmission provider must make and retain a contemporaneous record of all such exchanges except in emergency circumstances, in which case a record must be made of the exchange as soon as practicable after the fact. The transmission provider shall make the record available to the Commission upon request. The record may consist of hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and must be retained for a period of five years. The permitted information is as follows:

(1) Information regarding generation necessary to perform generation dispatch, or

(2) Information necessary to maintain or restore operation of the transmission system.

§ 358.8 Implementation requirements.

(a) *Effective date.* A transmission provider must be in full compliance with the standards of conduct by the earlier of:

(1) The date it has a rate on file with the Commission, or

(2) The date it commences transmission transactions.

(b) *Compliance measures and written procedures.*

(1) A transmission provider must implement measures to ensure that the requirements of §§ 358.5(a) and 358.6(a) are observed by its employees and by the employees of its affiliates.

(2) A transmission provider must distribute the written procedures referred to in § 358.7(d) to all its transmission function employees, marketing function employees, officers, directors, supervisory employees, and any other employees likely to become privy to transmission function information.

(c) *Training and compliance personnel.*

(1) A transmission provider must provide annual training on the standards of conduct to all the employees listed in paragraph (b)(2) of this section. The transmission provider must provide training on the standards of conduct to new employees in the categories listed in paragraph (b)(2) of this section, within the first 30 days of their employment. The transmission provider must require each employee who has taken the training to certify electronically or in writing that s/he has completed the training.

(2) A transmission provider must designate a Chief Compliance Officer who will be responsible for standards of conduct compliance. The transmission provider must post the name of the Chief Compliance Officer and provide his or her contact information on the OASIS or Internet Web site, as applicable.

(d) *Books and records.* A transmission provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its affiliates that employ or retain marketing function employees, and these must be available for Commission inspections.

Note: The following appendix will not be published in the Code of Federal Regulations.

Appendix A: Table of Commenters and Abbreviations for Commenters

An asterisk indicates that the commenter filed both initial and reply comments.

1. Missouri Public Service Commission	Missouri PSC.
2. Comments of the State of Alaska on Notice of Proposed Rulemaking	Alaska.
3. Rulemaking Comments of New Mexico Attorney General Office	New Mexico AG.
4. Rulemaking Comment of National Association of Regulatory Utility Commissioners*	NARUC.
5. Notice of Intervention of California Public Utilities Commission*	California PUC.
6. Initial Comments of * * * the Public Utilities Commission of Ohio	PUC of Ohio.
7. Joint Comments of the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, and the PUC of Oregon*.	Washington, Idaho and Oregon state commissions.
8. Georgia Public Service Commissioner Stan Wise	Commissioner Wise.
9. Rulemaking Comment of South Carolina Public Service Authority	Santee Cooper.
10. Initial Comments of the Natural Gas Supply Association*	NGSA.
11. Initial Comments of the American Gas Association*	AGA.
12. Rulemaking Comment of Interstate Natural Gas Association of America*	INGAA.
13. Comments of Texas Pipeline Association	Texas Pipeline Ass'n.
14. Comments of the American Public Gas Association*	APGA.
15. Initial Comments of the National Fuel Companies*	National Fuel Companies.
16. Rulemaking Comment of Spectra Energy Transmission, LLC	Spectra.
17. Rulemaking Comments of Enbridge Energy Partners, L.P. and Enbridge, Inc	Enbridge.
18. Initial Comments of Williams Four Corners LLC	Williams.
19. Rulemaking Comment of Questar Market Resources, INC	Questar Market Resources.
20. Rulemaking Comment of Questar Gas Company	Questar Gas Co.
21. Comments of Boardwalk Pipeline Partners, LP	Boardwalk.
22. Rulemaking Comments of Williston Basin Interstate Pipeline Company	Williston.
23. Comments Of NiSource Inc	NiSource.
24. Rulemaking Comment of Alliance Pipeline L.P	Alliance.
25. Rulemaking Comment of USG Pipeline Company, et al	USG.
26. Initial Comments of Exxon Mobil Corporation	ExxonMobil.
27. Rulemaking Comment of DCP Midstream, LP	DCP Midstream.
28. Initial Comments of El Paso Corporation	El Paso.
29. Rulemaking Comment of Northwest Natural Gas Company and KB Pipeline Company	Northwest Natural.
30. Initial Comments of Southwest Gas Corporation	Southwest Gas.
31. Rulemaking Comment of New Jersey Resources Corporation	NJ Resources.
32. Initial Comments of Sequent Energy Management, LP	Sequent.
33. Comments of CenterPoint Energy Gas Transmission Company	CenterPoint.
34. Comments of KO Transmission Company	KO Transmission.
35. Rulemaking Comment of Dominion Resources Services, Inc	Dominion Resources.
36. Comments of Suez Energy North America, Inc	Suez.
37. Comments of Edison Electric Institute*	EEI.
38. Rulemaking Comment of the Large Public Power Council*	LPPC.
39. Comments of the Electric Power Supply Association*	EPSA.
40. Rulemaking Comment of Transmission Dependent Utility Systems*	TDU Systems.
41. Comments of the American Public Power Association*	APPA.
42. Rulemaking Comments of National Rural Electric Cooperative Association	NRECA.
43. Rulemaking Comment of Southwest Area Transmission Sub-Regional Planning Group*	SWAT.
44. Rulemaking Comment of Retail Energy Supply Association*	Retail Energy Supply Ass'n.
45. Rulemaking Comment of Transmission Access Policy Study Group*	TAPS.
46. Rulemaking Comment of the Western Utilities*	Western Utilities Compliance Group.
47. Rulemaking Comment of Idaho Power Company	Idaho Power.
48. Rulemaking Comment of Tucson Electric Power Company	Tucson Electric.
49. Initial Comments of Nevada Power Company and Sierra Pacific Power Company	Nevada Companies.
50. Rulemaking Comment of Arizona Public Service Company	Arizona PSC.
51. Comments of Public Service Co. of New Mexico	PSC of New Mexico.
52. Joint Initial Comments of Community Power Alliance Members (i.e., Entergy Services, Inc.; Salt River Project Ag. Imp. and Power Dist.; Progress Energy; and, Southern Co.)*.	CPA.
53. Initial Comments of Southern Company Services, Inc	Southern Co. Services.
54. Comments of Entergy Services, Inc	Entergy.
55. Rulemaking Comment of The AES Corporation	AES.
56. Rulemaking Comment of E.ON U.S. LLC	E.ON.
57. Comments of Reliant Energy, Inc	Reliant.
58. Comments of DTE Energy Company	DTE.
59. Rulemaking Comments of PSEG Energy Resources & Trade LLC, et al	PSEG.
60. Rulemaking Comment of KeySpan Corporation	KeySpan.
61. Rulemaking Comment of Bonneville Power Administration*	Bonneville.
62. Comments of the Transmission Agency of Northern California*	TANC.
63. Rulemaking Comment of Portland General Electric Company	Portland General.
64. Rulemaking Comment of Florida Power & Light Company	Florida Power & Light.
65. Rulemaking Comment of FPL Group, Inc	FPL Group.
66. Rulemaking Comment of Otter Tail Power Company	Otter Tail.
67. Comments of Wisconsin Electric Power Company	Wisconsin Electric.
68. Rulemaking Comment of Puget Sound Energy, Inc	Puget Sound.
69. Rulemaking Comment of Exelon Corporation	Exelon.
70. Rulemaking Comment of NSTAR Electric & Gas Corporation	NSTAR.
71. Comments of NorthWestern Corporation	NorthWestern.
72. Rulemaking Comment of the Indicated New York Transmission Owners	Indicated NY TOs.
73. Comments of FirstEnergy Service Company	FirstEnergy.
74. Rulemaking Comments of American Transmission Company LLC	American Trans. Co.

75. Joint Comments of Progress Energy, Inc., ElectriCities of North Carolina, Inc. and North Carolina Electric Membership Corporation.	Progress.
76. Motion To Intervene And Comments of Pacific Gas & Electric Company	PG&E.
77. Comments of Ameren Services Company	Ameren.
78. Initial Comments of Oklahoma Gas and Electric Company	Oklahoma Gas & Electric.
79. Rulemaking Comment of Southern California Edison Company	SCE.
80. Rulemaking Comment of Morgan Stanley Capital Group Inc.*	MSCGI.
81. Comments of National Grid USA	National Grid.
82. Rulemaking Comment of MidAmerican Energy Company, PacifiCorp, Kern River Gas Transmission Company, and Northern Natural Gas Company.	MidAmerican.
83. Initial Comments of SCANA Corp.	SCANA.
84. Rulemaking Comment of Xcel Energy Services Inc	Xcel.
85. Comments of Sempra	Sempra.
86. Florida Public Service Commission (Reply comments only)	Florida PSC.
87. ITC—Mich. Electric Transmission (Reply comments only)	ITC.
88. Federal Trade Commission (Reply comments only)	FTC.
89. Alabama PSC (Reply comments only)	Alabama PSC.
90. Chevron (Reply comments only)	Chevron.
91. Aux Sable Liquids (Reply comments only)	Aux Sable.
92. Calypso/Broadwater (Reply comments only)	Calypso.
93. Anadarko*	Anadarko.
94. BG E&P Alaska (Reply comments only)	BG E&P Alaska.
95. Fayetteville (Reply comments only)	Fayetteville.

[FR Doc. E8–6261 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Employment Standards Administration

Wage and Hour Division

29 CFR Parts 501, 780, and 788

RIN 1205–AB55

Temporary Agricultural Employment of H–2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement; Extension of Comment Period

AGENCIES: Employment and Training Administration, Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Employment and Training Administration and the Employment Standards Administration recently issued a proposed rule to modernize the application process for and enforcement of temporary alien agricultural (H–2A) labor certifications. 73 FR 8538 (Feb. 13, 2008). The proposed rule provided a comment period through March 31, 2008. The agencies have received several requests to extend the comment period and have decided to extend the comment period through April 14, 2008.

DATES: The comment period for the notice of proposed rulemaking published February 13, 2008 (73 FR 8538) is extended through April 14, 2008. Interested persons are invited to submit written comments on the proposed rule on or before April 14, 2008.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB55, by any one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov:* Follow the Web site instructions for submitting comments.
- *Mail:* Please submit all written comments (including disk and CD–ROM submissions) to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.
- *Hand Delivery/Courier:* Please submit all comments to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at: *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection at the ETA Office of Policy Development and Research at the above address during normal business hours. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a

toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: For further information regarding 20 CFR part 655, contact Sherril Hurd, Acting Team Leader, Regulations Unit, Employment and Training, Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210; Telephone (202) 693–3700 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. For further information regarding 29 CFR parts 501, 780 and 788, contact James Kessler, Farm Labor Team Leader, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3510, Washington, DC 20210; Telephone (202) 693–0070 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In February 2008, the Employment and Training Administration and the Employment Standards Administration of the Department of Labor issued a Notice of Proposed Rulemaking rule to modernize the application process for and enforcement of temporary alien agricultural (H–2A) labor certifications. 73 FR 8538 (Feb. 13, 2008). The proposed rule provided a comment period through March 31, 2008. The agencies have received several requests to extend the comment period and have decided to extend the comment period. Given the complexity of the proposed rule and the intense level of interest, the comment period is being extended through April 14, 2008.

Signed in Washington, DC, this 20th day of March, 2008.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

Alexander J. Passantino,

Acting Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. E8–6121 Filed 3–26–08; 8:45 am]

BILLING CODE 4510–FP–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–0AR–2007–1176; A–1–FRL–8546–8]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Diesel Engine Anti-Idling Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted on November 29, 2007 by the State of Rhode Island. This SIP revision includes a regulation that prohibits the unnecessary idling of diesel engines and vehicles in Rhode Island. The regulation sets limits for the amount of time and under what conditions diesel engines may idle. EPA is proposing that the standards and requirements set by the rule will strengthen the Rhode Island SIP. The intended effect of this action is to propose approval of this rule into the Rhode Island SIP. EPA is proposing approval of this rule pursuant to the Clean Air Act.

DATES: Written comments must be received on or before April 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–0AR–2007–1176 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''EPA–R01–0AR–2007–1176'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023, or
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, Office of Ecosystem Protection, EPA New England, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023; 617–918–1045 (phone); 617–918–0045 (fax); e-mail at *judge.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: March 14, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E8–6188 Filed 3–26–08; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 73, No. 60
Thursday, March 27, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No: APHIS–2008–0012]

Notice of Availability of Assessments of the Highly Pathogenic Avian Influenza Subtype H5N1 Status of Denmark and France

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared assessments of the animal health status of Denmark and France relative to the H5N1 subtype of highly pathogenic avian influenza (HPAI), following single outbreaks of HPAI subtype H5N1 in domestic poultry in each of those countries. The assessments present our evaluation of the HPAI H5N1 detection, control, and eradication measures in place in Denmark and France at the time of the outbreaks and of the actions taken by each country in response to the outbreaks, as well as our assessment of the present status of each country with respect to HPAI subtype H5N1. We are making these risk assessments available to the public for review and comment.

DATES: We will consider all comments we receive prior to April 28, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0012* to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2008–0012, 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–2008–0012.

Reading Room: You may read any comments that we receive on the assessments 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.

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. Julia Punderson, Regionalization Evaluation Services-Import, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, 301–734–4356.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) has the authority to prohibit or restrict the importation into the United States of animals, animal products, and other articles in order to prevent the introduction of diseases and pests into the U.S. livestock and poultry populations.

Highly pathogenic avian influenza (HPAI) is a zoonotic disease of poultry. The H5N1 subtype of HPAI is an extremely infectious and fatal form of the disease. HPAI can strike poultry quickly without any warning signs of infection and, once established, can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. The H5N1 subtype of HPAI has been of particular concern because it has crossed the species barrier and caused disease in humans.

On February 25, 2006, France reported to the World Organization for Animal Health (OIE) an outbreak of HPAI H5N1 in a turkey breeding flock. On May 18, 2006, Denmark reported to the OIE an outbreak of HPAI H5N1 in a backyard poultry flock. To prevent the introduction of HPAI H5N1 into the United States, APHIS designated the affected regions in both Denmark and France as regions where HPAI was considered to exist, and prohibited the importation of birds, poultry, and poultry products from these regions into the United States.

In the assessment titled ''APHIS Analysis of the Status of High Pathogenicity Avian Influenza H5N1 (HPAI H5N1) Virus in France'' (December 2007), we present the results of our evaluation of the prevalence of HPAI H5N1 in domestic poultry in France in light of the actions taken by French authorities since that outbreak, and document our analysis of the risk associated with allowing the importation of birds, poultry, and poultry products from France into the United States in the aftermath of the outbreak. The assessment titled ''APHIS Analysis of the Status of High Pathogenicity Avian Influenza H5N1 (HPAI H5N1) Virus in Denmark'' (December 2007) conducts a similar examination and analysis with respect to the situation in Denmark. We conducted each evaluation based on documentation supplied to APHIS by animal health authorities within the respective countries, existing European Union legislation, final reports each country submitted to the OIE regarding the outbreaks, and information that the Danish and French animal health authorities posted on their Web sites.

We based our evaluation of each country's HPAI H5N1 status on the following critical factors:

- Each country has been free of outbreaks of the H5N1 subtype in its domestic poultry for at least 3 months, as a result of effective control measures taken by a competent veterinary infrastructure;
- HPAI H5N1 was a notifiable disease in each country at the time of the outbreak;
- Each country had an ongoing disease awareness program in place at the time of the outbreak;
- Each country investigated notified or suspected occurrences of the disease;

• Each country had an effective surveillance program in place that supported the detection and investigation of outbreaks;

• Diagnostic and laboratory capabilities within each country were both adequate and effective;

• Each country undertook appropriate eradication and control measures and movement restrictions in response to the outbreaks to prevent further spread of the disease; and

• In each country, procedures used for repopulation of affected premises included monitoring to demonstrate that HPAI H5N1 had been eradicated from the premises.

Based on these factors, which are consistent with the OIE's recommendations for reinstatement for trade with a country that has experienced an HPAI H5N1 outbreak,[1] our assessment concludes that both France and Denmark had adequate detection and control measures in place at the time of the outbreak, that they have been able to effectively control and eradicate HPAI H5N1 in their domestic poultry populations since that time, and that both French and Danish animal health authorities have control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into France or Denmark in either wild birds or domestic poultry.

We are making these assessments available for public comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

If, after the close of the comment period, APHIS can identify no additional risk factors that would indicate that domestic poultry in either France or Denmark continue to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from either France or Denmark presents a low risk of introducing HPAI H5N1 into the United States.

The assessments may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the assessments by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the titles of the assessments when requesting copies.

Done in Washington, DC, this 21st day of March 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–6241 Filed 3–26–08; 8:45 am]

BILLING CODE 3410–34–P

[1] OIE (2006). Risk Analysis. In *Terrestrial Animal Health Code,* 14th edition. Paris, World Organization for Animal Health: Section 2.7.12. To view the document on the Internet, go to *http://www.oie.int/eng/normes/mcode/A_summry.htm?e1d11.*

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

Conservation Security Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Notice.

DATES: The administrative actions announced in the notice are effective on March 27, 2008.

FOR FURTHER INFORMATION CONTACT: Dwayne Howard, Branch Chief—Stewardship Programs, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265. Submit e-mail to: *dwayne.howard@wdc.usda.gov,* Attention: Conservation Security Program.

SUMMARY: This document announces the Fiscal Year 2008 sign-up, CSP–08–01, for the Conservation Security Program (CSP). This sign-up will be open from April 18, 2008 through May 17, 2008, in selected 8-digit watersheds.

SUPPLEMENTARY INFORMATION: In the Interim Final Rule published March 25, 2005 (7 CFR 15201), USDA's Natural Resources Conservation Service (NRCS) established the implementing regulations for the Conservation Security Program (CSP). The CSP is a voluntary program administered by NRCS, using authorities and funds of the Commodity Credit Corporation, that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands.

This document announces the Fiscal Year 2008 sign-up, CSP–08–01 that will be open from April 18, 2008 through May 17, 2008, in selected 8-digit watersheds, which can be viewed at: *http://www.nrcs.usda.gov/programs/csp/CSP_2008/2008_CSP_WS.html.*

These watersheds were selected using the process set forth in the Interim Final Rule. In addition to other data sources, this process used National Resources Inventory data to assess land use, agricultural input intensity, and historic conservation stewardship in watersheds nationwide. NRCS State Conservationists recommended a list of potential watersheds after gaining advice from the State Technical Committees. These 51 watersheds were announced by the Secretary of Agriculture September 25, 2006, and will be carried forward to sign-up CSP–08–01 as no sign-up was conducted in 2007. Producers who are participants in an existing CSP contract may not apply in this sign-up. Applicants can submit one application for this sign-up. Those applicants who are entities or joint operations must file a single application for the organization.

Consistent with the authority to exercise administrative flexibility provided by 7 CFR 1469.2(b), the Chief of NRCS intends to deliver a technically enhanced, streamlined version of CSP during sign-up CSP–08–01. CSP–08–01 will incorporate:

(1) The nationwide piloting of improved national eligibility tools, including the Soil and Water Eligibility Tool, the Grazing Lands Eligibility Tool, and the Wildlife Habitat Eligibility Tool;

(2) The availability of both benchmark and new enhancements at a uniform compensation rate over the contract length rather than declining rates for benchmark enhancements, but will provide no contract improvement modification opportunity for CSP–08–01 participants;

(3) No new practice payments; and

(4) Priority to Tier II and Tier III applications requesting 5-year contracts.

To be eligible for CSP, a majority of the agricultural operation must be within the limits of one of the selected watersheds. Applications which meet the minimum requirements, as set forth in the Interim Final Rule and listed below will be placed in enrollment categories for funding consideration. Categories will be funded in alphabetical order until funds are exhausted. If funds are not available to fund an entire category, then subcategories will be used to determine application funding order within a category. If a category or subcategory cannot be fully funded, applicants may be offered the FY 2008 CSP contract payment on a prorated basis.

Part of the CSP application process is conducted through applicant self-assessment of their conservation system. The applicant is responsible for providing all information that will or

may be needed to properly evaluate the agricultural operation to establish benchmark conditions as well as assignment to tier and enrollment category. It is the responsibility of the applicant to request any needed clarification and/or additional information from NRCS in order to provide a complete and accurate application package.

Producers should begin the application process by filling out a CSP Self-Assessment Workbook to determine if they meet the basic qualifications for CSP. Self-assessment workbooks are available in hard copy at USDA Service Centers within the watersheds, or can be downloaded from the NRCS Web site at: *http://www.nrcs.usda.gov/programs/csp/CSP_2008/2008_pdfs/SAW2008*.

In addition to the self-assessment workbook, an applicant must also submit a benchmark inventory where the applicant documents their current conservation system, including the conservation practices and activities that are ongoing on their operation. This benchmark inventory is used by NRCS to measure an applicant's existing level of conservation activities in order to determine program eligibility, and serves as the basis for the conservation stewardship plan. Once the producer concludes that they meet the CSP requirements as outlined in the workbook, they should make an appointment for an applicant interview to discuss their application with the NRCS local staff to determine if they meet specific CSP eligibility requirements.

In order to apply, applicants must submit the following by the end date of the sign-up period:

(1) A completed self-assessment workbook.

(2) A benchmark condition inventory and associated information that includes:

a. A map, aerial photograph, or overlay that delineates the entire agricultural operation, including land use and acreage;

b. A map of the applicant's land offered for CSP;

c. A description of the applicant's production system(s) on the land offered;

d. The existing conservation practices and resource concerns, problems, and opportunities on the land offered;

e. The Applicant Offer Certification Worksheet that provides the producer-certification of the benchmark condition inventory accuracy, the availability of records to support the current conservation system, and the applicant's selected tier, enrollment category, and subcategory placement;

f. A description of the significant resource concerns and other resource concerns that the applicant is willing to address through the adoption of new conservation practices and measures; and

g. A list of enhancements that the applicant is currently applying, or may be willing to undertake as part of their proposed contract.

(3) Evidence to the satisfaction of NRCS that the applicant has a minimum of 2 years of written records or documentation to support the current conservation system, including fertilizer, nutrient, and pesticide application schedules, cropping and tillage systems, irrigation water management, waste utilization, and grazing and pasture management, as applicable. Applicants will need to supply written records and documentation of their conservation system upon request by NRCS.

(4) A completed NRCS–CPA–1200 available through the Web site, or any USDA Service Center.

(5) Any other requirement specified in the sign-up notice or as requested by NRCS either prior to or during the applicant interview in order to support the application.

The evaluation of an applicant's offered land will be based on the typical system information the applicant provides to NRCS in the self-assessment workbook, the benchmark condition inventory, and during the applicant interview. Technical evaluations will consider conservation system averages represented in the typical system information to determine whether eligibility and treatment requirements are met. Additionally, the typical system information referred to above and provided during the sign-up period will be considered for tier, category, and subcategory placement.

It is the responsibility of the applicant to ensure that the application includes all information needed to support the claimed benchmark condition as well as the tier, category, and subcategory placement. The applicant must certify on the Applicant Offer Certification Worksheet that all materials submitted to NRCS in a CSP application are true, correct, and represent the current conservation system being offered by the applicant. All applications may be subject to quality assurance procedures at any time during the application process or, in the event an application is approved, prior to or following contract award.

If NRCS determines that an applicant intentionally misrepresented any fact affecting a CSP determination, the application will be cancelled immediately or the contract will be terminated in the case where a contract has been awarded, in accordance with the CSP regulation at 7 CFR § 1469.36.

Applicants are encouraged to attend preliminary workshops, which will be announced locally. There, the basic qualifications will be explained, and assistance provided as to completion of the self-assessment workbook and benchmark inventory.

CSP is offered at three tiers of participation. Some payments are adjusted based on the tier, and some payments are tier-neutral. See payment information below.

Minimum Tier Eligibility and Contract Requirements

The following are the minimum tier eligibility and contract requirements:

CSP Tier I—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment for any eligible landuse on part of the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

CSP Tier II—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment for all eligible land uses on the entire agricultural operation. Additionally, the applicant must agree to address another significant resource concern applicable to their watershed to be started no later than two years prior to contract expiration, and completed by the end of the contract period. If the applicable resource concern is already addressed or does not pertain to the operation, then this requirement is satisfied.

CSP Tier III—the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the existing resource concerns listed in Section III of the NRCS Field Office Technical Guide (FOTG) with a resource management system that meets the minimum level of treatment for all eligible land uses on the entire agricultural operation.

Delineation of the Agricultural Operation

Delineating an agricultural operation for CSP is an important part in determining the Tier of the contract, stewardship payments, and the required level of conservation treatment needed for participation. The applicant will

delineate the agricultural operation to include all agricultural lands, and other lands such as farmstead, feedlots, and headquarters and incidental forestlands, under the control of the applicant and constituting a cohesive management unit that is operated with equipment, labor, accounting system, and management that are substantially separate from any other. In delineating the agricultural operation, Farm Service Agency (FSA) farm boundaries may be used. If FSA farm boundaries are used in the application, the entire farm area must be included within the delineation.

Minimum Eligibility Requirements

To be eligible to participate in CSP, the applicants must meet the requirements for eligible applicants, the land offered for contract must meet the definition of eligible land, and the conservation system on the land offered must meet the conservation standards as described below.

Eligible Applicants

To be eligible to participate, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions;

(2) Meet the Adjusted Gross Income requirements;

(3) Show control of the land for the life of the proposed contract period. If the applicant is a tenant, the applicant must provide NRCS with written evidence or assurance of control from the landowner, but a lease is not required. In the case of land allotted by the Bureau of Indian Affairs (BIA) or Tribal land, there is considered to be sufficient assurance of control;

(4) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agriculture operation. Landlords and owners are ineligible to submit an application for exclusively cash rented agriculture operations;

(5) Complete a benchmark condition inventory and associated information as described above for the entire agricultural operation or the portion being offered; and

(6) Supply information, as required by NRCS, to determine eligibility and support the tier, category, and subcategory placement for the program; including but not limited to, information related to eligibility criteria in this sign-up announcement; and information to verify the applicant's status as a beginning or limited resource farmer or rancher if applicable.

Eligible Land

To be eligible for enrollment in CSP, land must be:

(1) Private agricultural land;

(2) Private non-industrial forested land that is an incidental part of the agriculture operation;

(3) Agricultural land that is Tribal, allotted, or Indian trust land;

(4) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (including non-cropped center pivot corners, linear practices, field borders, turn rows, intermingled small wet areas, or riparian areas); or

(5) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of the agricultural land or enrolled parcel such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts.

Land Not Eligible for Enrollment in CSP

The following lands are ineligible for enrollment in CSP:

(1) Land enrolled in the Conservation Reserve Program, the Wetlands Reserve Program, or the Grassland Reserve Program;

(2) Public land, including land owned by a Federal, State, or local unit of government;

(3) Private non-industrial forest land that exceeds 10 acres in size individually, or 10 percent in aggregate of the total offered acres; and

(4) Any land that fails to meet the definition of eligible land.

Ineligible land referred to above needs to be delineated as part of the agricultural operation. This land may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets minimum level of treatment requirements, the applicant's category placement, and may be described in the Conservation Stewardship Plan.

Land Not Eligible for Any Payment Component in CSP

Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002, is not eligible for any payment component in CSP.

Conservation Standards for Tier I and Tier II—Minimum Level of Treatment

The following conservation standards apply for Tier I and Tier II:

(1) The minimum level of treatment on cropland for soil and water quality is considered achieved when the Soil and Water Eligibility Tool minimum thresholds are met for soil quality functions and water quality resource concerns.

(2) The minimum level of treatment on pastureland and rangeland for soil and water quality is considered achieved when the CSP Grazing Lands Eligibility Tool minimum thresholds are met for soil quality and water quality resource concerns.

Conservation Standards for Tier III—Minimum Level of Treatment

The minimum level of treatment for Tier III on any eligible landuse is met by achieving the required conservation standards specified for Tier I and Tier II requirements, plus meeting the quality criteria for the local NRCS FOTG for all existing resource concerns and the following specific criteria:

(A) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use index value of at least 50;

(B) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in an index value of at least 0.5 of the habitat potential. States will use the Wildlife Habitat Eligibility Tool to determine index values, with the exception of Alaska, Hawaii, Guam, and Puerto Rico. They will use either a general or species specific habitat assessment guide, as determined by the State Conservationist.

CSP Contract Payments and Limits

CSP contract payments include one or more of the following components subject to the described limits:

(1) An annual per acre stewardship component for the benchmark conservation treatment. This component is calculated separately for each land use by multiplying the number of acres times the tier factor (0.05 for Tier I, 0.10 for Tier II, and 0.15 for Tier III) times the stewardship payment rate established for the watershed times the tier reduction factor (0.25 for Tier I and 0.50 for Tier II, and 0.75 for Tier III).

(2) An annual existing practice component for maintaining existing conservation practices. Existing practice payments will be calculated as a flat rate

of 25 percent of the stewardship payment.

(3) An annual enhancement component for exceptional conservation effort and activities that provide increased resource benefits beyond the quality criteria for a given resource concern or go beyond the minimum requirements of a conservation standard. During initial contract development, participants may contract to complete both enhancement activities that are part of the benchmark inventory and new enhancement activities. All enhancement activities will be paid at a uniform compensation rate over the contract length. The total of all enhancement payments in any one year will not exceed $13,750 for Tier I, $21,875 for Tier II, and $28,125 for Tier III annually.

Enhancement Components Available in This Sign-up

Enhancement activities within the resource categories of water quality, soil quality, water management, grazing lands, wildlife, plants, air, and energy management will be available for sign-up CSP–08–01:

An advance enhancement payment may be made available in the FY 2008 sign-up. The advance enhancement payment may be available to contracts with the initial enhancement payment as determined in the benchmark inventory and interview. The advance enhancement payment would shift a portion of the contract's enhancement payment amount into the first-year payment and deduct it from the following years' payments.

Tier I contracts are for a five-year duration. Tier II and Tier III contracts are for a 5- to 10-year duration at the option of the participant. However, Tier II and Tier III applicants who select 5-year contracts will be given priority in category placement.

Future contract improvement modifications such as advancing tiers, adding land, and adding enhancements will not be offered to CSP–08–01 participants.

Total annual maximum contract payment limits are $20,000 for Tier I, $35,000 for Tier II, and $45,000 for Tier III, including any advance enhancement payment.

For more details on payment components, call or visit the local USDA Service Center, or view on the Web site at: *http://www.nrcs.usda.gov/programs/csp/CSP_2008/2008_CSP_WS.html*.

CSP Enrollment Categories and Subcategories

An eligible application will be placed in an enrollment category as follows:

(1) A single land use application will be placed in an enrollment category by applying the applicant's group level assignment, Tier, and applicant-selected contract length to the 2008 CSP Enrollment Category Matrix. An applicant's group level is assigned using the 2008 Conservation System Criteria By Land Use Table and the associated Stewardship Practice and Activity Lists provided in this notice. An application will be assigned to the highest group level that all conservation management units being offered meet. Only unique practices or activities that have been installed and maintained for at least two years prior to the sign-up period, and applied in every location suitable or needed to address resource concerns will be counted to assign an applicant's group level.

(2) A multiple land use application will be placed in the category of the land use with the largest number of offered acres. Category placement for a land use will follow the direction for single land use application category placement (see above).

The CSP will fund the enrollment categories in alphabetical order. If an enrollment category cannot be completely funded, then subcategories will be funded in the following order:

(1) Applicant is a limited resource producer, according to criteria specified in the USDA Limited Resource Farmers/Ranchers guidelines, or a Tribal member producing on Tribal or historically tribal lands;

(2) Applicant is a participant in an on-going monitoring program that is sponsored by an organization or unit of government that analyzes the data and has authority to take action to achieve improvements;

(3) Agricultural operation in a water conservation area or aquifer zone designated by a unit of government;

(4) Agricultural operation in a drought area designated by a unit of government in any two of the past three years before the sign-up dates;

(5) Agricultural operation in a water quality area with a priority on pesticides designated by a unit of government;

(6) Agricultural operation in a water quality area with a priority on nutrients designated by a unit of government;

(7) Agricultural operation in a water quality area with a priority on sediment designated by a unit of government;

(8) Agricultural operation in a non-attainment area for air quality or other local or regionally designated air quality zones designated by a unit of government;

(9) Agricultural operation in an area selected for the conservation of imperiled plants and animals, including threatened and endangered species, as designated by a unit of government; or

(10) All other applications.

Designated by a unit of government'' means officially assigned a priority by a Federal, State, or local unit of government prior to this notice. Neither an agency, nor a committee or board who provides advice or makes decisions on programs delivered by the agency are considered units of government. If a category or subcategory cannot be fully funded, applicants may be offered the FY 2008 CSP contract payment on a prorated basis.

Signed in Washington, DC, on March 19, 2008.

Arlen Lancaster,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

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2008 CSP ENROLLMENT CATEGORY MATRIX

Category	Tier I	Tier II		Tier III	
		5 yrs	> 5 yrs	5 yrs	> 5 yrs
A	Not Applicable	Group 1 or 2	Not Applicable	Group 1, 2 or 3	Not Applicable
B	Group 1	Group 3	Group 1 or 2	Group 4	Group 1, 2 or 3
C	Group 2	Group 4	Group 3	Group 5	Group 4
D	Group 3	Group 5	Group 4		Group 5
E	Group 4 and 5		Group 5		

2008 CONSERVATION SYSTEM CRITERIA BY LAND USE TABLE

	Group Level	2008 Conservation System Criteria - Cropland
Cropland (Row crops, closely grown crops, forage crops in rotation with row or closely grown crops, orchards, vineyards, horticultural crops, cropped woodland and marshes, and permanent hayland)		**Conservation Cropping and Tillage System Performance Level and Stewardship Practices and Activities installed and maintained for at least two years prior to the sign-up period from the attached list.**
	1	SWET score of ≥ 179, plus at least 2 unique practices or activities from each area of Soil Quality, Water Quality, and Wildlife Habitat.
	2	SWET score of ≥ 155 and ≤ 178, plus at least 1 unique practice or activities from each area of Soil Quality, Water Quality, and Wildlife Habitat, and one additional practice from any of the areas.
	3	SWET score of ≥ 133 and ≤ 154, plus at least 1 unique practice or activity from each area of Soil Quality, Water Quality and Wildlife Habitat.
	4	SWET score of ≥ 89 and ≤ 132, plus at least 2 unique practices or activities from any of the areas.
	5	* Must meet minimum level of treatment as defined in this sign-up notice (CSP-08-01)

	Group Level	2008 Conservation System Criteria – Grazing Land
Grazing Land (Rangeland and Pastureland)		**Grazing Management System and Stewardship Practices and Activities installed and maintained for at least two years prior to the sign-up period from the attached list.**
	1	Vegetation and animal management accomplished by following a grazing management plan, plus at least 3 unique practices or activities from Water Quality and at least 2 unique practices or activities from each area of Soil Quality, and Wildlife Habitat.
	2	Vegetation and animal management accomplished by following a grazing management plan, plus at least 2 unique practices or activities from each area of Soil Quality, Water Quality, and Wildlife Habitat.
	3	Vegetation and animal management accomplished by following a grazing management plan, plus at least 1 unique practice or activity from each area of Soil Quality, Water Quality and Wildlife Habitat.
	4	Vegetation and animal management accomplished by following a grazing management plan, plus at least 2 unique practices or activities from any of the areas.
	5	* Must meet minimum level of treatment as defined in this sign-up notice (CSP-08-01)

Cropland Soil Quality – Stewardship Practice and Activity List for Soil Quality

Alley cropping with trees or shrubs planted in single or multiple rows with agronomic, horticultural crops or forages produced between rows of woody plants.

Conservation crop rotation perennial grasses, legumes and forbs in rotation for a minimum of 2 years; or a high biomass crop every other year; (already have cover crop as an activity) or a combination of crops that match soil water storage with crop water use needs.

Contour buffer strips with permanent, herbaceous vegetative cover established across the slope and alternated down the slope with parallel, wider cropped strips.

Contour Farming orchards, vineyards, plantations and field grown ornamentals planted in parallel lines across and perpendicular to the dominant slope.

Cover crops small grains, legumes, forbs, or other herbaceous plants established for seasonal cover.

Cross wind trap strips the use of herbaceous cover resistant to wind erosion.

Field borders with a strip of permanent vegetation established at the edge or around the perimeter of a field.

Forage harvest management for improved ground cover, protection from soil erosion and to improve soil characteristics.

Grassed waterway that is shaped or graded to required dimensions and established with suitable vegetation.

Ground Cover use of grasses, legumes or forbs maintained as permanent cover between rows in orchards, vineyards, plantations, field grown ornamentals, or cropped woodland.

Pasture and Hayland Plantings/Improvement to establish native or introduced grasses or legumes that improve forage quality and soil characteristics.

Hedgerow planting with the establishment of dense vegetation.

Herbaceous Wind Barriers with vegetation established in rows or narrow strips across the prevailing wind direction.

Irrigation Water Management actions to reduce erosion such as the use of polyacrylamide (PAM) or controlling the volume, frequency, and application rate of irrigation water.

Mulching use of wood chips, leaf litter or other organic materials as a year round cover between rows in orchards, vineyards, plantations, field grown ornamentals, or cropped woodland.

Residue management system with no-till or strip tillage systems to maintain plant residues on the soil surface year-round.

Riparian forest buffer of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

Riparian herbaceous cover consisting of grasses, grass-like plants and forbs immediately adjacent to watercourses.

Stripcropping with row crops, forages, small grains, or fallow in alternating across a field.

Soil pH Management use of soil amendments or activities to maintain the alkalinity and acidity at optimum levels for nutrient uptake, based on soil tests conducted per land grant university recommendations.

Soil salinity management on irrigated cropland with soil amendments such as gypsum or sulfur.

Windbreak and shelterbelt establishment of single or multiple rows of trees or shrubs.

Cropland Water Quality – Stewardship Practice and Activity List for Water Quality

Cropland WQ - PERMANENT VEGETATION PRACTICES AND ACTIVITES

Cover crops of grasses, legumes, forbs, or other herbaceous plants established for seasonal cover.

Contour buffer strips with permanent, herbaceous vegetative cover established across the slope and alternated down the slope with parallel, wider cropped strips.

Critical area planting that establishes permanent vegetation on sites with high erosion rates, and physical, chemical or biological conditions that prevent the establishment of vegetation with normal practices.

Crop Management Consultation the use of certified crop advisors to provide recommendations on nutrient and or pest management activities.

Field borders with a strip of permanent vegetation established at the edge or around the perimeter of a field.

Filter strip with herbaceous vegetation between cropland, grazing land, or forestland and environmentally sensitive areas.

Integrated Pest Management the use of scouting, and economic thresholds to determine the method, timing and application of pest control methods.

Mulching use of wood chips, leaf litter or other organic materials as a year round cover between rows in orchards, vineyards, plantations field grown ornamentals, or cropped woodland.

Pasture and hay land planting to provide increased sod or perennial crops in rotation for a minimum of 2 years.

Riparian herbaceous cover consisting of grasses, grass-like plants and forbs immediately adjacent to watercourses.

Riparian forest buffer of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

Vegetative Barriers narrow strips of perennial vegetation planted in parallel lines across and perpendicular to the predominant slope.

Cropland WQ - WATER MANAGEMENT PRACTICES AND ACTIVITES

Soil salinity management on irrigated cropland through combination of drainage water management and amendments to move salts thru the root zone.

Water control structures to catch, manage and properly use water applications.

Water and sediment control basins to trap sediment and detain water.

Wetland enhancement or **Wetland restoration and rehabilitation** to increase function and value for water quality purposes.

Irrigation system with micro-irrigation for distribution of water directly to the plant root zone.

Irrigation system with MESA, LIPC, LEPA or similar high efficiency irrigation system to supply crop needs that matches water application to crops, soils and topography.

Irrigation water management to determine and control the volume, frequency, and application rate of irrigation water by any one of the following:

- Improved system efficiency by evaluations and adjustment;
- Use of data from on-farm weather station; or
- Use of tensiometers or other techniques to assess and improve irrigation water management.

Drainage water management through seasonal on-farm water storage and retention.

Irrigation with a tailwater return system which utilizes the collection, storage, and transportation of irrigation tailwater for reuse.

Cropland WQ - PEST & NUTRIENT MANAGEMENT PRACTICES AND ACTIVITES

Pest management by any one of the following:

- Spot spraying activities and other control of noxious/invasive weeds;
- Minimize pesticide use by selecting plant varieties to minimize the application of pesticides;
- Use a risk assessment tool such as WINPST to select the least toxic pesticides and herbicides to minimize harmful environmental effects;
- Use local guidelines to set economic thresholds for pests to minimize use of pesticides and herbicides;
- Use of biological control methods such as beneficial insects, genetically modified varieties, or livestock; or
- Use of cultural control methods such as rotations with allelopathic and smothering plants, intercropping, mulching, or plant removal.

Nutrient management by any one of the following:

- Precise nutrient application of such as - banding, side dressing, injection, fertigation;
- Split nitrogen application to meet crop needs;
- Test soil and/or plant tissue annually for annual crops OR per land grant university recommendations for perennial crops, and low input systems such as cropped woodland and marshes;
- Use yield monitoring data to determine nutrient needs;
- Waste utilization to control pathogen and organic runoff; or
- Feed management and additives.

Cropland Wildlife Habitat - Stewardship Practice and Activity List for Wildlife Habitat (Activities to improve fish and wildlife habitat)

Brush Piles located on the edge of fields or clearings in cropped woodland and marshes, minimum size pile 4'x 4'x 4', at least 1 pile per 5 acres.

Cover crops grasses, legumes, forbs, or other herbaceous plants established for seasonal cover.

Critical area planting that establishes permanent vegetation beneficial to wildlife on sites with high erosion rates, and other conditions that prevent the establishment of vegetation with normal practices.

Drainage water management (for wildlife) with control of water surface elevations and discharge from surface and subsurface drainage systems or through seasonal on-farm water storage and retention.

Diversification of plant species in non-cropped areas for nectar or attraction of beneficial insects.

Forage harvest management with timely cutting and removal of forages from the field as hay, green-chop or ensilage, or by mowing crops in such a manner to allow wildlife to escape to surrounding habitat.

Pest management by any one of the following:

- Spot spraying activities and other control of noxious/invasive weeds;
- Minimize pesticide use by selecting plant varieties to minimize the application of pesticides;
- Use a risk assessment tool such as WINPST or others to select the least toxic pesticides and herbicides to minimize harmful environmental effects;
- Use of biological control methods such as beneficial insects, genetically modified varieties, or livestock; or
- Use of cultural control methods such as rotations with allelopathic and smothering plants, intercropping, mulching, or plant removal.

Pasture and Hayland plantings /Improvement establishing native or introduced forage species that provide additional benefits to wildlife.

Pasture & Hay in Rotation perennial grasses, legumes and forbs in rotation for a minimum of 2 years.

Shallow water development to provide open water on fields and moist soil areas to facilitate waterfowl resting and feeding and provide habitat for reptiles, amphibians and other aquatic species.

Raptor Nesting Trees maintain trees with forks 15 ft or more above ground, at least 2 trees per acre at openings of cropped woodland and marshes.

Snag and Cavity Trees maintain at least 7 standing dead or nearly dead trees per acre in cropped woodland and marshes.

Stream habitat management activities to maintain, improve, or restore physical, chemical and biological functions of a stream.

Vernal Pools maintain buffer zones around vernal pools and protect during harvest operations.

Wetland enhancement to increase function and values.

Wetland restoration and rehabilitation of a drained or degraded wetland to restore wetland functions and values.

Wildlife habitat management by winter flooding of cropland fields for species in need of conservation.

Wildlife habitat management Plan a state approved management plan or Private Lands Agreement that meets the needs for food, cover or water for targeted species.

Windbreak and shelterbelt establishment multiple rows of trees or shrubs.

Hedgerow planting of dense heterogeneous woody vegetation in a linear design.

Field borders with permanent vegetation at the edge or around the perimeter of a field that provides wildlife habitat.

Riparian herbaceous cover consisting of grasses, grass-like plants and forbs.

Riparian forest buffer of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

Grazing Lands: Stewardship Practice and Activity List for Soil Quality and Plant Health (Activities to improve soil quality or the health of the plant community)

Brush management for removal, reduction or manipulation of non-herbaceous plants.

Pasture and hay plantings by establishing permanent vegetative cover.

Range planting to establish adapted perennial vegetation and improve plant diversity.

Prescribed burning by applying controlled fire to a predetermined area.

Grassed waterway that is shaped or graded to required dimensions and established with suitable vegetation.

Grazing land mechanical treatment modifying physical soil and/or plant conditions.

Channel bank stabilization by establishing and maintaining vegetation.

Soil salinity management on non-irrigated grazing lands.

Prescribed grazing management by any one of the following:

- Bottomland or riparian area treated as a separate grazing treatment unit and alternative watering facilities in place;
- Grazing distribution facilitated by managing watering locations and rotating feeding and salting areas;
- Use of decision support tools in development of grazing and/or animal management plans, such as Grazing Lands Spatial Analysis Tool (GSAT), Nutritional Balance Analyzer (NUTBAL), etc;
- Participating in grass-banking or stockpiling; or
- Application of monitoring plan for improved grazing management.

Riparian herbaceous cover improvements with diversified cover consisting of grasses, grass-like plants and forbs.

Irrigation water management properly determining and controlling the volume, frequency, and application rate of irrigation water in a planned, efficient manner.

Heavy use area protection and stabilization by establishing vegetative cover, surfacing with suitable materials, and/or installing needed structures.

Grazing Lands: Stewardship Practice and Activity List for Water Quality

Prescribed grazing management by use of decision support tools in development of grazing and/or animal management plans, such as Grazing Lands Spatial Analysis Tool (GSAT), Nutritional Balance Analyzer (NUTBAL), etc., or application of monitoring plan.

Brush management for removal, reduction or manipulation of non-herbaceous plants.

Water well constructed to access aquifers and move livestock away from water courses.

Watering facility for providing animal access to water away from natural water bodies.

Critical area planting that establishes permanent vegetation on sites with high erosion rates, and physical, chemical or biological conditions that prevent the establishment of vegetation with normal practices.

Fence (sensitive area protection only) to control movement of animals and people.

Spring development that provides water for a conservation need.

Pipeline installed to convey water for livestock, or wildlife.

Nutrient management by any one of the following:

- Soil and/or plant tissue test every 3 years on pastures not receiving confinement wastes or annual tests where confinement wastes are applied;
- Direct injection of animal wastes; or
- Split nitrogen applications to meet current crop needs.

Integrated pest management to control weeds, brush, insects, or diseases.

Stream crossing constructed to provide a travel way for people, livestock, equipment, or vehicles.

Stream habitat management activities to maintain, improve, or restore physical, chemical and biological functions of a stream.

Streambank and shoreline protection treatments to stabilize and protect banks of streams, constructed channels, shorelines of lakes, reservoirs, or estuaries.

Water and sediment control basins to trap sediment and detain water.

Livestock watering areas have controlled access.

Riparian herbaceous cover improvements with additions of grasses, grass-like plants and forbs.

Wetland enhancement or **Wetland restoration and rehabilitation** to increase function and value for water quality purposes.

Waste utilization to control pathogen and organic runoff.

Heavy use area protection and stabilization by establishing vegetative cover, surfacing with suitable materials, and/or installing needed structures.

Grazing Lands: Stewardship Practice and Activity List for Wildlife Habitat (Activities to improve fish and wildlife habitat)

Channel bank stabilization by establishing and maintaining vegetation that provides wildlife habitat.

Critical area planting that establishes permanent vegetation beneficial to wildlife on sites with high erosion rates, physical, chemical or biological conditions that prevent the establishment of vegetation with normal practices.

Pasture and hay plantings of diversified native or introduced forage species.

Prescribed burning by applying controlled fire to a predetermined area.

Riparian herbaceous cover improvements with additions of grasses, grass-like plants and forbs.

Spring development that provides water for wildlife during critical times.

Stream habitat improvement and management activities to maintain, improve, or restore physical, chemical and biological functions of a stream.

Streambank and shoreline protection treatments to stabilize and protect banks of streams, constructed channels, shorelines of lakes, reservoirs, or estuaries.

Water well constructed to access aquifers and provide water for wildlife.

Wetland enhancement to increase function and values.

Wetland restoration and rehabilitation of a drained or degraded wetland to restore functions and values.

Wildlife watering facility designed to meets the needs of targeted species.

Wildlife habitat management by any one of the following:

- Application of an approved management plan or Private Lands Agreement that meets the needs for food, cover or water for targeted species;
- Enhance wildlife habitat linkages and corridors by creating a mosaic or pattern; or
- Management that provides for shallow water and wetland wildlife habitat improvement.

Prescribed grazing management by any one of the following:

- Adds functional group pastures to improve pasture condition;
- Interseeding of desirable forages and legumes;
- Timed grazing on a portion of paddocks to create habitat for targeted species;
- Increased plant diversity - forbs and legumes greater than 40%; or
- Patch burn/graze to improve wildlife habitat diversity and cover.

Integrated pest management activities for weeds, brush, insects, or diseases that include follow-up treatment.

Brush management for removal, reduction or manipulation of non-herbaceous plants to improve wildlife habitat, including brush piling and creation of mosaics.

Range planting establishment of adapted diverse perennial vegetation.

Provide wildlife corridors with pathways for predators and large animals or plant diversity for nectar-loving species.

Protection of honey trees utilizing a physical barrier.

Riparian forest buffer of trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies.

[FR Doc. E8–6177 Filed 3–26–08; 8:45 am]

BILLING CODE 3410–16–C

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2008–0009]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Labeling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture, and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on March 31, 2008. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 36th Session of the Codex Committee on Food Labeling (CCFL) of the Codex Alimentarius Commission (Codex), which will be held in Ottawa, Canada, on April 28 to May 2, 2008. In addition, a working group on the Implementation of the World Health Organization (WHO) Global Strategy on Diet, Physical Activity, and Health will meet on April 26, 2008. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 36th Session of the CCFL and to address items on the agenda.

DATES: The public meeting is scheduled for Monday, March 31, 2008, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 107A, Jamie Whitten Federal Building, 1200 Independence Avenue, SW., Washington, DC 20250. Codex documents related to the 36th Session of the CCFL will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The U.S. Delegate to the CCFL, Dr. Barbara Schneeman, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *ccfl@fda.hhs.gov.*

For Further Information about the 36th Session of the CCFL Contact: Dr. Michael Wehr, FDA, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740. Phone: (301) 436–1724, Fax: (301) 436–2618, e-mail: *michael.wehr@fda.hhs.gov.*

For Further Information about the Public Meeting Contact: Doreen Chen-Moulec, U.S. Codex Office, Food Safety and Inspection Service (FSIS), Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. Phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the WHO. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFL drafts provisions on labeling applicable to all foods; considers, amends if necessary, and endorses specific provisions on labeling of draft standards, codes of practice, and guidelines prepared by other Codex committees; studies specific labeling problems assigned to it by the Codex Alimentarius Commission; and studies problems associated with the advertisement of food with particular reference to claims and misleading descriptions. The CCFL is chaired by Canada.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 36th Session of the CCFL will be discussed during the public meeting:

- Matters Referred to the CCFL from other Codex Bodies.
- Matters Referred by FAO and WHO: Implementation of the WHO Global Strategy on Diet, Physical Activity, and Health.
- Consideration of Labeling Provisions in Draft Codex Standards.
- Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods: Draft Revised Annex 2: Table 3, Draft Amendment: Addition of Ethylene, and Proposal for new work: Deletion of Rotenone from Annex 2.
- Labeling of Foods and Food Ingredients Obtained through Certain Techniques of Genetic Modification or Genetic Engineering: Definitions and Labeling Provisions.
- Draft Amendment to the General Standard for the Labeling of Prepackaged Foods: Quantitative Declaration of Ingredients.
- Draft Definition of Advertising in Relation to Nutrition and Health Claims.
- Discussion Paper on Modified Standardized Common Names

Each item listed above will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the April 28–May 2, 2008, meeting in Ottawa, Canada. Members of the public may access these documents on the World Wide Web (see **ADDRESSES**).

Public Meeting

At the March 31, 2008, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be sent electronically to the U.S. Delegate for the CCFL, Dr. Barbara Schneeman (see **ADDRESSES**). Written comments should state that they relate to activities of the 36th Session of the CCFL.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at: (*http://www.fsis.usda.gov/regulations/2008_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and they have the option to password protect their accounts.

Done at Washington, DC, on: March 24, 2008.

Karen L. Hulebak,

Acting U.S. Manager for Codex Alimentarius.

[FR Doc. E8–6243 Filed 3–26–08; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting and briefing.

DATE AND TIME: Friday, April 4, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Briefing Agenda

Topic: The Impact of Illegal Immigration on the Wages & Employment Opportunities of Black Workers.

I. Introductory Remarks by Chairman
II. Speakers' Presentations
III. Questions by Commissioners and Staff Director
IV. Adjourn Briefing

FOR FURTHER INFORMATION CONTACT: Lenore Ostrowsky, Acting Chief, Public Affairs Unit, (202) 376–8582.

Dated: March 25, 2008.

David Blackwood,

General Counsel.

[FR Doc. 08–1081 Filed 3–25–08; 2:34 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, Basic Demographic Items.

Form Number(s): CPS–263, CPS–263(SP), CPS–264, CPS–264(SP), CPS–266, BC–1428, BC–1428(SP), BC–1433, BC–1433(SP),CPS–692, CPS–504.

OMB Control Number: 0607–0049.

Type of Request: Revision of a currently approved collection.

Burden Hours: 18,013.

Number of Respondents: 59,000.

Average Hours Per Response: 1 and a half minutes.

Needs and Uses: The purpose of this request for review is for the U.S. Census Bureau to obtain clearance from the Office of Management and Budget (OMB) for the collection of basic demographic information on the Current Population Survey (CPS). The CPS has been the source of official government statistics on employment and unemployment for over 50 years. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey, and the Census Bureau prepares and conducts all the field work. The Census Bureau provides the BLS with data files and tables. The BLS seasonally adjusts, analyzes, and publishes the results for the labor force data in conjunction with the demographic characteristics. In accordance with the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program. Title 29, United States Code, Sections 1–9, authorizes the collection of labor force data in the CPS.

The demographic information provides a unique set of data on selected characteristics for the civilian noninstitutional population. Some of the demographic information Census collect is age, marital status, gender, Armed Forces status, education, race, origin, and family income. These data is used in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We also use these data independently for internal analytic research and for evaluation of other surveys. In addition, we need these data to correctly control estimates of other characteristics to the proper proportions of age, gender, race, and origin.

Census use the data from the CPS on household size and composition, age, education, ethnicity, and marital status to compile monthly averages or other aggregates for national and sub-national estimates. The data is used in four principal ways: In association with other data, such as monthly labor force or periodic supplement publications; for internal analytic research; for evaluation of other surveys and survey results; and as a general purpose sample and survey.

The demographic data are central to the publication of all labor force data in the BLS' monthly report *Employment and Earnings.* The data set that results from combining the monthly labor force data with the demographic data provides analysts with the ability to understand labor force patterns of many subpopulation groups. This is particularly important since the federal government often directs initiatives at special groups that historically have not conformed to general labor force participation patterns.

Analysts also use the demographic data in association with all supplement publications. (Census describe supplements later in this section.) For example, publications that use these data are *Fertility of American Women, School Enrollment—Social and Economic Characteristics of Students and Educational Attainment in the United States* (Series P–20). Comparably, researchers are able to characterize the population within the subject area of the many supplements conducted in conjunction with the CPS. For instance, the Annual Social and Economic Supplement identifies which subpopulation groups, as established by the demographic variables, experience the highest incidence of poverty. While Census collect and support independently the demographic variables, the labor force data, and the supplement inquiries, their use as a combined data set enhances the utility of each.

The Census Bureau also uses the demographic data extensively for internal analytic work. For example, these data is used to develop estimates of family and household types and metropolitan and nonmetropolitan populations. Census use these estimates to identify population trends between decennial censuses and to analyze the growth and distribution of various racial and ethnic groups. It may then be used in preparing reports on these subjects or in determining the accuracy of population controls used throughout the Census Bureau. As is noted below, we use the demographic data to improve our postcensal population estimates (that is, the components of emigration and undocumented immigration).

Also, Census use the CPS as a source for other survey samples. A household remains in the CPS sample for 16 months. Other surveys conducted by the Census Bureau may use a CPS sample when it is no longer part of the CPS. In 2006, the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, sponsored by the Department of the Interior, used retired cases from the CPS samples. The ongoing American Time Use Survey, sponsored by the BLS uses expired CPS sample. By using the CPS demographics to select their samples, other surveys have been able to avoid screening samples and to obtain accurate estimates by demographics.

Another use of the demographic data is in evaluating other survey results. For example, analysts control the results of the National American Housing Survey to the CPS monthly averages of households. Similarly, in order to determine the plausibility of the results

of the Survey of Income and Program Participation (SIPP), analysts continuously compare the data on household and family composition from the SIPP to the CPS monthly household and family composition data.

The Census Bureau often uses the CPS as a model and resource for improving the efficiency and quality of other surveys. For example, the Census Bureau designed some series of items for the SIPP from the CPS. Academicians and researchers have historically used the CPS to better understand the many complexities associated with sample surveys and household interviews in general.

In addition to the collection of demographic and labor force data, the CPS is also a major vehicle for the collection of supplemental questions on various socio-economic topics. In most months of the year supplemental questions are asked after the basic labor force questions of all eligible people in a household are obtained, thereby maximizing the utility of the CPS sample. The Census funding for the CPS and this OMB clearance also provides for annual data on work experience, income, migration (Annual Social and Economic Supplement), and school enrollment of the population (October supplement). In addition Census collect biennial, but separately funded, data on the fertility and birth expectations of the women of child-bearing age (June), voting and registration (November) and child support and alimony. The BLS, the Census Bureau, other government agencies, and private groups sponsor the supplements.

There have been changes and additions to the basic CPS demographic items (including coverage items and other non-labor force items) since the last request was submitted for an OMB clearance request for the basic CPS demographics in 2005.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141, 181, and 182 and Title 29, United States Code, Sections 1–9 authorize the collection of this information.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–6257 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Monthly Wholesale Trade Survey.

Form Number(s): SM–42(06).

OMB Control Number: 0607–0190.

Type of Request: Extension of a currently approved collection.

Burden Hours: 6,300.

Number of Respondents: 4,500.

Average Hours Per Response: 7 minutes.

Needs and Uses: The Monthly Wholesale Trade Survey (MWTS) canvasses firms primarily engaged in merchant wholesale trade, excluding manufacturers' sales branches and offices (MSBOs) that are located in the United States. This survey provides the only continuous measure of monthly wholesale sales, end-of-month inventories, and inventories/sales ratios. The sales and inventory estimates produced from the MWTS provide current trends of economic activity by kind of business for the United States. Also, the estimates compiled from this survey provide valuable information for economic policy decisions by the government and are widely used by private businesses, trade organizations, professional associations, and other business research and analysis organizations.

As one of the U.S. Census Bureau's thirteen principal economic indicators, the estimates produced by the MWTS are critical to the accurate measurement of total economic activity of the United States. The estimates of sales made by wholesale locations represent only merchant wholesalers, excluding MSBOs, who take title to goods bought for resale to other companies. Wholesalers normally sell to industrial distributors, retail operations, cooperatives, and other businesses. The sales estimates include sales made on credit as well as on a cash basis, but exclude receipts from sales taxes and interest charges from credit sales.

The estimates of inventories represent all merchandise held in wholesale locations, warehouses, and offices, as well as goods held by others for sale on consignment or in transit for distribution to wholesale establishments. The estimates of inventories exclude fixtures and supplies not for resale, as well as merchandise held on consignment which are owned by others. Inventories are an important component in the Bureau of Economic Analysis's (BEA) calculation of the investment portion of the Gross Domestic Product (GDP).

Census publish wholesale sales and inventory estimates based on the North American Industry Classification System (NAICS) which has been widely adopted throughout both the public and private sectors.

The Census Bureau tabulates the collected data to provide, with measurable reliability, statistics on sales, end-of-month inventories, and inventories/sales ratios for merchant wholesalers, excluding MSBOs.

The BEA is the primary Federal user of data collected in the MWTS. The BEA uses this information on methods of valuation and changes in these methods to improve the inventory valuation adjustments applied to estimates of the GDP.

The Bureau of Labor Statistics uses the data as input to its Producer Price Indexes and in developing productivity measurements. Private businesses use the wholesale sales and inventory data in computing business activity indexes. Other government agencies and businesses use this information for market research, product development, and business planning to gauge the current trends of the economy.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 24, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–6258 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Migration Supplement to the Current Population Survey.

Form Number(s): CPS–263 (MIS–1) (L) (8–2007), CPS–263 (MIS–5) (L) (11–2006).

OMB Control Number: 0607–0710.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 2,250.

Number of Respondents: 55,000.

Average Hours per Response: 1 minute.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the August 2008 Migration supplement to the Current Population Survey (CPS). This clearance request covers five topics of supplemental inquiry in addition to the CPS Basic instrument: Citizenship, Year of Entry, Residence One Year Ago, Residents and Emigrants Abroad, and Transfers.

As part of the federal government's efforts to collect data and provide timely information on migration for policy planning, the main citizenship and year of entry questions have been collected annually on the CPS Basic questionnaire since 1994. The Migration supplement to the CPS provides some basic data on contemporary migration dynamics and population change that is necessary for tracking historical trends. This supplement will be instrumental for understanding the prevalence and nature of changing migration patterns, which is necessary as background for maintaining high data quality, utility and relevance of data, and for policy planning and support. When combined with CPS-collected characteristics, such as citizenship, place of birth, parental nativity, income, and household relationships, the data can provide information on the social and economic adaptation of and the potential needs of the foreign-born population over time in the United States. The CPS August 2008 Migration supplement will be the only comprehensive, nationally representative source of data on multiple years of entry to the United States, time outside the United States since coming to the United States, emigration, and monetary remittances.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 24, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–6259 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Monthly Retail Trade Survey.

Form Number(s): SM–44(06)S, SM–44(06)SE, SM–44(06)SS, SM–44(06)B, SM–44(06)BE, SM–44(06)BS, SM–45(06)S, SM–45(06)SE, SM–45(06)SS, SM–45(06)B, SM–45(06)BE, SM–45(06)BS, SM–72(06)S, and SM–20(06)I.

OMB Control Number: 0607–0717.

Type of Request: Extension of a currently approved collection.

Burden Hours: 12,196.

Number of Respondents: 8,712.

Average Hours Per Response: 7 minutes.

Needs and Uses: This request is for approval of an extension to the Monthly Retail Trade Survey, previously referred to as the ''Current Retail Sales and Inventory Survey''. The Monthly Retail Trade Survey provides estimates of monthly retail sales, end-of-month merchandise inventories, and quarterly e-commerce sales of retailers in the United States by selected kinds of business. Also, it provides monthly sales of food service establishments.

Sales and inventories data provide a current statistical picture of the retail portion of consumer activity. The sales and inventories estimates in the Monthly Retail Trade Survey measure current trends of economic activity that occur in the United States. Also, the estimates compiled from the survey provide valuable information for economic policy decisions and actions by the government and are widely used by private businesses, trade organizations, professional associations, and others for market research and analysis. The Bureau of Economic Analysis (BEA) uses these data in determining the consumption portion of Gross Domestic Product (GDP).

Retail and Food Services Sales during 2007 amounted to $4.5 trillion. The estimates produced in the Monthly Retail Trade Survey are critical to the accurate measurement of total economic activity. The estimates of retail sales represent all operating receipts, including receipts from wholesale sales made at retail locations and services rendered as part of the sale of the goods, by businesses that primarily sell at retail. The sales estimates include sales made on credit as well on a cash basis, but exclude receipts from sales taxes and interest charges from credit sales. Also excluded is non-operating income from such services as investments and real estate.

The estimates of merchandise inventories owned by retailers represent all merchandise located in retail stores, warehouses, offices, or in transit for distribution to retail establishments. The estimates of merchandise inventories exclude fixtures and supplies not held for sale, as well as merchandise held on consignment owned by others. The BEA uses inventories data to determine the investment portion of the GDP.

Retail e-commerce sales are estimated from the same sample used in the Monthly Retail Trade Survey to estimate

preliminary and final U.S. retail sales. The Monthly Retail Trade sample is updated on an ongoing basis to account for new retail employer businesses (including those selling via the Internet), business deaths, and other changes to the retail business universe. Research was conducted to ensure that retail firms selected in the Monthly Retail Trade Survey sample and engaged in e-commerce are representative of the universe of e-commerce retailers. Total e-commerce sales for 2007 were estimated at $136 billion.

Census publish retail sales and inventories estimates based on the North American Industry Classification System (NAICS), which has been widely adopted throughout both the public and private sectors.

The BEA is the primary Federal user of data collected in the Monthly Retail Trade Survey. BEA uses the information in its preparation of the National Income and Products Accounts, and its benchmark and annual input-output tables. Statistics provided from retail sales and inventories estimates are used in the calculation of the GDP. If the survey were not conducted, BEA would lack comprehensive data from the retail sector. This would adversely affect the reliability of the National Income and Products Accounts and the GDP.

The Bureau of Labor Statistics (BLS) uses the data as input to their Producer Price Indexes and in developing productivity measurements. The data are also used for gauging current economic trends of the economy. Private businesses use the retail sales and inventories data to compute business activity indexes. The private sector also uses retail sales as a reliable indicator of consumer activity.

Affected Public: Business or other for-profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at: *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 24, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–6260 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan; Partial Rescission of Antidumping Duty Administrative Review and Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2008.

FOR FURTHER INFORMATION CONTACT: Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0049.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2007, the Department of Commerce (the Department) published a notice in the **Federal Register** of opportunity to request administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007). On July 31, 2007, in accordance with 19 CFR 351.213(b)(1), the petitioners[1] requested an administrative review with respect to 15 producers/exporters of subject merchandise. The Department received no other requests for review.

On August 24, 2007, the Department published a notice of initiation of administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613 (Aug. 24, 2007). The period of review is July 1, 2006, through June 30, 2007, and the review covers 15 producers/exporters of the subject merchandise to the United States. The preliminary results are currently due no later than April 1, 2008.

Partial Rescission of Review

On October 11, 2007, the petitioners withdrew their request for administrative review with respect to each of the following companies within the time limits set forth in 19 CFR 351.213(d)(1): 1) China Steel Corporation; 2) Tang Eng Iron Works; 3) PFP Taiwan Co., Ltd.; 4) Yieh Loong Enterprise Co., Ltd. (also known as Chung Hung Steel Co., Ltd.); 5) Yieh Trading Corp.; 6) Goang Jau Shing Enterprise Co., Ltd.; 7) Yieh Mau Corp.; 8) Chien Shing Stainless Co.; 9) Chain Chon Industrial Co., Ltd.; 10) Emerdex Stainless Flat–Rolled Products, Inc.; 11) Emerdex Stainless Steel, Inc.; and 12) Emerdex Group (and its various affiliates). Section 351.213(d)(1) of the Department's regulations requires that the Secretary rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation. Therefore, in accordance with 19 CFR 351.213(d)(1), because the request for administrative review with respect to the companies listed above was timely withdrawn, we are rescinding this review with regard to those companies.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because we require additional time to analyze the data submitted by the companies participating in this review and issue supplemental questionnaires to them. Therefore, we have fully extended the deadline for completing the preliminary results until July 30, 2008, which is 365 days from the last day of the anniversary month of the date of publication of the order. The

[1] The petitioners in this proceeding are Allegheny Ludlum Corporation, AK Steel Corporation, North American Stainless, United Auto Workers Local 3303, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 21, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–6268 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 080321457–8458–01]

Revision to the 2008 Dr. Nancy Foster Scholarship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA publishes this notice to amend the application requirements for the 2008 Dr. Nancy Foster Scholarship program, which was announced in the **Federal Register** on July 2, 2007. The notice informs applicants that NOAA removes the requirement that a copy of the Free Application for Federal Student Aid (FAFSA) form be submitted as part of the applications for the 2008 Dr. Nancy Foster Scholarship program.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Priti Brahma, 301–713–9437 or *priti.brahma@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to remove the requirement that a copy of the Free Application for Federal Student Aid (FAFSA) form be submitted as part of the applications for the 2008 Dr. Nancy Foster Scholarship program, which was announced in the **Federal Register** on July 2, 2007 (72 FR 36263). The requirement for this form is contained in the Announcement of Federal Funding Opportunity (NOS–NMS–2008–2001067), Section IV.B.5 posted to *http://www.grants.gov* and referenced in the **Federal Register** notice cited above. The requirement stated that failure to provide the form would disqualify the application from consideration. However, NOAA has determined that the Student Aid Report, a document which is also a required submission, contains the information necessary to allow a determination of the student's financial need, and that the FAFSA is not necessary. Therefore, those applications that failed to include the FAFSA will not be disqualified from the competition. All other requirements for the program as previously stated remain the same.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2008 program is contingent upon the availability of Fiscal Year 2008 appropriations.

Universal Identifier

Applicants should be aware they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register**, (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com*.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Preaward Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public

property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Approved:

Dated: March 24, 2008.

Louisa Koch,

Director of Education, National Oceanic and Atmospheric Administration.

[FR Doc. E8–6285 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG25

Taking of Marine Mammals Incidental to Specified Activities; Operation of an LNG Facility in Massachusetts Bay

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

ACTION: Notice; proposed incidental harassment authorization and receipt of application for five-year regulations; request for comments and information.

SUMMARY: On October 30, 2006, NMFS received a request from Northeast Gateway Energy Bridge™ L.L.C. (Northeast Gateway) and Algonquin Gas Transmission, L.L.C. (Algonquin), for authorization to harass marine mammals, by harassment, incidental to construction and operation of an offshore liquefied natural gas (LNG) facility in the Massachusetts Bay. Following notice and comment, NMFS issued an incidental harassment authorization (IHA) to Northeast Gateway and Algonquin for a period of one year from May 8, 2007, to May 7, 2008, with mitigation, monitoring, and reporting requirements. On February 28, 2008, NMFS received a request from Tetra Tech EC, on behalf of Northeast Gateway to renew the IHA for a period of one year. NMFS will propose regulations at a later date that would govern these incidental takes under a Letter of Authorization (LOA) issued to Northeast Gateway for a period of up to 5 years after the 1-year IHA expires. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to Northeast Gateway to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year. NMFS is also requesting comments, information, and suggestions concerning Northeast Gateway's application and the structure and content of future regulations.

DATES: Comments and information must be postmarked no later than April 28, 2008.

ADDRESSES: Comments should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. The mailbox address for providing email comments on this action is *PR1.0648–XG25@noaa.gov*. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. A copy of the application and a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Northeast Gateway Energy Bridge LNG Deepwater Port license application is available for viewing at *http://dms.dot.gov* under the docket number 22219.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take marine mammals by harassment. With respect to ''military readiness activities,'' the MMPA defines ''harassment'' as follows:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

On October 30, 2006, NMFS received an application from Northeast Gateway and Algonquin for an IHA to take small numbers of several species of marine mammals, by Level B (behavioral) harassment, for a period of 1 year, incidental to construction and operation of an offshore LNG facility. On May 7, 2007, NMFS issued an IHA to Northeast Gateway and Algonquin to take marine mammals, by Level B harassment, incidental to construction and operation of the Northeast Gateway Deepwater Port (Port) to import LNG into the New England region. As one of the mitigation measures required by the IHA, construction of the LNG Port and its associated Pipeline Lateral was limited to between May 1 and November 30, 2007 so that acoustic disturbance to the endangered North Atlantic right whale would largely be avoided.

On November 15, 2007, Northeast Gateway and Algonquin submitted a letter to NMFS requesting a modification to their IHA to allow construction activities to extend into December 2007, due to unforeseen scheduling issues. Following a thorough review of Northeast Gateway's remaining construction activities, weekly marine mammal monitoring reports from previous construction, and analysis of the potential impacts to marine mammal species in the vicinity of the LNG Port, NMFS modified the IHA to allow Port construction activities into December 2007, with additional mitigation, monitoring, and reporting measures.

On December 21, 2007, Northeast Gateway reported that the LNG Port construction was complete. The Port, which is located in Massachusetts Bay, consists of a submerged buoy system to dock specifically designed LNG carriers approximately 13 mi (21 km) offshore of Massachusetts in federal waters approximately 270 to 290 ft (82 to 88 m) in depth. After construction, the Port completed commissioning activities on February 27, 2008, enabling the facility to receive natural gas and to begin operations.

Description of the Activity

The Port consists of two subsea Submerged Turret Loading (STL) buoys, each with a flexible riser assembly and a manifold connecting the riser assembly, via a steel flowline, to the subsea Pipeline Lateral. Northeast Gateway utilizes vessels from its current fleet of specially designed Energy-Bridge™Regasification Vessels (EBRVs), each capable of transporting approximately 2.9 billion ft^3 (Bcf; 82 million m^3) of natural gas condensed to 4.9 million ft^3 (138,000 m^3) of LNG. Northeast Gateway will also add vessels to its fleet that will have a cargo capacity of approximately 151,000 m^3. The mooring system installed at the Port is designed to handle both the existing vessels and any of the larger capacity vessels that may come into service in the future. The EBRVs dock to the STL™ buoys which serve as both the single-point mooring system for the vessels and the delivery conduit for natural gas. Each of the STL™ buoys is secured to the seafloor using a series of suction anchors and a combination of chain/cable anchor lines.

During the Port operations, EBRVs servicing the Port would utilize the newly configured and International Maritime Organization-approved Boston Traffic Separation Scheme (TSS) on their approach to and departure from the NEG Port at the earliest practicable point of transit. EBRVs would maintain speeds of 12 knots or less while in the TSS except when transiting the Off Race Point Seasonal Management Area between March 1 and April 30, the Great South Channel Seasonal Management Area between April 1 and July 31, or when there have been active right whale sightings, active acoustic detections, or both, in the vicinity of the transiting EBRV in the TSS or at the Port in which case the vessels would slow their speeds to 10 knots or less. See the Proposed Mitigation, Monitoring and Reporting Section.

As an EBRV makes its final approach to the Port, vessel speed will gradually be reduced to 3 knots at 1.86 mi (1.16 km) out to less than 1 knot at a distance of 1,640 ft (500 m) from the Port. When an EBRV arrives at the Port, it will retrieve one of the two permanently anchored submerged STL™ buoys. It will make final connection to the buoy through a series of engine and bow thruster actions. The EBRV will require the use of thrusters for dynamic positioning during docking procedure. Typically, the docking procedure is completed over a 10- to 30-minute period, with the thrusters activated as necessary for short periods of time in second bursts, not a continuous sound source. Once connected to the buoy, the EBRV will begin vaporizing the liquified natural gas (LNG) into its natural gas state using the onboard regasification system. As the LNG is regasified, natural gas will be transferred at pipeline pressures off the EBRV through the STL™ buoy and flexible riser via a steel flowline leading to the connecting Pipeline Lateral. When the LNG vessel is on the buoy, wind and current effects on the vessel will be allowed to ''weathervane'' on the single-point mooring system; therefore, thrusters will not be used to maintain a stationary position. It would take approximately 8 days for each EBRV to moor to the STL™ Buoy, regasify its cargo of LNG and send it to the Northeast Gateway Pipeline Lateral, and disengage from the buoy.

It is estimated that the Port could receive approximately 65 cargo deliveries a year. During this time period thrusters will be engaged in use for docking at the Port approximately 10 to 30 minutes for each vessel arrival and departure.

The specified design life of the NEG Port is about 40 years, with the exception of the anchors, mooring chain/rope, and riser/umbilical assemblies, which are based on a maintenance-free design life of 20 years. The buoy pick-up system components are considered consumable and will be inspected following each buoy connection, and replaced (from inside the STL™ compartment during the normal cargo discharge period) as deemed necessary. The underwater components of the Port will be inspected once yearly using either divers or remotely operated vehicles to check and record the condition of the various STL™ system components. These activities will be conducted using the Port's normal support vessel, and to the extent possible will coincide with planned weekly visits to the Port.

Detailed information on these activities can be found in the MARAD/USCG Final EIS on the Northeast Gateway Project (see **ADDRESSES** for availability) and in the IHA application. Detailed information on the LNG facility's operation and maintenance activities, and noise generated from operations was also published in the **Federal Register** on March 13, 2007 (72 FR 11328).

Marine Mammals Affected by the Activity

Marine mammal species that potentially occur in the vicinity of the Northeast Gateway facility include several species of cetaceans and pinnipeds:

North Atlantic right whale (*Eubalaena glacialis*),
humpback whale (*Megaptera novaeangliae*),
fin whale (*Balaenoptera physalus*),
minke whale (*B. acutorostrata*),
pilot whale (*Globicephala spp.*),
Atlantic white-sided dolphin (*Lagenorhynchus acutus*),
bottlenose dolphin (*Tursiops truncatus*),
common dolphin (*Delphinus delphis*),
killer whale (*Orcinus orca*),
harbor porpoise (*Phocoena phocoena*),
harbor seal (*Phoca vitulina*), and
gray seal (*Halichoerus grypus*).

Information on those species that may be impacted by this activity are discussed in detail in the USCG Final EIS on the Northeast Gateway LNG proposal. Please refer to that document for more information on these species and potential impacts from construction and operation of this LNG facility. In addition, general information on these marine mammal species can also be found in Wursig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring *et al.*, 2007). This latter document is available at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm201/*. An updated summary on several commonly sighted marine mammal species distribution and abundance in the vicinity of the proposed action area is provided below.

Humpback Whale

The highest abundance for humpback whales was distributed primarily along a relatively narrow corridor following the 100–m (328 ft) isobath across the southern Gulf of Maine from the northwestern slope of Georges Bank, south to the Great South Channel, and northward alongside Cape Cod to Stellwagen Bank and Jeffreys Ledge. The relative abundance of whales increased in the spring with the highest occurrence along the slope waters (between the 40- and 140–m, or 131- and 459–ft, isobaths) off Cape Cod and Davis Bank, Stellwagen Basin and

Tillies Basin and between the 50- and 200–m (164- and 656–ft) isobaths along the inner slope of Georges Bank. High abundance was also estimated for the waters around Platts Bank. In the summer months, abundance increased markedly over the shallow waters (<50 m, or <164 ft) of Stellwagen Bank, the waters (100 - 200 m, or 328 - 656 ft) between Platts Bank and Jeffreys Ledge, the steep slopes (between the 30- and 160–m isobaths) of Phelps and Davis Bank north of the Great South Channel towards Cape Cod, and between the 50- and 100–m (164- and 328–ft) isobath for almost the entire length of the steeply sloping northern edge of Georges Bank. This general distribution pattern persisted in all seasons except winter, when humpbacks remained at high abundance in only a few locations including Porpoise and Neddick Basins adjacent to Jeffreys Ledge, northern Stellwagen Bank and Tillies Basin, and the Great South Channel.

Fin Whale

Spatial patterns of habitat utilization by fin whales were very similar to those of humpback whales. Spring and summer high-use areas followed the 100–m (328 ft) isobath along the northern edge of Georges Bank (between the 50- and 200–m (164- and 656–ft) isobaths), and northward from the Great South Channel (between the 50- and 160–m, or 164- and 525–ft, isobaths). Waters around Cashes Ledge, Platts Bank, and Jeffreys Ledge are all high-use areas in the summer months. Stellwagen Bank was a high-use area for fin whales in all seasons, with highest abundance occurring over the southern Stellwagen Bank in the summer months. In fact, the southern portion of the Stellwagen Bank National Marine Sanctuary (SBNMS) was used more frequently than the northern portion in all months except winter, when high abundance was recorded over the northern tip of Stellwagen Bank. In addition to Stellwagen Bank, high abundance in winter was estimated for Jeffreys Ledge and the adjacent Porpoise Basin (100- to 160–m, 328- to 656–ft, isobaths), as well as Georges Basin and northern Georges Bank.

Minke Whale

Like other piscivorous baleen whales, highest abundance for minke whale was strongly associated with regions between the 50- and 100–m (164- and 328–ft) isobaths, but with a slightly stronger preference for the shallower waters along the slopes of Davis Bank, Phelps Bank, Great South Channel and Georges Shoals on Georges Bank. Minke whales were sighted in the SBNMS in all seasons, with highest abundance estimated for the shallow waters (approximately 40 m, or 131 ft) over southern Stellwagen Bank in the summer and fall months. Platts Bank, Cashes Ledge, Jeffreys Ledge, and the adjacent basins (Neddick, Porpoise and Scantium) also supported high relative abundance. Very low densities of minke whales remained throughout most of the southern Gulf of Maine in winter.

North Atlantic Right Whale

North Atlantic right whales were generally distributed widely across the southern Gulf of Maine in spring with highest abundance located over the deeper waters (100- to 160–m, or 328- to 525–ft, isobaths) on the northern edge of the Great South Channel and deep waters (100 – 300 m, 328 – 984 ft) parallel to the 100–m (328–ft) isobath of northern Georges Bank and Georges Basin. High abundance was also found in the shallowest waters (< 30 m, or <98 ft) of Cape Cod Bay, over Platts Bank and around Cashes Ledge. Lower relative abundance was estimated over deep-water basins including Wilkinson Basin, Rodgers Basin and Franklin Basin. In the summer months, right whales moved almost entirely away from the coast to deep waters over basins in the central Gulf of Maine (Wilkinson Basin, Cashes Basin between the 160- and 200–m, or 525- and 656–ft, isobaths) and north of Georges Bank (Rogers, Crowell and Georges Basins). Highest abundance was found north of the 100–m (328–ft) isobath at the Great South Channel and over the deep slope waters and basins along the northern edge of Georges Bank. The waters between Fippennies Ledge and Cashes Ledge were also estimated as high-use areas. In the fall months, right whales were sighted infrequently in the Gulf of Maine, with highest densities over Jeffreys Ledge and over deeper waters near Cashes Ledge and Wilkinson Basin. In winter, Cape Cod Bay, Scantum Basin, Jeffreys Ledge, and Cashes Ledge were the main high-use areas. Although SBNMS does not appear to support the highest abundance of right whales, sightings within SBNMS are reported for all four seasons, albeit at low relative abundance. Highest sighting within SBNMS occured along the southern edge of the Bank.

Pilot whale

Pilot whales arrived in the southern Gulf of Maine in spring, with highest abundance in the region occurring in summer and fall. Summer high-use areas included the slopes of northern Georges Bank along the 100–m (328–ft) isobath and pilot whales made extensive use of the shoals of Georges Bank (<60 m, or <197 ft, depth). Similarly, fall distributions were also primarily along the slopes of northern Georges Bank, but with high-use areas also occurring amongst the deep-water basins and ledges of the south-central Gulf of Maine. Within SBNMS, pilot whales were sighted infrequently and were most often estimated at low density. Cape Cod Bay and southern SBNMS were the only locations with pilot whale sightings for winter.

Atlantic White-Sided Dolphin

In spring, summer and fall, Atlantic white-sided dolphins were widespread throughout the southern Gulf of Maine, with the high-use areas widely located either side of the 100–m (328–ft) isobath along the northern edge of Georges Bank, and north from the Great South Channel to Stellwagen Bank, Jeffreys Ledge, Platts Bank and Cashes Ledge. In spring, high-use areas existed in the Great South Channel, northern Georges Bank, the steeply sloping edge of Davis Bank and Cape Cod, southern Stellwagen Bank and the waters between Jeffreys Ledge and Platts Bank. In summer, there was a shift and expansion of habitat toward the east and northeast. High-use areas were identified along most of the northern edge of Georges Bank between the 50- and 200–m (164- and 656–ft) isobaths and northward from the Great South Channel along the slopes of Davis Bank and Cape Cod. High sightings were also recorded over Truxton Swell, Wilkinson Basin, Cashes Ledge and the bathymetrically complex area northeast of Platts Bank. High sightings of white-sided dolphin were recorded within SBNMS in all seasons, with highest density in summer and most widespread distributions in spring located mainly over the southern end of Stellwagen Bank. In winter, high sightings were recorded at the northern tip of Stellwagen Bank and Tillies Basin.

A comparison of spatial distribution patterns for all baleen whales (Mysticeti) and all porpoises and dolphins combined showed that both groups have very similar spatial patterns of high- and low-use areas. The baleen whales, whether piscivorous or planktivorous, were more concentrated than the dolphins and porpoises. They utilized a corridor that extended broadly along the most linear and steeply sloping edges in the southern Gulf of Maine indicated broadly by the 100 m (328 ft) isobath. Stellwagen Bank and Jeffreys Ledge supported a high abundance of baleen whales throughout the year. Species richness maps

indicated that high-use areas for individual whales and dolphin species co-occurred, resulting in similar patterns of species richness primarily along the southern portion of the 100–m (328–ft) isobath extending northeast and northwest from the Great South Channel. The southern edge of Stellwagen Bank and the waters around the northern tip of Cape Cod were also highlighted as supporting high cetacean species richness. Intermediate to high numbers of species are also calculated for the waters surrounding Jeffreys Ledge, the entire Stellwagen Bank, Platts Bank, Fippennies Ledge and Cashes Ledge.

Killer Whale, Common Dolphin, Bottlenose Dolphin, and Harbor Porpoise

Although these four species were some of the most widely distributed small cetacean species in the world (Jefferson *et al.*, 1993), there were not commonly seen in the vicinity of the proposed project area in Massachusetts Bay (Wiley *et al.*, 1994; NCCOS, 2006; Northeast Gateway Marine Mammal Monitoring Weekly Reports, 2007).

Harbor Seal and Gray Seal

In the U.S. waters of the western North Atlantic, both harbor and gray seals were usually found from the coast of Maine south to southern New England and New York (Warrings *et al.*, 2007).

Along the southern New England and New York coasts, harbor seals occur seasonally from September through late May (Schneider and Payne, 1983). In recent years, their seasonal interval along the southern New England to New Jersey coasts had increased (deHart, 2002). In U.S. waters, harbor seal breeding and pupping normally occur in waters north of the New Hampshire/Maine border, although breeding has occurred as far south as Cape Cod in the early part of the 20th century (Temte *et al.*, 1991; Katona *et al.*, 1993).

Although gray seals were often seen off the coast from New England to Labrador, within the U.S. waters, only small numbers of gray seals have been observed pupping on several isolated islands along the Maine coast and in Nantucket-Vineyard Sound, Massachusetts (Katona *et al.*, 1993; Rough, 1995). In the late 1990s, a year-round breeding population of approximately over 400 gray seals was documented on outer Cape Cod and Muskeget Island (Warring *et al.*, 2007).

Potential Effects of Noise on Marine Mammals

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) The noise may be audible but not strong enough to elicit any overt behavioral response; (3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases; (4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat; (5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise; (6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and (7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic (or explosive events) may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

There are three general kinds of sounds recognized by NMFS: continuous (such as shipping sounds), intermittent (such as vibratory pile driving sounds), and impulse. No impulse noise activities, such as blasting or standard pile driving, are associated with this project. The noise sources of potential concern are regasification/offloading (which is a continuous sound) and dynamic positioning of vessels using thrusters (an intermittent sound). Based on research by Malme *et al.* (1983; 1984), for both continuous and intermittent sound sources, Level B harassment is presumed to begin at received levels of 120–dB.

None of the continuous sound sources associated with operation of the Northeast Gateway Project is expected to exceed the 120–dB threshold for Level B harassment. However, the intermittent noises from thruster use associated with dynamic positioning of vessels during operation (docking) may occasionally exceed this 120–dB threshold. Consequently, thruster use has the potential for a ''take'' by Level B harassment of any marine mammal occurring with a zone of ensonification (greater than 120 dB) emanating from the sound source. The potential impacts to marine mammals associated with sound propagation from vessel movements, anchors, chains and LNG regasification/offloading could be the temporary and short-term displacement of seals and whales from within the 120–dB zones ensonified by these noise sources. Animals would be expected to re-occupy the area once the noise ceases. In the vicinity of the LNG Port, where the water depth is about 80 m (262 ft), the 120–dB radius is estimated to be approximately 2.56 km (1.6 mi) from the second source during dynamic positioning for the container ship, making a ZOI of 21 km^2 (8.1 mi^2).

Estimates of Take by Harassment

The basis for Northeast Gateway's ''take'' estimate is the number of marine mammals that would be exposed to sound levels in excess of 120 dB. This is determined by multiplying the ZOI by local marine mammal density estimates, corrected to take account for 50 percent marine mammals that may be underwater, and then by estimated LNG container ship visits per year. In the case of data gaps, a conservative approach was used to ensure the potential number of takes is not underestimated, as described next.

NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the proposed project area from May to

November. However, the occurrence and abundance of fin, humpback, and minke is not well documented within the project area. Nonetheless, NMFS uses the data on cetacean distribution within Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS, 2006), to determine potential takes of marine mammals in the vicinity of project area.

The NCCOS study used cetacean sightings from two sources: (1) the North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at NOAA Northeast Fisheries Science Center (NEFSC). The NARWC data contained survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005. The main data contributors included: Cetacean and Turtles Assessment Program (CETAP), Canadian Department of Fisheries and Oceans, PCCS, International Fund for Animal Welfare, NOAA's NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 653,725 km (406,293 mi) of survey track and 34,589 cetacean observations were provisionally selected for the NCCOS study in order to minimize bias from uneven allocation of survey effort in both time and space. The sightings-per-unit-effort (SPUE) was calculated for all cetacean species by month covering the southern Gulf of Maine study area, which also includes the proposed project area (NCCOS, 2006).

The MBO's Cetacean and Seabird Assessment Program (CSAP) was contracted from 1980 to 1988 by NMFS NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern United States (MBO, 1987). The CSAP program was designed to be completely compatible with NMFS NEFSC databases so that marine mammal data could be compared directly with fisheries data throughout the time series during which both types of information were gathered. A total of 5,210 km (8,383 mi) of survey distance and 636 cetacean observations from the MBO data were included in the NCCOS analysis. Combined valid survey effort for the NCCOS studies included 567,955 km (913,840 mi) of survey track for small cetaceans (dolphins and porpoises) and 658,935 km (1,060,226 mi) for large cetaceans (whales) in the southern Gulf of Maine. The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

Owning to the comprehensiveness and total coverage of the NCCOS cetacean distribution and abundance study, NMFS subsequently recalculated the estimated take number of marine mammals based on the most recent NCCOS report published in December 2006. A summary of seasonal cetacean distribution and abundance in the proposed project area is provided above, in the Marine Mammals Affected by the Activity section. For a detailed description and calculation of the cetacean abundance data and SPUE, please refer to the NCCOS study (NCCOS, 2006). These data show that the upper limit of the relative abundance of North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-sided dolphins for all seasons, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0265, 0.0059, 0.0407, and 0.1314 n/km, respectively.

In calculating the area density of these species from these linear density data, NMFS used 0.4 km (0.25 mi), which is a quarter the distance of the radius for visual monitoring (see Monitoring, Mitigation, and Reporting section below), as a conservative hypothetical strip width (W). Thus the area density (D) of these species in the proposed project area can be obtained by the following formula:

$D = SPUE/2W$.

Based on the calculation, the estimated take numbers per year for North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-sided dolphins, within the 120–dB ZOI of the LNG Port facility area of approximately 21 km^2 (8.1 mi^2) maximum ZOI, corrected for 50 percent underwater, are 21, 90, 165, 15, 104, and 336, respectively. This estimate is based on an average of 65 visits by LNG container ships to the project area per year (or approximately 1.25 visits per week), operating the vessels' thrusters for dynamic positioning before offloading natural gas. It is expected that total amount of time of dynamic positioning is about 30 minutes, therefore, any marine mammals that are potentially exposed to noise levels about 120 dB re 1 microPa from container ships' dynamic positioning would be brief. There is no danger of injury, death, or hearing impairment from the exposure to these noise levels. These numbers represent approximately 7, 3, 18, 0.4, 0.3, and 0.7 percent of the populations for these species, respectively.

In addition, bottlenose dolphins, common dolphins, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of the proposed deepwater LNG port project. The numbers of estimated take of these species are not available they are rare in the proposed project area. The population estimates of these marine mammal species and stock in the west North Atlantic basin are 81,588, 120,743, 89,700, 99,340, and 195,000 for bottlenose dolphins, common dolphins, harbor porpoises, harbor seals, and gray seals, respectively (Waring *et al.*, 2007). Since the Massachusetts Bay represents only a small fraction of the west North Atlantic basin where these animals occur, and these animals do not congregate in the vicinity of the proposed project area, NMFS believes that only relatively small numbers of these marine mammal species would be potentially affected by the proposed Northeast Gateway LNG deepwater project. From the most conservative estimates of both marine mammal densities in the proposed project area and the size of the 120–dB zone of (noise) influence (ZOI), the calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population size.

Potential Impact on Habitat

Operation of the Port and Pipeline Lateral will result in long-term effects on the marine environment, including alteration of seafloor conditions, continued disturbance of the seafloor, regular withdrawal of sea water, and regular generation of underwater noise. A small area (0.14 acre) along the Pipeline Lateral will be permanently altered (armored) at two cable crossings. In addition, the structures associated with the Port will occupy 4.8 acres of seafloor. An additional area of the seafloor of up to 38 acres will be subject to disturbance due to chain sweep while the buoys are occupied. The benthic community in the up-to 38 acres of soft bottom that may be swept by the anchor chains while EBRVs are docked will have limited opportunity to recover, so this area will experience a long-term reduction in benthic productivity.

Each EBRV will require the withdrawal of an average of 4.97 million gallons per day of sea water for general ship operations during its 8-day stay at the Port. As with hydrostatic testing, plankton associated with the sea water will not likely survive this activity. Based on densities of plankton in

Massachusetts Bay, it is estimated that sea water use during operations will consume, on a daily basis, about 3 200 x 1,010 phytoplankton cells (about several hundred grams of biomass), 6.5 x 108 zooplankters (equivalent to about 1.2 kg of copepods), and on the order of 30,000 fish eggs and 5,000 fish larvae. Also, the daily removal of sea water will reduce the food resources available for planktivorous organisms. However, the removal of these species is minor relative to the overall area they occupy and unlikely to measurably affect the food sources available to marine mammals.

Proposed Monitoring, Mitigation, and Reporting

All individuals onboard the EBRVs responsible for the navigation and lookout duties on the vessel must receive training prior to assuming navigation and lookout duties, a component of which will be training on marine mammal sighting/reporting and vessel strike avoidance measures. Crew training of EBRV personnel will stress individual responsibility for marine mammal awareness and reporting.

If a marine mammal is sighted by a crew member, an immediate notification will be made to the Person-in-Charge on board the vessel and the Northeast Port Manager, who will ensure that the required reporting procedures are followed.

Vessel Strike Avoidance

(1) All EBRVs approaching or departing the port will comply with the Mandatory Ship Reporting (MSR) system to keep apprised of right whale sightings in the vicinity. Vessel operators will also receive active detections from the passive acoustic array prior to and during transit through the northern leg of the Boston TSS where the buoys are installed.

(2) In response to active right whale sightings (detected acoustically or reported through other means such as the MSR or SAS), and taking into account safety and weather conditions, EBRVs will take appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots or less and alerting personnel responsible for navigation and lookout duties to concentrate their efforts.

(3) EBRVs will maintain speeds of 12 knots or less while in the TSS until reaching the vicinity of the buoys (except during the seasons and areas defined below, when speed will be limited to 10 knots or less). At 1.86 miles (3 km) from the NEG port, speed will be reduced to 3 knots, and to less than 1 knot at 1,640 ft (500 m) from the buoy.

(4) EBRVs will reduce transit speed to 10 knots or less (unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety or maneuverability of the vessel) from March 1 - April 30 in all waters bounded by straight lines connecting the following points in the order stated below. This area is also known as the Off Race Point Seasonal Management Area (SMA).

42°30′N 70°30′W
42°30′N 69°45′W
41°40′N 69°45′W
41°40′N 69°57′W
42°04.8′N 70°10′W
42°12′N 70°15′W
42°12′N 70°30′W
42°30′N 70°30′W

(5) EBRVs will reduce transit speed to 10 knots or less (unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety or maneuverability of the vessel) from April 1 - July 31 in all waters bounded by straight lines connecting the following points in the order stated below. This area is also known as the Great South Channel SMA.

42°30′N 69°45′W
42°30′N 67°27′W
42°09′N 67°08.4′W
41°00′N 69°05′W
41°40′N 69°45′W
42°30′N 69°45′W

(6) EBRVs are not expected to transit Cape Cod Bay. However, in the event transit through Cape Cod Bay is required, EBRVs will reduce transit speed to 10 knots or less (unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety or maneuverability of the vessel) from January 1 - May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12′N latitude.

(7) In such cases where speeds in excess of the ten knot speed maximums as described above are required, the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation will be documented in the logbook of the vessel and reported to the NMFS Northeast Region Ship Strike Coordinator.

PAM Program

An array of ABs will be installed in the Boston TSS that meets the criteria specified in the recommendations developed by NOAA through consultation with the USCG under the National Marine Sanctuary Act (NMSA). The system will provide near real-time information on the presence of vocalizing whales in the shipping lanes.

An archival array of acoustic recording units (ARUs), or ''pop-ups,'' will be installed around the port site that meets the criteria specified in the program developed by NOAA in consultation with the USCG under the NMSA. The ARUs will be in place for 5 years following initiation of operations to monitor the actual acoustic output of port operations and alert NOAA to any unanticipated adverse effects of port operations, such as large-scale abandonment of the area or greater acoustic impacts than predicted through modeling.

Reporting

The Project area is within the Mandatory Ship Reporting Area (MSRA), so all vessels entering and exiting the MSRA would report their activities to WHALESNORTH. During all phases of the Northeast Gateway LNG Port operation, sightings of any injured or dead marine mammals would be reported immediately to the USCG or NMFS, regardless of whether the injury or death is caused by project activities.

An annual report on marine mammal monitoring and mitigation would be submitted to NMFS Office of Protected Resources and NMFS Northeast Regional Office within 90 days after the expiration of the IHA. The annual report should include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of LNG facility operation. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to construction and operation activities shall also be included in the annual report.

Endangered Species Act (ESA)

On February 5, 2007, NMFS concluded consultation with MARAD and the USCG, under section 7 of the ESA, on the proposed construction and operation of the Northeast Gateway LNG facility and issued a biological opinion. The finding of that consultation was that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green or leatherback sea turtles. NMFS determined the issuance of the IHA for the construction and operation of the

LNG Port facility for the period between May 8, 2007, and May 7, 2008, with construction activities limited from May to November 2007, would not have impacts beyond what was analyzed in the biological opinion so additional consultation was not required. An incidental take statement (ITS) was issued following NMFS' issuance of the IHA.

On November 15, 2007, Northeast Gateway and Algonquin submitted a letter to NMFS requesting an extension for the LNG Port construction into December 2007. Upon reviewing Northeast Gateway's weekly marine mammal monitoring reports submitted under the previous IHA, NMFS recognized that the potential take of some marine mammals resulting from the LNG Port and Pipeline Lateral by Level B behavioral harassment likely had exceeded the original take estimates. Therefore, NMFS Northeast Region (NER) reinitiated consultation with MARAD and USCG on the construction and operation of the Northeast Gateway LNG facility, based on their proposed action to issue revised permits allowing construction to continue through December 2007 and including the mitigation measures that are also included as part of the IHA modification, and the fact that the takes associated with the project likely had exceeded the amount of take in the ITS of the February 5, 2007, biological opinion. On November 30, 2007, NMFS NER issued a revised biological opinion, reflecting the revised construction time period and including a revised ITS. This revised biological opinion concluded that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales. NMFS has concluded that issuance of this proposed IHA renewal would not have impacts beyond what was analyzed in the November 30, 2007, biological opinion, so additional consultation is not required.

National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Northeast Gateway Port and Pipeline Lateral. A notice of availability was published by MARAD on October 26, 2006 (71 FR 62657). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods and analysis of potential impacts on marine mammal.

NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final EISs. NMFS has reviewed the Final EIS and has adopted it. Therefore, the preparation of another EIS or EA is not warranted.

Preliminary Determinations

NMFS has preliminarily determined that the impact of operation of the Northeast Gateway Port Project may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Northeast Gateway LNG facility and associated pipeline during its operation. These activities are expected to result in some local short-term displacement and will have no more than a negligible impact on the affected species or stocks of marine mammals. Taking these two factors together, NMFS concludes that there will be no biologically significant effects on the survival and reproduction of these species or stocks. Please see Estimate of Take by Harassment section below for the calculation of these take numbers.

This preliminary determination is supported by proposed mitigation, monitoring, and reporting measures described in this document and NMFS' Biological Opinion on this action.

As a result of the described proposed mitigation and monitoring measures, no take by injury or death would be requested, anticipated or authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low noise levels (and consequently small zone of impact).

While the number of marine mammals that may be harassed will depend on the distribution and abundance of marine mammals in the vicinity of the LNG Port facility, the estimated numbers of marine mammals to be harassed is small relative to the affected species or stock sizes.

Proposed Authorization

NMFS proposes to issue an IHA to Northeast Gateway and Algonquin for conducting LNG Port facility operations in Massachusetts Bay, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and Northeast Gateway and Algonquin's application for incidental take regulations (see **ADDRESSES**). NMFS requests interested persons to submit comments, information, and suggestions concerning both the request and the structure and content of future regulations to allow this taking. NMFS will consider this information in developing proposed regulations to govern the taking.

Dated: March 20, 2008.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–6292 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–22–S

PATENT AND TRADEMARK OFFICE

Post Registration (Trademark Processing)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the extension of a continuing information collection, 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 May 27, 2008.

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

E-mail: Susan.Fawcett@uspto.gov. Include ''0651–0055 comment'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan K. Fawcett.

Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Federal Rulemaking Portal: http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Janis Long, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, by telephone at 571–272–9573, or by e-mail at *janis.long@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.* which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO.

Such individuals and businesses may also submit various communications to the USPTO, including requests to amend their registrations to delete goods or services that are no longer being used by the registrant. Registered marks remain on the register for ten years and can be renewed, but will be cancelled unless the owner files with the USPTO a declaration attesting to the continued use (or excusable non-use) of the mark in commerce within specific deadlines. Applicants may also surrender a registration and, in limited situations, petition the Director to reinstate a registration that has been cancelled.

The rules implementing the Act are set forth in 37 CFR Part 2. These rules mandate that each register entry include the mark, the goods and/or services in connection with which the mark is used, ownership information, dates of use, and certain other information. The USPTO also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual or by businesses to determine availability of a mark. By accessing the USPTO's information, parties may reduce the possibility of initiating use of a mark previously adopted by another. The Federal trademark registration process may lessen the filing of papers in court and between parties.

II. Method of Collection

Electronically if applicants submit the information using the forms available through TEAS. By mail or hand delivery if applicants choose to submit the information in paper form.

III. Data

OMB Number: 0651–0055.

Form Number(s): PTO Forms 4.16, 1553, 1583, 1597 and 1963.

Type of Review: Extension of a currently approved collection.

Affected Public: Primarily business or other for-profit organizations.

Estimated Number of Respondents: 106,030 per year.

Estimated Time per Response: The USPTO estimates that it will take approximately 3 minutes (0.05 hours) to 30 minutes (0.50 hours) to complete this information. This includes the time to gather the necessary information, create the documents, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 16,689 hours.

Estimated Total Annual Respondent Cost Burden: $5,073,456. The USPTO believes that associate attorneys will complete this information. The professional hourly rate for associate attorneys in private firms is $304. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $5,073,456.

Item	Estimated time for response (min)	Estimated annual esponses	Estimated annual burden hours
Declaration of Use of a Mark in Commerce Under § 8	11	866	156
TEAS Declaration of Use of a Mark in Commerce Under § 8	10	6,559	1,115
Combined Declaration of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9	14	3,013	693
TEAS Combined Declaration of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9	12	41,287	8,257
Declaration of Incontestability of a Mark Under § 15	3	92	5
TEAS Declaration of Incontestability of a Mark Under § 15	6	508	51
Combined Declaration of Use & Incontestability Under §§ 8 & 15	5	7,120	570
TEAS Combined Declaration of Use & Incontestability Under §§ 8 & 15	3	37,555	1,878
Amendments and Corrections	30	4,780	2,390
Surrenders	30	450	225
Section 7 Request	20	1,900	627
TEAS Section 7 Request	23	1,900	722
Totals	.....	106,030	16,689

Estimated Total Annual Non-Hour Respondent Cost Burden (includes postage costs and filing fees): $37,153,771. This collection has no operating, maintenance or recordkeeping costs.

Customers incur postage costs when submitting non-electronic information to the USPTO by mail through the United States Postal Service. The USPTO estimates that the majority of submissions for these paper forms are made via first class mail. First class postage is 41 cents. Therefore, a total estimated mailing cost of $7,471 is incurred (18,221 responses × $0.41).

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
Declaration of Use of a Mark in Commerce Under § 8	866	$0.41	$355.00
Combined Declaration of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9	3,013	0.41	1,235.00
Declaration of Incontestability of a Mark Under § 15	92	0.41	38.00
Combined Declaration of Use & Incontestability Under §§ 8 & 15	7,120	0.41	2,919.00
Amendments and Corrections	4,780	0.41	1,960.00
Surrenders	450	0.41	185.00

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
Section 7 Requests	1,900	0.41	779.00
Totals	18,221		7,471.00

Filing fees of $37,146,300 are associated with this collection. The filing fees are based on per class filing of goods and services, therefore, the total filing fees can vary depending on the number of classes. There is a $100 filing fee for Section 7 Requests unless the correction is due to a USPTO error, in which case there is no fee. The USPTO estimates that approximately 2,533 of the 3,800 expected Section 7 Requests would require the fee. The filing fees shown here are the minimum fees associated with this information collection.

Item	Responses (yr) (a)	Filing fees (b) (b)	Total cost (yr) (a × b)
Declaration of Use of a Mark in Commerce Under § 8	866	$100.00	$86,600.00
TEAS Declaration of Use of a Mark in Commerce Under § 8	6,559	100.00	655,900.00
Combined Declaration of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9	3,013	500.00	1,506,500.00
TEAS Combined Declaration of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9	41,287	500.00	20,643,500.00
Declaration of Incontestability of a Mark Under § 15	92	200.00	18,400.00
TEAS Declaration of Incontestability of a Mark Under § 15	508	200.00	101,600.00
Combined Declaration of Use & Incontestability Under §§ 8 & 15	7,120	300.00	2,136,000.00
TEAS Combined Declaration of Use & Incontestability Under §§ 8 & 15	37,555	300.00	11,266,500.00
Amendments and Corrections	4,780	100.00	478,000.00
Surrenders	450	0.00	0.00
Section 7 Requests	1,266	100.00	126,600.00
TEAS Section 7 Requests	1,267	100.00	126,700.00
Totals	104,763		37,146,300.00

*Note: All filing fees are based on per class filing.

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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 20, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–6297 Filed 3–26–08; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 9 a.m., Tuesday April 22, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Public meeting to discuss recent events affecting the agricultural commodity markets.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1080 Filed 3–25–08; 1:23 pm]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). Copies of this ICR,

with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, Ms. Angela Roberts, at (202) 606–6822, (*aroberts@cns.gov*); (TTY/TDD) at (202) 606–5256 between the hours of 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, by any of the following two methods listed in the address section, within 30 days from the publication in **Federal Register**.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By fax to: (202) 395–6964, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Comments

A 60-day public comment Notice, regarding modification of the Grant Application was published in the **Federal Register** on December 7, 2007. The comment period ended on February 5, 2008. No comments were received.

Type of Review: Renewal of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: SF 424–NSSC.

Affected Public: Current and prospective sponsors of National Senior Service Corps Grants.

Total Respondents: 1,350.

Frequency: Annually.

Average Time Per Response: Averages 13.2 hours. Estimated at 16.5 hours for first time respondents; 15 hours for continuation sponsors; 5 hours for revisions.

Estimated Total Burden Hours: 17,820 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $6,497.

Description: The Corporation seeks to renew the current application without significant change. Revisions are limited to minor language changes in the Grant Application Instructions to facilitate ease of use by applicants. The modifications proposed by the Corporation for this renewal are limited to language changes to the application instructions to: (a) Remove the term ''non-impact'' work plan and replace with ''work plan'' to clarify and simplify for applicants; and (b) update the ''Required Documents'' list to specify that applicants send the 990 Financial Form in the event that the organization does not meet the threshold for an A–133 audit.

The Senior Corps Grant Application is completed by applicant organizations interested in sponsoring a Senior Corps project. The application is completed electronically using the Corporation's Web-based grants management system, eGrants (*http://www.nationalservice.gov/egrants/index.asp*).

Dated: March 21, 2008.

Tess Scannell,

Director, Senior Corps.

[FR Doc. E8–6279 Filed 3–26–08; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Forbearance Request for National Service Form. Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 27, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Service Trust; Attention Bruce Kellogg, 1201 New York Avenue, NW., Washington, DC., 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3484, Attention Bruce Kellogg.

(4) Electronically through the Corporation's e-mail address system: *bkellogg@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954, or by e-mail at *bkellogg@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

This form or the electronic equivalent are used by AmeriCorps members to request a postponement, during their term of service, of their obligation to make payment on qualified student loans while they are earning a minimal living allowance in their national service position. The form provides proof that the borrower is serving in an approved national service position, thereby meeting the criteria for the mandatory forbearance based on national service. The form has a ''Manual'' version generated from the online request when the institution is not registered online, which provides the AmeriCorps member's electronic signature; the non-electronic version provides a space for the member and the authorized program official to sign.

Current Action

The Corporation seeks to renew the current form. The application will be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on July 31, 2008.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Forbearance Request for National Service Form.

OMB Number: 3045–0030.

Agency Number: None.

Affected Public: Individuals who have enrolled in a term of national service who wish to postpone loan payments on qualified loans while they serve.

Total Respondents: 11,000 responses annually, using the paper form.

Frequency: Some members do not have any qualified student loans while others have several. Currently, we estimate about half of the forbearance requests are processed electronically. The Corporation expects the use of paper forms to decrease over the next few years.

Average Time per Response: Total of 10 minutes (nine minutes for the AmeriCorps member's section (non-electronic version) and one minute for certification).

Estimated Total Burden Hours: 1,833 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 20, 2008.

Maggie Taylor-Coates,

Manager (Acting), National Service Trust.

[FR Doc. E8–6282 Filed 3–26–08; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Interest Accrual Form. Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 27, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, National Service Trust; Attention Bruce Kellogg, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3484, Attention Bruce Kellogg.

(4) *Electronically through the Corporation's e-mail address system: bkellogg@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954, or by e-mail at: *bkellogg@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

This form or its electronic equivalent is used by AmeriCorps members to request a payment of the interest accruing on qualified loans during the AmeriCorps member's term of service, if their loans were in forbearance during their service and if they successfully complete their terms of service. The form serves to give the member's permission to and directs the loan holder to release loan information to the Corporation so that the National Service Trust can make the interest payment. The form has a ''Manual'' version generated from the online request when the institution is not registered online, which provides the member's electronic signature; the non-electronic version provides a space for the member and the loan holder to sign.

Current Action

The Corporation seeks to renew the current form. The application will be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on July 31, 2008.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Interest Accrual Form.

OMB Number: 3045–0053.

Agency Number: None.

Affected Public: Individuals who have completed a term of national service who wish the National Service Trust to pay certain interest accruing on qualified student loans.

Total Respondents: 4,000 responses annually, using the paper form.

Frequency: Some members do not have qualified student loans while others have several. Currently, over half of the interest payments are processed electronically. The Corporation expects the use of paper forms to decrease over the next few years.

Average Time per Response: Total of 10 minutes (one minute for the AmeriCorps member's section (non-electronic version) and nine minutes for the loan holder).

Estimated Total Burden Hours: 667 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 20, 2008.

Maggie Taylor-Coates,

Manager (Acting), National Service Trust.

[FR Doc. E8–6283 Filed 3–26–08; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel will report on the findings and recommendations of the Navy Medicine to the Chief of Naval Operations. The meeting will consist of discussions of the organization, training, and equipping of Navy medical forces; standards of care for Navy members and their dependents; care for wounded members of the Naval service; the optimal level of ''jointness'' in Navy medicine; public policy recommendations to control the rising cost of Navy health care.

DATES: The meeting will be held on April 23, 2008 from 1 p.m. to 2 p.m.

ADDRESSES: The meeting will be held in the Multi Purpose Room of The CNA Corporation, 4825 Mark Center Drive, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Commander David Di Tallo, U.S. Navy, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, telephone: 703 681–4908.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute sensitive information that is specifically authorized to be kept private. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(6) of title 5, United States Code.

Individuals or interested groups interested may submit written statements for consideration by the Chief of Naval Operations Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the Chief of Naval Operations Executive Panel Chairperson, and ensure they are provided to members of the Chief of Naval Operations Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

Dated: March 21, 2008.

T.M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–6228 Filed 3–26–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students; Overview Information; Foreign Language Assistance Program—Local Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.293B].

Dates: Applications Available: March 27, 2008.

Deadline for Notice of Intent to Apply: April 11, 2008.

Deadline for Transmittal of Applications: April 30, 2008.

Deadline for Intergovernmental Review: June 30, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Foreign Language Assistance Program (FLAP) provides grants to local educational agencies (LEAs) for innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students. Under this competition, as required by the fiscal year 2008 Appropriations Act, 5-year grants will be awarded to LEAs to work in partnership with one or more institutions of higher education (IHEs) to establish or expand articulated programs of study in languages critical to United States national security in order to enable successful students to achieve a superior level of proficiency in those languages as they advance from elementary school through high school and college. In addition, an LEA that receives a grant under this program must use the funds to support programs that show the promise of being continued beyond the grant period and demonstrate approaches that can be disseminated to and duplicated in other LEAs. Projects supported under this program may also include a professional development component.

Priorities: This notice involves an absolute priority and four competitive preference priorities. The absolute priority is from Public Law 110–161, the Consolidated Appropriations Act of 2008, Division G, Title III, School Improvement Programs. In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priorities #1 through #4 are from section 5493 of the Foreign Language Assistance Act of 2001 (20 U.S.C. 7259b).

Absolute Priority: For FY 2008, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Sequential Study of Critical Languages

This priority supports projects to establish or expand articulated programs of study in foreign language learning that exclusively teach one or more of the following languages critical to United States national security—Arabic, Chinese, Korean, Japanese, Russian, and languages in the Indic, Iranian, and Turkic language families. Such programs must be designed to enable successful students to achieve a superior level of proficiency in those languages as they advance from elementary school through high school and college.

The following definitions apply to this priority:

(1) Articulated program of study. Each grade level of the elementary-school-through-college foreign language program is designed to expand sequentially on the achievement students have made in the previous level, with a goal of achieving a superior level of language proficiency.

(2) Superior level of language proficiency. A proficiency level of 3, as measured by the Federal Interagency Language Roundtable (ILR), achieved by a student.

Competitive Preference Priorities: For FY 2008, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets one or more of these priorities over an application of comparable merit that does not meet the priorities.

Note: There is no advantage to addressing all four competitive preference priorities. Creating a program around all four priorities may result in an unfocused program design. We give preference to applications describing programs that address any of these priorities.

These priorities are:

Competitive Preference Priority #1. Projects that include intensive summer foreign language programs for professional development.

Competitive Preference Priority #2. Projects that link non-native English speakers in the community with the schools in order to promote two-way language learning.

Competitive Preference Priority #3. Projects that make effective use of technology, such as computer-assisted instruction, language laboratories, or distance learning, to promote foreign language study.

Competitive Preference Priority #4. Projects that promote innovative activities, such as foreign language immersion, partial foreign language immersion, or content-based instruction.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking rules governing the first grant competition under a new or substantially revised program authority. This program was substantially revised by Public Law 110–161, the Consolidated Appropriations Act of 2008, Division G, Title III, School Improvement Programs and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment under section 437(d)(1) of GEPA on the absolute priority and definitions in this notice. The absolute priority and definitions will apply to the FY 2008 grant competition only.

Program Authority: 20 U.S.C. 7259a–7259b and Public Law 110–161, the Consolidated Appropriations Act of 2008, Division G, Title III, School Improvement Programs.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98 and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,360,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months. Applications that request funding for a project period of other than 60 months will be deemed ineligible and will not be read.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools that are considered LEAs under State law, in partnership with one or more institutions of higher education.

2. *Cost Sharing or Matching:* Section 5492(c)(2) of the Foreign Language Assistance Act of 2001 (20 U.S.C. 7259a(c)) requires that the Federal share of a project funded under this program for each fiscal year be 50 percent. For example, an LEA requesting $100,000 in Federal funding for its foreign language program each fiscal year must match that amount with $100,000 of non-Federal funding for each year. Section 80.24 of EDGAR addresses Federal cost-sharing requirements.

If an LEA does not have adequate resources to pay the non-Federal share of the cost, a waiver may be requested. An LEA may request a waiver of part or all of the matching requirement. The waiver request should be submitted by letter to the Secretary of Education and included in the application. An authorized representative of the school district, such as the Superintendent of Schools, should sign the letter. Further information on submitting a waiver request is included in the application package.

The request for waiver should—

- Provide an explanation, supported with appropriate documentation, of the basis for the LEA's position that it does not have adequate resources to pay the non-Federal share of the cost of the project.
- Specify the amount, if any, of the non-Federal share that the LEA can pay.

We recommend that LEAs that are unable to provide the required level of non-Federal support for their project provide as much non-Federal support as possible.

IV. Application and Submission Information

1. Address to Request Application Package: Yvonne Putney-Mathieu, U.S. Department of Education, 400 Maryland Avenue, SW., Room 10070, PCP, Washington, DC 20202–6500. Telephone: (202) 245–7155, or by e-mail: *yvonne.mathieu@ed.gov*.

Note: Please include ''FLAP Application Request'' in the subject heading of your e-mail.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format, e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: If you intend to apply for a grant under this competition, contact Yvonne Mathieu by e-mail: *yvonne.mathieu@ed.gov*.

Note: Please include ''FLAP Intent to Apply'' in the subject heading of your e-mail. The e-mail should specify: (1) The LEA name, (2) city, (3) state, (4) number of grants, and (5) language(s) of instruction. We do not consider an application that does not comply with the deadline requirements established in this notice. However, we will consider an application submitted by the deadline date for transmittal of applications, even if the applicant did not provide us notice of its intent to apply.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 35 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the two-page abstract. However, the page limit does apply to all of the application narrative section in Part III.

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. Submission Dates and Times:

Applications Available: March 27, 2008.

Deadline for Notice of Intent to Apply: April 11, 2008.

Deadline for Transmittal of Applications: April 30, 2008.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (*http://www.grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: June 30, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Foreign Language Assistance Program, CFDA Number 84.293B, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Foreign Language Assistance Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.293, not for 84.293B).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take

five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact either person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.293B), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.293B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.293B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The Secretary evaluates an application by determining how well the proposed project meets the

following selection criteria. The selection criteria for this program are from 34 CFR 75.210 of EDGAR. Applicants are not required to address the criteria as outlined in the *Notes*. However, the *Notes* we have included are guidance to assist applicants in understanding each criterion as they prepare their applications and are not required by statute or regulation. In addressing each criterion, applicants are encouraged to make explicit connections to relevant aspects of the Purpose of the Program including the Absolute Priority as described in section I of this notice. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (5 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factor:

(1) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Notes for (a) Need for project: The Secretary encourages applicants to describe current characteristics of the LEA and targeted schools, including the specific foreign languages offered and, for each foreign language offered, the number of students enrolled in classes, grade levels served or, in the case of secondary education, the course levels served; the number of schools providing instruction; the type of foreign language instructional model provided; and, the minutes of instruction per day and number of days per week.

Applicants are also encouraged to address how the proposed project will increase enrollment in critical foreign languages during the course of the grant by adding languages, adding grades or course levels, recruiting students, and expanding to additional schools. Finally, applicants are encouraged to describe how the proposed project will improve instruction by hiring highly qualified teachers, improving teacher skills through professional development, expanding the curriculum, and increasing the minutes of instruction per day or week.

(b) *Quality of the project design.* (60 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(5) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(6) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

Notes for (b) Quality of the project design—factors 1 through 6: The Secretary encourages applicants to address the factors under this criterion by discussing the extent to which the proposed project addresses key components of project design, such as measurable objectives for all Government Performance and Results Act (GPRA) measures, including measures of improved student foreign language proficiency and expected student achievement. Further, the applicant is encouraged to describe the extent to which the proposed project will use its ambitious project objectives and will ensure that they are challenging, raise expectations, provide ways for students to demonstrate progress, and are specific to each year served by the grant. Finally, the applicant is encouraged to describe the extent to which performance guidelines for K–12 students are incorporated by targeting the student proficiency level of Advanced, as measured by the American Council on the Teaching of Foreign Languages (ACTFL), for students exiting the K–12 program.

The Secretary encourages applicants to discuss their plans to develop and implement an articulated curriculum with minimal content repetition, so that students in the project will, when they graduate from high school, have the skills needed to achieve a superior level of proficiency by the end of an undergraduate program.

The Secretary encourages applicants to address the extent to which the proposed project describes how it will disseminate its innovative model and best practices for duplication by other LEAs.

The Secretary encourages applicants to describe the specific assessments to be used or, if assessments are not available, how assessments will be developed and how assessment results will be used to inform decisions on instruction and articulation.

The Secretary encourages applicants to describe a plan to carry out activities under the grant as part of their required partnership with one or more IHEs, including how each member will be involved in the planning, development, and implementation of the project; the resources to be provided by each partner; the rationale for selecting the partner(s); the specific activities that the partner(s) will contribute to the grant during each year of the project; and the identity of each member of the partnership, including contact information, with a one-page letter of commitment from the partner(s) in an appendix to the application narrative.

The Secretary encourages applicants to address the commitment of partner(s) to building local capacity so that the program will be institutionalized and sustained after Federal funds are expended.

The Secretary encourages applicants to discuss the overall project model, its key components, and the degree to which the model's key components are based on sound research and practice.

The Secretary encourages applicants to include evidence of how they will establish linkages with the State educational agency, foreign language organizations, community-based organizations, and the heritage communities of the target language(s) in order to support the program. Further, the Secretary encourages applicants to address the extent to which the proposed project encourages parental involvement.

Finally, the Secretary encourages applicants to include information on how they will use State and national standards for foreign language learning (including standards related to communication, cultures, connections, comparisons, and communities) as a framework for teaching and learning.

(c) *Quality of project personnel.* (10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director.

(2) The qualifications, including relevant training and experience, of key project personnel.

Note for (c) Quality of project personnel—factors 1 and 2: The Secretary encourages applicants to address the factors under this criterion by including position descriptions (not resumes) for the project director and other key personnel. Further, the applicant is encouraged to describe the qualifications, including relevant training and experience, of current district employees who will be teaching critical languages, and, if applicable, how the proposed project plans to recruit highly qualified teachers of critical languages. Finally the applicant is encouraged to include the qualifications,

including relevant training and experience, of other key project personnel and consultants.

(d) *Quality of the management plan.* (10 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Notes for (d) Quality of the management plan—factors 1 and 2: Section 75.112 of EDGAR requires an applicant to include a narrative that describes how and when, in each budget period of the project, the applicant plans to meet each project objective. The Secretary encourages applicants to address the factors under this criterion by including in this narrative a clear, well thought-out implementation plan that includes annual timelines, key project milestones, a schedule of activities with sufficient time for developing an adequate implementation plan, and the persons responsible for each management activity. The Secretary encourages applicants to include the percentage of time the project director, partner staff, consultants, and other key personnel will spend on the project. Finally, each applicant is encouraged to address this criterion by describing the roles of the LEA and its IHE partner(s) in each phase of the proposed project.

(e) *Quality of the project evaluation.* (15 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(3) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Notes for (e) Quality of the project evaluation—factors 1 through 3. A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The applicant is encouraged to describe how it will select an independent, objective evaluator who has experience in evaluating foreign language programs and who will play an active role in the design and development of the project. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

The Secretary encourages applicants to address the factors under this criterion by describing how the evaluation plan is aligned with the goals, objectives and activities described in the Quality of Project Design criterion. In addition, each applicant is encouraged to provide how each objective will be evaluated and when the applicant will collect, analyze, and report quantitative and qualitative data. (The specific performance measures established for the overall Foreign Language Assistance Program are discussed under *Performance Measures* in section VI of this notice.) Grantees are required to submit annual performance reports for each of the first four years of the grant and a final evaluation at the end of the fifth year. Further, the Secretary encourages applicants to address this criterion by describing how they will monitor progress toward specific project objectives and outcome measures, in order to assess the impact on teaching and learning or other important project outcomes. Each applicant is encouraged to describe how it will monitor progress in meeting annual targets established for project objectives, as well as for the GPRA measures.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for a two-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

5. *Performance Measures:* In response to the Government Performance and Results Act (GPRA), the Department developed three objectives for evaluating the overall effectiveness of the Foreign Language Assistance Program (FLAP) LEA program.

Objective 1: To expand foreign language study for students served by FLAP.

Measure 1.1 of 2: The number of students participating in foreign language instruction in the target languages(s) in the schools served by FLAP.

Measure 1.2 of 2: The number of minutes of foreign language instruction in the target languages(s) provided in the schools served by FLAP.

Objective 2: To expand foreign language study in critical languages for students served by the FLAP program.

Measure 2.1 of 1: The number of students participating in critical languages in the schools served by FLAP.

Objective 3: To improve the foreign language proficiency of students served by FLAP.

Measure 3.1 of 1: The number of students in FLAP projects who meet ambitious project objectives for foreign language proficiency.

We will expect each LEA funded under this competition to document how its project is helping the

Department meet these performance measures. Grantees will be expected to report on progress in meeting these performance measures for FLAP in their Annual Performance Report and in their Final Performance Report.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 10080, Washington, DC 20202. Telephone: (202) 245–7133, or by e-mail: *rebecca.richey@ed.gov* or Sharon Coleman, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 10071, Washington, DC 20202. Telephone: (202) 245–7124, or by e-mail: *sharon.coleman@ed.gov*.

If you use TDD, call FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: March 19, 2008.

Margarita P. Pinkos,

Assistant Deputy Secretary and Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

[FR Doc. E8–6236 Filed 3–26–08; 8:45 am]

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ELECTION ASSISTANCE COMMISSION

Election Data Collection Grant Program

AGENCY: United States Election Assistance Commission.

ACTION: Notice.

Funding Opportunity Title: Election Data Collection Grant Program.

Announcement Type: Competitive Grant—Initial.

Funding Opportunity Number: EAC–08–001.

CFDA Number: 90.400.

DATES: Applications are due by 4 p.m. Eastern Daylight Time on April 28, 2008.

SUMMARY: On December 22, 2007, Congress authorized the Omnibus Appropriations Act for Fiscal Year 2008. Public Law 110–161 authorized the U.S. Election Assistance Commission (''the EAC'') to award $10 million in grants to States to implement an election data collection program (''the program''). Under the Administrative Provision of the Act (Section 501), the EAC shall establish a program to provide a grant of $2 million to each of five eligible States to improve the collection of precinct level data relating to the November 2008 Federal elections. The program is designed to: (a) Develop and document a series of administrative and procedural best practices in election data collection that can be replicated by other States; (b) improve data collection processes; (c) enhance the capacity of States and their jurisdictions to collect accurate and complete election data; and (d) document and describe particular administrative and management data collection practices, as well as particular data collection policies and procedures. For more information please visit *http://www.eac.gov.*

I. Funding Opportunity Description

The announcement for this grant program is authorized by the Omnibus Appropriation Act for Fiscal Year (FY) 2008, Public Law (Pub. L.) 110–161, Title V. Under the Act, the U.S. Election Assistance Commission (EAC or Commission) is sanctioned to award grants to States for improving the collection of precinct-level data for Federal elections. This announcement offers the applicant State the opportunity to provide for the collection of such data in a common electronic format to be determined by the Commission.

Election Data Collection Grant Program

Public Law 110–161 authorizes the EAC to award $10,000,000 in grants to States to implement a data collection program for the Federal elections scheduled to be held in November 2008. Of that sum, $2 million will be provided to each of five eligible applicants.

The EAC is soliciting proposals from States to improve the collection of data at the precinct level for the November 2008 Federal elections. In general, a precinct is defined as an administrative division of a county or municipality to which voters have been assigned by their residing address for voting.

Grantees will be required to report to the EAC on all data elements as described in Appendix A. (Appendix A is available at the Web site *http://www.submitgrant.net* or *http://www.eac.gov.*) States that receive an award are also required to report, at a minimum, precinct level data for questions 1, 2, 18a, 23, 29, and 30.

The purpose of the Election Data Collection Grant Program is to:

- Develop and document a series of administrative and procedural best practices in election data collection that can be replicated by other States;
- Improve data collection processes;
- Enhance the capacity of States and their jurisdictions to collect accurate and complete election data; and
- Document and describe particular administrative and management data collection practices, as well as particular data collection policies and procedures.

State grantees will use the grant funds in part to implement new data collection procedures, systems, and/or methodologies for the November 2008 election. They will have until March 2009 to report the data collected from that election to the EAC. They will also be required to submit to the EAC a semi-annual program report, which is due six months following the inception of the grant, as well as a final program report, which is due June 1, 2009. Additionally, States must submit an SF 269 financial report on January 15, 2009, for the period beginning on the date of award of the contract and ending on December 31, 2008; and on July 31, 2009 for the period beginning January 1, 2008 and ending on the close out of the grant program.

Not later than June 30, 2009, the EAC will submit a report to Congress on the impact of the grant program on States' ability to effectively collect Federal election data. The EAC will consult with States receiving grants under the program, along with the Election Assistance Commission Board of Advisors, to compile the report. The report will include recommendations to improve the collection of data relating to regularly scheduled general elections

for Federal office in all States. This will include recommendations for changes in Federal law or regulations and the EAC's estimate of the amount of funding necessary to carry out such changes.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $10,000,000.

Anticipated Number of Awards: 5.

Amount of Award to Each State Awarded: $2,000,000.

Project Period for Awards: From the date of award until June 30, 2009.

III. Eligibility Information

1. Eligible Applicants

States, through their Chief State Election Officials, are the sole eligible applicants for this grant.

States are permitted to identify other organizations that may assist them in implementing their data collection efforts on behalf of this grant. However, these organizations will be considered subcontractors, rather than co-participants or sub-grantees, and are not eligible to apply for the grant under this program. Any applications sent by States citing other organizations as co-applicants or sent by non-States will be considered non-responsive and returned without review.

To be eligible for an Election Data Collection Grant, a State must submit an application containing the following information and assurances:

- A plan for the use of the funds provided by the grant which will expand and improve the collection of the election data relating to the regularly scheduled general election for Federal office held in November 2008, and will provide for the collection of such data in a common electronic format (as determined by the Commission). The State must, at a minimum, be able to provide data in Excel or in Excel-compatible software.
- An assurance that the State will comply with all requests made by the Commission for the compilation and submission of the data.
- An assurance that the State will provide the Commission with such information as the Commission may require in order to assist the Commission in preparing and submitting a report to Congress. The Commission, in consultation with the States receiving grants under the program and the Election Assistance Commission Board of Advisors, shall submit a report to Congress on the impact of the program on the collection of the election data not later than June 30, 2009.
- Such other information and assurances as the Commission may require.

For the purposes of this grant, a ''State'' has the meaning given in Section 901 of HAVA (42 U.S.C. 15541.). The term ''State'' is defined as each of the 50 States, along with the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

States are also required to address the six criteria described in Section V. (''Application Review Information'') in a narrative statement that must not exceed 30 pages.

2. Cost Sharing or Matching

None.

IV. Application, Submission, and Related Information

1. General Guidelines for Application

Your application must include a narrative statement that:

- Outlines a plan of action which describes the scope and detail of how the proposed work will be accomplished (e.g., identify the hours and dates of the program, staff to be used, role of staffers, and systems implemented), given the description and purpose detailed above regarding the Election Data Collection Grant Program;
- Illustrates the methods, work plan, and timetable for the data collection project;
- Describes the State's approach to collecting data, such as developing systems or methodologies, in order to enhance data collection;
- Describes the State's ability and resources that will enable it to quickly begin the data collection project based on stated capacity and the readiness of the staff and any partners to implement the project;
- Identifies the results and benefits to be derived from the data collection project;
- Illustrates how the State and any proposed partners have experience in data collection for elections or work related to the data collection program; and
- Presents a budget with reasonable project costs, appropriately allocated across component areas, which are sufficient to accomplish the objectives, such as documentation of the dollar amount requested, as well as a description of the fiscal controls and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.
- Indicates the level at which election data is collected and reported in the State—i.e., at the county, township, independent city, or borough level.

The narrative statement must address each of the six criteria described in Section V. (''Application Review Information'').

2. Federal Assistance Forms

Applicants must provide an Application for Federal Assistance consisting of Office of Management and Budget (OMB) forms SF 424, SF 424A, and Certifications/Assurances. Standard application forms can be requested by mail from Mr. Eduardo Hernandez, EAC Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, by e-mail at *EAC@lcgnet.com,* or by phone at (888) 203–6161.

3. Notices of Intent To Apply

Applicants are encouraged to submit a non-binding Notice of Intent to Apply. To obtain this Notice of Intent to Apply, which is Appendix B of this document, go to the Web site *http://www.submitgrant.net* or *http://www.eac.gov.* Notices of Intent to Apply are not required and submission or failure to submit a notice has no bearing on the scoring of proposals received. The receipt of notices enables the EAC to better plan for the application review process. Notices of Intent to Apply are due April 9, 2008.

4. Applicant Question & Answer

States requesting clarity on specific issues of this RFA must submit those questions in writing to the following e-mail address: *EAC@lcgnet.com.* All questions must be received by 4 p.m., Eastern Daylight Time, on April 14, 2008. Questions and answers will be posted on a rolling basis at the following Web site address: *http://www.submitgrant.net.*

5. Content and Form of Application Submission

The Application

You may view this grant announcement at *http://www.submitgrant.net.* Applicants can submit applications electronically or in hard copy. Electronic submissions can be submitted through *http://www.submitgrant.net.* Hard copy applications must be sent to EAC Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209. For additional information concerning submissions, contact the EAC Support Center by phone at (888) 203–6161, or via e-mail at *EAC@lcgnet.com.* Each application must include only one proposed State project.

Data Universal Number System (DUNS) Number Requirement. All applicants must have a Dun & Bradstreet Data Universal Numbering System (DUNS) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a DUNS number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper or electronic application. These numbers are issued by Dun & Bradstreet. Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Application Requirements

A complete application consists of the following items:

- Narrative Statement (must not exceed 30 pages) that addresses the six criteria described in Section V. (''Application Review Information'');
- Application for Federal Assistance (SF 424, REV 4–92);
  - Budget Information—Non-Construction Programs (SF 424A, REV 4–92);
  - Budget justification for Section B—Budget Categories;
  - Assurances—Non-Construction Programs (Standard Form 424B, REV 4–92);
- Statement attesting to non-partisanship of the program; and
- Certification regarding lobbying.

Applicants that are submitting their application in paper format should submit one original and two copies of the complete application. The original and each of the two copies must include all required forms, certifications, assurances, and appendices. The original copy of the application must have the original signature(s) of the authorized representative of the applicant organization.

Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments, compact or DVD disks, or entire articles of incorporation.

The applicant must disclose the names of individuals and organizations that assisted it with the proposal preparation.

Format of the Application

Each application must include contents that meet the following specifications:

- Use white paper only.
- Use 8.5 x 11″ pages (on one side only) with one-inch margins (top, bottom and sides).
- Paper sizes other than 8.5 x 11″ will not be accepted. This is particularly important because it is often not possible to reproduce copies in a size other than 8.5 x 11″.
- Use no less than a 12-point Arial or 12-point Times New Roman font.
- Double-space all narrative pages.
- There is a 30-page limit for the narrative portion, excluding budgetary information, required appendices, assurances, certifications, and standard forms. Please do not repeat information detailing existing State programs.
- Do not include critical details in any appendices not required by the EAC because those appendices will not be included for purposes of the ratings process.
- Do not bind copies. Secure pages with a binder clip, paper clip, or 3-ring binder. Please do not insert dividers or other implements that cannot be put through a copier.
- The use of color in typefaces, graphs or charts is not recommended.

No grant award will be made under this announcement on the basis of an incomplete application.

5. Submission Dates and Times

Deadline: You must submit the application for this grant announcement no later than 4 p.m., Eastern Daylight Time, on the above referenced date. The deadline applies to both electronic and paper submissions.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers must be received by 4 p.m., Eastern Daylight Time, on the above referenced date at the following address: Eduardo Hernandez, EAC Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209.

Late Applications: Late applications will not be considered. Applications which do not meet the aforementioned criteria are considered late applications, absent extreme circumstances to be determined by the Commission. Each late applicant will be notified that its application will not be considered in the current competition.

Extension of deadlines: The EAC may extend application deadlines where circumstances such as Acts of God (floods, hurricanes, etc.) occur. Determinations to extend or waive deadline requirements rest with the U.S. Election Assistance Commission. Notification of any deadline extension will be posted on the **Federal Register**, as well as on the EAC's Web site.

6. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of January 1, 2008, the following jurisdictions have elected to participate in the Executive Order process:

Arkansas, California, Delaware, Florida, Georgia, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, District of Colombia, Puerto Rico, American Samoa, Guam, North Mariana Islands, and the Virgin Islands. Applicants from these jurisdictions should determine the SPOC for that jurisdiction, and contact their SPOC as soon as possible to alert them of the prospective application and receive instructions. Applicants must submit any required material to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has up to 60 days from the application deadline to comment on proposed new or competing continuation awards.

Applicants from a jurisdiction that does not participate in the Executive Order process, and which have met the eligibility requirements of this program, are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC.

A list of the Single Points of Contact for each State and Territory can be obtained from the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*.

7. Funding Restrictions

Grant applicants are to request $2,000,000 in funding. States may request neither more nor less than that amount.

Pre-award costs are not allowable charges to this program. Applications

that include pre-award costs with their submission will be considered non-responsive and will not be eligible for funding under this announcement.

Indirect labor costs are not an allowable activity or expenditure under this program. Applications that propose construction projects or expenditures will be considered non-responsive and will not be eligible for funding under this announcement.

The purpose of this program is to focus on election data. Voter registration and Get-Out-The-Vote (GOTV) efforts are not allowable activities under this program. Applications that propose voter registration or GOTV efforts will be considered non-responsive and will not be eligible for funding under this announcement.

Grant applicants should be aware that, as States, they are subject to the cost principles outlined in the OMB Circular A–87 (found online at *http://www.whitehouse.gov/OMB/circulars/a087/a87_2004.html*) along with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (''Common Rule,'' Administrative Requirements, 53 FR 8087, March 11, 1988).

8. Other Application Requirements

2008 Election Day Survey

Please note that grantees are expected to respond to the 2008 Election Day Survey's request for state- and county-level data.

Review Process

Panels of elections and research experts will conduct an independent review of all applications. The panelists will assess each application based on the criteria specified in this application to determine the merits of the proposal and the extent to which it furthers the purposes of the grant program. The EAC will review the recommendations of the panel. Final award decisions will be made by the EAC after consideration of the comments and recommendations of the review panelists, and the availability of funds. It is anticipated that applicants will be notified of a grant award on or before May 30, 2008.

V. Application Review Information

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for grants will be reviewed and evaluated against the following criteria:

1. Criteria (Total Possible Points: 100)

Criterion 1: Program Strategy (Maximum 20 Points)

Applicants will be evaluated on the extent to which they describe how the grant funds will be used for the collection of Federal election data.

Applicants will also be evaluated on the extent to which their application:

- Proposes infrastructure development that will improve their State's ability to collect data for the 2008 Federal elections and future Federal elections at the precinct level.
- Illustrates that they understand the characteristics of the State's current Federal election data collection system(s) and the strengths and weaknesses of that system(s).
- Describes the major barriers to the collection of Federal election data at the precinct level in their State, as well as the proposed grant project in terms of its approach to barrier elimination and the problems for which this EAC grant will be an answer. Applications must address the question: Is your State currently able to collect and report on data at the precinct level? If the answer is yes, the applicant must describe its database system's ability to collect information at this level and how it's been done in the past (if applicable). If the answer is no, the applicant must describe what systems it will put in place in order to collect these data.
- Defines realistic milestones and work products to be accomplished during the budget period. Examples of work products include, among others, completed system designs or reporting systems. The timetable for accomplishing the major tasks to be undertaken should include key dates relevant to the proposed project (e.g., the November election cycle).
- Describes their State's method for collecting election data. Does the State allow for centralized or decentralized authority? That is, does the State determine how data is collected or are the counties (townships, independent cities, and boroughs) allowed to collect data as they wish?
- Briefly describes the impact, if any, of their State's political structure in terms of its centralized or decentralized authority and decision-making on their ability to collect precinct level data.
- Describes whether their State uses a top-down or bottom-up approach to collect data that feeds into the voter registration database. (Note: top-down means the data are hosted on a single, central platform (e.g., mainframe and/or client servers) and connected to terminals housed at the local level; bottom-up means the data are gathered or uploaded from local voter registration databases to form the statewide voter registration list).
- Indicates whether their State uses just one vendor or more than one vendor for its voter registration database(s).

Furthermore, applicants will be evaluated on the extent to which their proposal is written clearly, is logically presented, and demonstrates an understanding of the grant program's objectives.

Criterion 2: Feasibility of the Plan (Maximum 15 Points)

Applicants will be evaluated on the extent to which they illustrate that the methods, work plan, and timetable they provide inspire confidence that the goals of their proposal will be met. For example, States can include the extent to which:

- Outcomes and methods are clearly and effectively delineated;
- External partners are needed to successfully complete the project;
- The data collection infrastructure created complements and is coordinated with the State's current system; and
- Technical assistance is needed to further the project and can provide a budget that reflects the true costs of these services.

Criterion 3: Innovation (Maximum 20 Points)

Applicants will be evaluated on the extent to which they provide a unique approach to collecting data. This can include the development of systems or methodologies to enhance data collection. Grantees will be expected to electronically report the Federal data contained in Appendix A. Applicants will be evaluated on the extent to which they explain the status of current election data systems and describe the modifications that will be required to track Federal election results in November 2008. Applicants must be able to collect precinct level data for the following questions in Appendix A: 1, 2, 18a, 23, 29, and 30. Applicants should also discuss the feasibility and value of collecting precinct level data related to the other questions that appear in Appendix A. Describe the processes your state would use to collect these additional data. Applicants must address the following question: How would your State use the grant money to enhance its ability to collect precinct level election data? Be sure to discuss any innovative strategies your State has implemented (or will implement) to improve data collection efforts. Applicants must also describe how their State has been collecting at

the State, county (township, independent city, borough), and precinct levels data related to:

- UOCAVA voters (e.g., ballot transmittals and receipt of those ballots, reasons for ballot rejection);
- Newly registered voters (e.g., tracking the sources of voter registration applications from various State agencies);
- Absentees (e.g., sources of absentee ballots); and
- Provisional ballots

Applicants must discuss improvements they would make to the collection of these four data elements if they were to receive an award. Additionally, applicants that are already doing well in the area of data collection must go beyond describing the successes they have had; they should discuss how they will improve their data collection in an innovative way, and how those methods could possibly be replicated by other States.

Criterion 4: Readiness to Proceed (Maximum 15 Points)

Applicants will be evaluated on the extent to which they describe their ability to quickly begin the data collection project based on existing capacity. Applicants will be evaluated on the extent to which they describe the readiness of the staff and any partners to implement the project. This includes the extent to which the application describes a qualified and sufficient staffing pattern to accomplish the outcomes for the demonstration, and techniques to ensure that well-qualified staff will be enlisted in a timely manner.

- Evidence that key project staff, by virtue of their personal and/or first-hand professional experiences with data collection, have the requisite knowledge to implement project goals;
- Proposed management structure and how key project staff will relate to the proposed project director, the EAC, and any interagency or community working groups;
- Description of the sub-contractors or partners to be involved in the grant program and receiving funds, their management structure and organization, an outline of the specific tasks to be executed by the sub-contractor or partner and the reporting mechanisms that the State will require of each sub-contractor or partner;
- Brief biographical sketches of the project director and key project personnel indicating their qualifications, and prior experience for the project. Resumes for the key project personnel should be provided as an attachment;
- Description of your State's capacity (i.e. staffing, organizational, management) to implement this grant program; and
- Description of how your State's plan for precinct-level data collection can be implemented within the established timeframe for this grant.

Criterion 5: Outcomes (Maximum 20 Points)

Applicants will be evaluated on the extent to which they describe processes to measure progress toward completing the assigned tasks. This includes the State's plans for evaluating the program's success over time, including establishing a baseline estimate for monitoring the completeness and accuracy of the Federal election data elements contained in Appendix A.

Criterion 6: Budget and Budget Justification (Maximum 10 Points)

Applicants will be evaluated on the extent to which the applicant presents (1) a budget with reasonable project costs, appropriately allocated across component areas, and sufficient to accomplish the objectives; and (2) demonstrates an understanding of accounting procedures necessary for Federal grant receipt.

Note: All necessary salary rates must appear on the application for the EAC.

(1) Applications will be evaluated based on the extent to which they discuss and justify the costs of the proposed project as being reasonable and programmatically justified in view of the activities to be conducted and the anticipated results and benefits including:

- A line item allocation for all proposed costs (salaries, materials, transportation, etc.). (5 points)
- A narrative budget justification that describes how the categorical costs are derived and a discussion of the reasonableness and appropriateness of the proposed costs. (2.5 points)

(2) Applicants will be evaluated based on the extent to which they detail the procedures used to ensure successful management of Federal grant funds including:

- A description of the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement. (2.5 points)

VI. Other Evaluation Considerations

In addition to the aforementioned selection criteria, the EAC will consider other factors when making its final award selection. The EAC is interested in having a wide range of States represented in the group of States that are awarded grants. This includes a selection of States with the following characteristics:

- *State Size.* This is based on a State's citizen voting-age population and on its number of electoral votes. States are broken into categories of large, medium, and small.
- *Region of the Country.* To achieve regional diversity, State applicants may be chosen from the North, South, East, and West.
- *Voter Registration Database.* Whether a State's voter registration database system is top-down (hosted on a single, central platform (*e.g.*, mainframe and/or client servers) and connected to terminals housed at the local level), or bottom-up (gathers or uploads its information from local voter registration databases to form the statewide voter registration list).

Multiple vendors versus single vendor. Consideration will be given to States that employ a contract with a single vendor and those that may use multiple vendors to operate their voter registration databases.

- *Political Structure.* This refers to States with centralized versus decentralized authority and decision-making.
- *Unit of government.* Data collection and reporting at the county, township, independent city, and borough levels.
- *Election Day Registration States.* Such States include Idaho, Maine, Montana, Iowa, Minnesota, New Hampshire, Wisconsin, and Wyoming

VII. Award Administration Information

1. Award Notices

Successful applicants will receive a grant agreement award document from the authorized EAC official. Three copies of the agreement will be sent via surface mail. The recipient should have an authorized official at the organization sign and return two copies of the agreement to the address listed in the award document. The agreement will also include the standard terms and conditions, general terms and conditions (if any) and special award conditions (if any), that are applicable.

Organizations whose applications will not be funded will be notified in writing by the EAC.

2. Administrative and National Policy Requirements

The EAC has not promulgated any such requirements at this time. It is expected that general administrative and national policy requirements will be followed, and the EAC will seek

guidance on these requirements from other Federal agencies, such as the U.S. Department of Health and Human Services.

3. Reporting

Semi-Annual Program Reports

States awarded grants will be required to submit a semi-annual report, which is due six months following the inception of the grant. They will also be required to submit a final report, which is due June 1, 2009. Specific details regarding timeframes for submitting, and topics/subjects to be addressed, will be described in detail in the grant recipients' award letter.

Financial Reports

A SF 269 must be submitted on January 15, 2009, for the period beginning on the date of award of the contract and ending on December 31, 2008, and on July 31, 2009 for the period beginning January 1, 2008 and ending on the close out of the grant program. Specific details regarding timeframes for submitting, and line item expenditures to be reported on, will be described in detail in the grant recipients' award letter.

Other Reports

To obtain grant funds, grantees will be required to submit SF 270 forms (Request for Advance or Reimbursement) on a quarterly basis.

All reports will be submitted to the attention of Karen Lynn-Dyson at EAC Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, or by e-mail at *EAC@lcgnet.com.* If you have any questions regarding report submission, please call (888) 203–6161.

The required standard forms 269 and 270 are located on the Internet at: *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

4. OMB Number

The project described in this announcement is approved under OMB (Office of Management and Budget) control number 3265–0012, which expires 09/30/2008.

VIII. Agency Contacts

For Further Information Contact: Karen Lynn-Dyson at EAC Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, by e-mail at *EAC@lcgnet.com,* or by phone at (888) 203–6161.

IX. Other Information

Meetings

All States receiving awards must plan to participate in periodic teleconferences or online meetings throughout the grant period.

Civil Rights

All grantees receiving awards under this grant program must meet the requirements of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Hill-Burton Community Service nondiscrimination provisions; and Title II, Subtitle A, of the Americans with Disabilities Act of 1990.

Additional Information About the EAC

Addition information about the U.S. Election Assistance Commission and its purpose can be found at the following Internet address: *http://www.eac.gov.*

Gracia Hillman,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. E8–6263 Filed 3–26–08; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Letter From Secretary of Energy Accepting Defense Nuclear Facilities Safety Board (Board) Recommendation 2008–1

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) is making available the Secretary's letter to the Board accepting the Board's recommendation 2008–1 regarding fire protection at defense nuclear facilities.

ADDRESSES: U.S. Department of Energy, HS–1.1, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: DOE is making this letter available for public information and solicits comments from the public. Comments may be sent to the address above. The text of the document is below. It may also be viewed at: *http://www.hss.energy.gov/deprep/default.asp.*

Issued in Washington, DC on March 21, 2008.

Robert J. McMorland,

Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board.

March 19, 2008

The Honorable A. J. Eggenberger

Chairman

Defense Nuclear Facilities Safety Board

625 Indiana Avenue, NW., Suite 700

Washington, DC 20004–2901

Dear Mr. Chairman:

The Department of Energy (DOE) acknowledges receipt of the Defense Nuclear Facilities Safety Board (Board) Recommendation 2008–1, Safety Classification of Fire Protection Systems, issued on January 29, 2008.

As identified in your letter, the Department has general design requirements for safety systems. We agree with the Board that safety systems for each project can be evaluated individually, but that it would be beneficial to establish guidance on translating requirements into specific fire protection design and operating features for more frequently used fire protection systems. As acknowledged, it may not always be necessary to meet criteria for redundancy, nuclear-grade quality assurance, or seismic qualification. As suggested in Recommendation 2008–1, our implementation will leave room for engineering judgment and innovative approaches in such cases. As discussed in this letter, we accept the Board's recommendation and will respond by developing an Implementation Plan that:

- Identifies additional design and operational criteria for newly classified (but not existing) safety-class and safety-significant fire protection systems where warranted;
- Revises DOE Standard–1066–99, *Fire Protection Design Criteria,* to provide additional guidance for design and operation of selected fire protection systems designated as safety-class or safety-significant by the relevant Documented Safety Analysis. This guidance will include the appropriate level of detail that considers the uniqueness of fire scenarios;
- Identifies Nuclear Regulatory Commission and commercial design codes and standards that could be applied to safety-class and safety significant fire protection systems; and
- As necessary, modifies DOE Guide (G) 420.1–1, Nonreactor *Nuclear Safety Design Criteria and Explosive Safety Criteria Guide for use with DOE 0 420. 1, Facility Safety*, and DOE G 420.1–3, *Implementation Guide for DOE Fire Protection and Emergency Services Programs for Use with DOE O 420. I B, Facility Safety*, to ensure compatibility with the new guidance for fire protection systems.

We will interact with the Board and Board staff as we develop our Implementation Plan. I have assigned Mr. Andrew C. Lawrence, Director, Office of Nuclear Safety and Environment, Office of Health, Safety and Security, to be the Department's responsible manager for developing the Implementation Plan. He can be reached at (202) 586–5680.

Sincerely,

Samuel W. Bodman

[FR Doc. E8–6240 Filed 3–26–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13108–000]

FFP Detroit 1, LLC; Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

March 20, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13108–000.

c. *Date Filed:* February 4, 2008.

d. *Applicant:* FFP Detroit 1, LLC.

e. *Name of Project:* Detroit River Project.

f. *Location:* The project would be located on the Detroit River in Wayne County, Michigan. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dan Irvin, FFP Detroit 1, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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–13108–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person 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 document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 370 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 7.4 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Niagara Project 1, LLC, project would have an average annual generation of 32.4 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', 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.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6219 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13098–000]

FFP Niagara Project 1, LLC; Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

March 20, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13098–000.

c. *Date filed:* January 18, 2008.

d. *Applicant:* FFP Project 19, LLC.

e. *Name of Project:* Niagara River Project.

f. *Location:* The project would be located on the Niagara River in Erie and Niagara Counties, New York. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dan Irvin, FFP Niagara Project 1, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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–13098–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person 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 document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 875 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 17.5 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Niagara Project 1, LLC, project would have an average annual generation of 76.6 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING

APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', 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.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6218 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13006–000]

Green River 5 Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

March 20, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13006–000.

c. *Date filed:* September 7, 2007.

d. *Applicant:* Green River 5 Hydro, LLC.

e. *Name of Project:* Green River Lock and Dam #5 Hydroelectric Project.

f. *Location:* Green River in Warren County, Kentucky. It would use the U.S. Army Corps of Engineers' Green River Lock and Dam #5.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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–13006–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person 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 document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Green River Lock and Dam #5 and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) two turbine/generator units with a combined installed capacity of 14 megawatts; (3) a new 0.25-mile-long above ground 25-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (4) appurtenant facilities. The proposed Green River Lock and Dam #5 Project would have an average annual generation of 40 gigawatt-hours.

l. 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must

be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''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. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6217 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13001–000]

Kentucky Hydro 10, LLC; Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

March 20, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13001–000.

c. *Date filed:* September 7, 2007.

d. *Applicant:* Kentucky Hydro 10, LLC.

e. *Name of Project:* Kentucky River Lock and Dam #10 Hydroelectric Project.

f. *Location:* Kentucky River in Madison County, Kentucky. It would use the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #10.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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–13001–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person 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 document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #10 and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) two turbine/generator units with a combined installed capacity of 10 megawatts; (3) a new 0.16-mile-long above ground 25-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (4) appurtenant facilities. The proposed Kentucky River Lock and Dam #10 Project would have an average annual generation of 30 gigawatt-hours.

l. 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''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. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6214 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13003–000]

Kentucky Hydro 11, LLC; Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

March 20, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13003–000.

c. *Date filed:* September 7, 2007.

d. *Applicant:* Kentucky Hydro 11, LLC.

e. *Name of Project:* Kentucky River Lock and Dam #11 Hydroelectric Project.

f. *Location:* Kentucky River in Estill County, Kentucky. It would use the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #11.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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–13003–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person 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 document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Kentucky River Lock and Dam #11 and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) two turbine/generator units with a combined installed capacity of 9 megawatts; (3) a new 2-mile-long above ground 25-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (4) appurtenant facilities. The proposed Kentucky River Lock and Dam #11 Project would have an average annual generation of 30 gigawatt-hours.

l. 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''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. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6215 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13005–000]

Oliver Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

March 20, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13005–000.

c. *Date filed:* September 7, 2007.

d. *Applicant:* Oliver Hydro, LLC.

e. *Name of Project:* William Bacon Oliver Lock and Dam Hydroelectric Project.

f. *Location:* Black Warrior River in Tuscaloosa County, Alabama. It would use the U.S. Army Corps of Engineers' William Bacon Oliver Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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–13005–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person 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 document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' William Bacon Oliver Lock and Dam and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) three turbine/generator units with a combined installed capacity of 25 megawatts; (3) a new 0.05-mile-long above ground 46-kilovolt transmission line extending from the switchyard to an interconnection point with the utility distribution system owned by Black Warrior Electric Membership Corporation; and (4) appurtenant facilities. The proposed William Bacon Oliver Lock and Dam Project would have an average annual generation of 80 gigawatt-hours.

l. 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a

notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''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. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6216 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–91–000]

Columbia Gulf Transmission Company; Tennessee Gas Pipeline Company; Natural Gas Pipeline Company of America LLC; Notice of Application

March 20, 2008.

Take notice that on March 12, 2008, Columbia Gulf Transmission Company (Columbia Gulf), 5151 San Felipe, Suite 2500, Houston, Texas 77056, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, and Natural Gas Pipeline Company of America LLC (Natural) 500 Dallas Street, Houston, Texas 77002, filed in Docket No. CP08–91–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for authorization to abandon certain facilities located in Eugene Island, Offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.

Specifically, Columbia Gulf, Tennessee, and Natural propose to abandon in place the following facilities: (i) The segment of 20-inch diameter pipeline owned by Natural, Segment 3991, comprised of approximately 1.58 miles, from Eugene Island Block 331 to Block 314; (ii) the segment of 20-inch diameter pipeline owned by Columbia Gulf, Segment 496, comprised of approximately 3.1 miles, from Eugene Island Block 314 to Block 309; (iii) the segment of 20-inch diameter pipeline jointly owned by Columbia Gulf, Tennessee, and Natural, Segment 5235, comprised of approximately 16.1 miles, from Eugene Island Block 309 to Eugene Island 250B; and (iv) side taps, measurement facilities, and other various appurtenances attached to these facilities and certain non-jurisdictional facilities, located in the Eugene Island Areas 250, 264, 271, 286, 287, 292, 309, 314, and 331, all Offshore Louisiana.

Any questions regarding this application should be directed to Fredric J. George, Lead Counsel, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273, at (304) 357–2359 or fax (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of

comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

Comment Date: April 10, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6213 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–11–006]

Enbridge Pipelines (Louisiana Intrastate) LLC; Notice of Compliance Filing

March 20, 2008.

Take notice that on March 12, 2008, Enbridge Pipelines (Louisiana Intrastate) LLC filed its annual revision of the fuel percentage on its system pursuant to section 3.2 of its Statement of Operating Conditions. Louisiana Intrastate seeks an effective date of April 1, 2008.

Any person desiring to participate in this rate proceeding 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 on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Friday, April 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6212 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–12–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northern Lights 2009–2010 Zone EF Expansion Project and Request for Comments on Environmental Issues

March 20, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Northern Lights 2009–2010 Zone EF Expansion Project involving construction and operation of facilities by Northern Natural Gas Company (Northern) in Carver, Wright, Hennepin, Dakota, Anoka, Washington, and Freeborn Counties, Minnesota. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period for this Notice will close on April 21, 2008. Details on how to submit comments are provided in the Public Participation section of this notice. Further notice will be issued in the near future regarding any local public comment meetings to be held by the Commission staff.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A brochure prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This brochure addresses a number of typically asked questions.

Summary of the Proposed Project

Northern wants to expand the capacity of its facilities in Minnesota to transport an additional 135,000 decatherms per day of natural gas for incremental firm winter service.

Northern seeks authority to construct and operate:

- An approximately 6.34-mile-long extension of the 30-inch-diameter Faribault-Farmington D-Line;
- an approximately 5.98-mile-long extension of the 20-inch-diameter Farmington-North Branch C-Line;
- an approximately 5.9-mile-long extension of the 20-inch-diameter Elk River loop;
- the replacement of approximately 10.99 miles of the 3- and 2-inch-diameter Rockford Branch Line with 22.65 miles of 16-inch-diameter pipeline;
- an approximately 10.68 miles of the 16-inch-diameter Greenfield Corcoran Branch Line;
- a new 15,000 horsepower ISO-rated greenfield compressor station located near Albert Lea, Minnesota; and
- 1 new Corcoran meter station.

The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements

Construction of the proposed facilities would require approximately 664 acres of land. Following construction, approximately 323.0 acres would be maintained as new pipeline right-of-way and aboveground facility sites. The remaining acreage would be restored and allowed to revert to its former use. Surveys are still ongoing during pre-filing and acreages are apt to change.

The EA Process

We[2] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes Northern's proposal. By this notice, we are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA.

Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

The purpose of the Pre-filing Process is to seek public and agency input early in the project planning phase and encourage involvement by interested stakeholders in a manner that allows for the early identification and resolution of environmental issues. We will work with all interested stakeholders to identify and attempt to address issues before Northern files its application with the FERC.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA. As part of the Pre-filing Process review, FERC staff representatives will participate in three public open houses sponsored by Northern in the project areas on April 15–17, 2008 to explain the environmental review process to interested stakeholders and take comments about the project.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- water resources, fisheries, and wetlands
- endangered and threatened species
- land use
- cultural resources
- vegetation and wildlife (including sensitive species)
- air and noise quality.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA which will be published and mailed to federal, state, and local agencies, interested individuals who return the Information Request Form in Appendix 3, and the Commission's official service list for this proceeding. A comment period will be allotted for review when the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. Once a formal application is filed with the FERC, a new docket number will be established.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. This preliminary list of issues may be changed based on your comments and our analysis.

- Federally listed endangered or threatened species may occur in the proposed project area.
- Construction impacts to wetlands located in the proposed project area.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, reasonable alternatives to the proposal including alternative locations and routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE.; Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. PF08–12–000.
- Mail your comments so that they will be received in Washington, DC on or before April 21, 2008.

The Commission strongly encourages electronic filing of any comments, interventions or protests to this proceeding. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the link to ''Documents and Filings'' and ''eFiling.'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your hard drive. New eFiling users must first create an

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''Quick Comment'' option available, which is an easy method for interested persons to submit text only comments on a project. The Quick-Comment User Guide can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.* Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid email address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket or project number.

If you are interested in receiving a copy of the EA, please return the Information Request Form (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Once Northern formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Site Visits

On April 15–17, 2008, the OEP staff will conduct a site visit of the planned Northern Lights Zone EF Expansion Project. We will view the proposed facility locations and pipeline route. Examination will be by automobile and on foot. Representatives of Northern will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation and should meet at the following locations:

Monday, April 14, 2008

2:30 p.m. Site visit for Elk River Loop Extension. Meet at Prairie Knoll Park, 14800 Prairie Road NW (off of 146th Lane), Andover, MN 55304.

Tuesday, April 16, 2008

9 a.m. Site visit for Rockford BL Replacement. Meet at American Inn Lodge & Suites, 36 S. Elm Street, Waconia, MN 55387.

1 p.m. Site visit for Corcoran MN BL. Meet at Woody's on Main, 6030 Main Street, Rockford, MN 55373.

Wednesday, April 17, 2008

9 a.m. Site visit for C-Line Extension. Meet at The Machine Shed Restaurant, 8515 Hudson Boulevard (I–94 & Inwood Avenue), Lake Elmo, MN 55042.

2:30 p.m. Site visit for D-Line Extension. Meet at the Big Steer Travel Plaza (Sunco Station), 8051 Bagley Avenue, Northfield, MN 55057.

Thursday, April 18, 2008

2:30 p.m. Site visit for Albert Lea Compressor Station. Meet at Gopher Stop Convenience Store, 3598 West Highway 30 (I–35 at Exit 26), Ellendale, MN 56026.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6220 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–87–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

March 12, 2008.

Take notice that on March 6, 2008, Florida Gas Transmission Company, LLC (FGT), 5444 Westheimer Road, Houston, Texas 77056, filed in Docket No. CP08–87–000, a prior notice request pursuant to sections 157.205 and 157.212 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct, own, and operate an interconnect with Kinder Morgan Louisiana Pipeline LLC (KMLP), located in Acadia Parish, Louisiana, to receive revaporized liquefied natural gas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, FGT proposes the installation of a 12-inch tap and valve, approximately 50 feet of 16-inch diameter connecting pipe, and electronic flow measurement. FGT estimates the cost of construction to be $226,000. FGT states that all cost associated with such facilities will be reimbursed by KMLP. FGT asserts that FGT will own, maintain, and operate

the over-pressure protection equipment that KMLP will install in the KMLP Meter Station.

Any questions regarding the application should be directed to Stephen Veatch, Senior Director of Certificates & Tariffs, Florida Gas Transmission Company, LLC, 5444 Westheimer Road, Houston, Texas 77056, call (713) 989–2024, fax (713) 989–1158, or e-mail *stephen.veatch@SUG.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–6221 Filed 3–26–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0064, FRL–8547–9]

U.S. EPA's 2008 National Clean Water Act Recognition Awards: Availability of Application and Nomination Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This announces the availability of application and nomination information for the U.S. EPA's 2008 Clean Water Act (CWA) Recognition Awards. The awards recognize municipalities and industries for outstanding and innovative technological achievements in wastewater treatment and pollution abatement programs. The awards are intended to educate the public about the contributions wastewater treatment facilities make to clean water; to encourage public support for municipal and industrial efforts in effective wastewater management, biosolids disposal and reuse, and wet weather pollution control; and to recognize communities that use innovative practices to meet CWA permitting requirements.

DATES: Nominations are due from EPA Regional offices to EPA headquarters no later than May 30, 2008.

FOR FURTHER INFORMATION CONTACT: Matthew Richardson, Office of Water, Office of Wastewater Management, Municipal Support Division (MC 4204M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; telephone: (202) 564–2947; fax Number: (202) 501–2396; e-mail address: *richardson.matthew@epa.gov.* Also visit the Office of Wastewater Management's Web page at: *http://www.epa.gov/owm.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2003–0064, FRL—. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the National Clean Water Act Recognition Awards Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the National Clean Water Act Recognition Awards Docket is (202) 564–2947.

2. *Electronic Access of This Document.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

3. *Electronic Access for Additional Information.* You may obtain additional application and nomination information from the EPA Regional offices and our Web site at *http://www.epa.gov/OWM/mtb/intnet.htm.* If additional help is needed to obtain the documentation, see contact information above.

II. Applicant Information

To be considered for a CWA award, applicants are to submit applications to the local EPA Regional office, or the State or Tribal water pollution control agency. The State or Tribal water pollution control agency then submits their nominee recommendations to the local EPA Regional office. Only applications or nominations recommended by EPA Regions to EPA headquarters are considered for a national award. The CWA Recognition Awards are authorized by section 33 U.S.C. 1361(a) and (e); additional details of the CWA awards program are described in 40 CFR part 105. Programs and projects being nominated for any of the award categories must be in compliance with applicable water quality requirements and have a satisfactory record with respect to environmental quality. Municipalities and industries are recognized for their demonstrated creativity and technological and environmental achievements in five award categories as follows:

(1) Outstanding Operations and Maintenance practices at wastewater treatment facilities;

(2) Exemplary Biosolids Management projects, technology/innovation or development activities, research and public acceptance efforts;

(3) Pretreatment Program Excellence;

(4) Storm Water Management Program Excellence; and

(5) Outstanding Combined Sewer Overflow Control Programs.

Dated: March 20, 2008.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. E8–6281 Filed 3–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0151, FRL–8548–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Standardized Permit for RCRA Hazardous Waste Facilities; EPA ICR No. 1935.03, OMB Control No. 2050–0182

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that 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 is scheduled to expire on August 31, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 27, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2008–0151, by one of the following methods:

- http://*www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *rcra-docket@epa.gov.*
- Fax: 202–566–9744.
- Mail: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: 1301 Constitution Ave., NW, Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2008–0151. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Jeff Gaines, Office of Solid Waste (mail code 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8655; fax number: 703–308–8617; e-mail address: *gaines.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0151, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. 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.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are Business and State, Local, or Tribal Governments

Title: Standardized Permit for RCRA Hazardous Waste Facilities

ICR numbers: EPA ICR No. 1935.03, OMB Control No. 2050–0182.

ICR status: This ICR is currently scheduled to expire on August 31, 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: Under the authority of sections 3004, 3005, 3008 and 3010 of

the Resource Conservation and Recovery Act (RCRA), as amended, the U.S. Environmental Protection Agency (EPA) is finalizing revisions to the RCRA hazardous waste permitting program to allow a ''standardized permit.'' The standardized permit is available to facilities that generate hazardous waste and routinely manage the waste on-site in non-thermal units such as tanks, containers, and containment buildings. This ICR presents a comprehensive description of the information collection requirements for owners and operators submitting applications for a standardized permit or a standardized permit modification.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 175.

Frequency of response: 1.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 15,045.

Estimated total annual costs: $1,478,050. This includes an estimated labor burden cost of $866,391 and an estimated cost of $611,659 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 10, 2008.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. E8–6265 Filed 3–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8547–7]

Clean Water Act Section 303(d): Availability of List Decision

ACTION: Notice of Availability and Opportunity to Comment.

SUMMARY: This notice announces the availability of, and opportunity to comment on, an EPA decision reconsidering its decision to approve the omission of microcystin toxins listings for three segments of the Klamath River in California and identifying microcystin toxins as an additional cause of impairment for a segment of the Klamath River pursuant to Clean Water Act section 303(d)(2). Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

DATES: Comments must be submitted to EPA on or before April 28, 2008.

FOR FURTHER INFORMATION CONTACT: Comments should be sent in writing to Peter Kozelka, TMDL Coordinator, Water Division (WTR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3448, facsimile (415) 947–3537, e-mail *kozelka.peter@epa.gov*. Materials relating to EPA's reconsideration and determination can be viewed at EPA Region 9's Web site: *http://www.epa.gov/region9/water/tmdl/303d.html* or obtained by writing or calling Mr. Kozelka at the above address. Documentation relating to EPA's action is available for public inspection at the above address.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, California submitted to EPA its listing decisions under section 303(d)(2) on November 24, 2006. On November 30, 2006, EPA approved California's list of impaired waters, except Walnut Creek Toxicity. On March 8, 2007, EPA disapproved California's decisions not to list 36 water quality limited segments and associated pollutants, and additional pollutants for 34 water bodies already listed by the State. On June 28, 2007, EPA issued its final decision regarding the additional waters and pollutants for inclusion on the 2006 section 303(d) list. Among other things, the June 28 decision approved the 2006 section 303(d) list without adding any Klamath River segments as impaired due to microcystin toxins.

California's 2006 section 303(d) List already identifies each segment of the Klamath River within California as impaired due to Nutrients, Organic Enrichment/Low Dissolved Oxygen, and Temperature. EPA has reconsidered its prior approval of the omission of microcystin toxins listings for three Klamath River segments, and on March 13, 2008, determined to add a listing for microcystin toxins for one of these three segments, ''Klamath River HU, Middle HA, Oregon to Iron Gate''. EPA's reconsideration of its decisions related to microcystin toxins and the Klamath River, and its determination to add a listing for microcystin toxins for one of the river's segments, do not affect EPA's determinations regarding any other portion of California's section 303(d) List. Neither EPA's approval of the State's listings for the Klamath River listings, nor EPA's determination to add the listing for microcystin toxins, extends to any water bodies located within Indian country, as defined in 18 U.S.C. 1151.

EPA is providing the public the opportunity to review EPA's reconsideration of the listings for the Klamath River related to microcystin toxins, and its determination to add a

listing for microcystin toxins for one segment of the river. EPA may revise its decision if warranted in response to comments received. EPA is soliciting comment only with respect to the reconsideration of listings related to microcystin toxins for three Klamath River segments and EPA's determination to add the listing.

Dated: March 20, 2008.

Alexis Strauss,

Director, Water Division, EPA Region IX.

[FR Doc. E8–6278 Filed 3–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8548–2]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a public teleconference of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and Tribal governments. The purpose of this teleconference is to discuss and approve the NACEPT Environmental Technology Subcommittee's draft recommendations on actions that EPA and the investment community could take and partnerships they could create to achieve the goal of greater private sector investment in the commercialization of environmental technologies over the long-term. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a public teleconference on Monday, April 14, 2008 from 2:30 p.m.—4:30 p.m. EDT.

ADDRESSES: The meeting will be held in the U.S. EPA Office of Cooperative Environmental Management at 1201 Constitution Ave, NW., EPA East Building, Room 1132, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov,* (202) 564–0243, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above by Wednesday, April 9, 2008. The public is welcome to attend all portions of the meeting, but seating is limited and is allocated on a first-come, first-serve basis. Members of the public wishing to gain access to the conference room on the day of the meeting must contact Sonia Altieri at (202) 564–0243 or *altieri.sonia@epa.gov* by April 9, 2008.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–564–0243 or *altieri.sonia@epa.gov.* To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 17, 2008.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E8–6267 Filed 3–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8548–3]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in his capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The NAC is composed of 12 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 12 members representing state, local, and Tribal governments. The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC.

The purpose of the meeting is to review the CEC's Trade and Environment projects and assist in the development of U.S. priorities for the CEC Council Session in June 2008. The meeting will also include a public comment session. A copy of the agenda will be posted at *http://www.epa.gov/ocem/nacgac-page.htm.*

DATES: The National and Governmental Advisory Committees will hold an open meeting on Wednesday, April 16, from 8:30 a.m. to 5:30 p.m., and Thursday, April 17, from 8:30 a.m. until 2:30 p.m.

ADDRESSES: The meeting will be held at the Hilton Alexandria Old Town Hotel, 1767 King Street, Alexandria, VA 22314. Telephone: 703–837–0440. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, *carrillo.oscar@epa.gov*, 202–564–0347, U.S. EPA, Office of Cooperative Environmental Management (1601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Committees should be sent to Oscar Carrillo, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202–564–0347 or *carrillo.oscar@epa.gov.* To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 17, 2008.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. E8–6291 Filed 3–26–08; 8:45 am]

BILLING CODE 6560–50–P

EXPORT–IMPORT BANK

[Public Notice 106]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and Request for Comments, Letter of Interest Application.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 28, 2008 to be assured of consideration.

ADDRESSES: Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897. Direct all requests for additional information, including copies of the proposed collection of information and documentation to Nicole Valtos, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3411, (800) 565–3946, Ext. 3411, or *nicole.valtos@exim.gov.*

SUPPLEMENTARY INFORMATION:

Title and Form Number: Ex-Im Bank Letter of Interest Application, EIB Form 95–9.

OMB Number: 3048–0005.

Type of Review: Extension of a currently approved collection.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to determine eligibility for an indicative offer of support under the loan and guarantee programs.

Affected Public: Business and other for-profit institutions.

Respondents: Entities involved in the provision of financing or arranging of financing for foreign buyers of U.S. exports.

Estimated Annual Respondents: 222 (revised).

Estimated Time Per Respondent: 20 Minutes.

Estimated Annual Burden: 74 Hours.

Frequency of Response: When applying for a Letter of Interest.

Solomon Bush,

Agency Clearance Officer.

[FR Doc. E8–6225 Filed 3–26–08; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 19, 2008.

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 PRA comments should be submitted on or before May 27, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, send them to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Jerry Cowden via e-mail at *PRA@fcc.gov* or call (202) 418–0447.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* None.

Title: Reporting Requirement to Determine Progress Toward Compliance with E911 Location Accuracy Requirement (47 CFR 20.18(h)).

Form Nos.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents and Responses: 6,200 respondents; 6,200 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: One time.

Obligation to Respond: Mandatory (authority: 47 CFR 20.18(h)).

Total Annual Burden: 18,600 hours.

Total Annual Cost: None.

Privacy Impact Assessment: Not applicable.

Nature and Extent of Confidentiality: No confidentiality is required for this collection.

Needs and Uses: The Commission's Report and Order (FCC 07–166, PS Docket No. 07–114, CC Docket No. 94–102, WC Docket No. 05–196) (the Order), requires wireless licensees subject to section 20.18(h) of the Commissions rules, to satisfy wireless enhanced 911 (E911) emergency communications service location accuracy and reliability standards at a geographical level defined by the coverage area of a Public Safety Answering Point (PSAP). Inaccurate and unreliable E911 location information can cause tragic results. This requirement is an initial step to ensure that all stakeholders—including public safety entities, wireless carriers, and technology providers—are subject to an appropriate and consistent compliance methodology with respect to the location accuracy standards in section 20.18(h). The Order establishes a deadline of September 11, 2012 for achieving compliance with this requirement. In order to ensure that carriers are making progress toward compliance, the Order requires carriers to provide the Commission with two reports describing the status of their ongoing compliance efforts. The first report must be filed by September 11, 2009, and the second report must be filed by September 11, 2011. Only the first report is covered by this information collection.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–6030 Filed 3–26–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

March 19, 2008.

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, 44 U.S.C. 3501–3520. 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 April 28, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at: *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B. Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page: *http://reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

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: 3060–0767.

Title: Sections 1.2110, 1.2111 and 1.2112, Auction Forms and License Disclosure Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 22,000 respondents; 22,000 responses.

Estimated Time Per Response: 17.6 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: 390,750 hours.

Total Annual Cost: $23,966,750.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, if applicants wish to request confidential treatment of their filing, they may do so pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements) during this comment period to obtain the full three-year clearance from them. There is a significant decrease in the number of burden hours and annual costs because when this information was submitted to OMB in 2005, the burden estimates provided to them were too high. Therefore, the Commission has re-calculated the estimates to more accurately reflect the actual burden imposed on applicants. Finally, the Commission changed the title of this IC to note the specific rule sections for which the Commission seeks extension of OMB approval under this OMB Control Number 3060–0767. The Commission rule sections for this IC are section 1.2110, Designated Entities; Section 1.2111, Assignment or Transfer of Control: Unjust Enrichment; and section 1.2112, Ownership Disclosure Requirements for Applications.

Disclosure requirements regarding ownership and gross revenues information and calculations are designed to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive small business preferences. Disclosures regarding joint bidding agreements and the associated certification are designed to prevent collusion. Disclosure of information regarding license transfers and partitioning is designed to deter unjust enrichment. Finally, records retention and maintenance by small business licensees is designed to prevent unjust enrichment and to facilitate enforcement efforts, if necessary.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. E8–6032 Filed 3–26–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 08–607]

Consumer & Governmental Affairs Bureau Seeks To Refresh Record on Assigning Internet Protocol (IP)-Based Telecommunications Relay Service (TRS) Users' Ten-Digit Telephone Numbers Linked to North American Numbering Plan (NANP) and Related Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks to refresh the record on the numbering issue identified in the Commission's *Interoperability FNPRM*, regarding feasibility of establishment of a ten-digit telephone numbering system for Video Relay Services (VRS). Specifically, the Commission seeks to ensure that the record reflects current viewpoints and any recent technical, economic, and administrative developments relevant to establishing a numbering system for IP-based TRS.

DATES: Interested parties may file comments in this proceeding no later than April 8, 2008. Reply comments may be filed no later than April 18, 2008.

ADDRESSES: Interested parties may submit comments identified by [CG

Docket Number 03–123 and/or DA 08–607], by any of the following methods:

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*, or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 03–123. Parties also may 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 <your e-mail address>.'' A sample form and directions will be sent in response.

• Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on compact disc. The compact disc should be submitted, along with three paper copies, to: Dana Wilson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3–C418, Washington, DC 20554. Such submission should be on a compact disc formatted in an IBM compatible format using Word 2003 or a compatible software. The compact disc should be accompanied by a cover letter and should be submitted in ''read only'' mode. The compact disc should be clearly labeled with the commenter's name, proceeding (CG Docket No. 03–123), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the compact disc. The label also should include the following phrase: ''CD–ROM Copy—Not an Original.'' Each compact disc should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters filing by paper must send a compact disc copy to the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer & Governmental Affairs Bureau, Disability Rights Office at (800) 311–4381 (voice/VRS), (202) 418–0431 (TTY), or e-mail at *Gregory.Hlibok@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 08–607. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the Dates section. Pursuant to 47 CFR 1.1206, this matter shall be treated as a ''permit-but-disclose'' proceeding in which *ex parte* communications are subject to disclosure.

The full text of document DA 08–607 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 08–607 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com*; or by calling (800) 378–3160. Document DA 08–607 and subsequently filed documents in this matter also may be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Document DA 08–607 also can be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/trs.html*.

SYNOPSIS: On May 9, 2006, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, Declaratory Ruling and Further Notice of Proposed Rulemaking, FCC 06–57 (*Interoperability FNPRM*), published at 71 FR 30848, May 31, 2006. The *Interoperability FNPRM*, among other things, sought comment on the feasibility of establishing a global, uniform ten-digit telephone numbering system for VRS. The Commission now seeks to refresh the record on the numbering issues in order to ensure that the record reflects current viewpoints and any new developments that have been made since the deadline for filing comments in response to the *Interoperability FNPRM*, including any developments with respect to technical, economic, and administrative issues relevant to assigning users of all IP-based forms of TRS uniform and static end-point numbers linked to the NANP. In this regard, the Commission also seeks to refresh the record on issues directly related to numbering, including application of the ''slamming'' and other consumer protection rules (such as the Commission's Consumer Proprietary Network Information rules, local number portability rules, and number resource conservation).

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E8–6223 Filed 3–26–08; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0163]

General Services Administration; Information Collection; Information Specific to a Contract or Contracting Action (Not Required by Regulation)

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved

information collection requirement regarding information specific to a contract or contracting action (not required by regulation). A request for public comments was published at 72 FR 226, November 26, 2007. No comments were received. This OMB clearance expires on June 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: April 28, 2008.

FOR FURTHER INFORMATION CONTACT: William Clark, Procurement Analyst, Contract Policy Division, at telephone (202) 219–1813 or via e-mail to *william.clark@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jasmeet Seehra, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of supplies, transportation, ADP, telecommunications, real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of public contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting special program objectives.

B. Annual Reporting Burden

Respondents: 126,870.
Responses Per Respondent: 1.36.
Total Responses: 172,500.
Hours Per Response: .399.
Total Burden Hours: 68,900.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–4755. Please cite OMB Control No. 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence.

Dated: February 29, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–6276 Filed 3–26–08; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0250]

General Services Administration Acquisition Regulation; Information Collection; Zero Burden Information Collection Reports

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding zero burden information collection reports. A request for public comments was published at 72 FR 58308, October 15, 2007. No comments were received. This OMB clearance expires on June 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: April 28, 2008.

FOR FURTHER INFORMATION CONTACT: William Clark, Procurement Analyst, Contract Policy Division, at telephone (202) 219–1813 or via e-mail to *william.clark@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jasmeet Seehra, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0250, Zero Burden Information Collection Reports, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information requirement consists of reports that do not impose collection burdens upon the public. These collections require information which is already available to the public at large or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process.

GSA has published rules in the **Federal Register** that fall under information collection 3090–0250. The rule that prescribed clause 552.238–70 ''Identification of Electronic Office Equipment Providing Accessibility for the Handicapped'' was published at 56 FR 29442, June 27, 1991, titled ''Implementation of Public Law 99–506'', with an effective date of July 8, 1991; and Clause 552.238–74 ''Industrial Funding Fee and Sales Reporting'' published at 68 FR 41286, July 11, 2003.

B. Annual Reporting Burden

None.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–4755. Please cite OMB Control No. 3090–0250, Zero Burden Information Collection Reports, in all correspondence.

Dated: February 29, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–6284 Filed 3–26–08; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

Office of Small Business Utilization; Small Business Advisory Committee; Notification of a Public Meeting of the Small Business Advisory Committee

AGENCY: Office of Small Business Utilization, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing a public meeting of the GSA Small Business Advisory Committee (the Committee).

DATES: The meeting will take place April 21, 2008. The meeting will begin at 9:00 a.m. and conclude no later than 6:00 p.m. that day. The Committee will accept oral public comments at this meeting and has reserved a total of thirty minutes for this purpose. Members of the public wishing to reserve speaking time must contact Aaron Collmann in writing at: *sbac@gsa.gov* or by fax at (202) 501–2590, no later than one week prior to the meeting.

ADDRESS: Marriott Anaheim, Gold Key I and II, 700 W Convention Way, Anaheim, CA 92802

FOR FURTHER INFORMATION CONTACT Aaron Collmann, Room 6029, GSA Building, 1800 F Street, NW., Washington, DC 20405; (202) 501–1021 or email at *sbac@gsa.gov*.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of this meeting is to develop the topics generated during the previous meetings; to receive briefings from small business topical experts, and to hear from interested members of the public on proposals to improve GSA's small business contracting performance.

Topics for this meeting will include discussion on GSA's Veteran Outreach Program (21 Gun Salute) and GSA's role in the Presidential Transition. Other topics to be discussed may include, but are not limited to, topics from previous meetings. The agenda will be published online at *http://www.gsa.gov/sbac* at least 7 days prior to the meeting. Information and agendas from previous meetings can be found online at *http://www.gsa.gov/sbac*.

Dated: March 24, 2008.

Felipe Mendoza,

Associate Administrator, Office of Small Business Utilization, General Services Administration.

[FR Doc. E8–6274 Filed 3–26–08; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Preparedness and Response (ASPR), Office of Preparedness and Emergency Operations (OPEO), Revised National Disaster Medical System (NDMS) Patient Treatment and Tracking Records System

AGENCY: Office of the Assistant Secretary for Preparedness and Response, HHS.

ACTION: Notice of a Revised Privacy Act System of Records (SOR).

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to revise the new Privacy Act System of Records (SOR) entitled, ''The National Disaster Medical System (NDMS) Patient Treatment and Tracking Records System,'' System Number 09–90–0040, in response to public comments received. The primary purpose of the NDMS Patient Treatment and Tracking Records System is to collect and store data about individuals who are served by the medical care response capabilities provided by the Department of Health and Human Services (HHS) through the NDMS, and through other HHS medical personnel. The proposed system will cover the collection, storage and sharing of personally identifiable data in accordance with the Privacy Act.

SUPPLEMENTARY INFORMATION:

A. Background

In a **Federal Register** Notice [72 FR 35052–35055] published on June 26, 2007, the HHS, ASPR, OPEO, NDMS proposed to establish the NDMS Patient Treatment and Tracking Record System. This system will collect demographic and health care data from individuals treated by the medical response personnel of HHS and in particular, ASPR. The HHS notice included reasons why this system is necessary as well as routine uses for disclosures. HHS received comments from private, non-profit organizations regarding the privacy protections that apply to information about individuals treated by HHS medical personnel. The comments suggested that the notice lacked clarity. The following paragraphs summarize the comments, recommendations and the agency's responses. We are also making other editorial changes to the System of Records Notice at this time.

B. Comments and Responses

Comment: There was an overall comment that the notice lacked adequate discussion of whether this system would be maintained in compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. It was recommended that compliance with the HIPAA Privacy Rule be ''spelled out in the notice.''

Response: While ASPR, in operating NDMS, provides medical care to individuals who are victims of disasters, emergencies, public health emergencies, and events of national significance, ASPR is not a covered entity or a health care component of a covered entity, and therefore is not subject to the HIPAA Privacy Rule. Congress provided that these HIPAA standards only apply to health care providers that transmit health information electronically in connection with a transaction for which the Secretary of HHS has adopted standards (i.e., the standards provided for in the HIPAA Transactions Rule at 45 CFR Part 162). NDMS health care providers, operating under ASPR auspices, do not engage in these electronic transactions. However, the records within the NDMS Patient Treatment and Tracking Records System are protected by the Privacy Act.

Comment: The organizations which commented on the notice wanted to make it clear that there will be ''no routine uses that are in violation of HIPAA.''

Response: As explained above, while ASPR provides medical care to individuals who are victims of disasters, emergencies, public health emergencies, and events of national significance, ASPR is not subject to the HIPAA Privacy Rule. The routine uses will comply with the provisions of the Privacy Act.

Comment: There was a comment regarding clarifying the use of data by NDMS's federal partners.

Response: The language has been clarified. Disclosure of personally identifiable information between federal partners will be limited to what is needed to support patient care and medical transport.

Comment: There is a concern that routine disclosure of patient location, especially when the patient is a victim of domestic violence, should be changed.

Response: Agree. The routine disclosure to family members regarding patient location and status has been revised to state that disclosure is not permitted when there is a reasonable belief that such information could endanger the life, safety, health, or well-being of the patient.

Revised Document

1. The Categories of Individuals Covered by the System section in the System of Records Notice (SORN) is revised to include other HHS personnel who may treat individuals. The section is revised as follows:
The individuals covered by the system are all persons and owners of animals treated by NDMS and other HHS medical personnel when the NDMS Disaster Medical Assistance Teams (DMATs), National Veterinary Response Teams (NVRTs), or other HHS medical personnel are activated to respond to emergency situations, or as a response to any other situation for which they are activated.

2. The Purpose(s) section in the SORN is revised to include other HHS personnel who may treat individuals. The first sentence of that section is revised to read:
Medical and demographic information is collected on all patients seen and/or treated by NDMS or other HHS personnel.

3. Routine Use No. 1 in the SORN is revised to clarify that it refers to sharing information between NDMS partner agencies, and to include a discussion, at the end of the routine use, of the relationship between all of the NDMS partners regarding the use of medical records as follows:
NDMS is a coordinated effort between HHS, the Department of Homeland Security (DHS), the Department of Defense (DoD), and the Department of Veterans Affairs (VA). As such, the medical treatment and movement of patients is a shared responsibility between these partnership agencies. The medical and demographic information collected during the treatment of a patient is shared with the partners to ensure that patients treated through NDMS receive the appropriate level of health care. The health information disclosed among the partners is limited to what is needed for continuity of health care operations.

4. Routine Use No. 4 in the SORN is revised to include volunteers as follows:
Disclosure to agency contractors, consultants, grantees, or volunteers who have been engaged by the agency to assist in the performance of a service related to this collection and who have a need to have access to the records in order to perform the activity.

5. Routine Use No. 6 in the SORN is revised to include a discussion, at the end of the routine use, of the circumstances when the agency will not disclose the patient's location or status to family members as follows:
Disclosure of a patient's location or status is not permitted when there is a reasonable belief that disclosing such information could endanger the life, safety, health, or well-being of the patient.

6. In the SORN, in the Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System, in the Disposition authority subsection, the first two sentences are revised as follows:
Patient Care Forms or other Medical Records created by the Federal Medical Station(s) (FMS) or by any component of HHS/ASPR inclusive of NDMS during a response to an event while caring for victims of that event are cutoff at the end of the response activity by the Federal Medical Station(s) or HHS/ASPR component for a particular event. Cutoff refers to breaking, or ending files at regular intervals, usually at the close of a fiscal or calendar year, to permit their disposal or transfer in complete blocks and, in this case, cutoff is at the end of the response activity. The cutoff date marks the beginning of the records retention period.

Dated: March 3, 2008.

Kevin Yeskey,

Deputy Assistant Secretary, Director, Office of Preparedness and Emergency Operations.

[FR Doc. E8–6238 Filed 3–26–08; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (0MB) approve the proposed information collection project: ''Health Care Systems for Tracking Colorectal Cancer Screening Tests.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by May 27, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at: *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at: *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Health Care Systems for Tracking Colorectal Cancer Screening Tests

AHRQ proposes to implement and assess a system redesign intervention to improve colorectal cancer (CRC) screening and follow-up among patients 50–79 years-old. Other goals of the intervention include: (1) Achieving a high level of satisfaction with the intervention among patients, providers, and practice staff, (2) promoting patient-centered care through the intervention, (3) being a cost-effective intervention, and (4) demonstrating the benefits to businesses for implementing the intervention. The research is sponsored by AHRQ under its ACTION (Accelerating Change and Transformation in Organizations and Networks) program, and will be conducted for AHRQ by The CNA Corporation (CNA) and its partners Thomas Jefferson University (TJU) and Lehigh Valley Physician Hospital Organization (LVPHO).

Colorectal cancer screening is recommended as routine preventive care and this intervention, which is consistent with current CRC screening guidelines, carries no greater risk than that which occurs in usual delivery of healthcare (i.e., screening and follow up done without benefit of this intervention).

Nevertheless, as part of standard research practice, the intervention and assessment protocol will be submitted to the Institutional Review Boards (IRB) at both LVPHO and TJU so that they can review the protocols to ensure that they are consistent with the requirements of human subjects protection as outlined in federal statute, regulations, and guidelines. These approvals will be obtained before the study begins. Additionally, CNA and LVPHO have a business associate agreement, and all parties involved with the study (CNA, LVPHO, and TJU) will comply with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR Parts 160 and 164. To further protect patient privacy, neither CNA nor TJU will have access to any personally-identifiable data. Only PHO personnel will have access to

identifiable data, which they will de-identify before sending to CNA and TJU for analysis. Consistent with this protocol, only LVPHO staff will have access to patient names and addresses and will conduct all mailings of letters and related material to patients.

The intervention will be implemented in both Family Medicine and General Internal Medicine practices affiliated with the LVPHO, and will involve 20 intervention practices and 5 control practices (25 practices total). The intervention will consist of inviting and assisting eligible patients of intervention practices to be screened for CRC, providing academic detailing to intervention practice providers regarding CRC screening and appropriate follow-up for positive screens, and assisting providers to identify and follow up with their patients who have positive screens.

Patient eligibility criteria for the intervention include: being between the ages of 50–79, having no recent CRC screening test, not having a previous diagnosis of CRC, and not having a family history of CRC before age 60. Eligible patients will be identified through a two step process: (1) An electronic records review to identify potentially eligible patients; and (2) a mailed Screening Eligibility Assessment (SEA) form from their primary care practice to allow potentially eligible patients to confirm or refute their eligibility, and provide selected additional demographic and perceived health status information. Patients will also have the opportunity to opt out of the study on the SEA form.

Patients who are deemed eligible and have not opted out of the study through the SEA form will then receive a mailing from their practice inviting them to be screened for colorectal cancer. The invitation will include a letter on practice letterhead signed by the practice's primary care providers, a brochure that describes the benefits of CRC screening and the alternative screening modalities that are consistent with American Cancer Society guidelines, a Stool Blood Test (SBT) kit with an envelope to return it for processing for those patients who want to use that screening modality, and a list of colonoscopists that the practice refers patients to for those patients who prefer colonoscopy to a SBT. In addition to the list of colonoscopists, the accompanying letter from the practice will also include wording to make sure patients are aware they can select other colonoscopists who may not be on the list. As this invitation mailing is part of normal recommended clinical practice and requires no response on the part of the patient other than participating in the clinically recommended screening, it is not considered to be a data collection.

Patient electronic records will be tracked by LVPHO personnel for evidence of screening. Patients whose records do not indicate they have been screened within a certain amount of time will be sent a reminder letter. As with the invitation mailing, this reminder mailing is part of normal recommended clinical practice and requires no response on the part of the patient other than participating in the clinically recommended screening, and is not considered to be a data collection.

There will be no additional cost to patients for CRC screening beyond that which occurs in the usual delivery of health care. Patients insured through a LVPHO insurance product will be covered for diagnosis and treatment. Patients covered through non-LVPHO plans (public as well as private) will also likely be covered, and such coverage will be documented to determine its impact on the effectiveness of the intervention. Patients who are underinsured or uninsured are eligible to use systems for charity and discounted care available in the Lehigh Valley Hospital and Healthcare Network, including access to hospital clinics and access to financial advisors.

Clinicians and staff of intervention practices will participate in a brief academic detailing session to review the current evidence-based guidelines for CRC screening from the American Cancer Society, to receive information regarding appropriate follow-up to positive screens, and to receive the operational details of the implementation that will affect the practice (including being provided information about the intervention that may be necessary for answering questions from patients). Academic detailing will not be provided to control practices. As educational information is only being provided, this component of the intervention is not a data collection.

Method of Collection

Data will be collected through six modes: (1) A SEA form; (2) focus groups of providers and staff at each intervention and control practice; (3) brief informal interviews with selected providers and staff at each practice; (4) a survey of all clinicians and staff at each practice; (5) patient chart audits; and (6) patient focus groups. The data will be collected to obtain the following types of information needed for determining patient eligibility for the intervention and for conducting an assessment of the intervention: patient's screening history and eligibility information; patient demographics; patient, provider, and practice satisfaction with the intervention; practice attitudes; practice procedures and systems for screening and tracking results; and patient-perceived barriers and facilitators for following screening and follow-up recommendations.

SEA Form

Potentially eligible patients identified by electronic records review will receive a SEA form and accompanying letter. This form will ask patients to confirm or refute their eligibility based on all eligibility criteria. The form will also ask patients for additional socio-demographic and perceived health status data, and allow patients to opt out of participation in the intervention if they so choose.

Practice Focus Groups

The practice focus groups will be conducted both prior to the intervention and following the intervention at each intervention practice. The pre-intervention focus groups are designed to collect information to establish a baseline. The post-intervention focus groups will be conducted to assess satisfaction with the intervention and to identify changes in attitudes and behaviors regarding screening and follow-up and changes in management of normal and abnormal screening tests resulting from the intervention. In addition, focus groups at control practices will be conducted late in the intervention period to gather comparison information similar to the baseline information gathered from intervention practices.

Brief Informal Interviews

Brief informal interviews with selected intervention practice providers and staff will be conducted as a follow-up to the focus groups to ascertain additional baseline information about procedures and systems for screening results (pre-intervention), and additional information about each practice's experience with the intervention and facilitators and barriers to the intervention's implementation (post-intervention). In addition, similar baseline information will be collected from control practices late in the intervention period.

Practice Survey

A pre-intervention practice survey of providers and staff will be administered in the intervention practices to provide a baseline of the current CRC screening environment at each practice. The survey will be administered again post-

intervention to ascertain changes in behavior or attitudes resulting from the intervention. In addition, the survey will also be administered in the control practices late in the intervention period to gather comparison information similar to the baseline information gathered from intervention practices.

Patient Chart Audits

Study personnel will track patient screening rates and outcomes as well as follow-up rates at intervention and control practices by conducting chart audits on patients whose electronic data are inconclusive, or on patients who are part of practices without electronic medical records (EMR) systems. Chart audits will be performed by study personnel; however, practice staff will be required to identify, locate, and make charts available to study personnel.

Patient Focus Groups

Focus groups of patients will be conducted to better understand the intervention from the patient's perspective. Focus groups with the intervention practices will be held at two sites geographically situated across the region. At each site, three focus groups will be conducted for each of the following types of intervention patients: (1) Those who did not get the recommended screening after receiving the invitation packet, (2) those who did get the recommended screening and whose test was negative, and (3) those who did get screened and whose test was positive. For purposes of comparison, two focus groups of patients from control group practices will also be conducted. Participants will be asked about their attitudes and beliefs regarding colorectal cancer screening and what they believe would help them get the screening they need.

Estimated Annual Respondent Burden

Exhibit I shows the estimated annualized burden hours for the respondents to participate in this project. The SEA form will be sent to a maximum of 7,500 patients across the 20 intervention practices and will require an average of 10 minutes to complete each. Practice focus groups will be conducted with 10 individuals per practice, and will last approximately 30 minutes each. The pre-intervention and post-intervention practice focus groups will be held with intervention practices only (20 practices). Focus groups will also be held at each of the control practices for comparison purposes (5 practices). Informal interviews will be conducted with three individuals per practice, and will last about 10 minutes each. The pre and post-intervention informal interviews will be conducted among the intervention practices (20 practices). Informal interviews will also be conducted in the control practices for comparison purposes (5 practices). A survey of providers and staff will be conducted with 10 individuals at each practice, and the survey will take approximately 15 minutes to complete. The survey will be administered to the intervention practices during the pre and post-intervention practice focus group (20 practices). The survey will also be administered to the control practices for comparison purposes (5 practices). Patient chart audits will be performed post-intervention at both intervention and control practices as a supplement to the information available through electronic records. Among the 25 practices, about 50 patients from each practice will have their charts audited, which should take about 10 minutes per chart. Patient focus groups will be held post-intervention and will include six groups of 10 patients from the intervention group practice sites, and two groups of 10 patients from the control group practice sites (80 patients total). These focus groups are expected to last about 2 hours. The total burden for all phases of the project is estimated to be 1,978.33 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents' time to participate in the project. The total cost is estimated to be $29,844.73.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection mode	Number of respondents	Number of responses per respondent	Est. time per respondent in hours	Total burden hours
Screening Eligibility Assessment (SEA) Form	7,500	1	10/60	1250
Pre-interventlon practice focus groups	20	10	30/60	100
Post-intervention practice focus groups	20	10	30/60	100
Control practice focus groups	5	10	30/60	25
Pre-intervention informal interviews with selected providers and staff	20	3	10/60	10
Post-intervention informal interviews with selected providers and staff	20	3	10/60	10
Control informal interviews with selected providers and staff	5	3	10/60	2.5
Pre-intervention survey of clinicians and staff	20	10	15/60	50
Post-intervention survey of clinicians and staff	20	10	15/60	50
Control survey of clinicians and staff	5	10	15/60	12.5
Chart audits	25	50	10/60	208.33
Patient Focus Groups (post-intervention)	80	1	2	160
Total	7,740			1,978.33

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Data collection mode	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Screening Eligibility Assessment (SEA) Form(1)	7,500	1,250	$12.54	$15,675
Pre-intervention practice focus groups(2)	20	100	28	2,800
Post-intervention practice focus groups(2)	20	100	28	2,800
Control practice focus groups(2)	5	25	28	700
Pre-intervention informal interviews with selected providers and staff(2)	20	10	28	280
Post-intervention informal interviews with selected providers and staff(2)	20	10	28	280
Control informal interviews with selected providers and staff(2)	5	2.5	28	70
Pre-intervention survey of clinicians and staff(2)	20	50	28	1,400

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN—Continued

Data collection mode	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Post-intervention survey of clinicians and staff(2)	20	50	28	1,400
Control survey of clinicians and staff(2)	5	12.5	28	350
Chart audits(3)	25	208.33	10	2,083.33
Patient Focus Groups (post-intervention)(1)	80	160	12.54	2,006.40
Total	7,740	1,978.33		29,844.73

(1) Patient average hourly wage based on the average per capita income of $26,088 (computed into an hourly wage rate of $12.54) in Lehigh Valley, Pennsylvania: ''Demographic Information for the Lehigh Valley'' from the Lehigh Valley Economic Development Corporation 2006.

(2) Provider and practice hourly wage based on an average of the following estimates from LVPHO: physician = $70/hour; manager = $19/hour; clinical staff = $13/hour; and clerical staff = $10/hour.

(3) Practice clerical staff will retrieve the charts to be audited by study personnel; therefore only the time of the practice staff is included in Exhibit 1 and in the Exhibit 2 cost estimate. Practice clerical staff hourly wage is estimated by LVPHO to be $10/hour.

Estimated Annual Costs to the Federal Government

The estimated total cost to the Federal government is $271,764.68. The average annualized cost over the two years of the project is $135,882.34 per year. Exhibit 3 shows a breakdown of the costs.

EXHIBIT 3.—ESTIMATED ANNUAL COSTS TO THE FEDERAL GOVERNMENT

Component	Year 1	Year 2	Total
The cost of developing the data collection instruments	$24,765.38	$0	$24,765.38
The cost of implementing the data collections	99,061.52	24,601.75	123,663.27
The cost of analyzing the data and publishing the results	49,530.76	73,805.26	123,336.02
Total	173,357.66	98,407.02	271,764.68

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 20, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–6073 Filed 3–26–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0180]

Draft Guidance for Industry on Coronary Drug Eluting Stents–Nonclinical and Clinical Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Coronary Drug Eluting Stents—Nonclinical and Clinical Studies.'' This draft guidance is intended to provide recommendations to sponsors or applicants planning to develop, or to submit to FDA, a marketing application for a coronary drug eluting stent (DES). The draft guidance discusses the clinical studies that should be performed and the data that should be submitted to support such an application. The draft guidance is being issued in two parts. The companion document provides additional and more detailed guidance on some of the recommendations included in this document. The companion document is intended to be used together with this draft guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by July 25, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to

http://www.regulations.gov. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Ashley Boam, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4222, or

Devi Kozeli, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4183, Silver Spring, MD 20903–0002, 301–796–1128.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Coronary Drug Eluting Stents—Nonclinical and Clinical Studies.'' Coronary stents are implantable devices that are placed percutaneously in one or more coronary arteries to maintain patency. As defined by section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)), DESs are considered combination products because they are a combination of two different types of regulated components (a device and a drug) that are physically and/or chemically combined and produced as a single entity (21 CFR 3.2(e)(1)). A combination product is assigned to an agency component, such as the Center for Devices and Radiological Health (CDRH) or the Center for Drug Evaluation and Research (CDER) for premarket review and regulation based on a determination of the product's *primary mode of action*. In response to *several requests for designation* under 21 CFR 3.7, the agency determined that the primary mode of action for current DESs is that of the device component in maintaining coronary artery patency; the drug component plays a secondary role in preventing restenosis, augmenting the safety and/or effectiveness of the uncoated (bare) stent.[1] Therefore, the premarket review and regulatory responsibility has been assigned to CDRH. Nevertheless, careful consideration should be given to characterizing the drug component of DESs. This draft guidance is intended to provide recommendations on meeting the regulatory requirements for both the drug and device components of a DES.

DESs incorporate a pharmacologically active agent (drug) that is delivered at the site of stent deployment to reduce the incidence of restenosis due to neointimal hyperplasia associated with bare metal stenting. In many cases, the drug is incorporated into and released from a polymeric coating of sufficient capacity to accommodate the selected dose and to modulate its delivery at the intended site of action and for the intended duration. The chemical, physical, and mechanical attributes of the polymer coating system are important for stent deployment, biocompatibility, and stability. To perform a regulatory assessment of a DES, FDA must review data from a comprehensive evaluation of individual components (drug, polymer, and stent), as well as from a comprehensive evaluation of the finished drug-device combination product.

This draft guidance clarifies a number of issues related to the development DESs including the following.

- How to characterize the drug substance, including chemistry, nonclinical systemic and local tissue pharmacology and toxicology, and how to evaluate potential for and consequences of systemic clinical exposure.
- How to characterize the drug-device combination product, including the chemical/physical/mechanical properties of the DES, the nonclinical local vascular and regional myocardial toxicology, and the clinical performance of the drug-stent combination.
- Regulatory considerations that are unique to DES combination products.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 211 (current good manufacturing practice for finished pharmaceuticals) have been approved under OMB control number 0910–0139. The collections of information in 21 CFR parts 312 (investigational new drug application) and 314 (applications for FDA approval to market a new drug) have been approved under OMB control numbers 0910–0014 and 0910–0001. The collections of information in FDA's medical devices regulations in 21 CFR parts 801 (labeling), 803 (medical device reporting), 812 (investigational device exemptions), 814 (premarket approval of medical devices), and 820 (quality system regulation) have been approved under OMB control numbers 0910–0485, 0910–0437, 0910–0078, 0910–0231, and 0910–0073.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: March 21, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–6210 Filed 3–26–08; 8:45 am]

BILLING CODE 4160–01–S

[1] See ''Jurisdictional Update: Drug-Eluting Cardiovascular Stents,'' *http://www.fda.gov/oc/combination/stents.html*. This Jurisdictional Update is applicable to DESs for which the primary mode of action is the device component in maintaining vessel patency. However, a DES for which the primary mode of action is attributable to the drug component would be assigned to CDER.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0174]

Identification of Drug and Biological Products Deemed to Have Risk Evaluation and Mitigation Strategies for Purposes of the Food and Drug Administration Amendments Act of 2007

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice to notify holders of certain prescription new drug and biological license applications that they will be deemed to have in effect an approved risk evaluation and mitigation strategy (REMS) under the Food and Drug Administration Amendments Act of 2007 (FDAAA). Holders of applications deemed to have in effect an approved REMS are required to submit a proposed REMS to FDA.

DATES: Submit proposed REMSs to FDA by September 21, 2008.

ADDRESSES: Written communications regarding the applicability of this notice to a specific product should be identified with Docket Number FDA–2008–N–0174 and submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic communications to *http://www.regulations.gov*. Information about FDA implementation of FDAAA is available on the Internet at *http://www.fda.gov/oc/initiatives/advance/fdaaa.html*.

FOR FURTHER INFORMATION CONTACT: Mary Dempsey, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4326, Silver Spring, MD 20993–0002, 301–796–0147.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 27, 2007, the President signed into law FDAAA (Public Law 110–85). Title IX, subtitle A, section 901 of FDAAA created new section 505–1 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355–1). Section 505–1(a) of the act authorizes FDA to require persons submitting certain applications[1] to submit and implement a REMS if FDA determines that a REMS is necessary to ensure that the benefits of a drug outweigh the risks of the drug and informs the holder of the application for the drug of the determination. Section 909 of FDAAA provides that Title IX, subtitle A takes effect 180 days after its enactment, which is March 25, 2008.

FDAAA also contains REMS requirements for drug and biological products approved before the effective date of Title IX, subtitle A. Section 909(b)(1) of FDAAA specifies that a ''drug that was approved before the effective date of this Act is * * * deemed to have in effect an approved risk evaluation and mitigation strategy under section 505–1 of the Federal Food, Drug, and Cosmetic Act * * * if there are in effect on the effective date of this Act elements to assure safe use—(A) required under section 314.520 or section 601.42 of title 21, Code of Federal Regulations; or (B) otherwise agreed to by the applicant and the Secretary [of Health and Human Services] for such drug.''

Section 909(b)(3) of FDAAA states: ''Not later than 180 days after the effective date of this Act, the holder of an approved application for which a risk evaluation and mitigation strategy is deemed to be in effect * * * shall submit to the Secretary a proposed risk evaluation and mitigation strategy. Such proposed strategy is subject to section 505–1 of the Act as if included in such application at the time of submission of the application to the Secretary.''[2]

Section 909(b)(2) of FDAAA states that a REMS for a drug deemed to have a REMS consists of the timetable required under section 505–1(d) of the act and any additional elements under section 505–1(e) and (f) of the act in effect for the drug on the effective date of FDAAA.

The purpose of this notice is to identify those drugs that FDA has determined will be deemed to have in effect an approved REMS and to notify holders of applications for such drugs that they are required to submit a proposed REMS by September 21, 2008. FDA is developing guidance on the preferred content and format of a proposed REMS required to be submitted under section 909(b) of FDAAA and will issue it as soon as possible.

II. List of Drug and Biological Products Deemed to Have a REMS

Drug and biological products deemed to have in effect an approved REMS are those that on March 25, 2008 (the effective date of Title IX, subtitle A of FDAAA), had in effect ''elements to assure safe use.'' ''Elements to assure safe use'' include the following: (1) Health care providers who prescribe the drug have particular training or experience, or are specially certified; (2) pharmacies, practitioners, or health care settings that dispense the drug are specially certified; (3) the drug is dispensed to patients only in certain health care settings, such as hospitals; (4) the drug is dispensed to patients with evidence or other documentation of safe use conditions, such as laboratory test results; (5) each patient using the drug is subject to certain monitoring; or (6) each patient using the drug is enrolled in a registry (see section 505–1(f)(3) of the act).

Some applications approved before the effective date of FDAAA Title IX, subtitle A contain these elements to assure safe use.[3] Some of these applications were approved under § 314.520 (21 CFR 314.520) or § 601.42 (21 CFR 601.42). Others were not approved under part 314, subpart H or part 601, subpart E, but still contain elements to assure safe use that were agreed to by the applicant and the Secretary for such drug. Since 2005, these elements typically appeared in approved risk minimization action plans (RiskMAPs) (see the guidance for industry entitled ''Development and Use of Risk Minimization Action Plans'' (70 FR 15866, March 29, 2005)).

FDA has reviewed its records to identify applications that were approved before the effective date of Title IX of FDAAA with elements to assure safe use and has identified the drug and biological products listed in table 1 of this document as those that will be deemed to have in effect an approved REMS.

[1] Section 505(p)(1) of the act (21 U.S.C. 355(p)(1)) states that section 505–1 of the act applies to applications for prescription drugs approved under section 505(b) or (j) of the act and applications approved under section 351 of the Public Health Service Act (42 U.S.C. 262).

[2] Title IX, subtitle A of FDAAA, which includes section 909, takes effect March 25, 2008; 180 days after that date is September 21, 2008.

[3] These plans sometimes contain other elements to minimize risk such as a Medication Guide (21 CFR part 208) or a communication/educational plan for health care providers or patients. A drug will not be deemed to have a REMS if it has only a Medication Guide, patient package insert, and/or communication plan (see section 505–1(e)(2) and (e)(3) of the act).

TABLE 1.—PRODUCTS DEEMED TO HAVE IN EFFECT AN APPROVED REMS

Generic or Proper Name	Brand Name	Application Number[1]	Date of Approval[2]
Abarelix	Plenaxis[3]	NDA 21–320	11/25/2003
Alosetron	Lotronex	NDA 21–107	02/09/2000
Ambrisentan	Letairis	NDA 22–081	06/15/2007
Bosentan	Tracleer	NDA 21–290	11/20/2001
Clozapine	Clozaril	NDA 19–758	09/26/1989
		ANDA 74–949	11/26/97
		ANDA 75–417	5/27/99
		ANDA 75–713	11/15/02
		ANDA 75–162	4/26/05
		ANDA 76–809	12/16/05
	Fazaclo ODT	NDA 21–590	02/09/2004
Dofetilide	Tikosyn	NDA 20–931	10/01/1999
Eculizumab	Soliris	BLA 125166	03/16/2007
Fentanyl PCA	Ionsys[3]	NDA 21–338	05/22/2006
Fentanyl citrate	Actiq	NDA 20–747	11/04/1998
Isotretinoin	Accutane	NDA 18–662	05/07/1982
	Amnesteem	ANDA 75–945	11/2002
	Claravis	ANDA 76–135	04/2003
		ANDA 76–356	04/2003
	Sotret	ANDA 76–041	12/2002
		ANDA 76–503	06/2003
Lenalidomide	Revlimid	NDA 21–880	12/27/2005
Mifepristone	Mifeprex	NDA 20–687	09/28/2000
Natalizumab	Tysabri	BLA 125104	11/23/2004
Small pox (Vaccinia) Vaccine, Live	ACAM2000	BLA 125158	08/31/2007
Sodium oxybate	Xyrem	NDA 21–196	07/17/2002
Thalidomide	Thalomid	NDA 20–785	07/16/1998
		NDA 21–430	

[1] New drug application (NDA), abbreviated new drug application (ANDA), biologics license application (BLA).
[2] The original date of approval of the drug. FDA may have required elements to assure safe use at a later date.
[3] Product is not currently marketed in the United States.

FDA is further asking members of the public to please notify the agency if they are aware of applications that have not been identified in this document and that they believe should be deemed to have in effect an approved REMS. Please provide the information to Mary Dempsey, Risk Management Coordinator (see the **FOR FURTHER INFORMATION CONTACT** section of this document).

Any application holder that believes its product identified in this notice should not be on the list of drug or biological products that will be deemed to have in effect an approved REMS should submit a letter identified with Docket Number FDA–2008–N–0174 to the Division of Dockets Management (see **ADDRESSES**) stating why the application holder believes its product was improperly identified in this notice. FDA will notify the application holder within 30 days of receipt of the letter of its determination.

Dated: March 19, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–6201 Filed 3–26–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 5 and 6, 2008, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD. The hotel telephone number is 301–948–8900.

Contact Person: Teresa Watkins, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Teresa.Watkins@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in Washington, DC area), codes 3014512529 and 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory hotline/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 5, 2008, the committees will discuss new drug application (NDA) 22–272, OXYCONTIN (oxycodone hydrochloride controlled-release) Tablets, Purdue Pharma L.P., and its safety for the proposed indication of management of moderate to severe pain when a continuous, around-the-clock analgesic is needed for an extended period of time. The sustained-release characteristics of this formulation are purportedly less easily defeated than other formulations of OXYCONTIN. On May 6, 2008, the committees will discuss supplemental new drug application (sNDA) 21–947/s-005, FENTORA (fentanyl buccal tablet), Cephalon, Inc., and its safety for the proposed indication of breakthrough pain in opioid tolerant non-cancer patients with chronic pain.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 21, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. each day. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 11, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 14, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Teresa Watkins at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–6294 Filed 3–26–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 16, 2008, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Michael Bailey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4100, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512524. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for the FC2 Female Condom, sponsored by the Female Health Co. This device is indicated to help prevent HIV/AIDS and unintended pregnancy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after

the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 2, 2008. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m., and between 3:30 p.m. and 4 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 24, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 25, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, Conference Management Staff, at 240–276–8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–6290 Filed 3–26–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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 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 the use of automated collection techniques or other forms of information technology.

Proposed Project: The Nurse Faculty Loan Program (NFLP): Program Specific Data Form (NEW)

The Nurse Faculty Loan Program (NFLP) is authorized under Title VIII of the Public Health Service Act, Section 846A, as amended by the Nurse Reinvestment Act, Public Law 107–205 to increase the number of qualified nurse faculty. The HHS, acting through HRSA, may enter into an agreement with schools of nursing and make an award to establish and operate a distinct NFLP loan fund. The NFLP loan fund is used by the applicant School of Nursing to make loans to eligible students pursuing an advanced nursing degree program that will prepare the student to become qualified as a nursing faculty.

The NFLP Program Specific Data Form will capture program-related information provided by the applicant. NFLP applicants will complete and submit the Program Specific Data Form as an electronic attachment with the required application materials. The form will provide the Federal Government with specific data from the applicant to specify: (1) The amount of the Federal funds requested by the applicant, (2) the expected contribution from the applicant, (3) the student enrollment and graduation data based on current and prospective NFLP loan recipients, (4) the graduate nursing education programs supported under NFLP, (5) the program accreditation status, (6) the current tuition and fee information for graduate nursing education programs, and (7) the projected NFLP loan fund balance that may be considered as part of the award determination. The data provided in the form are essential for the formula-based criteria used to determine the award amount to the applicant schools. The new Program Specific Data Form will facilitate the current effort to develop an automated data collection capability for the NFLP. The electronic data collection capability will streamline the application submission process, enable an efficient award determination process, and serve as a data repository to facilitate reporting on the use of funds and analysis of program outcomes. Additionally, the data will be used to ensure programmatic compliance with the legislative authority and program guidance, to report program accomplishments to policy makers and Congress, and to formulate and justify the appropriation to the Office of Management and Budget and Congress.

The estimate of burden for this form is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Nurse Faculty Loan Program Annual Operating Report (AOR).	150	1	150	8 hours	1200 hours
Total Burden	150	1	150	8 hours	1200 hours

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 20, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–6224 Filed 3–26–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis, Panel Mechanism of Obesity and Diabetes.

Date: April 16, 2008.

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: Reed A. Graves, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@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: March 19, 2008.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6083 Filed 3–26–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Trafficking.

Date: April 16, 2008.

Time: 3:30 p.m. to 5:30 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: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: May 19–20, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Elaine Sierra-Rivera, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@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: March 18, 2008.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6093 Filed 3–26–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the NIH Advisory Board for Clinical Research, March 31, 2008, 10 a.m. to March 31, 2008, 2 p.m., National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 2C116, Bethesda, MD 20892 which was published in the **Federal Register** on March 12, 2008, FR E8–4654.

There will not be a closed session for this meeting. The meeting is open to the public.

Dated: March 19, 2008.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6095 Filed 3–26–08; 8:45 am]

BILLING CODE 4140–01–M

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 President's Cancer Panel, March 5, 2008, 1 p.m. to March 5, 2008, 3 p.m., National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on February 11, 2008, 73 FR7749.

This meeting is amended to change the meeting date from March 5, 2008 to April 29, 2008. The meeting times will be 10 a.m. to 12 p.m. The meeting is closed to the public.

Dated: March 19, 2008.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6080 Filed 3–26–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed 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 Cancer Institute Special Emphasis Panel; AIDS and Cancer Specimen Resource.

Date: April 24, 2008.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Conference Room 611, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sherwood Githens, PhD., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8053, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SPORE in Lymphoma and Lung Cancer.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shamala K. Srinivas, PhD., Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892, 301–594–1224, *ss537t@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SPORE in Prostate, Breast, Ovarian, Pancreatic and Gastrointestinal Cancers.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Caron Lyman, PhD., Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive BIvd, Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Prevention, Control and Population Sciences.

Date: June 11–12, 2008.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Wlodek Lopaczynski, MD, PhD., Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Clinical Studies P01 Special Emphasis Panel.

Date: June 19–20, 2008.

Time: 7 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Majed M. Hamawy, PhD., MBA, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20852, 301–594–5659, *mh101v@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 17, 2008.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6094 Filed 3–26–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 of General Medical Sciences, Special Emphasis Panel, Minority Biomedical Research Support in Neurology/Physiology.

Date: March 31, 2008.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, 45 Center Drive, Room 3AN18, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Margaret J. Weidman, PhD., Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821 Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 17, 2008.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6085 Filed 3–26–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel To Review An Unsolicited P01.

Date: April 16, 2008.
Time: 9 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).
Contact Person: Clayton C Huntley, PhD., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2570. *chuntley@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel To Review an Unsolicited P01.
Date: April 17, 2008.
Time: 9 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).
Contact Person: Clayton C Huntley, PhD., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2570, *chuntley@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6086 Filed 3–26–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Review of An Unsolicited P01 Application.
Date: April 14, 2008.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, 6700–B Rockledge Drive, Rockville, MD 20892 (Telephone Conference Call).
Contact Person: Peter R. Jackson, PhD., Chief, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, DHHS, 6700–B Rockledge Drive, Room 3133, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *pjackson@niaid.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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; To Review Contract Proposals.
Date: April 21–22, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Grand Ballroom B, Bethesda, MD 20814.
Contact Person: Mercy R. Prabhudas, PhD., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *Mp457n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–6089 Filed 3–26–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–N0052; 1112–0000–81440–F2]

Receipt of Applications for Five Incidental Take Permits for the Construction of 24 Single-Family Homes and an Addition to an Existing Single-Family Home in Santa Cruz County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of five Incidental Take Permit (ITP) Applications and Habitat Conservation Plans (HCPs) from the following five applicants: Hochler Construction, Scotts Valley LLC, James and Melinda Carter, Ronald Sunde, and College Heights Development Corp. Hochler Construction, Scotts Valley LLC, and James and Melinda Carter each request an ITP for a duration of 5 years; Ronald Sunde requests an ITP for a duration of 3 years; and College Heights Development Corp. requests an ITP for a duration of 6 years under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicants collectively anticipate removing a total of approximately 7.23 acres of Mount Hermon June beetle (*Polyphylla barbata*) occupied habitat incidental to constructing 24 single-family homes and an addition to an existing single-family home in Santa Cruz County, California (Projects). The applicants' HCPs describe the mitigation and minimization measures the applicants propose to address the effects of the Projects on the Mount Hermon June beetle. In addition, the College Heights Development Corp. HCP includes the federally endangered Ben Lomond wallflower (*Erysimum teretifolium*) and Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) as covered species, and their HCP describes mitigation and minimization measures for those species as well.

We are requesting comments on the permit application and on our preliminary determination that the proposed Habitat Conservation Plan (HCP) qualifies as a ''low effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in draft Environmental Action Statements (EAS) and associated Low Effect Screening Forms. The Applicants' Low Effect HCPs describe the mitigation and minimization measures they would implement, as required in Section 10(a)(2)(B) of the Act, to address the effects of the project on the Mount Hermon June beetle. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The draft HCPs and EASs are available for public review.

DATES: Written comments should be received on or before April 28, 2008.

ADDRESSES: Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also send comments by facsimile to (805) 644–3958. To obtain copies of draft

documents, see ''Availability of Documents'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator, (see **ADDRESSES**) telephone: (805) 644–1766 extension 224.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the applications and HCPs by contacting the HCP Coordinator (see **FOR FURTHER INFORMATION CONTACT**). Documents will also be available for review by appointment, during normal business hours, at the Ventura Fish and Wildlife Office (see **ADDRESSES**), or via the Internet at: *http://www.fws.gov/ventura.*

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to cover incidental take, i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants.

The Projects are located on soils known as ''Zayante sands.'' These soils support the Zayante sandhills ecosystem that occurs exclusively in the Santa Cruz Mountains near the city of Scotts Valley and the communities of Ben Lomond, Mount Hermon, Felton, Olympia, Corralitos, and Bonny Doon. The Mount Hermon June beetle is restricted to Zayante sands soils in the Scotts Valley-Mount Hermon-Felton-Ben Lomond area and is found in association with vegetation of the Zayante sandhills, which is characterized by a mosaic of ponderosa pines (*Pinus ponderosa*), silverleaf manzanita (*Arctostaphylos silvicola*), and areas that are sparsely vegetated with grasses and herbs.

The five (5) applicants are requesting to remove approximately 7.23 acres of combined Mount Hermon June beetle habitat incidental to the construction of 24 single-family homes and an addition to an existing single-family home in Santa Cruz County, California. Residential construction of one single-family home for Ronald Sunde would occur within parcel 066–201–13 in Mount Hermon, Santa Cruz County, California. Residential construction of four single-family homes for Scotts Valley LLC would occur within parcel 021–031–13 in Scotts Valley, Santa Cruz County, California. Residential construction of an addition to an existing single-family residence for James and Melinda Carter would occur within parcel 067–533–04 near the city of Scotts Valley in Santa Cruz County, California. Residential construction of four single-family homes for Hochler Construction would occur within parcels 067–041–14 and 067–581–07 near the city of Scotts Valley in Santa Cruz County, California. Residential construction of 13 single-family homes for College Heights Development Corp. would occur within parcel 022–631–22 in Scotts Valley, Santa Cruz County, California.

The parcels combined encompass about 21.61 acres, and the footprint of the homes, infrastructure, and landscaping would eliminate 7.23 acres of Mount Hermon June beetle habitat. To mitigate for incidental take on the project sites, Hochler Construction, Scotts Valley LLC, James and Melinda Carter, and Ronald Sunde propose to purchase a total of 3.08 conservation credits for the Mount Hermon June beetle at the recently approved Ben Lomond Sandhills Preserve of the Zayante Sandhills Conservation Bank operated by PCO, LLC. College Heights Development Corp. will establish a permanent conservation easement on 14.0 acres of prime sandhills habitat within the parcel (Preserve). Once the easement is established, they will conduct the following activities within the Preserve: monitor the Mount Hermon June beetle, Ben Lomond wallflower, and Ben Lomond spineflower in perpetuity, remove garbage and debris, remove and control exotic plants, construct permanent fencing to protect the preserve, maintain indigenous sandhill plants, restore native plant communities where temporary impacts occur during construction, and establish an irrevocable assessment against the residential lots to cover anticipated expenses associated with the monitoring and management of the Preserve. In addition, College Heights Development Corp. will implement a number of minimization and mitigation measures including the following: control dust during grading; use of non-insect attracting light bulbs in street lights and exterior light fixtures on the new residences; erect construction fencing during grading and construction; collect seed from the Ben Lomond spineflower plants growing within the impact area; and implement a fuel management plan to minimize the chance of catastrophic fire events.

We have made a preliminary determination that the HCPs qualify as ''low-effect'' plans as defined by our Habitat Conservation Planning Handbook (November 1996). Our determination that an HCP qualifies as a low-effect plan is based on the following criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, the cumulative effects to the environmental values or resources that would be considered significant. As more fully explained in our EASs and associated Low Effect Screening Forms, the Applicants' proposals for residential construction qualify as ''low effect'' plans for the following reasons:

(1) Approval of the HCPs would result in minor or negligible effects on the Mount Hermon June beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the Mount Hermon June beetle resulting from the proposed projects.

(2) Approval of the HCPs would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the HCPs would not result in any cumulative or growth-inducing impacts and would not result in significant adverse effects on public health or safety.

(4) The projects do not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor do they threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(5) Approval of the HCPs would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approvals of the HCPs qualify as categorical exclusions under the

National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

We will evaluate the permit applications, HCPs, and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the applications meet those requirements, we will issue the ITPs for incidental take of the Mount Hermon June beetle. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITPs.

Public Review and Comment

If you wish to comment on the permit applications, draft Environmental Action Statements or the proposed HCPs, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names, home addresses, etc., of respondents available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. In the absence of exceptional, documented circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: March 20, 2008.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. E8–6234 Filed 3–26–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–PE–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0103

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an Information Collection Request (ICR) to OMB for review and approval. The ICR is scheduled to expire on March 31, 2008. The BLM 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. However, under OMB regulations, the BLM may continue to conduct or sponsor this information collection while it is pending at OMB. On January 8, 2008, the BLM published a notice in the **Federal Register** (73 FR 1364) requesting comment on this information collection. The comment period closed on March 8, 2008. The BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed in the **ADDRESSES** section below.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by April 28, 2008 to receive maximum consideration.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Alexandra Ritchie, Information Collection Clearance Officer, Bureau of Land Management, at U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Washington, DC 20240. Additionally, you may contact Alexandra Ritchie regarding this ICR at (202) 452–0388 (phone); (202) 653–5287 (fax); or *Alexandra_Ritchie@blm.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: For program-related questions, contact George Brown on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Brown via message service. For questions regarding this ICR or the information collection process, contact Alexandra Ritchie by phone, mail, fax, or e-mail (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1004–0103.

Title: Mineral Materials Disposal, 43 CFR 3600, 3601, and 3602.

Bureau Form Number: 3600–9.

Type of Request: Revision of currently approved collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually or monthly (contracts and reporting requirements vary).

Activity		Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Form 3600–9:					
43 CFR 3602.10	Contract for the Sale of Mineral Materials	440	440	30 minutes	220
Form Subtotal		440	440	30 minutes	220
Non-form:					
43 CFR 3601.30	Sampling and testing	30	30	30 minutes	15
43 CFR 3602.10	Request for sale	440	440	30 minutes	220
43 CFR 3601.40	Mining and reclamation plans	110	110	24 hours	2,640
43 CFR 3601.40	Mining and reclamation plans (simple case)	200	200	2 hours	400
43 CFR 3602.14	Performance bond	440	440	30 minutes	220

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
43 CFR 3602.21 Payments	440	440	12 hours	5,280
43 CFR 3602.28 Records Maintenance	440	440	6 hours	2,640
Non-Form Subtotal	2,100	2,100		11,415
Total Form and Non-Form	2,540	2,540		11,635

Abstract: The Materials Act of 1947, as amended (Act), 30 U.S.C. 601 and 602, provides for the disposal of mineral materials, such as sand, gravel, and petrified wood from public lands by sale or free use. The BLM disposes of such materials under the regulations at CFR parts 3600 and 3620.

The BLM uses Form 3600–9 to collect information to:

(1) Determine whether the sale of mineral materials is in the public interest;

(2) Mitigate the environmental impacts of mineral materials development;

(3) Get fair market value for materials sold; and

(4) Prevent trespass removal of the materials.

Applicants must submit a request in writing to the BLM to purchase mineral materials. Specific information requirements are not stated in the regulations, but sale agreements are made on Form 3600–9 approved by the BLM.

Respondents maintain records as part of the customary and usual business and private practices, and purchases do not involve substantial additional information collection for most respondents. Cost estimates for information collection can vary widely because the nature of the applications varies considerably in size, location, and associated environmental conflicts; all of which can substantially affect the complexity and cost of the processing and the amount of information needed. Typically, larger purchases involve more records over a longer period of time. Respondents are not required to purchase additional computer hardware or software to comply with these information collection requirements. There are no capital and start-up costs involved with this information collection.

While the BLM does not require the respondents to purchase special equipment to maintain these records and these respondents maintain records for tax purposes and production verification as part of their usual business, the BLM does ask respondents to query or search their databases or other records maintenance systems to provide a summary record so that the BLM can process the requests for an exclusive mineral materials sales contract. We therefore treat this combined records maintenance and reporting effort as part of the respondents' annual burden hours and costs in Item 12 of this document. For the purposes of this information collection request, ''records maintenance'' is considered one of the ''non-form information requirements.''

There is a filing fee associated with this information collection for independent sales that are not in a community pit or common use area. Such sales require a case-by-case analysis by the BLM of each application because each is unique. Sales vary widely depending on the magnitude and nature of the application (can range in quantity from tens to millions of tons of materials), the complexity of the mining plan proposed, the duration proposed (can range from days to years), the location of the proposed removal area, the associated environmental effects at that location, and the BLM's related processing costs for that application, including the travel time to the site.

The information collection considers a general cost range for respondents for 43 CFR 3601.40, including no cost (where respondent uses a BLM plan at a community pit), mid-range costs (respondent either prepares a simple plan for small sale at a new site, designs a plan for multiple sales at a new site, or makes adjustments to a BLM plan for a sale at a community pit), and upper-level costs (to establish a new site, typically for a larger sale, requiring original mining and reclamation plan design).

The BLM collected a total of $66,120 in fees associated with processing information requirements connected with this collection (exclusive sales contracts) in FY 2007. Although we cannot determine the filing fee per response in advance, for purposes of this information collection we have determined that the average annual filing fee per contract is $150.27 or about $150 ($66,120 divided by 440 exclusive sales contracts). We are therefore assigning this non-burden hour cost to the sales contract Form 3600–9 Information Collection (IC) in the ROCIS database.

We can attribute our change in non-burden hour costs to respondents from the previous collection to new BLM regulations (program change) that took effect in November 2005 authorizing the BLM to charge fees to recover our costs of processing some sales contracts. Those regulatory changes are contained in Minerals Management: Adjustment of Cost Recovery Fees Final Rule (43 CFR parts 3000, 3100, 3150, 3200, 350, 3580, 3600, 3730, 3810, and 3830). The BLM collected a total of $66,120 in cost recovery fees associated with this information collection in FY 2007. In order to estimate the annual non-burden hour cost to respondents for this collection, the BLM is assuming that it will collect on average $66,120 in cost-recovery fees each year associated with this collection.

Comments: We again specifically request your comments on the following:

(1) Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

(2) The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

(3) The quality, utility and clarity of the information we collect; and

(4) How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying

information from public review, we cannot guarantee that it will be done.

Dated: March 24, 2008.

Alexandra Ritchie,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. E8–6293 Filed 3–26–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 08463, UTU 53990, UTU 010096, UTU 42889]

Public Land Order No. 7395; Revocation of Public Land Order Nos. 494, 565, 983, and 1011, Utah; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects an error in the land description published as FR Doc. 99–16616 in the **Federal Register**, 64 FR 35179, June 30, 1999, for a Department of Energy withdrawal revocation.

On page 35179, column 2, line 33 from the bottom, which reads ''T. 36 S., R. 10 E., '' is hereby corrected to read ''T. 36 S., R. 19 E.''

Dated: March 17, 2008.

Jeff Rawson,

Acting State Director.

[FR Doc. E8–6289 Filed 3–26–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–920–1310–FI); (CACA 47607 and CACA 47608]

Proposed Reinstatement of Terminated Oil and Gas Leases CACA 47607 and CACA 47608

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Leases.

SUMMARY: Under the provisions of Public Law 97–451, Maverick Petroleum Inc., timely filed a petition for reinstatement of oil and gas leases CACA 47607 and CACA 47608 for lands in Kern County, California, and it was accompanied by all required rentals and royalties accruing from August 1, 2007, the date of termination.

FOR FURTHER INFORMATION CONTACT: Rita Altamira, Land Law Examiner, Branch of Adjudication, Division of Energy & Minerals, BLM California State Office, 2800 Cottage Way, W–1834, Sacramento, California 95825, (916) 978–4378.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective August 1, 2007, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 20, 2008.

Debra Marsh,

Supervisor, Branch of Adjudication, Division of Energy & Minerals.

[FR Doc. E8–6233 Filed 3–26–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Quarry Visitor Center Final Environmental Impact Statement, Dinosaur National Monument, Colorado and Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Quarry Visitor Center, Dinosaur National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2) (C), the National Park Service announces the availability of a Final Environmental Impact Statement for the Quarry Visitor Center at Dinosaur National Monument, Colorado and Utah.

SUPPLEMENTARY INFORMATION: Five alternatives were evaluated in the environmental impact statement. These include: Alternative A, No Action—Continue Current Management; Alternative B, the Preferred Alternative—Rehabilitate or Replace the Exhibit Hall and Construct a New Facility Off-Site; Alternative C—Retain the Exhibit Hall and Construct a New Facility at the Quarry Visitor Center Site; Alternative D—Retain the Exhibit Hall and Construct Wings Similar to Existing Facility; Alternative E—Demolish the Entire Facility and Construct a New Facility at the Quarry Visitor Center Site. The preferred alternative would provide for a shelter and interpretive area at the fossil wall, either by rehabilitating the existing 10,800-square-foot Exhibit Hall or constructing a new structure to provide opportunities for visitors to view the dinosaur bones in situ. This alternative would minimize facilities at the Quarry Visitor Center site and allow new interpretive experiences to be developed and showcased at a new location where soils are more stable.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information on the final Environmental Impact Statement will be available online at *http://parkplanning.nps.gov,* in the office of the Superintendent, Mary Risser, 4545 E. Highway 40, Dinosaur, CO, 81610–9724, (970) 374–3001, and the following locations: The Moffat County Library, 570 Green St., Craig, CO., 81625 and the Uintah County Library, 155 East Main, Vernal, UT, 84078.

FOR FURTHER INFORMATION CONTACT: Mary Risser, 4545 E. Highway 40, Dinosaur, CO., 81610–9724 (970) 374–3001, *Mary_Risser@nps.gov*.

Dated: January 25, 2008.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. E8–6269 Filed 3–26–08; 8:45 am]

BILLING CODE 4312–CR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of May 3, 2008 Meeting.

SUMMARY: This notice sets forth the date of the May 3, 2008 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, May 3, 2008 from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held at the Somerset County Courthouse, Court

Room #1, located at 111 E. Union Street, Somerset, PA 15501.

Agenda: The May 3, 2008 joint Commission and Task Force meeting will consist of

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from Feb 3, 2008.
3. Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: March 3, 2008.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. E8–6277 Filed 3–26–08; 8:45 am]

BILLING CODE 4312–25–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0011]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meeting.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet April 10, 2008, in Washington, DC.

DATES: *FACOSH meeting:* FACOSH will meet from 1 p.m. to 4:30 p.m., Thursday, April 10, 2008.

Submission of comments and requests to speak: Comments and requests to speak at the FACOSH meeting must be received by April 3, 2008.

ADDRESSES: *FACOSH meeting:* FACOSH will meet in Room C–5521, Conference Room 4, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: Comments and requests to speak at the FACOSH meeting, identified by Docket No. OSHA–2008–0011, may be submitted by any of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: You must submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2008–0011). Submissions in response to this **Federal Register** notice, including personal information provided, will be posted without change at: *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information such as social security numbers and birth dates. Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section below.

Docket: To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA–2008–0011 at: *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Jennifer Ashley, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general information: Michelle Walker, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2122; fax (202) 693–1685; email *ofap@dol.gov.*

For special accommodations for the FACOSH meeting: Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION: FACOSH will meet Thursday, April 10, 2008, in Washington, DC. All FACOSH meetings are open to the public.

FACOSH is authorized by section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), 5 U.S.C. 7902, and Executive Order 12196 to advise the Secretary of Labor on all matters relating to the occupational safety and health of Federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal Department and Agency.

The tentative agenda for the FACOSH meeting includes:

- FY 2008 performance status of Federal Executive Branch agencies in meeting the four goals of the Presidential Safety, Health, and Return-to-Employment (SHARE) Initiative;
- Progress of the Federal Agency Recordkeeping Subcommittee;
- Implementation of the Federal Agency targeted inspection program (FedTarg08);
- Federal Agency safety and health training; and
- Federal Agency return-to-work programs.

FACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts, minutes and other materials presented at the meeting are included in the official record of FACOSH meetings.

Interested parties may submit a request to make an oral presentation to FACOSH by one of the methods listed

in the **ADDRESSES** section. The request must state the amount of time requested to speak, the interest represented (e.g., organization name), if any, and a brief outline of the presentation. Requests to address FACOSH may be granted as time permits and at the discretion of the FACOSH chair.

Interested parties also may submit comments, including data and other information, using any of the methods listed in the **ADDRESSES** section. OSHA will provide all submissions to FACOSH members.

Individuals who need special accommodations and wish to attend the FACOSH meeting should contact Veneta Chatmon, at the address above, at least seven days before the meeting.

Public Participation—Submissions and Access to Official Meeting Record

You may submit comments and requests to speak (1) electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the OSHA docket number for this notice (Docket No. OSHA–2008–0011). You may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit three copies to the OSHA Docket Office using the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Meeting transcripts and minutes as well as submissions in response to this **Federal Register** notice are included in the official record of the FACOSH meeting (Docket No. OSHA–2008–0011). Submissions are posted without change at: *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information such as social security numbers and birth dates. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to make submissions and to access the docket and exhibits is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate submissions and other documents in the docket.

Electronic copies of this **Federal Register** notice are available at: *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available at OSHA's Web page at: *http://www.osha.gov.*

Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), 5 U.S.C. 7902, section 1–5 of Executive Order 12196, the Federal Advisory Committee Act (5 U.S.C. App.2) and regulations issued under FACA (41 CFR Part 102–3), and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 24th day of March, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–6244 Filed 3–26–08; 8:45 am]

BILLING CODE 4510–26–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9 a.m. to 12 p.m., Friday, April 11, 2008.

PLACE: The offices of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) A report from the Udall Center for Studies in Public Policy; (3) A report on the Native Nations Institute; (4) Program Reports; and (5) A Report from the Management Committee.

PORTIONS OPEN TO THE PUBLIC: All sessions with the exception of the session listed below.

PORTIONS CLOSED TO THE PUBLIC: Executive session.

FOR FURTHER INFORMATION CONTACT: Ellen K. Wheeler, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: March 20, 2008.

Ellen K. Wheeler.

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. E8–6109 Filed 3–26–08; 8:45 am]

BILLING CODE 6820–FN–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34325]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for Amendment of a Materials Permit in Accordance With Byproduct Materials License No. 03–23853–01VA, for Unrestricted Release of a Department of Veterans Affair's Facility in Hampton, VA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: William Snell, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; telephone: (630) 829–9871; fax number: (630) 515–1259; or by e-mail at *wgs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend a materials permit held under Byproduct Materials License No. 03–23853–01VA. The permit is held by the Department of Veterans Affairs (the Licensee), for its Hampton VA Medical Center facilities, located at 100 Emancipation Drive, Hampton, Virginia (the Facility). Issuance of the amendment would authorize release of Building 72 (described below) for unrestricted use. The Licensee requested this action in a letter dated October 22, 2007. The NRC has prepared an Environmental Assessment

(EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's October 22, 2007, materials permit amendment request, resulting in release of Building 72 for unrestricted use. License No. 03–23853–01VA was issued on March 17, 2003, pursuant to 10 CFR Parts 30 and 35, and has been amended periodically since that time. This license authorizes the Licensee to use byproduct materials at several Licensee facilities around the country, as authorized on a site-specific basis by permits issued by the Licensee's National Radiation Safety Committee. Under the license, the permits authorize the use of by-product materials for various medical and veterinary purposes, and for use in portable gauges.

The Facility is situated on an 85-acre site and is located in a residential area of Hampton, Virginia. Within the Facility, Building 72 was constructed in 1908 and was originally used as a dining room for soldiers. In 1974 the 10,600 square foot structure was converted into a research facility. Building 72 has a single floor, and is made of brick with a wood frame attic. Based on a Historical Site Assessment, there was no evidence that radioactive material was used in Building 72 prior to the conversion of the building to a research facility in 1974. Licensed materials were used for both medical diagnostic and treatment purposes, as well as for research purposes, including animal studies. The licensee ceased using licensed materials in Building 72 in 2001, and conducted, but did not complete, surveys and decontamination of the building. In February 2007, the licensee initiated additional surveys and decontamination of the building. Based on the Licensee's historical knowledge of the site and the conditions within Building 72, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted final status surveys of Building 72 on June 28, 2007. The results of these surveys along with other supporting information were provided to the NRC to demonstrate that the criteria in Subpart E of 10 CFR Part 20 for unrestricted release have been met.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities in Building 72, and seeks the unrestricted use of Building 72.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted in Building 72 shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Building 72 affected by these radionuclides.

The Licensee completed final status surveys on Building 72 on June 28, 2007. The surveys covered the floor area of Building 72, as well as sinks and drains, laboratory counters, hoods, refrigerators, and other horizontal surfaces. The final status survey report was attached to the Licensee's amendment request dated October 22, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 using release criteria for building surfaces based on NRC Regulatory Guide 1.86, ''Termination of Operating Licenses for Nuclear Reactors.'' These release criteria are much more restrictive than the radionuclide-specific dose-based release criteria, described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. These values provide acceptable levels of surface contamination to demonstrate compliance with the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below the Regulatory Guide 1.86 values and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material in Building 72. The NRC staff reviewed available docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding Building 72. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that issuance of the proposed amendment authorizing release of Building 72 for unrestricted use is in compliance with 10 CFR Part 20. Based on its review, the staff considered the impact of the residual radioactivity from Building 72 and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that Building 72 meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff

concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Virginia Radioactive Materials Program for review on February 25, 2008. The State agreed with the conclusions of the EA, and otherwise provided no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. E. Lynn McGuire, Department of Veterans Affairs, letter to Cassandra Frazier, U.S. Nuclear Regulatory Commission, Region III, dated October 22, 2007 (ADAMS Accession No. ML072980830);
2. Regulatory Guide 1.86, ''Termination of Operating Licenses for Reactors;''
3. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
4. Title 10 Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
5. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''
6. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 17th day of March 2008.

For the Nuclear Regulatory Commission,

Patrick Louden,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E8–6230 Filed 3–26–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

Seabrook Station, Unit No. 1; Correction to Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on March 19, 2008 (73 FR 14850), that incorrectly referenced the date of the submittal for the amendment request. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: G. Edward Miller, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2481, *e-mail*: *GXM@nrc.gov*.

SUPPLEMENTARY INFORMATION: On page 14852, in the second column, in the second complete paragraph, fourth line, it is corrected to read from ''February 16, 2007'' to ''March 7, 2008''.

Dated in Rockville, Maryland, this 20th day of March 2008.

For the Nuclear Regulatory Commission.

G. Edward Miller,

Project Manager, Plant Licensing Branch 1–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–6237 Filed 3–26–08; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Change in Rates of General Applicability for Competitive Products: Decision of the Governors of the Postal Service

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: This notice sets forth changes in rates of general applicability for competitive products.

DATES: *Effective Date:* May 12, 2008.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., 202–268–2989.

SUPPLEMENTARY INFORMATION: On March 3, 2008, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for competitive products. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with § 3632(b)(2). Implementing regulations will be published separately in the **Federal Register**.

Stanley F. Mires,

Chief Counsel, Legislative.

Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Competitive Products (Governors' Decision No. 08–3)

March 4, 2008.

Statement of Explanation and Justification

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), we establish new prices of general applicability for the Postal Service's competitive products, and such changes in classifications as are necessary to define the new prices. The prices and classification changes are shown in Attachment A and are described in detail in the analysis provided by management in Attachment B. We have reviewed that analysis and have evaluated the new prices and classification changes in accordance with 39 U.S.C. 3632–3633 and 39 CFR 3015.2. We approve the changes set forth in Attachment A, finding that they

are appropriate, and are consistent with the regulatory criteria. In particular, we note that the price changes are expected to result in an increase of contribution for each competitive product.

For Express Mail service, the overall increase is approximately 3.1 percent. A number of substantive changes are made to the Express Mail price categories. First, the current unzoned retail price structure is replaced with prices that are zoned to reflect the practice in the marketplace and to align prices better with costs. Second, lower prices are available for customers who use alternate postage payment systems that capture more detailed customer information, such as the online service, Click-N-Ship, or corporate accounts. Even lower prices will be available to customers who use corporate accounts and whose average daily volumes exceed a minimum threshold. These changes will improve Express Mail's competitive position, especially with regard to small and medium-sized businesses.

For Priority Mail service, the overall price increase is 4 percent. The average Priority Mail retail price increases by about 6 percent. Customers who use electronic postage and meet other requirements are provided reduced prices. On average, these prices are 3.5 percent lower than retail prices; however, the size of the reduction varies for each specific price point, based on competitive considerations. This should increase volume and revenue from small-volume commercial shippers.

For Parcel Select service, the overall average price increase is 5.7 percent. Prices increase more for Destination BMC entry than for Destination Delivery Unit entry in order to further encourage customers to bring packages to the DDU. Incentives are provided, in the form of declining block prices, for shippers with greater than $5 million annual Parcel Select revenue who increase their volume from the previous twelve month period. To further encourage growth, qualifying shippers whose annual Parcel Select volume grows more than 10 percent will receive rebates ranging from 2 to 14 percent of DDU postage based on their annual postage revenues.

For Parcel Return Service, prices have an overall increase of 2 percent to encourage growth. Prices are realigned between the return delivery unit (RDU) and return BMC categories, such that RBMC has an approximately 9 percent increase and RDU prices are decreased 21 percent.

For Global Express Guaranteed service, the overall price increase is 5.2 percent. Price increases vary by country group and weight increment. An online price remains available. The relatively modest price increases and continued availability of the lower online price should allow this service to remain competitive.

For Express Mail International service, prices will increase on average by 6 percent. Price increases vary by country group and weight increment. Customers using Click-N-Ship or other online applications continue to receive a lower price. In addition, two new incentives are provided for commercial mailers. First, customers receive a reduced price if they pay postage by PERMIT imprint and use authorized software to prepare their mail. This software allows mailers to create online Customs forms, print labels, and track packages. Second, customers also receive a lower price if they use this authorized software to prepare their mail and pay their postage through an Express Mail Corporate Account; this incentive is tiered, depending on volume or postage minimums. The new incentives are expected to result in little or no shift of retail mail volume to the lower prices; rather, they are expected to be used by new customers, or customers who previously had a customized agreement with the Postal Service.

For Priority Mail International service, price increases, on the whole, are 6.1 percent. Different increases apply depending on the weight and country group. Prices are set to fit logically between Express Mail International and First-Class Mail International. The incentive to pay postage online is maintained and a new incentive is added for commercial customers who pay postage by PERMIT imprint and use authorized software to prepare their mail. As with Express Mail International, retail mail volume is not expected to shift to the new lower prices.

For International Direct Sacks—M-Bags (Airmail M-Bags), prices rise around 5.9 percent. The country group structure for this product is expanded to nine country groups to match the Express Mail International, Priority Mail International and planned First-Class Mail International country group structures, providing convenience and ease of use for customers.

For International Priority Airmail (IPA), published prices generally increase by 12.5 percent. For International Surface Airlift (ISAL), prices for ISC Drop Shipment will increase 21.3 percent. In addition, published prices for ISAL Direct Shipment are eliminated and, in the future, will only be available through customized agreements.

Finally, prices for the following International Ancillary Services used with competitive international mail services will increase: International Certificate of Mailing, International Registered Mail, International Return Receipt, International Restricted Delivery and certain International Insurance prices (Priority Mail International Insurance and Global Express Guaranteed Insurance).

As shown in Attachment B, these changes satisfy the statutory requirements. They should not result in the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)). Each competitive product should cover its attributable costs (39 U.S.C. 3633(a)(2)). They should allow competitive products as a whole to comply with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.

Order

The changes in prices and classes set forth herein shall be effective at 12:01 A.M. on May 12, 2008. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2). We also direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

Alan C. Kessler,

Chairman.

BILLING CODE 7710–12–P

ATTACHMENT A to Governors' Decision 08-3

2105 Express Mail

Any matter eligible for mailing may, at the option of the mailer, be mailed by Express Mail service. Express Mail service is available from designated retail postal facilities to other designated facilities for delivery to the recipient, or, optionally, pickup by the recipient. Drop-off, pick-up, and delivery times are specified by the Postal Service for particular locations and days of the week. Delivery is either overnight, on the second day, or on the second delivery day (the next delivery day following the second day), as specified by the Postal Service for particular locations and days of the week.

Express Mail pieces are sealed against postal inspection and shall not be opened except as authorized by law. Insurance, up to an amount specified in the Domestic Mail Manual, is included in Express Mail postage. Additional insurance (Express Mail Insurance) is available for an additional charge, depending on the value and nature of the item sent by Express Mail service. Express Mail service provides a high speed, high reliability service. Claims for refunds of postage must be filed within the period of time and under terms and conditions specified in the Domestic Mail Manual.

Size and Weight:

	Length	Height	Width	Weight
Minimum	Large enough to accommodate postage, address and other required elements on the address side.			none
Maximum	108 inches in combined length and girth			70 pounds

Minimum Volume: None.

Price Categories:

Retail

Flat Rate Envelope – Provided by the Postal Service.

Zone/Weight – Prices are based on weight and zone.

Commercial Base – Available to customers who tender payment via an authorized online service, Express Mail Corporate Account, or specifically authorized third-party postage vendor.

Flat Rate Envelope – Provided by the Postal Service.

Zone/Weight – Prices are based on weight and zone.

Commercial Volume Incentives – Available for customers who both tender payment via an Express Mail Corporate Account or specifically authorized third-party postage vendor accounts and mail specified average daily volumes. The incentives may be paid in the form of rebates.

2105 Express Mail

Optional Features:

Pickup on Demand
Sunday/holiday Delivery
Hold for Pickup

Ancillary Services

- Address Correction Service
- Return Receipts
- Collect On Delivery
- Express Mail Insurance

2105 Express Mail

Prices:

Retail

Flat Rate Envelope $16.50

Zone/Weight

Weight	Zone						
	L, 1, 2	3	4	5	6	7	8
0.5	$ 12.60	$ 14.65	$ 17.45	$ 18.30	$ 18.60	$ 19.25	$ 19.50
1	$ 14.55	$ 19.00	$ 22.40	$ 22.65	$ 22.90	$ 23.15	$ 23.40
2	$ 15.70	$ 20.15	$ 24.65	$ 24.90	$ 25.15	$ 25.40	$ 25.65
3	$ 16.65	$ 21.35	$ 28.40	$ 28.65	$ 28.90	$ 29.15	$ 29.40
4	$ 17.95	$ 22.75	$ 32.10	$ 32.35	$ 32.60	$ 32.85	$ 33.10
5	$ 18.60	$ 24.35	$ 35.85	$ 36.10	$ 36.35	$ 36.60	$ 36.85
6	$ 21.85	$ 29.25	$ 39.55	$ 39.80	$ 40.05	$ 40.30	$ 40.55
7	$ 25.10	$ 34.15	$ 43.25	$ 43.50	$ 43.75	$ 44.00	$ 44.25
8	$ 26.35	$ 35.15	$ 47.00	$ 47.25	$ 47.50	$ 47.75	$ 48.00
9	$ 27.80	$ 36.65	$ 50.35	$ 50.95	$ 51.20	$ 51.45	$ 51.70
10	$ 28.60	$ 38.10	$ 52.70	$ 53.55	$ 53.80	$ 54.05	$ 54.30
11	$ 32.00	$ 43.00	$ 55.40	$ 56.15	$ 56.40	$ 56.65	$ 56.90
12	$ 32.00	$ 46.00	$ 58.40	$ 58.70	$ 58.95	$ 59.20	$ 59.45
13	$ 32.00	$ 49.00	$ 61.05	$ 61.30	$ 61.55	$ 61.80	$ 62.05
14	$ 33.00	$ 52.00	$ 63.60	$ 63.85	$ 64.10	$ 64.35	$ 64.60
15	$ 35.00	$ 55.00	$ 66.20	$ 66.45	$ 66.70	$ 66.95	$ 67.20
16	$ 36.00	$ 58.00	$ 68.80	$ 69.05	$ 69.30	$ 69.55	$ 69.80
17	$ 38.00	$ 61.00	$ 71.35	$ 71.60	$ 71.85	$ 72.10	$ 72.35
18	$ 40.00	$ 64.00	$ 73.95	$ 74.20	$ 74.45	$ 74.70	$ 74.95
19	$ 41.00	$ 67.00	$ 76.50	$ 76.75	$ 77.00	$ 77.25	$ 77.50
20	$ 43.00	$ 70.00	$ 79.10	$ 79.35	$ 79.60	$ 79.85	$ 80.10
21	$ 44.00	$ 73.00	$ 81.95	$ 82.70	$ 82.95	$ 83.20	$ 83.45
22	$ 46.00	$ 76.00	$ 84.00	$ 85.25	$ 85.50	$ 85.75	$ 86.00
23	$ 47.00	$ 79.00	$ 86.45	$ 87.85	$ 88.10	$ 88.35	$ 88.60
24	$ 49.00	$ 82.00	$ 89.20	$ 90.40	$ 90.65	$ 90.90	$ 91.15
25	$ 51.00	$ 85.00	$ 91.40	$ 93.00	$ 93.25	$ 93.50	$ 93.75
26	$ 52.00	$ 88.00	$ 94.05	$ 95.60	$ 95.85	$ 96.10	$ 96.35
27	$ 54.00	$ 91.00	$ 96.45	$ 98.15	$ 98.40	$ 98.65	$ 98.90
28	$ 55.00	$ 94.00	$ 99.55	$ 100.75	$ 101.00	$ 101.25	$ 101.50
29	$ 57.00	$ 97.00	$ 102.80	$ 103.30	$ 103.55	$ 103.80	$ 104.05
30	$ 59.00	$ 100.00	$ 106.05	$ 106.40	$ 106.65	$ 106.90	$ 107.40
31	$ 60.00	$ 103.00	$ 109.30	$ 109.65	$ 109.90	$ 110.15	$ 110.70
32	$ 62.00	$ 106.00	$ 112.55	$ 112.90	$ 113.15	$ 113.40	$ 114.00
33	$ 63.00	$ 109.00	$ 115.80	$ 116.20	$ 116.45	$ 116.70	$ 117.30
34	$ 65.00	$ 112.00	$ 119.10	$ 119.45	$ 119.70	$ 119.95	$ 120.60
35	$ 66.00	$ 115.00	$ 122.35	$ 122.75	$ 123.00	$ 123.25	$ 123.90
36	$ 68.00	$ 118.00	$ 125.60	$ 126.00	$ 126.25	$ 126.50	$ 127.20
37	$ 70.00	$ 121.00	$ 128.85	$ 129.30	$ 129.55	$ 129.80	$ 130.50
38	$ 71.00	$ 124.00	$ 132.10	$ 132.55	$ 132.80	$ 133.05	$ 133.80
39	$ 73.00	$ 127.00	$ 135.40	$ 135.80	$ 136.05	$ 136.30	$ 137.10
40	$ 74.00	$ 130.00	$ 138.65	$ 139.10	$ 139.35	$ 139.60	$ 140.45

Weight	Zone						
	L, 1, 2	3	4	5	6	7	8
41	$ 76.00	$ 133.00	$ 141.90	$ 142.35	$ 142.60	$ 142.85	$ 143.75
42	$ 78.00	$ 136.00	$ 145.15	$ 145.65	$ 145.90	$ 146.15	$ 147.05
43	$ 79.00	$ 139.00	$ 148.40	$ 148.90	$ 149.15	$ 149.40	$ 150.35
44	$ 81.00	$ 142.00	$ 151.65	$ 152.20	$ 152.45	$ 152.70	$ 153.65
45	$ 82.00	$ 145.00	$ 154.95	$ 155.45	$ 155.70	$ 155.95	$ 156.95
46	$ 84.00	$ 148.00	$ 158.20	$ 158.70	$ 158.95	$ 159.20	$ 160.25
47	$ 85.00	$ 151.00	$ 161.45	$ 162.00	$ 162.25	$ 162.50	$ 163.55
48	$ 87.00	$ 154.00	$ 164.70	$ 165.25	$ 165.50	$ 165.75	$ 166.85
49	$ 89.00	$ 157.00	$ 167.95	$ 168.55	$ 168.80	$ 169.05	$ 170.15
50	$ 90.00	$ 160.00	$ 171.25	$ 171.80	$ 172.05	$ 172.30	$ 173.50
51	$ 92.00	$ 163.00	$ 174.50	$ 175.05	$ 175.30	$ 175.55	$ 176.80
52	$ 93.00	$ 166.00	$ 177.75	$ 178.35	$ 178.60	$ 178.85	$ 180.10
53	$ 95.00	$ 169.00	$ 181.00	$ 181.60	$ 181.85	$ 182.10	$ 183.40
54	$ 97.00	$ 172.00	$ 184.30	$ 184.90	$ 185.15	$ 185.40	$ 186.70
55	$ 98.00	$ 176.00	$ 187.55	$ 188.15	$ 188.40	$ 188.65	$ 190.00
56	$ 100.00	$ 179.00	$ 190.80	$ 191.45	$ 191.70	$ 191.95	$ 193.30
57	$ 101.00	$ 182.00	$ 194.05	$ 194.70	$ 194.95	$ 195.20	$ 196.60
58	$ 103.00	$ 185.00	$ 197.30	$ 197.95	$ 198.20	$ 198.45	$ 199.90
59	$ 104.00	$ 188.00	$ 200.55	$ 201.25	$ 201.50	$ 201.75	$ 203.20
60	$ 106.00	$ 191.00	$ 203.80	$ 204.50	$ 204.75	$ 205.00	$ 206.50
61	$ 108.00	$ 194.00	$ 207.10	$ 207.80	$ 208.05	$ 208.30	$ 209.85
62	$ 109.00	$ 197.00	$ 210.35	$ 211.05	$ 211.30	$ 211.55	$ 213.15
63	$ 111.00	$ 200.00	$ 213.60	$ 214.30	$ 214.55	$ 214.80	$ 216.45
64	$ 112.00	$ 203.00	$ 216.85	$ 217.60	$ 217.85	$ 218.10	$ 219.75
65	$ 114.00	$ 206.00	$ 220.10	$ 220.85	$ 221.10	$ 221.35	$ 223.05
66	$ 116.00	$ 209.00	$ 223.40	$ 224.15	$ 224.40	$ 224.65	$ 226.35
67	$ 117.00	$ 212.00	$ 226.65	$ 227.40	$ 227.65	$ 227.90	$ 229.65
68	$ 119.00	$ 215.00	$ 229.90	$ 230.70	$ 230.95	$ 231.20	$ 232.95
69	$ 120.00	$ 218.00	$ 233.15	$ 233.95	$ 234.20	$ 234.45	$ 236.25
70	$ 122.00	$ 221.00	$ 236.40	$ 237.20	$ 237.45	$ 237.70	$ 239.55

For each Pickup On Demand stop, add $14.75.

For Sunday/holiday delivery, add $12.50

2105 Express Mail

Prices:

Commercial Base

Flat Rate Envelope	$16.00
Zone/Weight	Retail prices minus 3.0%

	Retail prices minus:
Commercial Volume Incentives:	
Average daily volume over 2 pieces	5.0%
Average daily volume over 7 pieces	7.5%
Average daily volume over 15 pieces	10.0%

For each Pickup On Demand stop, add $14.75.

For Sunday/holiday delivery, add $12.50

2110 Outbound International Expedited Services

International Expedited Services provide expedited service to designated outbound international destinations, according to requirements specified in the International Mail Manual.

Size and Weight for Global Express Guaranteed:

	Length	Width	Height	Weight
Minimum	Must be able to hold shipping label with pouch (7 inches by 12 inches) and postage			None
Maximum[1]	46 inches	35 inches	46 inches	70 pounds

[1] Combined length and girth may not exceed 108 inches.

Size and Weight for Express Mail International:

	Length	Height	Width	Weight[1]
Minimum	Large enough to accommodate postage, address and other required elements on the address side.			
Maximum[1]	36	Length plus girth: 79 inches.		

[1] Country-specific restrictions may apply as specified in the International Mail Manual.

Minimum Volume: None

Price Categories:

Global Express Guaranteed – Global Express Guaranteed (GXG) service offers a postage-refund guarantee for day-certain delivery from select post offices to select foreign destinations and according to requirements specified in the International Mail Manual. Global Express Guaranteed may include matter containing personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account. Document reconstruction and non-document insurance for loss or damage up to $100 per shipment are included at no additional charge, subject to terms and conditions specified in the International Mail Manual. Additional insurance may be purchased for document and non-document shipments, up to an amount and limit specified in the International Mail Manual. Only Global Express Guaranteed items that contain documents are sealed against postal inspection and shall not be opened except as authorized by law. ~~Discounts for online preparation and payment or for use of an authorized PC postage vendor may apply as specified in the International Mail Manual.~~ Postage is charged based on the actual weight or the dimensional weight, whichever is greater, except for Postal Service-supplied Global Express Guaranteed envelopes where postage is charged based on the actual weight.

- Price Group 1
- Price Group 2
- Price Group 3
- Price Group 4
- Price Group 5
- Price Group 6
- Price Group 7
- Price Group 8

Online Incentives – Available for preparation and payment online at *usps.com* or by using an authorized PC postage vendor.

Express Mail International – Express Mail International (EMI) offers transit times that can be longer than for Global Express Guaranteed. A postage-refund guarantee for date-certain delivery may be available to a limited number of foreign destinations for mailable matter as specified in the International Mail Manual. Express Mail International may include matter containing personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account. Document reconstruction and merchandise insurance up to $100 is included in the price of postage, subject to the terms and limitations specified in the International Mail Manual. Additional merchandise insurance up to an amount and limit specified in the International Mail Manual may be purchased at the time of mailing. Additional document reconstruction insurance may not be purchased. Express Mail International is sealed against postal inspection and shall not be opened except as authorized by law. ~~Discounts for Express Mail Corporate Accounts, online preparation and payment or for use of an authorized PC postage vendor may apply as specified in the International Mail Manual~~.

Flat Rate Envelope

- Canada and Mexico
- All other countries

Parcels

- Price Group 1
- Price Group 2
- Price Group 3
- Price Group 4
- Price Group 5
- Price Group 6
- Price Group 7
- Price Group 8
- Price Group 9
- ~~Price Group 10~~

Online Incentives – Available for preparation and payment online at *usps.com* or by using an authorized PC postage vendor.

Permit Imprint Incentives – Available for payment by permit imprint and use of approved software for mail preparation and Customs-related functions.

Express Mail Corporate Account Incentives – Available for payment through an Express Mail Corporate Account and use of approved software for mail preparation and Customs-related functions. Annualized volume or postage minimums apply for higher tiers.

Customized Pricing – Available through mailer-specific agreement.

Optional Features:

~~Global Shipping Solutions (GSS)[1] (EMI only)~~
Pickup On Demand

International Ancillary Services

- International Insurance
- International Return Receipt (EMI only)

~~[1] GSS is software developed by the Postal Service to help mailers perform international package shipping. Features of GSS support labeling of packages, manifesting, pre-notification of foreign agents and officials, pre-payment of duties and taxes, and coordination of returns. GSS is only available through customized agreements.~~

2110 Outbound International Expedited Services

Prices:

Global Express Guaranteed

Weight Not Over (Pounds)	Price Group 1	Price Group 2	Price Group 3	Price Group 4	Price Group 5	Price Group 6	Price Group 7	Price Group 8
0.5	$29.95	$29.95	$38.95	$79.95	$38.95	$38.95	$38.95	$52.95
1	$43.50	$45.50	$52.00	$96.00	$62.00	$58.50	$50.00	$69.00
2	$47.25	$51.50	$59.50	$112.00	$70.00	$67.50	$57.00	$86.00
3	$51.00	$57.50	$67.00	$128.00	$78.00	$76.50	$64.00	$103.00
4	$54.75	$63.50	$74.50	$144.00	$86.00	$85.50	$71.00	$120.00
5	$58.50	$69.50	$82.00	$160.00	$94.00	$94.50	$78.00	$137.00
6	$62.25	$75.50	$89.50	$176.00	$102.00	$103.50	$85.00	$154.00
7	$66.00	$81.50	$97.00	$192.00	$110.00	$112.50	$92.00	$171.00
8	$69.75	$87.50	$104.50	$208.00	$118.00	$121.50	$99.00	$188.00
9	$73.50	$93.50	$112.00	$224.00	$126.00	$130.50	$106.00	$205.00
10	$77.25	$99.50	$119.50	$240.00	$134.00	$139.50	$113.00	$222.00
11	$80.50	$103.00	$124.25	$252.00	$139.50	$146.75	$118.50	$233.50
12	$83.75	$106.50	$129.00	$264.00	$145.00	$154.00	$124.00	$245.00
13	$87.00	$110.00	$133.75	$276.00	$150.50	$161.25	$129.50	$256.50
14	$90.25	$113.50	$138.50	$288.00	$156.00	$168.50	$135.00	$268.00
15	$93.50	$117.00	$143.25	$300.00	$161.50	$175.75	$140.50	$279.50
16	$96.75	$120.50	$148.00	$312.00	$167.00	$183.00	$146.00	$291.00
17	$100.00	$124.00	$152.75	$324.00	$172.50	$190.25	$151.50	$302.50
18	$103.25	$127.50	$157.50	$336.00	$178.00	$197.50	$157.00	$314.00
19	$106.50	$131.00	$162.25	$348.00	$183.50	$204.75	$162.50	$325.50
20	$109.75	$134.50	$167.00	$360.00	$189.00	$212.00	$168.00	$337.00
21	$113.00	$138.00	$171.75	$372.00	$194.50	$219.25	$173.50	$348.50
22	$116.25	$141.50	$176.50	$384.00	$200.00	$226.50	$179.00	$360.00
23	$119.50	$145.00	$181.25	$396.00	$205.50	$233.75	$184.50	$371.50
24	$122.75	$148.50	$186.00	$408.00	$211.00	$241.00	$190.00	$383.00
25	$126.00	$152.00	$190.75	$420.00	$216.50	$248.25	$195.50	$394.50
26	$129.25	$155.50	$195.50	$432.00	$222.00	$255.50	$201.00	$406.00
27	$132.50	$159.00	$200.25	$444.00	$227.50	$262.75	$206.50	$417.50
28	$135.75	$162.50	$205.00	$456.00	$233.00	$270.00	$212.00	$429.00
29	$139.00	$166.00	$209.75	$468.00	$238.50	$277.25	$217.50	$440.50
30	$142.25	$169.50	$214.50	$480.00	$244.00	$284.50	$223.00	$452.00
31	$145.50	$173.00	$219.25	$492.00	$249.50	$291.75	$228.50	$463.50
32	$148.75	$176.50	$224.00	$504.00	$255.00	$299.00	$234.00	$475.00
33	$152.00	$180.00	$228.75	$516.00	$260.50	$306.25	$239.50	$486.50
34	$155.25	$183.50	$233.50	$528.00	$266.00	$313.50	$245.00	$498.00
35	$158.50	$187.00	$238.25	$540.00	$271.50	$320.75	$250.50	$509.50
36	$161.75	$190.50	$243.00	$552.00	$277.00	$328.00	$256.00	$521.00
37	$165.00	$194.00	$247.75	$564.00	$282.50	$335.25	$261.50	$532.50
38	$168.25	$197.50	$252.50	$576.00	$288.00	$342.50	$267.00	$544.00
39	$171.50	$201.00	$257.25	$588.00	$293.50	$349.75	$272.50	$555.50
40	$174.75	$204.50	$262.00	$600.00	$299.00	$357.00	$278.00	$567.00

2110 Outbound International Expedited Services

Prices:

Global Express Guaranteed

Weight Not Over (Pounds)	Price Group 1	Price Group 2	Price Group 3	Price Group 4	Price Group 5	Price Group 6	Price Group 7	Price Group 8
41	$177.75	$207.50	$266.50	$609.00	$304.00	$363.50	$282.75	$576.00
42	$180.75	$210.50	$271.00	$618.00	$309.00	$370.00	$287.50	$585.00
43	$183.75	$213.50	$275.50	$627.00	$314.00	$376.50	$292.25	$594.00
44	$186.75	$216.50	$280.00	$636.00	$319.00	$383.00	$297.00	$603.00
45	$189.75	$219.50	$284.50	$645.00	$324.00	$389.50	$301.75	$612.00
46	$192.75	$222.50	$289.00	$654.00	$329.00	$396.00	$306.50	$621.00
47	$195.75	$225.50	$293.50	$663.00	$334.00	$402.50	$311.25	$630.00
48	$198.75	$228.50	$298.00	$672.00	$339.00	$409.00	$316.00	$639.00
49	$201.75	$231.50	$302.50	$681.00	$344.00	$415.50	$320.75	$648.00
50	$204.75	$234.50	$307.00	$690.00	$349.00	$422.00	$325.50	$657.00
51	$207.75	$237.50	$311.50	$699.00	$354.00	$428.50	$330.25	$666.00
52	$210.75	$240.50	$316.00	$708.00	$359.00	$435.00	$335.00	$675.00
53	$213.75	$243.50	$320.50	$717.00	$364.00	$441.50	$339.75	$684.00
54	$216.75	$246.50	$325.00	$726.00	$369.00	$448.00	$344.50	$693.00
55	$219.75	$249.50	$329.50	$735.00	$374.00	$454.50	$349.25	$702.00
56	$222.75	$252.50	$334.00	$744.00	$379.00	$461.00	$354.00	$711.00
57	$225.75	$255.50	$338.50	$753.00	$384.00	$467.50	$358.75	$720.00
58	$228.75	$258.50	$343.00	$762.00	$389.00	$474.00	$363.50	$729.00
59	$231.75	$261.50	$347.50	$771.00	$394.00	$480.50	$368.25	$738.00
60	$234.75	$264.50	$352.00	$780.00	$399.00	$487.00	$373.00	$747.00
61	$237.75	$267.50	$356.50	$789.00	$404.00	$493.50	$377.75	$756.00
62	$240.75	$270.50	$361.00	$798.00	$409.00	$500.00	$382.50	$765.00
63	$243.75	$273.50	$365.50	$807.00	$414.00	$506.50	$387.25	$774.00
64	$246.75	$276.50	$370.00	$816.00	$419.00	$513.00	$392.00	$783.00
65	$249.75	$279.50	$374.50	$825.00	$424.00	$519.50	$396.75	$792.00
66	$252.75	$282.50	$379.00	$834.00	$429.00	$526.00	$401.50	$801.00
67	$255.75	$285.50	$383.50	$843.00	$434.00	$532.50	$406.25	$810.00
68	$258.75	$288.50	$388.00	$852.00	$439.00	$539.00	$411.00	$819.00
69	$261.75	$291.50	$392.50	$861.00	$444.00	$545.50	$415.75	$828.00
70	$264.75	$294.50	$397.00	$870.00	$449.00	$552.00	$420.50	$837.00

Online Incentives Prices above minus 10.0%

For each Pickup On Demand stop, add $14.75.

2110 Outbound International Expedited Services

Prices:

Express Mail International

Weight Not Over (Pounds)	Price Group 1	Price Group 2	Price Group 3	Price Group 4	Price Group 5	Price Group 6	Price Group 7	Price Group 8	Price Group 9
Flat Rate Envelope	$23.95	$23.95	$25.95	$25.95	$25.95	$25.95	$25.95	$25.95	$25.95
0.5	$23.95	$23.95	$25.95	$25.95	$25.95	$25.95	$25.95	$25.95	$25.95
1	$27.25	$27.00	$28.50	$28.00	$30.50	$28.50	$32.00	$31.50	$30.50
2	$30.50	$31.00	$32.75	$31.75	$34.75	$32.25	$37.00	$36.50	$35.00
3	$33.75	$35.00	$37.00	$35.50	$39.00	$36.00	$42.00	$41.50	$39.50
4	$37.00	$39.00	$41.25	$39.25	$43.25	$39.75	$47.00	$46.50	$44.00
5	$40.25	$43.00	$45.50	$43.00	$47.50	$43.50	$52.00	$51.50	$48.50
6	$43.40	$45.75	$50.50	$47.00	$51.35	$48.25	$57.15	$56.50	$53.50
7	$46.55	$48.50	$55.50	$51.00	$55.20	$53.00	$62.30	$61.50	$58.50
8	$49.70	$51.25	$60.50	$55.00	$59.05	$57.75	$67.45	$66.50	$63.50
9	$52.85	$54.00	$65.50	$59.00	$62.90	$62.50	$72.60	$71.50	$68.50
10	$56.00	$56.75	$70.50	$63.00	$66.75	$67.25	$77.75	$76.50	$73.50
11	$59.00	$59.50	$75.50	$67.25	$70.60	$72.50	$83.10	$81.75	$78.75
12	$62.00	$62.25	$80.50	$71.50	$74.45	$77.75	$88.45	$87.00	$84.00
13	$65.00	$65.00	$85.50	$75.75	$78.30	$83.00	$93.80	$92.25	$89.25
14	$68.00	$67.75	$90.50	$80.00	$82.15	$88.25	$99.15	$97.50	$94.50
15	$71.00	$70.50	$95.50	$84.25	$86.00	$93.50	$104.50	$102.75	$99.75
16	$74.00	$73.25	$100.50	$88.50	$89.85	$98.75	$109.85	$108.00	$105.00
17	$77.00	$76.00	$105.50	$92.75	$93.70	$104.00	$115.20	$113.25	$110.25
18	$80.00	$78.75	$110.50	$97.00	$97.55	$109.25	$120.55	$118.50	$115.50
19	$83.00	$81.50	$115.50	$101.25	$101.40	$114.50	$125.90	$123.75	$120.75
20	$86.00	$84.25	$120.50	$105.50	$105.25	$119.75	$131.25	$129.00	$126.00
21	$89.00	$87.00	$125.50	$109.75	$109.10	$125.00	$136.60	$134.25	$131.25
22	$92.00	$89.75	$130.50	$114.00	$112.95	$130.25	$141.95	$139.50	$136.50
23	$95.00	$92.50	$135.50	$118.25	$116.80	$135.50	$147.30	$144.75	$141.75
24	$98.00	$95.25	$140.50	$122.50	$120.65	$140.75	$152.65	$150.00	$147.00
25	$101.00	$98.00	$145.50	$126.75	$124.50	$146.00	$158.00	$155.25	$152.25
26	$104.00	$100.75	$150.50	$131.00	$128.35	$151.25	$163.35	$160.50	$157.50
27	$107.00	$103.50	$155.50	$135.25	$132.20	$156.50	$168.70	$165.75	$162.75
28	$110.00	$106.25	$160.50	$139.50	$136.05	$161.75	$174.05	$171.00	$168.00
29	$113.00	$109.00	$165.50	$143.75	$139.90	$167.00	$179.40	$176.25	$173.25
30	$116.00	$111.75	$170.50	$148.00	$143.75	$172.25	$184.75	$181.50	$178.50
31	$119.00	$114.50	$175.50	$152.25	$147.60	$177.50	$190.10	$186.75	$183.75
32	$122.00	$117.25	$180.50	$156.50	$151.45	$182.75	$195.45	$192.00	$189.00
33	$125.00	$120.00	$185.50	$160.75	$155.30	$188.00	$200.80	$197.25	$194.25
34	$128.00	$122.75	$190.50	$165.00	$159.15	$193.25	$206.15	$202.50	$199.50
35	$131.00	$125.50	$195.50	$169.25	$163.00	$198.50	$211.50	$207.75	$204.75
36	$134.00	$128.25	$200.50	$173.50	$166.85	$203.75	$216.85	$213.00	$210.00
37	$137.00	$131.00	$205.50	$177.75	$170.70	$209.00	$222.20	$218.25	$215.25
38	$140.00	$133.75	$210.50	$182.00	$174.55	$214.25	$227.55	$223.50	$220.50
39	$143.00	$136.50	$215.50	$186.25	$178.40	$219.50	$232.90	$228.75	$225.75
40	$146.00	$139.25	$220.50	$190.50	$182.25	$224.75	$238.25	$234.00	$231.00

2110 Outbound International Expedited Services

Prices:

Express Mail International

Weight Not Over (Pounds)	Price Group 1	Price Group 2	Price Group 3	Price Group 4	Price Group 5	Price Group 6	Price Group 7	Price Group 8	Price Group 9
41	$149.00	$141.75	$225.50	$194.75	$186.10	$230.00	$243.60	$239.25	$236.25
42	$152.00	$144.25	$230.50	$199.00	$189.95	$235.25	$248.95	$244.50	$241.50
43	$155.00	$146.75	$235.50	$203.25	$193.80	$240.50	$254.30	$249.75	$246.75
44	$158.00	$149.25	$240.50	$207.50	$197.65	$245.75	$259.65	$255.00	$252.00
45	$161.00	$151.75	$245.50	$211.75	$201.50	$251.00	$265.00	$260.25	$257.25
46	$164.00	$154.25	$250.50	$216.00	$205.35	$256.25	$270.35	$265.50	$262.50
47	$167.00	$156.75	$255.50	$220.25	$209.20	$261.50	$275.70	$270.75	$267.75
48	$170.00	$159.25	$260.50	$224.50	$213.05	$266.75	$281.05	$276.00	$273.00
49	$173.00	$161.75	$265.50	$228.75	$216.90	$272.00	$286.40	$281.25	$278.25
50	$176.00	$164.25	$270.50	$233.00	$220.75	$277.25	$291.75	$286.50	$283.50
51	$179.00	$166.75	$275.50	$237.25	$224.60	$282.50	$297.10	$291.75	$288.75
52	$182.00	$169.25	$280.50	$241.50	$228.45	$287.75	$302.45	$297.00	$294.00
53	$185.00	$171.75	$285.50	$245.75	$232.30	$293.00	$307.80	$302.25	$299.25
54	$188.00	$174.25	$290.50	$250.00	$236.15	$298.25	$313.15	$307.50	$304.50
55	$191.00	$176.75	$295.50	$254.25	$240.00	$303.50	$318.50	$312.75	$309.75
56	$194.00	$179.25	$300.50	$258.50	$243.85	$308.75	$323.85	$318.00	$315.00
57	$197.00	$181.75	$305.50	$262.75	$247.70	$314.00	$329.20	$323.25	$320.25
58	$200.00	$184.25	$310.50	$267.00	$251.55	$319.25	$334.55	$328.50	$325.50
59	$203.00	$186.75	$315.50	$271.25	$255.40	$324.50	$339.90	$333.75	$330.75
60	$206.00	$189.25	$320.50	$275.50	$259.25	$329.75	$345.25	$339.00	$336.00
61	$209.00	$191.75	$325.50	$279.75	$263.10	$335.00	$350.60	$344.25	$341.25
62	$212.00	$194.25	$330.50	$284.00	$266.95	$340.25	$355.95	$349.50	$346.50
63	$215.00	$196.75	$335.50	$288.25	$270.80	$345.50	$361.30	$354.75	$351.75
64	$218.00	$199.25	$340.50	$292.50	$274.65	$350.75	$366.65	$360.00	$357.00
65	$221.00	$201.75	$345.50	$296.75	$278.50	$356.00	$372.00	$365.25	$362.25
66	$224.00	$204.25	$350.50	$301.00	$282.35	$361.25	$377.35	$370.50	$367.50
67	-	-	$355.50	$305.25	$286.20	$366.50	$382.70	$375.75	$372.75
68	-	-	$360.50	$309.50	$290.05	$371.75	$388.05	$381.00	$378.00
69	-	-	$365.50	$313.75	$293.90	$377.00	$393.40	$386.25	$383.25
70	-	-	$370.50	$318.00	$297.75	$382.25	$398.75	$391.50	$388.50

Prices above minus:

Online Incentives	8.0%
Permit Imprint Incentives	8.0%
Express Mail Corporate Account Incentives	8.0%
Annualized minimum of 1,000 pieces or $20,000 postage	10.0%
Annualized minimum of 3,000 pieces or $60,000 postage	12.0%

For each Pickup On Demand stop, add $14.75.

2200 Priority Mail

Any matter eligible for mailing may, at the option of the mailer, be mailed by Priority Mail service for expeditious handling and transportation. Matter containing personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account must be mailed as Priority Mail pieces if they exceed the weight limit set by the Postal Service for First-Class Mail, unless mailed by Express Mail service, exempt under title 39, United States Code, or are otherwise exempted by the Postal Service. Priority Mail pieces are sealed against postal inspection and shall not be opened except as authorized by law.

Size and Weight:

	Length	**Height**	**Width**	**Weight**
Minimum	Large enough to accommodate postage, address and other required elements on the address side.			none
Maximum	108 inches in combined length and girth			70 pounds

Minimum Volume: None

Price Categories:

Retail

Zone/Weight ~~Rated~~

Flat Rate Boxes – Provided by the Postal Service.

Flat Rate Envelope – Provided by the Postal Service.

Balloon Rate

Dimensional Weight

Commercial – Available to mailers who use specifically authorized postage payment methods.

Zone/Weight

Flat Rate Boxes – Provided by the Postal Service.

Flat Rate Envelope – Provided by the Postal Service.

Balloon Rate

Dimensional Weight

Optional Features:

Pickup on Demand

Ancillary Services

- Address Correction Service
- Business Reply Mail
- Certificate of Mailing
- Certified Mail
- Collect On Delivery
- Delivery Confirmation
- Insurance
- Merchandise Return
- Registered Mail
- Restricted Delivery
- Return Receipt
- Return Receipt for Merchandise
- Signature Confirmation
- Special Handling

2200 Priority Mail

Prices:

Zone/Weight – Retail

Weight to: (Pounds)	Zones L, 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	$4.80	$4.80	$4.80	$4.80	$4.80	$4.80	$4.80
2	$4.80	$5.05	$5.60	$6.80	$7.20	$7.70	$8.25
3	$5.20	$5.95	$6.75	$8.75	$9.55	$10.35	$11.50
4	$5.80	$6.80	$7.85	$10.55	$11.60	$12.65	$14.25
5	$6.45	$7.75	$8.90	$12.20	$13.45	$14.75	$16.80
6	$7.05	$8.65	$10.00	$13.95	$14.40	$16.25	$17.65
7	$7.60	$9.40	$11.00	$15.35	$15.80	$18.05	$20.15
8	$8.05	$9.75	$11.95	$16.40	$17.15	$19.80	$22.60
9	$8.45	$10.45	$12.75	$17.50	$18.55	$21.55	$25.15
10	$8.85	$11.25	$13.45	$18.65	$20.10	$23.45	$27.55
11	$9.35	$11.75	$14.50	$19.75	$21.75	$25.20	$29.00
12	$9.75	$12.35	$15.30	$20.85	$23.45	$26.50	$30.25
13	$10.00	$12.65	$15.75	$22.00	$25.15	$27.55	$31.30
14	$10.35	$13.20	$16.45	$23.00	$26.50	$29.15	$32.85
15	$10.80	$13.80	$17.25	$23.70	$27.10	$29.45	$33.55
16	$11.15	$14.25	$17.80	$24.20	$27.70	$30.10	$34.40
17	$11.50	$14.75	$18.15	$24.80	$28.45	$30.85	$35.30
18	$11.75	$15.20	$18.50	$25.30	$29.00	$31.45	$36.15
19	$12.15	$15.55	$18.80	$25.90	$29.70	$32.25	$37.05
20	$12.45	$15.80	$19.15	$26.35	$30.25	$32.85	$37.85
21	$12.80	$16.00	$19.45	$26.80	$30.75	$33.45	$38.60
22	$13.10	$16.30	$19.75	$27.40	$31.45	$34.20	$39.55
23	$13.40	$16.50	$20.30	$27.85	$32.00	$34.80	$40.25
24	$13.70	$16.70	$20.90	$28.45	$32.65	$35.60	$41.25
25	$14.00	$16.95	$21.60	$28.90	$33.15	$36.15	$41.95
26	$14.30	$17.15	$22.30	$29.50	$33.90	$36.90	$43.30
27	$14.70	$17.40	$22.95	$29.90	$34.40	$37.45	$44.90
28	$15.15	$17.60	$23.55	$30.30	$34.85	$38.00	$46.55
29	$15.60	$17.80	$24.25	$30.70	$35.30	$38.50	$48.05
30	$16.10	$18.05	$24.90	$31.15	$35.80	$39.05	$49.65
31	$16.50	$18.20	$25.60	$31.50	$36.25	$39.55	$51.30
32	$16.95	$18.65	$26.25	$31.90	$36.75	$40.50	$52.90
33	$17.40	$19.15	$26.85	$32.30	$37.20	$41.65	$54.45
34	$17.85	$19.65	$27.55	$33.00	$38.30	$42.80	$56.05
35	$18.30	$20.15	$28.10	$33.70	$39.35	$43.95	$57.65
36	$18.75	$20.65	$28.55	$34.45	$40.35	$45.15	$59.25
37	$19.20	$21.10	$29.00	$35.10	$41.40	$46.30	$60.85
38	$19.65	$21.60	$29.45	$35.80	$42.55	$47.40	$62.45
39	$20.05	$22.05	$29.85	$36.50	$43.60	$48.60	$64.10
40	$20.45	$22.50	$30.30	$37.25	$44.60	$49.70	$65.60
41	$20.85	$22.95	$30.70	$37.60	$45.65	$50.90	$67.20
42	$21.25	$23.40	$31.10	$38.40	$46.65	$52.10	$68.80

2200 Priority Mail

Prices:

Zone/Weight – Retail

Weight to: (Pounds)	Zones L, 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
43	$21.65	$23.80	$31.50	$39.25	$47.80	$53.25	$70.40
44	$22.05	$24.25	$31.90	$40.15	$48.80	$54.45	$72.00
45	$22.45	$24.70	$32.25	$41.00	$49.85	$55.60	$73.60
46	$22.85	$25.15	$32.90	$41.80	$50.90	$56.75	$75.20
47	$23.25	$25.60	$33.50	$42.70	$52.05	$57.95	$76.75
48	$23.65	$25.95	$34.25	$43.55	$53.10	$59.15	$78.40
49	$24.05	$26.25	$34.90	$44.35	$54.05	$60.35	$79.95
50	$24.40	$26.50	$35.55	$45.20	$55.10	$61.50	$81.40
51	$24.85	$26.75	$36.20	$46.10	$56.15	$62.65	$82.25
52	$25.20	$27.00	$36.90	$46.95	$57.30	$63.80	$83.05
53	$25.65	$27.25	$37.50	$47.80	$58.30	$65.00	$83.85
54	$26.00	$27.45	$38.15	$48.70	$59.30	$66.10	$84.65
55	$26.45	$27.70	$38.90	$49.55	$60.35	$67.20	$85.40
56	$26.80	$27.90	$39.50	$50.35	$61.50	$68.40	$86.15
57	$27.25	$28.15	$40.15	$51.15	$62.50	$69.60	$86.90
58	$27.60	$28.35	$40.85	$52.05	$63.55	$70.75	$87.60
59	$28.05	$28.55	$41.50	$52.90	$64.55	$71.90	$88.25
60	$28.40	$28.75	$42.15	$53.80	$65.65	$73.05	$88.90
61	$28.85	$28.95	$42.90	$54.60	$66.50	$74.20	$90.10
62	$29.20	$29.20	$43.50	$55.50	$66.95	$75.35	$91.50
63	$29.65	$29.65	$44.20	$56.40	$67.35	$76.10	$92.95
64	$30.00	$30.00	$44.85	$57.25	$67.75	$76.55	$94.45
65	$30.45	$30.45	$45.45	$57.95	$68.10	$77.00	$95.90
66	$30.80	$30.80	$46.15	$58.85	$68.50	$77.40	$97.30
67	$31.25	$31.25	$46.90	$59.75	$68.85	$77.80	$98.80
68	$31.60	$31.60	$47.50	$60.60	$69.15	$78.20	$100.20
69	$32.05	$32.05	$48.15	$61.50	$69.50	$78.55	$101.65
70	$32.45	$32.45	$48.90	$61.80	$69.80	$78.90	$103.10

Balloon Rate: In Zones 1-4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (though not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Dimensional Weight: In Zones 5-8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

Flat Rate Envelope – Retail $4.80

Regular Flat Rate Box – Retail $9.80

Large Flat Rate Box – Retail $12.95
$10.95 for delivery to APO/FPO addresses

For each Pickup On Demand stop, add $14.75.

2200 Priority Mail

Prices:

Zone/Weight – Commercial

Weight to: (Pounds)	Zones L, 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	$4.75	$4.75	$4.75	$4.75	$4.75	$4.75	$4.75
2	$4.75	$4.75	$5.29	$6.46	$6.88	$7.39	$7.96
3	$4.86	$5.59	$6.38	$7.79	$9.12	$9.94	$11.10
4	$5.42	$6.39	$7.42	$9.50	$11.08	$12.14	$13.75
5	$6.03	$7.29	$8.14	$11.11	$12.84	$14.16	$16.21
6	$6.59	$8.13	$9.25	$12.84	$13.75	$15.60	$17.03
7	$7.11	$8.84	$10.28	$14.28	$15.09	$17.33	$19.44
8	$7.53	$9.17	$11.29	$15.42	$16.38	$19.01	$21.81
9	$7.73	$9.82	$12.05	$16.63	$17.72	$20.69	$24.27
10	$8.18	$10.58	$12.71	$17.72	$19.20	$22.51	$26.59
11	$8.74	$11.05	$13.70	$18.76	$20.77	$24.19	$27.99
12	$9.12	$11.61	$14.46	$19.81	$22.39	$25.44	$29.19
13	$9.35	$11.89	$14.88	$20.90	$24.02	$26.45	$30.20
14	$9.68	$12.41	$15.55	$21.85	$25.31	$27.98	$31.70
15	$10.10	$12.97	$16.30	$22.52	$25.88	$28.27	$32.38
16	$10.43	$13.40	$16.82	$22.99	$26.45	$28.90	$33.20
17	$10.75	$13.87	$17.15	$23.56	$27.17	$29.62	$34.06
18	$10.99	$14.29	$17.48	$24.04	$27.70	$30.19	$34.88
19	$11.36	$14.62	$17.77	$24.61	$28.36	$30.96	$35.75
20	$11.64	$14.85	$18.10	$25.03	$28.89	$31.54	$36.53
21	$11.97	$15.04	$18.38	$25.46	$29.37	$32.11	$37.25
22	$12.25	$15.32	$18.66	$26.03	$30.03	$32.83	$38.17
23	$12.53	$15.51	$19.18	$26.46	$30.56	$33.41	$38.84
24	$12.81	$15.70	$19.75	$27.03	$31.18	$34.18	$39.81
25	$13.09	$15.93	$20.41	$27.46	$31.66	$34.70	$40.48
26	$13.37	$16.12	$21.07	$28.03	$32.37	$35.42	$41.78
27	$13.74	$16.36	$21.69	$28.41	$32.85	$35.95	$43.33
28	$14.17	$16.54	$22.25	$28.79	$33.28	$36.48	$44.92
29	$14.59	$16.73	$22.92	$29.17	$33.71	$36.96	$46.37
30	$15.05	$16.97	$23.53	$29.59	$34.19	$37.49	$47.91
31	$15.43	$17.11	$24.19	$29.93	$34.62	$37.97	$49.50
32	$15.85	$17.53	$24.81	$30.31	$35.10	$38.88	$51.05
33	$16.27	$18.00	$25.37	$30.69	$35.53	$39.98	$52.54
34	$16.69	$18.47	$26.03	$31.35	$36.58	$41.09	$54.09
35	$17.11	$18.94	$26.55	$32.02	$37.58	$42.19	$55.63
36	$17.53	$19.41	$26.98	$32.73	$38.53	$43.34	$57.18
37	$17.95	$19.83	$27.41	$33.35	$39.54	$44.45	$58.72
38	$18.37	$20.30	$27.83	$34.01	$40.64	$45.50	$60.26
39	$18.75	$20.73	$28.21	$34.68	$41.64	$46.66	$61.86
40	$19.12	$21.15	$28.63	$35.39	$42.59	$47.71	$63.30
41	$19.49	$21.57	$29.01	$35.72	$43.60	$48.86	$64.85
42	$19.87	$22.00	$29.39	$36.48	$44.55	$50.02	$66.39
43	$20.24	$22.37	$29.77	$37.29	$45.65	$51.12	$67.94

2200 Priority Mail

Prices:

Zone/Weight – Commercial

Weight to: (Pounds)	Zones L, 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
44	$20.62	$22.80	$30.15	$38.14	$46.60	$52.27	$69.48
45	$20.99	$23.22	$30.48	$38.95	$47.61	$53.38	$71.02
46	$21.36	$23.64	$31.09	$39.71	$48.61	$54.48	$72.57
47	$21.74	$24.06	$31.66	$40.57	$49.71	$55.63	$74.06
48	$22.11	$24.39	$32.37	$41.37	$50.71	$56.78	$75.66
49	$22.49	$24.68	$32.98	$42.13	$51.62	$57.94	$77.15
50	$22.81	$24.91	$33.59	$42.94	$52.62	$59.04	$78.55
51	$23.23	$25.15	$34.21	$43.80	$53.62	$60.14	$79.37
52	$23.56	$25.38	$34.87	$44.60	$54.72	$61.25	$80.14
53	$23.98	$25.62	$35.44	$45.41	$55.68	$62.40	$80.92
54	$24.31	$25.80	$36.05	$46.27	$56.63	$63.46	$81.69
55	$24.73	$26.04	$36.76	$47.07	$57.63	$64.51	$82.41
56	$25.06	$26.23	$37.33	$47.83	$58.73	$65.66	$83.13
57	$25.48	$26.46	$37.94	$48.59	$59.69	$66.82	$83.86
58	$25.81	$26.65	$38.60	$49.45	$60.69	$67.92	$84.53
59	$26.23	$26.84	$39.22	$50.26	$61.65	$69.02	$85.16
60	$26.55	$27.03	$39.83	$51.11	$62.70	$70.13	$85.79
61	$26.97	$27.21	$40.54	$51.87	$63.51	$71.23	$86.95
62	$27.30	$27.45	$41.11	$52.73	$63.94	$72.34	$88.30
63	$27.72	$27.87	$41.77	$53.58	$64.32	$73.06	$89.70
64	$28.05	$28.20	$42.38	$54.39	$64.70	$73.49	$91.14
65	$28.47	$28.62	$42.95	$55.05	$65.04	$73.92	$92.54
66	$28.80	$28.95	$43.61	$55.91	$65.42	$74.30	$93.89
67	$29.22	$29.38	$44.32	$56.76	$65.75	$74.69	$95.34
68	$29.55	$29.70	$44.89	$57.57	$66.04	$75.07	$96.69
69	$29.97	$30.13	$45.50	$58.43	$66.37	$75.41	$98.09
70	$30.34	$30.50	$46.21	$58.71	$66.66	$75.74	$99.49

Balloon Rate: In Zones 1-4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (though not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Dimensional Weight: In Zones 5-8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

Flat Rate Envelope – Commercial $4.75

Regular Flat Rate Box – Commercial $9.30

Large Flat Rate Box – Commercial $12.50
$10.50 for delivery to APO/FPO addresses

For each Pickup On Demand stop, add $14.75.

2210 Outbound Priority Mail International ~~Packages~~

Outbound Priority Mail International is ~~International Packages are~~ made up of the Priority Mail International Flat Rate Envelope, the Priority Mail International Flat Rate Boxes, and Priority Mail International Parcels. With the exception of the Flat Rate Envelope, Priority Mail International is ~~International Packages are~~ an outbound international mail service designed for the carriage of postal parcels. Written correspondence having the nature of current and personal correspondence is not permitted in Priority Mail International parcels, but may be sent in the Priority Mail International Flat Rate Envelope. Only the Priority Mail International Flat Rate Envelope is sealed against postal inspection and shall not be opened except as authorized by law. ~~Discounts for online preparation and payment or for use of an authorized PC postage vendor may apply as specified in the International Mail Manual.~~

Size and Weight:

	Length	Height	Width	Weight[1]
Minimum[2]	5.5 inches	None	3.5 inches	None
Maximum	42 inches	Length plus girth: 79 inches Circular parcels: ~~length plus~~ diameter: 64 inches.		70

[1] Weight and other exceptional size limits based on shape and destination country restrictions may apply as specified in the International Mail Manual.
[2] Items must be large enough to accommodate postage, address and other required elements on the address side.

Minimum Volume: None

Price Categories:

Priority Mail International Flat Rate Envelope

- Canada and Mexico
- All other countries

Priority Mail International Flat Rate Boxes

- Canada and Mexico
- All other countries

Priority Mail International Parcels

- Price Group 1
- Price Group 2
- Price Group 3
- Price Group 4
- Price Group 5
- Price Group 6
- Price Group 7
- Price Group 8
- Price Group 9
- ~~Price Group 10~~

Subject to the provisions of the Universal Postal Union Convention, Priority Mail International Parcels include indemnity coverage in the postage prices. Indemnity is limited to the lesser of the actual value of the contents or the maximum indemnity based on weight.

Online Incentives – Available for preparation and payment online at *usps.com* or by using an authorized PC postage vendor.

Permit Imprint Incentives – Available for payment by permit imprint and use of approved software for mail preparation and Customs-related functions.

Customized Pricing – Available through mailer-specific agreement.

Optional Features:

~~Global Shipping Solutions (GSS)~~[1]
Pickup On Demand

International Ancillary Services

- International Certificate of Mailing
- International Insurance
- International Registered Mail
- International Restricted Delivery
- International Return Receipt

[1] ~~GSS is software developed by the Postal Service to help mailers perform international package shipping. Features of GSS support labeling of packages, manifesting, pre-notification of foreign agents and officials, pre-payment of duties and taxes, and coordination of returns. GSS is only available through customized agreements.~~

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2210 Outbound Priority Mail International ~~Packages~~

Weight Not Over (Pounds)	Price Group 1	Price Group 2	Price Group 3	Price Group 4	Price Group 5	Price Group 6	Price Group 7	Price Group 8	Price Group 9
Flat Rate Envelope	$9.95	$9.95	$11.95	$11.95	$11.95	$11.95	$11.95	$11.95	$11.95
Regular Flat Rate Box	$23.95	$23.95	$38.95	$38.95	$38.95	$38.95	$38.95	$38.95	$38.95
Large Flat Rate Box	$29.95	$29.95	$49.95	$49.95	$49.95	$49.95	$49.95	$49.95	$49.95
1	$17.00	$17.00	$22.50	$21.50	$24.00	$23.00	$22.00	$21.00	$19.50
2	$18.40	$20.25	$27.00	$24.75	$27.00	$27.25	$26.50	$25.00	$23.25
3	$19.80	$23.50	$31.50	$28.00	$30.50	$31.50	$31.00	$29.00	$27.00
4	$21.20	$26.75	$36.00	$31.25	$34.00	$35.75	$35.50	$33.00	$30.75
5	$22.60	$30.00	$40.50	$34.50	$37.50	$40.00	$40.00	$37.00	$34.50
6	$24.10	$32.40	$44.25	$37.75	$40.50	$44.75	$44.50	$41.35	$37.90
7	$25.60	$34.80	$48.00	$41.00	$43.50	$49.50	$49.00	$45.70	$41.30
8	$27.10	$37.20	$51.75	$44.25	$46.50	$54.25	$53.50	$50.05	$44.70
9	$28.60	$39.60	$55.50	$47.50	$49.50	$59.00	$58.00	$54.40	$48.10
10	$30.10	$42.00	$59.25	$50.75	$52.50	$63.75	$62.50	$58.75	$51.50
11	$31.70	$44.25	$63.00	$54.50	$55.50	$68.75	$66.85	$63.10	$54.90
12	$33.30	$46.50	$66.75	$58.25	$58.50	$73.75	$71.20	$67.45	$58.30
13	$34.90	$48.75	$70.50	$62.00	$61.50	$78.75	$75.55	$71.80	$61.70
14	$36.50	$51.00	$74.25	$65.75	$64.50	$83.75	$79.90	$76.15	$65.10
15	$38.10	$53.25	$78.00	$69.50	$67.50	$88.75	$84.25	$80.50	$68.50
16	$39.70	$55.50	$81.75	$73.25	$70.50	$93.75	$88.60	$84.85	$71.90
17	$41.30	$57.75	$85.50	$77.00	$73.50	$98.75	$92.95	$89.20	$75.30
18	$42.90	$60.00	$89.25	$80.75	$76.50	$103.75	$97.30	$93.55	$78.70
19	$44.50	$62.25	$93.00	$84.50	$79.50	$108.75	$101.65	$97.90	$82.10
20	$46.10	$64.50	$96.75	$88.25	$82.50	$113.75	$106.00	$102.25	$85.50
21	$47.70	$66.75	$100.50	$92.00	$85.50	$118.75	$110.35	$106.60	$88.90
22	$49.30	$69.00	$104.25	$95.75	$88.50	$123.75	$114.70	$110.95	$92.30
23	$50.90	$71.25	$108.00	$99.50	$91.50	$128.75	$119.05	$115.30	$95.70
24	$52.50	$73.50	$111.75	$103.25	$94.50	$133.75	$123.40	$119.65	$99.10
25	$54.10	$75.75	$115.50	$107.00	$97.50	$138.75	$127.75	$124.00	$102.50
26	$55.70	$78.00	$119.25	$110.75	$100.50	$143.75	$132.10	$128.35	$105.90
27	$57.30	$80.25	$123.00	$114.50	$103.50	$148.75	$136.45	$132.70	$109.30
28	$58.90	$82.50	$126.75	$118.25	$106.50	$153.75	$140.80	$137.05	$112.70
29	$60.50	$84.75	$130.50	$122.00	$109.50	$158.75	$145.15	$141.40	$116.10
30	$62.10	$87.00	$134.25	$125.75	$112.50	$163.75	$149.50	$145.75	$119.50
31	$63.70	$89.25	$138.00	$129.50	$115.50	$168.75	$153.85	$150.10	$122.90
32	$65.30	$91.50	$141.75	$133.25	$118.50	$173.75	$158.20	$154.45	$126.30
33	$66.90	$93.75	$145.50	$137.00	$121.50	$178.75	$162.55	$158.80	$129.70
34	$68.50	$96.00	$149.25	$140.75	$124.50	$183.75	$166.90	$163.15	$133.10
35	$70.10	$98.25	$153.00	$144.50	$127.50	$188.75	$171.25	$167.50	$136.50
36	$71.70	$100.50	$156.75	$148.25	$130.50	$193.75	$175.60	$171.85	$139.90
37	$73.30	$102.75	$160.50	$152.00	$133.50	$198.75	$179.95	$176.20	$143.30
38	$74.90	$105.00	$164.25	$155.75	$136.50	$203.75	$184.30	$180.55	$146.70
39	$76.50	$107.25	$168.00	$159.50	$139.50	$208.75	$188.65	$184.90	$150.10

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2210 Outbound Priority Mail International ~~Packages~~

Weight Not Over (Pounds)	Price Group 1	Price Group 2	Price Group 3	Price Group 4	Price Group 5	Price Group 6	Price Group 7	Price Group 8	Price Group 9
40	$78.10	$109.50	$171.75	$163.25	$142.50	$213.75	$193.00	$189.25	$153.50
41	$79.70	$111.75	$175.50	$167.00	$145.50	$218.75	$197.35	$193.60	$156.90
42	$81.30	$114.00	$179.25	$170.75	$148.50	$223.75	$201.70	$197.95	$160.30
43	$82.90	$116.25	$183.00	$174.50	$151.50	$228.75	$206.05	$202.30	$163.70
44	$84.50	$118.50	$186.75	$178.25	$154.50	$233.75	$210.40	$206.65	$167.10
45	$86.10	-	$190.50	$182.00	$157.50	$238.75	$214.75	$211.00	$170.50
46	$87.70	-	$194.25	$185.75	$160.50	$243.75	$219.10	$215.35	$173.90
47	$89.30	-	$198.00	$189.50	$163.50	$248.75	$223.45	$219.70	$177.30
48	$90.90	-	$201.75	$193.25	$166.50	$253.75	$227.80	$224.05	$180.70
49	$92.50	-	$205.50	$197.00	$169.50	$258.75	$232.15	$228.40	$184.10
50	$94.10	-	$209.25	$200.75	$172.50	$263.75	$236.50	$232.75	$187.50
51	$95.70	-	$213.00	$204.50	$175.50	$268.75	$240.85	$237.10	$190.90
52	$97.30	-	$216.75	$208.25	$178.50	$273.75	$245.20	$241.45	$194.30
53	$98.90	-	$220.50	$212.00	$181.50	$278.75	$249.55	$245.80	$197.70
54	$100.50	-	$224.25	$215.75	$184.50	$283.75	$253.90	$250.15	$201.10
55	$102.10	-	$228.00	$219.50	$187.50	$288.75	$258.25	$254.50	$204.50
56	$103.70	-	$231.75	$223.25	$190.50	$293.75	$262.60	$258.85	$207.90
57	$105.30	-	$235.50	$227.00	$193.50	$298.75	$266.95	$263.20	$211.30
58	$106.90	-	$239.25	$230.75	$196.50	$303.75	$271.30	$267.55	$214.70
59	$108.50	-	$243.00	$234.50	$199.50	$308.75	$275.65	$271.90	$218.10
60	$110.10	-	$246.75	$238.25	$202.50	$313.75	$280.00	$276.25	$221.50
61	$111.70	-	$250.50	$242.00	$205.50	$318.75	$284.35	$280.60	$224.90
62	$113.30	-	$254.25	$245.75	$208.50	$323.75	$288.70	$284.95	$228.30
63	$114.90	-	$258.00	$249.50	$211.50	$328.75	$293.05	$289.30	$231.70
64	$116.50	-	$261.75	$253.25	$214.50	$333.75	$297.40	$293.65	$235.10
65	$118.10	-	$265.50	$257.00	$217.50	$338.75	$301.75	$298.00	$238.50
66	$119.70	-	$269.25	$260.75	$220.50	$343.75	$306.10	$302.35	$241.90
67	-	-	$273.00	$264.50	$223.50	$348.75	$310.45	$306.70	$245.30
68	-	-	$276.75	$268.25	$226.50	$353.75	$314.80	$311.05	$248.70
69	-	-	$280.50	$272.00	$229.50	$358.75	$319.15	$315.40	$252.10
70	-	-	$284.25	$275.75	$232.50	$363.75	$323.50	$319.75	$255.50

Prices above minus:

Online Incentives 5.0%

Permit Imprint Incentives 5.0%

For each Pickup On Demand stop, add $14.75.

2300 Parcel Select

Size and Weight:

	Length	Height	Width	Weight
Minimum	large enough to accommodate postage, address and other required elements on the address side.			none
Maximum	130 inches in combined length and girth			70 pounds

Minimum Volume: 50 per mailing

Price Categories:

DDU – Meets the presorting, addressing, and other preparation requirements specified in the Domestic Mail Manual, and is entered at a designated destination delivery unit, or other equivalent facility, as specified in the Domestic Mail Manual.

- Balloon Rate
- Oversized
- Loyalty Incentives – Rebates are available on qualified DDU volume to shippers who pay certain minimum levels of total Parcel Select postage, and who exceed their previous year's total Parcel Select volume, as specified in the Domestic Mail Manual
- Growth Incentives – Rebates are available on qualified DDU volume to shippers who qualify for Loyalty Incentives, and who maintain certain levels of Parcel Select volume growth rates, as specified in the Domestic Mail Manual

DSCF – Is entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified in the Domestic Mail Manual.

- Machinable - Meets the presorting, addressing, machinability, and other preparation requirements specified in the Domestic Mail Manual
- Nonmachinable - Meets the presorting, addressing, and other preparation requirements specified in the Domestic Mail Manual
- Balloon Rate
- Oversized

DBMC – Is entered at a designated destination bulk mail center, auxiliary service facility, or other equivalent facility, as specified in the Domestic Mail Manual.

- Machinable - Meets the presorting, addressing, barcoding, and other preparation requirements specified in the Domestic Mail Manual
- Nonmachinable - Meets the presorting, addressing, and other preparation requirements specified in the Domestic Mail Manual
- Balloon Rate
- Oversized

OBMC Presort – Meets the presorting, addressing, and other preparation requirements specified in the Domestic Mail Manual, and is entered at the origin bulk mail center..

- Machinable
- Nonmachinable
- Balloon Rate
- Oversized

BMC Presort – Meets the presorting, addressing, and other preparation and entry requirements specified in the Domestic Mail Manual and is entered at a facility authorized by the Postal Service.

- Machinable
- Nonmachinable
- Balloon Rate
- Oversized

Barcoded – Meets the addressing, barcoding, and other preparation requirements specified in the Domestic Mail Manual and is entered at a facility designated by the Postal Service.

- Balloon Rate

Optional Features:

Ancillary Services

- Address Correction Service
- Certificate of Mailing
- Collect On Delivery
- Delivery Confirmation
- Insurance
- Restricted Delivery
- Return Receipt
- Return Receipt for Merchandise
- Signature Confirmation
- Special Handling

2300 Parcel Select

DDU, DSCF, DBMC – Machinable

Prices:

Weight Not Over (Pounds)	DDU	DSCF	DBMC			
			Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	1.47	2.01	2.52	2.94	3.29	4.22
2	1.54	2.23	2.83	3.60	4.29	5.02
3	1.60	2.44	3.14	4.27	5.24	5.85
4	1.65	2.61	3.43	4.87	6.01	6.55
5	1.71	2.78	3.69	5.45	6.58	7.24
6	1.76	2.95	3.95	5.97	7.04	7.84
7	1.81	3.11	4.19	6.48	7.49	8.45
8	1.85	3.27	4.44	6.97	7.89	8.99
9	1.90	3.40	4.64	7.38	8.26	9.43
10	1.94	3.53	4.85	7.81	9.15	9.88
11	2.02	3.74	5.17	8.43	9.65	10.45
12	2.10	3.93	5.47	8.98	10.00	10.85
13	2.17	4.12	5.74	9.47	10.33	11.23
14	2.24	4.30	6.04	9.93	10.69	11.57
15	2.31	4.49	6.29	10.34	10.98	11.89
16	2.37	4.68	6.56	10.64	11.26	12.21
17	2.43	4.86	6.82	10.91	11.57	12.49
18	2.49	5.01	7.04	11.17	11.82	12.76
19	2.55	5.18	7.29	11.44	12.08	13.02
20	2.61	5.34	7.51	11.70	12.30	13.25
21	2.66	5.48	7.74	11.94	12.53	13.48
22	2.71	5.64	7.96	12.18	12.77	13.69
23	2.76	5.80	8.19	12.43	13.01	13.92
24	2.81	5.95	8.40	12.66	13.25	14.11
25	2.86	6.07	8.59	12.88	13.47	14.31
26	2.90	6.19	8.77	13.09	13.70	14.47
27	2.94	6.35	8.99	13.32	13.92	14.64
28	2.99	6.47	9.15	13.54	14.12	14.83
29	3.03	6.60	9.35	13.75	14.33	15.05
30	3.07	6.71	9.51	13.94	14.52	15.25
31	3.10	6.84	9.70	14.12	14.72	15.47
32	3.14	6.95	9.85	14.33	14.92	15.65
33	3.18	7.06	10.03	14.50	15.09	15.85
34	3.21	7.19	10.20	14.62	15.28	16.04
35	3.25	7.28	10.32	14.79	15.46	16.22

Balloon Rate: Parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price (Nonmachinable).

Loyalty Incentives and Growth Incentives may apply to DDU prices. See chart below.

2300 Parcel Select

DDU, DSCF, DBMC – Nonmachinable

Prices:

Weight Not Over (Pounds)	DDU	DSCF		DBMC			
		5-digit	3-digit	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	1.47	2.01	2.92	4.55	4.97	5.32	6.25
2	1.54	2.23	3.14	4.86	5.63	6.32	7.05
3	1.60	2.44	3.35	5.17	6.30	7.27	7.88
4	1.65	2.61	3.52	5.46	6.90	8.04	8.58
5	1.71	2.78	3.69	5.72	7.48	8.61	9.27
6	1.76	2.95	3.86	5.98	8.00	9.07	9.87
7	1.81	3.11	4.02	6.22	8.51	9.52	10.48
8	1.85	3.27	4.18	6.47	9.00	9.92	11.02
9	1.90	3.40	4.31	6.67	9.41	10.29	11.46
10	1.94	3.53	4.44	6.88	9.84	11.18	11.91
11	2.02	3.74	4.65	7.20	10.46	11.68	12.48
12	2.10	3.93	4.84	7.50	11.01	12.03	12.88
13	2.17	4.12	5.03	7.77	11.50	12.36	13.26
14	2.24	4.30	5.21	8.07	11.96	12.72	13.60
15	2.31	4.49	5.40	8.32	12.37	13.01	13.92
16	2.37	4.68	5.59	8.59	12.67	13.29	14.24
17	2.43	4.86	5.77	8.85	12.94	13.60	14.52
18	2.49	5.01	5.92	9.07	13.20	13.85	14.79
19	2.55	5.18	6.09	9.32	13.47	14.11	15.05
20	2.61	5.34	6.25	9.54	13.73	14.33	15.28
21	2.66	5.48	6.39	9.77	13.97	14.56	15.51
22	2.71	5.64	6.55	9.99	14.21	14.80	15.72
23	2.76	5.80	6.71	10.22	14.46	15.04	15.95
24	2.81	5.95	6.86	10.43	14.69	15.28	16.14
25	2.86	6.07	6.98	10.62	14.91	15.50	16.34
26	2.90	6.19	7.10	10.80	15.12	15.73	16.50
27	2.94	6.35	7.26	11.02	15.35	15.95	16.67
28	2.99	6.47	7.38	11.18	15.57	16.15	16.86
29	3.03	6.60	7.51	11.38	15.78	16.36	17.08
30	3.07	6.71	7.62	11.54	15.97	16.55	17.28
31	3.10	6.84	7.75	11.73	16.15	16.75	17.50
32	3.14	6.95	7.86	11.88	16.36	16.95	17.68
33	3.18	7.06	7.97	12.06	16.53	17.12	17.88
34	3.21	7.19	8.10	12.23	16.65	17.31	18.07
35	3.25	7.28	8.19	12.35	16.82	17.49	18.25
36	3.28	7.39	8.30	12.53	16.94	17.65	18.43
37	3.31	7.49	8.40	12.69	17.07	17.82	18.60
38	3.34	7.58	8.49	12.84	17.21	17.99	18.78
39	3.37	7.69	8.60	12.99	17.35	18.14	18.94
40	3.40	7.75	8.66	13.09	17.46	18.31	19.11
41	3.43	7.83	8.74	13.23	17.63	18.41	19.27

2300 Parcel Select

DDU, DSCF, DBMC – Nonmachinable

Prices:

Weight Not Over (Pounds)	DDU	DSCF		DBMC			
		5-digit	3-digit	Zones 1 & 2	Zone 3	Zone 4	Zone 5
42	3.46	7.94	8.85	13.37	17.74	18.53	19.42
43	3.49	8.02	8.93	13.50	17.86	18.60	19.58
44	3.51	8.10	9.01	13.62	17.98	18.69	19.72
45	3.54	8.18	9.09	13.75	18.08	18.93	19.86
46	3.56	8.27	9.18	13.86	18.21	19.01	20.12
47	3.59	8.34	9.25	13.98	18.31	19.09	20.55
48	3.61	8.40	9.31	14.08	18.44	19.15	21.00
49	3.63	8.47	9.38	14.19	18.55	19.22	21.43
50	3.66	8.54	9.45	14.31	18.65	19.28	21.89
51	3.68	8.64	9.55	14.44	18.73	19.36	22.35
52	3.70	8.68	9.59	14.54	18.89	19.42	22.84
53	3.72	8.73	9.64	14.64	18.96	19.46	23.33
54	3.74	8.81	9.72	14.77	19.02	19.53	23.83
55	3.76	8.92	9.83	14.89	19.09	19.60	24.04
56	3.78	8.97	9.88	14.99	19.15	19.68	24.13
57	3.80	9.05	9.96	15.11	19.17	19.71	24.28
58	3.81	9.12	10.03	15.23	19.24	19.76	24.38
59	3.83	9.21	10.12	15.35	19.28	19.82	24.49
60	3.85	9.27	10.18	15.47	19.31	19.85	24.61
61	3.87	9.31	10.22	15.54	19.38	19.92	24.71
62	3.88	9.38	10.29	15.65	19.42	20.00	24.81
63	3.90	9.45	10.36	15.76	19.45	20.10	24.90
64	3.91	9.53	10.44	15.87	19.48	20.19	25.01
65	3.93	9.58	10.49	15.98	19.53	20.28	25.09
66	3.94	9.62	10.53	16.03	19.57	20.38	25.21
67	3.96	9.69	10.60	16.13	19.60	20.49	25.29
68	3.97	9.73	10.64	16.22	19.63	20.54	25.38
69	3.99	9.81	10.72	16.33	19.66	20.64	25.47
70	4.00	9.86	10.77	16.42	19.71	20.74	25.56
Oversized	6.99	14.92	14.92	23.19	32.44	43.55	45.26

Balloon Rate: Parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price.

Loyalty Incentives and Growth Incentives may apply to DDU prices. See chart below.

2300 Parcel Select

DDU – Machinable and Nonmachinable

Prices:

Loyalty Incentives on Qualified Volume

Annual Total Parcel Select Postage	$5M	$25M	$50M	$100M	$300M	$500M
Rebate on Qualified DDU Volume	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%

Growth Incentives on Qualified Volume

Total Parcel Select Postage to Qualify	$5M	$25M	$50M	$100M	$300M	$500M
Total Parcel Select Annual Growth Rate	Rebate on Qualified Incremental DDU Volume					
>10%	2%	4%	6%	8%	10%	10%
>20%	4%	6%	8%	10%	12%	12%
>30%	6%	8%	10%	12%	14%	14%

2300 Parcel Select

OBMC Presort – Machinable

Prices:

Weight Not Over (Pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	3.10	3.10	3.10	3.10	3.10	3.10	3.10
2	3.10	3.40	3.90	4.49	4.68	4.90	5.22
3	3.60	4.25	5.15	5.49	5.77	6.07	6.67
4	4.30	5.30	6.10	6.43	6.78	7.17	7.93
5	4.95	6.25	6.92	7.31	7.74	8.22	9.13
6	5.55	7.15	7.70	8.16	8.66	9.21	10.27
7	6.10	7.89	8.44	8.97	9.53	10.15	11.36
8	6.55	8.25	9.16	9.74	10.37	11.06	12.40
9	6.95	8.61	9.85	10.49	11.18	11.94	13.41
10	7.35	9.75	10.51	11.21	11.95	12.78	14.38
11	7.70	10.15	11.15	11.90	12.71	13.59	15.31
12	8.05	10.45	11.77	12.57	13.43	14.38	16.22
13	8.45	10.72	12.37	13.22	14.14	15.14	17.10
14	8.66	11.06	12.96	13.85	14.82	15.88	17.95
15	8.84	11.34	13.52	14.47	15.48	16.60	18.77
16	8.99	11.61	14.07	15.06	16.13	17.30	19.58
17	9.18	11.84	14.61	15.64	16.76	17.98	20.36
18	9.32	12.09	15.13	16.21	17.37	18.65	21.12
19	9.51	12.34	15.64	16.76	17.97	19.29	21.87
20	9.64	12.57	16.14	17.30	18.55	19.92	22.59
21	9.80	12.81	16.63	17.82	19.12	20.54	23.30
22	9.93	12.99	17.02	18.34	19.67	21.14	23.99
23	10.08	13.25	17.35	18.84	20.22	21.73	24.67
24	10.19	13.44	17.62	19.33	20.75	22.31	25.33
25	10.34	13.63	17.92	19.81	21.27	22.87	25.98
26	10.45	13.82	18.19	20.28	21.78	23.42	26.62
27	10.62	14.01	18.44	20.74	22.28	23.96	27.24
28	10.71	14.20	18.73	21.19	22.77	24.49	27.85
29	10.85	14.39	18.99	21.64	23.25	25.01	28.45
30	10.96	14.54	19.22	22.07	23.72	25.52	29.03
31	11.10	14.71	19.46	22.50	24.18	26.02	29.61
32	11.19	14.88	19.70	22.92	24.62	26.52	30.17
33	11.30	15.05	19.94	23.33	25.05	27.00	30.73
34	11.43	15.16	20.12	23.73	25.47	27.47	31.27
35	11.54	15.35	20.35	24.13	25.88	27.94	31.81

Prices include the 3 cent barcode discount. If not barcoded, add 3 cents.

Balloon Rate: Parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price (Nonmachinable).

2300 Parcel Select

OBMC Presort – Nonmachinable

Prices:

Weight Not Over (Pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	6.83	6.83	6.83	6.83	6.83	6.83	6.83
2	6.83	7.13	7.63	8.22	8.41	8.63	8.95
3	7.33	7.98	8.88	9.22	9.50	9.80	10.40
4	8.03	9.03	9.83	10.16	10.51	10.90	11.66
5	8.68	9.98	10.65	11.04	11.47	11.95	12.86
6	9.28	10.88	11.43	11.89	12.39	12.94	14.00
7	9.83	11.62	12.17	12.70	13.26	13.88	15.09
8	10.28	11.98	12.89	13.47	14.10	14.79	16.13
9	10.68	12.34	13.58	14.22	14.91	15.67	17.14
10	11.08	13.48	14.24	14.94	15.68	16.51	18.11
11	11.43	13.88	14.88	15.63	16.44	17.32	19.04
12	11.78	14.18	15.50	16.30	17.16	18.11	19.95
13	12.18	14.45	16.10	16.95	17.87	18.87	20.83
14	12.39	14.79	16.69	17.58	18.55	19.61	21.68
15	12.57	15.07	17.25	18.20	19.21	20.33	22.50
16	12.72	15.34	17.80	18.79	19.86	21.03	23.31
17	12.91	15.57	18.34	19.37	20.49	21.71	24.09
18	13.05	15.82	18.86	19.94	21.10	22.38	24.85
19	13.24	16.07	19.37	20.49	21.70	23.02	25.60
20	13.37	16.30	19.87	21.03	22.28	23.65	26.32
21	13.53	16.54	20.36	21.55	22.85	24.27	27.03
22	13.66	16.72	20.75	22.07	23.40	24.87	27.72
23	13.81	16.98	21.08	22.57	23.95	25.46	28.40
24	13.92	17.17	21.35	23.06	24.48	26.04	29.06
25	14.07	17.36	21.65	23.54	25.00	26.60	29.71
26	14.18	17.55	21.92	24.01	25.51	27.15	30.35
27	14.35	17.74	22.17	24.47	26.01	27.69	30.97
28	14.44	17.93	22.46	24.92	26.50	28.22	31.58
29	14.58	18.12	22.72	25.37	26.98	28.74	32.18
30	14.69	18.27	22.95	25.80	27.45	29.25	32.76
31	14.83	18.44	23.19	26.23	27.91	29.75	33.34
32	14.92	18.61	23.43	26.65	28.35	30.25	33.90
33	15.03	18.78	23.67	27.06	28.78	30.73	34.46
34	15.16	18.89	23.85	27.46	29.20	31.20	35.00
35	15.27	19.08	24.08	27.86	29.61	31.67	35.54
36	15.37	19.22	24.32	28.25	30.01	32.12	36.06
37	15.47	19.35	24.48	28.63	30.40	32.57	36.58
38	15.57	19.53	24.67	29.01	30.79	33.01	37.09
39	15.69	19.63	24.86	29.38	31.18	33.45	37.59
40	15.79	19.80	25.07	29.74	31.56	33.88	38.08
41	15.92	19.94	25.23	30.10	31.93	34.30	38.56

2300 Parcel Select

OBMC Presort – Nonmachinable

Prices:

Weight Not Over (Pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
42	16.01	20.06	25.41	30.45	32.30	34.71	39.04
43	16.07	20.19	25.60	30.80	32.67	35.12	39.51
44	16.18	20.29	25.75	31.14	33.03	35.52	39.97
45	16.28	20.44	25.93	31.48	33.38	35.92	40.42
46	16.37	20.56	26.11	31.81	33.72	36.30	40.87
47	16.49	20.70	26.25	32.14	34.07	36.69	41.31
48	16.57	20.81	26.43	32.46	34.42	37.07	41.75
49	16.63	20.94	26.57	32.78	34.74	37.44	42.17
50	16.72	21.03	26.69	33.09	35.08	37.81	42.60
51	16.84	21.17	26.87	33.40	35.41	38.17	43.01
52	16.91	21.28	27.01	33.71	35.73	38.52	43.42
53	17.03	21.37	27.10	34.01	36.05	38.88	43.83
54	17.09	21.52	27.28	34.30	36.36	39.22	44.23
55	17.17	21.56	27.42	34.49	36.67	39.57	44.62
56	17.27	21.73	27.54	34.66	36.98	39.90	45.01
57	17.36	21.82	27.68	34.80	37.28	40.24	45.39
58	17.43	21.92	27.80	34.95	37.59	40.57	45.77
59	17.52	22.02	27.94	35.09	37.89	40.89	46.14
60	17.61	22.11	28.08	35.23	38.18	41.21	46.51
61	17.73	22.25	28.18	35.36	38.48	41.53	46.88
62	17.80	22.32	28.31	35.50	38.76	41.84	47.24
63	17.85	22.44	28.43	35.62	39.04	42.15	47.59
64	17.93	22.50	28.53	35.75	39.32	42.45	47.94
65	18.01	22.62	28.66	35.88	39.60	42.76	48.29
66	18.12	22.72	28.75	35.99	39.89	43.05	48.63
67	18.21	22.82	28.88	36.12	40.16	43.35	48.97
68	18.26	22.91	29.01	36.23	40.43	43.64	49.30
69	18.33	22.97	29.11	36.35	40.70	43.92	49.63
70	18.44	23.10	29.22	36.45	40.96	44.21	49.96
Oversized	53.42	58.46	61.81	73.88	87.82	93.41	119.46

Balloon Rate: Parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price.

2300 Parcel Select

BMC Presort – Machinable

Prices:

Weight Not Over (Pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	4.20	4.20	4.20	4.20	4.20	4.20	4.20
2	4.20	4.50	5.00	5.59	5.78	6.00	6.32
3	4.70	5.35	6.25	6.59	6.87	7.17	7.77
4	5.40	6.40	7.20	7.53	7.88	8.27	9.03
5	6.05	7.35	8.02	8.41	8.84	9.32	10.23
6	6.65	8.25	8.80	9.26	9.76	10.31	11.37
7	7.20	8.99	9.54	10.07	10.63	11.25	12.46
8	7.65	9.35	10.26	10.84	11.47	12.16	13.50
9	8.05	9.71	10.95	11.59	12.28	13.04	14.51
10	8.45	10.85	11.61	12.31	13.05	13.88	15.48
11	8.80	11.25	12.25	13.00	13.81	14.69	16.41
12	9.15	11.55	12.87	13.67	14.53	15.48	17.32
13	9.55	11.82	13.47	14.32	15.24	16.24	18.20
14	9.76	12.16	14.06	14.95	15.92	16.98	19.05
15	9.94	12.44	14.62	15.57	16.58	17.70	19.87
16	10.09	12.71	15.17	16.16	17.23	18.40	20.68
17	10.28	12.94	15.71	16.74	17.86	19.08	21.46
18	10.42	13.19	16.23	17.31	18.47	19.75	22.22
19	10.61	13.44	16.74	17.86	19.07	20.39	22.97
20	10.74	13.67	17.24	18.40	19.65	21.02	23.69
21	10.90	13.91	17.73	18.92	20.22	21.64	24.40
22	11.03	14.09	18.12	19.44	20.77	22.24	25.09
23	11.18	14.35	18.45	19.94	21.32	22.83	25.77
24	11.29	14.54	18.72	20.43	21.85	23.41	26.43
25	11.44	14.73	19.02	20.91	22.37	23.97	27.08
26	11.55	14.92	19.29	21.38	22.88	24.52	27.72
27	11.72	15.11	19.54	21.84	23.38	25.06	28.34
28	11.81	15.30	19.83	22.29	23.87	25.59	28.95
29	11.95	15.49	20.09	22.74	24.35	26.11	29.55
30	12.06	15.64	20.32	23.17	24.82	26.62	30.13
31	12.20	15.81	20.56	23.60	25.28	27.12	30.71
32	12.29	15.98	20.80	24.02	25.72	27.62	31.27
33	12.40	16.15	21.04	24.43	26.15	28.10	31.83
34	12.53	16.26	21.22	24.83	26.57	28.57	32.37
35	12.64	16.45	21.45	25.23	26.98	29.04	32.91

Prices include the 3 cent barcode discount. If not barcoded, add 3 cents.

Balloon Rate: Parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price (Nonmachinable).

2300 Parcel Select

BMC Presort – Nonmachinable

Prices:

Weight Not Over (Pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	7.93	7.93	7.93	7.93	7.93	7.93	7.93
2	7.93	8.23	8.73	9.32	9.51	9.73	10.05
3	8.43	9.08	9.98	10.32	10.60	10.90	11.50
4	9.13	10.13	10.93	11.26	11.61	12.00	12.76
5	9.78	11.08	11.75	12.14	12.57	13.05	13.96
6	10.38	11.98	12.53	12.99	13.49	14.04	15.10
7	10.93	12.72	13.27	13.80	14.36	14.98	16.19
8	11.38	13.08	13.99	14.57	15.20	15.89	17.23
9	11.78	13.44	14.68	15.32	16.01	16.77	18.24
10	12.18	14.58	15.34	16.04	16.78	17.61	19.21
11	12.53	14.98	15.98	16.73	17.54	18.42	20.14
12	12.88	15.28	16.60	17.40	18.26	19.21	21.05
13	13.28	15.55	17.20	18.05	18.97	19.97	21.93
14	13.49	15.89	17.79	18.68	19.65	20.71	22.78
15	13.67	16.17	18.35	19.30	20.31	21.43	23.60
16	13.82	16.44	18.90	19.89	20.96	22.13	24.41
17	14.01	16.67	19.44	20.47	21.59	22.81	25.19
18	14.15	16.92	19.96	21.04	22.20	23.48	25.95
19	14.34	17.17	20.47	21.59	22.80	24.12	26.70
20	14.47	17.40	20.97	22.13	23.38	24.75	27.42
21	14.63	17.64	21.46	22.65	23.95	25.37	28.13
22	14.76	17.82	21.85	23.17	24.50	25.97	28.82
23	14.91	18.08	22.18	23.67	25.05	26.56	29.50
24	15.02	18.27	22.45	24.16	25.58	27.14	30.16
25	15.17	18.46	22.75	24.64	26.10	27.70	30.81
26	15.28	18.65	23.02	25.11	26.61	28.25	31.45
27	15.45	18.84	23.27	25.57	27.11	28.79	32.07
28	15.54	19.03	23.56	26.02	27.60	29.32	32.68
29	15.68	19.22	23.82	26.47	28.08	29.84	33.28
30	15.79	19.37	24.05	26.90	28.55	30.35	33.86
31	15.93	19.54	24.29	27.33	29.01	30.85	34.44
32	16.02	19.71	24.53	27.75	29.45	31.35	35.00
33	16.13	19.88	24.77	28.16	29.88	31.83	35.56
34	16.26	19.99	24.95	28.56	30.30	32.30	36.10
35	16.37	20.18	25.18	28.96	30.71	32.77	36.64
36	16.47	20.32	25.42	29.35	31.11	33.22	37.16
37	16.57	20.45	25.58	29.73	31.50	33.67	37.68
38	16.67	20.63	25.77	30.11	31.89	34.11	38.19
39	16.79	20.73	25.96	30.48	32.28	34.55	38.69
40	16.89	20.90	26.17	30.84	32.66	34.98	39.18
41	17.02	21.04	26.33	31.20	33.03	35.40	39.66

2300 Parcel Select

BMC Presort – Nonmachinable

Prices:

Weight Not Over (Pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
42	17.11	21.16	26.51	31.55	33.40	35.81	40.14
43	17.17	21.29	26.70	31.90	33.77	36.22	40.61
44	17.28	21.39	26.85	32.24	34.13	36.62	41.07
45	17.38	21.54	27.03	32.58	34.48	37.02	41.52
46	17.47	21.66	27.21	32.91	34.82	37.40	41.97
47	17.59	21.80	27.35	33.24	35.17	37.79	42.41
48	17.67	21.91	27.53	33.56	35.52	38.17	42.85
49	17.73	22.04	27.67	33.88	35.84	38.54	43.27
50	17.82	22.13	27.79	34.19	36.18	38.91	43.70
51	17.94	22.27	27.97	34.50	36.51	39.27	44.11
52	18.01	22.38	28.11	34.81	36.83	39.62	44.52
53	18.13	22.47	28.20	35.11	37.15	39.98	44.93
54	18.19	22.62	28.38	35.40	37.46	40.32	45.33
55	18.27	22.66	28.52	35.59	37.77	40.67	45.72
56	18.37	22.83	28.64	35.76	38.08	41.00	46.11
57	18.46	22.92	28.78	35.90	38.38	41.34	46.49
58	18.53	23.02	28.90	36.05	38.69	41.67	46.87
59	18.62	23.12	29.04	36.19	38.99	41.99	47.24
60	18.71	23.21	29.18	36.33	39.28	42.31	47.61
61	18.83	23.35	29.28	36.46	39.58	42.63	47.98
62	18.90	23.42	29.41	36.60	39.86	42.94	48.34
63	18.95	23.54	29.53	36.72	40.14	43.25	48.69
64	19.03	23.60	29.63	36.85	40.42	43.55	49.04
65	19.11	23.72	29.76	36.98	40.70	43.86	49.39
66	19.22	23.82	29.85	37.09	40.99	44.15	49.73
67	19.31	23.92	29.98	37.22	41.26	44.45	50.07
68	19.36	24.01	30.11	37.33	41.53	44.74	50.40
69	19.43	24.07	30.21	37.45	41.80	45.02	50.73
70	19.54	24.20	30.32	37.55	42.06	45.31	51.06
Oversized	54.52	59.56	62.91	74.98	88.92	94.51	120.56

Balloon Rate: Parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price.

2300 Parcel Select

Barcoded – Inter-BMC

Prices:

Weight Not Over (Pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	4.52	4.52	4.52	4.52	4.52	4.52	4.52
2	4.52	4.82	5.32	5.91	6.10	6.32	6.64
3	5.02	5.67	6.57	6.91	7.19	7.49	8.09
4	5.72	6.72	7.52	7.85	8.20	8.59	9.35
5	6.37	7.67	8.34	8.73	9.16	9.64	10.55
6	6.97	8.57	9.12	9.58	10.08	10.63	11.69
7	7.52	9.31	9.86	10.39	10.95	11.57	12.78
8	7.97	9.67	10.58	11.16	11.79	12.48	13.82
9	8.37	10.03	11.27	11.91	12.60	13.36	14.83
10	8.77	11.17	11.93	12.63	13.37	14.20	15.80
11	9.12	11.57	12.57	13.32	14.13	15.01	16.73
12	9.47	11.87	13.19	13.99	14.85	15.80	17.64
13	9.87	12.14	13.79	14.64	15.56	16.56	18.52
14	10.08	12.48	14.38	15.27	16.24	17.30	19.37
15	10.26	12.76	14.94	15.89	16.90	18.02	20.19
16	10.41	13.03	15.49	16.48	17.55	18.72	21.00
17	10.60	13.26	16.03	17.06	18.18	19.40	21.78
18	10.74	13.51	16.55	17.63	18.79	20.07	22.54
19	10.93	13.76	17.06	18.18	19.39	20.71	23.29
20	11.06	13.99	17.56	18.72	19.97	21.34	24.01
21	11.22	14.23	18.05	19.24	20.54	21.96	24.72
22	11.35	14.41	18.44	19.76	21.09	22.56	25.41
23	11.50	14.67	18.77	20.26	21.64	23.15	26.09
24	11.61	14.86	19.04	20.75	22.17	23.73	26.75
25	11.76	15.05	19.34	21.23	22.69	24.29	27.40
26	11.87	15.24	19.61	21.70	23.20	24.84	28.04
27	12.04	15.43	19.86	22.16	23.70	25.38	28.66
28	12.13	15.62	20.15	22.61	24.19	25.91	29.27
29	12.27	15.81	20.41	23.06	24.67	26.43	29.87
30	12.38	15.96	20.64	23.49	25.14	26.94	30.45
31	12.52	16.13	20.88	23.92	25.60	27.44	31.03
32	12.61	16.30	21.12	24.34	26.04	27.94	31.59
33	12.72	16.47	21.36	24.75	26.47	28.42	32.15
34	12.85	16.58	21.54	25.15	26.89	28.89	32.69
35	12.96	16.77	21.77	25.55	27.30	29.36	33.23

Balloon Rate: Parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price (Nonmachinable).

2300 Parcel Select

Barcoded – Intra-BMC

Prices:

Weight Not Over (Pounds)	Local Zone	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	3.64	3.99	4.02	4.11	4.30
2	4.08	4.47	4.77	4.86	5.13
3	4.48	4.97	5.45	5.57	5.94
4	4.85	5.67	6.08	6.20	6.68
5	5.18	6.26	6.62	6.77	7.37
6	5.48	6.64	7.12	7.27	7.98
7	5.71	7.00	7.57	7.74	8.57
8	5.90	7.58	8.00	8.18	9.10
9	6.10	7.90	8.39	8.62	9.59
10	6.29	8.24	8.81	9.31	10.05
11	6.46	8.53	9.15	9.67	10.47
12	6.64	8.84	9.49	10.02	10.87
13	6.81	9.04	9.79	10.35	11.25
14	6.97	9.21	10.07	10.71	11.59
15	7.12	9.38	10.36	11.00	11.91
16	7.28	9.54	10.66	11.28	12.23
17	7.42	9.74	10.93	11.59	12.51
18	7.56	9.88	11.19	11.84	12.78
19	7.69	10.04	11.46	12.10	13.04
20	7.84	10.21	11.72	12.32	13.27
21	7.96	10.33	11.96	12.55	13.50
22	8.09	10.50	12.20	12.79	13.71
23	8.22	10.61	12.45	13.03	13.94
24	8.35	10.76	12.68	13.27	14.13
25	8.47	10.88	12.90	13.49	14.33
26	8.58	11.03	13.11	13.72	14.49
27	8.70	11.15	13.34	13.94	14.66
28	8.81	11.26	13.56	14.14	14.85
29	8.93	11.39	13.77	14.35	15.07
30	9.05	11.51	13.96	14.54	15.27
31	9.15	11.63	14.14	14.74	15.49
32	9.23	11.75	14.35	14.94	15.67
33	9.35	11.86	14.52	15.11	15.87
34	9.42	11.97	14.64	15.30	16.06
35	9.50	12.07	14.81	15.48	16.24

Balloon Rate: Parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price (Nonmachinable).

2400 Parcel Return Service

Machinable

Prices:

Weight Not Over (Pounds)	RDU	RBMC Zones 1 & 2	RBMC Zone 3	RBMC Zone 4	RBMC Zone 5
1	1.62	2.35	2.48	2.56	2.76
2	1.69	3.18	3.22	3.32	3.60
3	1.76	3.86	3.91	4.03	4.41
4	1.82	4.31	4.54	4.66	5.15
5	1.88	4.72	5.08	5.24	5.84
6	1.94	5.10	5.59	5.74	6.46
7	1.99	5.42	6.04	6.22	7.05
8	2.04	6.05	6.47	6.66	7.58
9	2.09	6.37	6.86	7.10	8.07
10	2.13	6.64	7.28	7.79	8.54
11	2.22	6.81	7.62	8.15	8.95
12	2.31	7.02	7.96	8.50	9.36
13	2.39	7.21	8.27	8.83	9.74
14	2.46	7.38	8.55	9.20	10.08
15	2.54	7.52	8.84	9.48	10.40
16	2.61	7.68	9.14	9.77	10.73
17	2.68	7.87	9.42	10.08	11.00
18	2.74	7.99	9.68	10.33	11.28
19	2.81	8.16	9.94	10.59	11.54
20	2.87	8.29	10.15	10.81	11.77
21	2.93	8.43	10.35	11.04	12.00
22	2.98	8.57	10.52	11.29	12.21
23	3.04	8.69	10.75	11.53	12.44
24	3.09	8.80	10.90	11.77	12.63
25	3.14	8.92	11.08	11.99	12.83
26	3.19	9.05	11.23	12.22	12.99
27	3.24	9.17	11.41	12.44	13.17
28	3.28	9.26	11.57	12.60	13.35
29	3.33	9.38	11.75	12.74	13.57
30	3.37	9.50	11.88	12.88	13.77
31	3.41	9.61	12.00	13.00	13.99
32	3.46	9.75	12.16	13.15	14.18
33	3.50	9.82	12.30	13.26	14.38
34	3.53	9.94	12.41	13.38	14.53
35	3.57	10.02	12.56	13.48	14.66

Balloon Rate: RBMC parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price (Nonmachinable).

2400 Parcel Return Service

Nonmachinable

Prices:

Weight Not Over (Pounds)	RDU	RBMC Zones 1 & 2	RBMC Zone 3	RBMC Zone 4	RBMC Zone 5
1	1.62	5.08	5.21	5.29	5.49
2	1.69	5.91	5.95	6.05	6.33
3	1.76	6.59	6.64	6.76	7.14
4	1.82	7.04	7.27	7.39	7.88
5	1.88	7.45	7.81	7.97	8.57
6	1.94	7.83	8.32	8.47	9.19
7	1.99	8.15	8.77	8.95	9.78
8	2.04	8.78	9.20	9.39	10.31
9	2.09	9.10	9.59	9.83	10.80
10	2.13	9.37	10.01	10.52	11.27
11	2.22	9.54	10.35	10.88	11.68
12	2.31	9.75	10.69	11.23	12.09
13	2.39	9.94	11.00	11.56	12.47
14	2.46	10.11	11.28	11.93	12.81
15	2.54	10.25	11.57	12.21	13.13
16	2.61	10.41	11.87	12.50	13.46
17	2.68	10.60	12.15	12.81	13.73
18	2.74	10.72	12.41	13.06	14.01
19	2.81	10.89	12.67	13.32	14.27
20	2.87	11.02	12.88	13.54	14.50
21	2.93	11.16	13.08	13.77	14.73
22	2.98	11.30	13.25	14.02	14.94
23	3.04	11.42	13.48	14.26	15.17
24	3.09	11.53	13.63	14.50	15.36
25	3.14	11.65	13.81	14.72	15.56
26	3.19	11.78	13.96	14.95	15.72
27	3.24	11.90	14.14	15.17	15.90
28	3.28	11.99	14.30	15.33	16.08
29	3.33	12.11	14.48	15.47	16.30
30	3.37	12.23	14.61	15.61	16.50
31	3.41	12.34	14.73	15.73	16.72
32	3.46	12.48	14.89	15.88	16.91
33	3.50	12.55	15.03	15.99	17.11
34	3.53	12.67	15.14	16.11	17.26
35	3.57	12.75	15.29	16.21	17.39
36	3.61	12.88	15.45	16.35	17.56
37	3.64	12.98	15.55	16.44	17.64
38	3.68	13.04	15.64	16.50	17.70
39	3.71	13.11	15.75	16.57	17.77
40	3.74	13.17	15.82	16.61	17.84
41	3.77	13.27	15.94	16.67	17.91

2400 Parcel Return Service

Nonmachinable

Prices:

Weight Not Over (Pounds)	RDU	RBMC Zones 1 & 2	RBMC Zone 3	RBMC Zone 4	RBMC Zone 5
42	3.80	13.30	16.02	16.73	17.97
43	3.83	13.36	16.11	16.80	18.00
44	3.86	13.43	16.18	16.85	18.04
45	3.89	13.48	16.25	17.05	18.10
46	3.92	13.57	16.35	17.10	18.13
47	3.94	13.63	16.40	17.13	18.17
48	3.97	13.68	16.50	17.16	18.22
49	4.00	13.75	16.58	17.20	18.25
50	4.02	13.76	16.65	17.23	18.30
51	4.04	13.86	16.70	17.26	18.35
52	4.07	13.91	16.81	17.31	18.38
53	4.09	13.93	16.85	17.32	18.43
54	4.11	13.99	16.88	17.36	18.46
55	4.13	14.04	16.91	17.39	18.50
56	4.16	14.09	16.93	17.43	18.55
57	4.18	14.16	16.93	17.43	18.59
58	4.20	14.21	16.96	17.45	18.64
59	4.22	14.26	16.98	17.47	18.68
60	4.23	14.32	16.99	17.47	18.71
61	4.25	14.37	17.00	17.50	18.76
62	4.27	14.41	17.01	17.57	18.79
63	4.29	14.47	17.01	17.64	18.85
64	4.31	14.52	17.01	17.67	18.89
65	4.32	14.56	17.05	17.72	18.92
66	4.34	14.62	17.05	17.79	18.97
67	4.35	14.68	17.06	17.87	19.01
68	4.37	14.68	17.06	17.90	19.04
69	4.39	14.75	17.06	17.97	19.10
70	4.40	14.80	17.06	18.02	19.14
Oversized	7.68	30.05	30.56	31.48	32.88

Balloon Rate: RBMC parcels exceeding 84 inches in combined length and girth (though not more than 108 inches) and weighing less than 20 pounds are subject to the 20-pound price.

Regardless of weight, any parcel measuring more than 108 inches (but not more than 130 inches) in combined length and girth must pay the Oversized price.

INTERNATIONAL

2505 International Priority Airmail ~~Airlift~~ (IPA)

International Priority Airmail ~~Airlift~~ (IPA) is a bulk international airmail service for First-Class Mail International items. International Priority Airmail ~~Airlift~~ may contain matter containing personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account. International Priority Airmail ~~Airlift~~ is sealed against postal inspection and shall not be opened except as authorized by law.

Size and Weight for Postcards:

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	6 inches	4.25 inches	0.016 inch	Not applicable ~~4 pounds~~

~~**Size and Weight for Letters and Small Packets:**~~

	~~Length~~	~~Height~~	~~Thickness~~	~~Weight~~
~~Minimum~~	~~5.5 inches~~	~~3.5 inches~~	~~0.007 inch~~	~~none~~
	~~Length~~	~~Length plus height plus thickness~~		~~Weight~~
~~Maximum~~	~~24 inches~~	~~36 inches~~		~~4 pounds~~

Size and Weight for Letters:

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	11.5 inches	6.125 inches	0.25 inch	3.5 ounces

Size and Weight for Large Envelopes (Flats):

	Length	Height	Thickness	Weight
Minimum[1]	11.5 inches	6.125 inches	0.25 inch	None
	Length	Height	Thickness	Weight
Maximum	15 inches	12 inches	0.75 inch	4 pounds

[1] Every minimum dimension does not have to be met; only one does.

Size and Weight for Packages (Small Packets):

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address and other required elements on the address side.			None
	Length	**Length plus height plus thickness**		**Weight**
Maximum	24 inches	36 inches		4 pounds

Size and Weight for Rolls:

	Length	Length plus twice the diameter	Weight
Minimum	4 inches	6.75 inches	None
Maximum	36 inches	42 inches	4 pounds

Minimum Volume: specified in the International Mail Manual

Price Categories:

International Priority Airmail – Meets the requirements specified in the International Mail Manual.

Presort Mail

Price Group 1	Full Service	ISC Drop Shipment
Price Group 2	Full Service	ISC Drop Shipment
Price Group 3	Full Service	ISC Drop Shipment
Price Group 4	Full Service	ISC Drop Shipment
Price Group 5	Full Service	ISC Drop Shipment
Price Group 6	Full Service	ISC Drop Shipment
Price Group 7	Full Service	ISC Drop Shipment
Price Group 8	Full Service	ISC Drop Shipment
Price Group 9	Full Service	ISC Drop Shipment

Worldwide Nonpresort Mail

Worldwide	Full Service	ISC Drop Shipment

IPA M-Bag – Meets the requirements specified in the International Mail Manual

Price Group 1	Full Service	ISC Drop Shipment
Price Group 2	Full Service	ISC Drop Shipment
Price Group 3	Full Service	ISC Drop Shipment
Price Group 4	Full Service	ISC Drop Shipment
Price Group 5	Full Service	ISC Drop Shipment
Price Group 6	Full Service	ISC Drop Shipment
Price Group 7	Full Service	ISC Drop Shipment
Price Group 8	Full Service	ISC Drop Shipment
Price Group 9	Full Service	ISC Drop Shipment

Customized Pricing – Available through mailer-specific agreement.

Optional Features:

Ancillary Services

- International Certificate of Mailing

INTERNATIONAL

2505 International Priority Airmail ~~Airlift~~ (IPA)

Prices:

Presort Mail

PRICE GROUPS	Per Piece	Full Service Per Lb.	ISC Drop Shipment Per Lb.
1	0.40	5.44	4.44
2	0.15	6.10	5.10
3	0.40	7.50	6.50
4	0.41	7.70	6.70
5	0.15	6.50	5.50
6	0.15	5.80	4.80
7	0.15	7.50	6.50
8	0.12	8.00	7.00
9	0.31	8.25	7.25

Worldwide Nonpresort Mail

Per Piece	Full Service Per Lb.	ISC Drop Shipment Per Lb.
0.36	8.50	7.50

INTERNATIONAL

2505 International Priority Airmail ~~Airlift~~ (IPA)

IPA M-Bag – Full Service

PRICE GROUPS	Full Service Per Lb.
1	2.10
2	2.70
3	3.60
4	5.15
5	4.40
6	4.20
7	4.95
8	4.85
9	5.60

Note: M-bags are subject to the minimum rate for 11 pounds

IPA M-Bag – ISC Drop Shipment ~~Full Service~~

	Country Price Groups								
Weight Not Over (lb.)	1	2	3	4	5	6	7	8	9
5	19.30	25.00	30.85	44.50	38.75	38.65	44.80	42.50	47.75
6	19.75	25.60	31.85	46.25	39.90	39.45	45.95	43.85	49.60
7	20.20	26.20	32.85	48.00	41.05	40.25	47.10	45.20	51.45
8	20.65	26.80	33.85	49.75	42.20	41.05	48.25	46.55	53.30
9	21.10	27.40	34.85	51.50	43.35	41.85	49.40	47.90	55.15
10	21.55	28.00	35.85	53.25	44.50	42.65	50.55	49.25	57.00
11	22.00	28.60	36.85	55.00	45.65	43.45	51.70	50.60	58.85
Each additional pound or fraction of a pound	2.00	2.60	3.35	5.00	4.15	3.95	4.70	4.60	5.35

INTERNATIONAL

2510 International Surface Airlift (ISAL)

International Surface Airlift (ISAL) is an international bulk mailing service for First-Class Mail International items. Volume requirements are higher than for IPA. ISAL may include matter containing personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account. International Surface Airlift is not sealed against postal inspection; mailing of matter by ISAL constitutes consent by the mailer to postal inspection of the contents, regardless of physical closure.

Size and Weight for Postcards:

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	6 inches	4.25 inches	0.016 inch	not applicable

~~**Size and Weight for Letters /Small Packets / Packages:**~~[1]

	~~Length~~	~~Height~~	~~Thickness~~	~~Weight~~
~~Minimum~~	~~5.5 inches~~	~~3.5 inches~~	~~0.007 inch~~	~~none~~
	~~Length~~	~~Length plus height plus thickness~~		~~Weight~~
~~Maximum~~	~~24 inches~~	~~36 inches or less~~		~~4 pounds~~

[1] ~~Packages of letter-size pieces of mails should be no thicker than approximately a handful of mail (4" to 6"); packages of flat-size mail may be thicker than 6", but weigh no more than 11 pounds. A package or packet is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces.~~

Size and Weight for Letters:[1]

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	11.5 inches	6.125 inches	0.25 inch	3.5 ounces

[1] Packages of letter-size pieces of mail~~s~~ should be no thicker than approximately a handful of mail (4" to 6"); a package or packet is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces.

Size and Weight for Large Envelopes (Flats):[1]

	Length	Height	Thickness	Weight
Minimum[2]	11.5 inches	6.125 inches	0.25 inch	none
	Length	Height	Thickness	Weight
Maximum	15 inches	12 inches	0.75 inch	4 pounds

[1] Packages of flat-size mail may be thicker than 6", but weigh no more than 11 pounds. A package or packet is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces.
[2] Every minimum dimension does not have to be met; only one does.

INTERNATIONAL

2510 International Surface Airlift (ISAL)

Size and Weight for Packages (Small Packets):

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address and other required elements on the address side.			None
	Length	**Length plus height plus thickness**		**Weight**
Maximum	24 inches	36 inches		4 pounds

Size and Weight for Rolls:

	Length	Length plus twice the diameter	Weight
Minimum	4 inches	6.75 inches	None
Maximum	36 inches	42 inches	4 pounds

Minimum Volume: 50 pounds per mailing
~~(Direct Shipment option requires minimum of 750 pounds to a single country destination as specified in the International Mail Manual.)~~

Price Categories:

International Surface Air Lift – Meets the requirements specified in the International Mail Manual.

Price Group 1	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 2	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 3	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 4	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 5	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 6	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 7	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 8	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 9	Full Service	~~Direct Shipment~~	ISC Drop Shipment

INTERNATIONAL

2510 International Surface Airlift (ISAL)

International Surface Air Lift M-Bags – Meets the requirements specified in the International Mail Manual.

Price Group 1	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 2	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 3	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 4	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 5	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 6	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 7	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 8	Full Service	~~Direct Shipment~~	ISC Drop Shipment
Price Group 9	Full Service	~~Direct Shipment~~	ISC Drop Shipment

Customized Pricing – Available through mailer-specific agreement.

INTERNATIONAL

2510 International Surface Airlift (ISAL)

Prices:

PRICE GROUPS	Per Piece	Full Service Per Lb.	ISC Drop Shipment Per Lb.
1	0.41	3.61	2.61
2	0.15	5.15	4.15
3	0.43	4.45	3.45
4	0.44	4.46	3.46
5	0.15	5.45	4.45
6	0.15	5.55	4.55
7	0.15	5.45	4.45
8	0.12	6.60	5.60
9	0.30	4.48	3.48

International Surface Air Lift M-Bags – Full Service ~~and Direct Shipment~~

PRICE GROUPS	Full Service Per Lb.
1	1.60
2	1.70
3	2.00
4	2.80
5	2.35
6	2.35
7	2.60
8	3.25
9	3.00

International Surface Air Lift M-Bag - ISC Drop Shipment

Weight Not Over (lb.)	Country Price Groups								
	1	2	3	4	5	6	7	8	9
5	15.90	14.30	11.45	16.25	12.90	14.40	12.05	16.20	18.25
6	16.00	14.85	12.75	18.40	14.60	15.85	14.35	19.00	20.25
7	16.10	15.40	14.05	20.55	16.30	17.30	16.65	21.80	22.25
8	16.20	15.95	15.35	22.70	18.00	18.75	18.95	24.60	24.25
9	16.30	16.50	16.65	24.85	19.70	20.20	21.25	27.40	26.25
10	16.40	17.05	17.95	27.00	21.40	21.65	23.55	30.20	28.25
11	16.50	17.60	19.25	29.15	23.10	23.10	25.85	33.00	30.25
Each additional pound or fraction of a pound	1.50	1.60	1.75	2.65	2.10	2.10	2.35	3.00	2.75

INTERNATIONAL

2515 International Direct Sacks — M–Bags

M-bags are direct sacks of printed matter to a single foreign addressee. M-bags may include articles of merchandise as specified in the International Mail Manual. Actual or personal correspondence and paper having the character of a bill or statement of account are not permitted. International Direct Sacks – M-Bags are not sealed against postal inspection; mailing of matter by such service constitutes consent by the mailer to postal inspection of the contents, regardless of physical closure.

Size and Weight:
No defined size limits as long as articles being sent can be enclosed in the mailbag as specified in the International Mail Manual. No minimum weight; maximum weight of 66 pounds, including the tare weight of the sack.

Minimum Volume: None

Price Categories:

M-Bags

- Price Group 1
- Price Group 2
- Price Group 3
- Price Group 4
- Price Group 5
- Price Group 6
- Price Group 7
- Price Group 8
- Price Group 9

Customized Pricing – Available through mailer-specific agreement.

Optional Features:

International Ancillary Services

- International Certificate of Mailing

INTERNATIONAL

2515 International Direct Sacks — M–Bags

Prices:

Country Price Groups[1]	Weight Not Over 11 lbs.	Additional Per Lb. Over 11 Lbs.
Price Group 1	$ 23.65	$ 2.15
Price Group 2	25.30	2.30
Price Group 3	50.60	4.60
Price Group 4	44.00	4.00
Price Group 5	33.00	3.00
Price Group 6	49.50	4.50
Price Group 7	44.00	4.00
Price Group 8	44.00	4.00
Price Group 9	43.45	3.95

[1] Same as Price Groups 1-9 for Single-Piece First-Class Mail International.

INTERNATIONAL

2535 International Ancillary Services

2535.1 International Certificate of Mailing – International Certificate of Mailing service furnishes evidence that mail has been presented to the Postal Service for mailing. It is available for Priority Mail International parcels purchased without insurance, IPA, and International Direct Sacks – M-Bags. The mailer may obtain Certificate of Mailing service on terms specified in the International Mail Manual. Customized pricing is available through mailer-specific agreement.

Fees:

Individual Pieces

Original certificate of mailing for listed pieces of ordinary Priority Mail International parcels	1.10
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	0.40
Each additional copy of original certificate of mailing or firm mailing bills (each copy)	1.10

Multiple Pieces

Identical pieces of ordinary Single-Piece First-Class Mail International paid with regular stamps, precanceled stamps, or meter stamps are subject to the following fees:

Up to 1,000 pieces (one certificate for total number)	6.00
Each additional 1,000 pieces or fraction	0.70
Duplicate copy	1.10

INTERNATIONAL

2535 International Ancillary Services

2535.2 International Registered Mail – International Registered Mail service provides additional protection and security in dispatch and conveyance in the United States for the Priority Mail Flat Rate envelope. International Registered Mail service is handled in accordance with the internal procedures of destination postal administrations. Indemnity in the event of loss or damage of International Registered Mail is limited to the amount set by the Universal Postal Union Convention and is significantly lower than the amounts available for domestic Registered Mail. International Registered Mail service is subject to both U.S. Postal Service requirements and the prohibitions and restrictions of the destination country. Customized pricing is available through mailer-specific agreement.

Fee:

International Registered Mail	10.80

INTERNATIONAL

2535 International Ancillary Services

2535.3 International Return Receipt – International Return Receipt service provides evidence to the mailer that an article has been received at the delivery address. It must be purchased at the time of mailing. It is signed at the point of delivery and is returned to the sender. International Return Receipt service is subject to availability in the destination country for registered Priority Mail flat rate envelopes, insured parcels, and Express Mail International as specified in the International Mail Manual. Customized pricing is available through mailer-specific agreement.

Fee:

International Return Receipt	2.20

INTERNATIONAL

2535 International Ancillary Services

2535.4 International Restricted Delivery – International Restricted Delivery service limits who may receive an item as determined by the internal requirements of the destination country. International Restricted Delivery service is available for registered Priority Mail International flat rate envelopes, and if accompanied by a return receipt, subject to availability in the destination country. Customized pricing is available through mailer-specific agreement.

Fee:

International Restricted Delivery	4.30

INTERNATIONAL

2535 International Ancillary Services

Fees:

Priority Mail International Insurance

Indemnity Limit Not Over	Canada	All Other Countries
$50	$1.70	$2.45
100	2.15	3.35
200	2.60	4.30
300	4.60	5.25
400	5.55	6.20
500	6.50	7.15
600	7.45	8.10
675	8.40	9.05
700	N/A	9.05
Each add'l $100 or fraction thereof over $700*	N/A	0.95

* Maximum indemnity varies by country.

Express Mail International Merchandise Insurance

Amount of Coverage	
$ 0.01 to 100.00	$0.00
100.01 to 200.00	0.75
200.01 to 500.00	2.10
500.01 to 1,000.00	3.45
1,000.01 to 1,500.00	4.80
1,500.01 to 2,000.00	6.15
2,000.01 to 2,500.00	7.50
2,500.01 to 3,000.00	8.85
3,000.01 to 3,500.00	10.20
3,500.01 to 4,000.00	11.55
4,000.01 to 4,500.00	12.90
4,500.01 to 5,000.00	14.25

Global Express Guaranteed Insurance

Indemnity Limit Not Over:	
$ 100	$ 0.00
Each add'l $100 or fraction thereof over $100 up to a maximum of $2,499 per shipment.*	1.00

* Maximum indemnity varies by country.

ATTACHMENT B to Governors' Decision 08-3

ANALYSIS OF COMPETITIVE PRODUCTS' PRICE AND CLASSIFICATION CHANGES

I. Express Mail

Overall, the Express Mail price changes represent a relatively modest 3.1 percent increase. This balances the need to increase profitability while positioning Express Mail service for growth. The changes in the Express Mail pricing structure will bring pricing into line with industry standard, make prices in high-volume zones more competitive, provide an incentive for customers to switch to postage payment systems that provide customer information, and better align prices with costs. Specifically, the Express Mail pricing structure will be zoned, and will provide online and volume incentives.

A. Zoning and Commercial Pricing

1. Zoned prices

The current unzoned retail price structure will be replaced with zoned prices.[1] Zoning Express Mail prices is consistent with the standard industry practice for expedited products, and aligns the pricing structure with customer expectations. In addition, it reflects the higher costs of transporting mail longer distances. Zoning prices is expected to put Express Mail service in a much stronger competitive position. The price applicable to a flat-rate envelope will increase, but will apply regardless of zone.

Price increases are concentrated in Zones 5 through 8 (mail transported more than 600 miles). Because transportation costs are increasing, the price increases will affect heavier pieces more than lighter ones. Currently, a customer who sends a one-pound package from Philadelphia to Pittsburgh pays $19.50, and would pay the same price if that same package were instead mailed to San Francisco. With the new zoned prices, those packages would cost $19.00 (Zone 3) and $23.40 (Zone 8), respectively.

Any decline in volume or revenue for long-distance shipments (because some customers may have used Express Mail service to take advantage of cost differentials between the Postal Service and other carriers) should be more than offset by increased competitiveness for Express Mail service transported shorter distances.

2. Online and volume incentives

A 3 percent price reduction will be provided to customers purchasing Express Mail service through authorized online services such as Click-N-Ship, and for customers using an Express Mail Corporate Account. The incentive both rewards current customers, and encourages customers to switch to systems that provide more detailed customer information. Customers who use an authorized corporate account and whose Express Mail volume exceeds a minimum threshold will receive a larger price reduction, depending on their average daily volume. For a mailer using Click-N-Ship, the Postal Service would charge $18.43 to ship a one-pound package from Philadelphia to Pittsburgh, and $22.70 to ship it to San Francisco. For the large

[1] The current schedule has prices for Custom Designed, Post Office-to-Post Office, and Post Office-to-Addressee, while the new schedule will only have one set of prices. Custom designed pricing will be offered through agreements with mailers. Post Office-to-Post Office service will still be available, under the new name "Hold for Pick Up," and will use the zoned price schedule.

retailer sending more than 20 shipments per day on average, postage could be as little as $17.10 per piece for the first package and $21.06 per piece for the second. (See Table 1.)

The volume incentives will be paid in the form of quarterly rebates and are expected to reduce postage from customers who currently send Express Mail pieces by about $5 million, and to reduce the average price increase by about 0.5 percent. However, this new structure puts Express Mail service in a much stronger position in the marketplace, especially with regard to small-to-medium-size businesses, and should compensate for and exceed any revenue loss from these incentives.

3. Financial Impact

For the remainder of FY 2008, this new pricing structure is expected to generate $35 million in revenue, resulting in increased contribution in Fiscal Year 2008.[2]

Table 1: Express Mail Price Change Examples

1 pound package	Price		Change	
	Current	New	Price	Percent
Philadelphia to Pittsburgh (zone 3)				
Retail	$19.50	$19.00	- $0.50	- 2.6 %
On-line (Click-N-Ship)	$19.50	$18.43	- $1.07	- 5.5 %
Large volume customer (>20 per day)	$19.50	$17.10	- $2.40	- 12.3 %
Philadelphia to San Francisco (zone 8)				
Retail	$19.50	$23.40	+ $3.90	+ 20.0 %
On-line (Click-N-Ship)	$19.50	$22.70	+ $3.20	+ 16.4 %
Large volume customer (>20 per day)	$19.50	$21.06	+ $1.56	+ 8.0%

II. Priority Mail

The overall price increase for Priority Mail service will be 4 percent. The average Priority Mail retail price will increase by about 6 percent. Lower commercial prices will also be available. There will be no major structural changes to the retail prices. The 6 percent increase is designed to improve contribution, and to allow the Postal Service to introduce lower prices for the use of electronic postage. In addition, the price for the Regular Flat-Rate Box increases by 9.5 percent, to $9.80, in order to reflect increased costs.

A. Lower Commercial Prices

Customers who purchase Priority Mail service using electronic postage and meet other requirements will be eligible for lower prices. On average, these prices will be 3.5 percent lower than retail prices; however, the size of the reduction will vary for each specific price point, based on competitive factors. This should result in an increase in volume and revenue from small-volume commercial shippers who use software to select the carrier with the lowest price.

[2] All discussions throughout this Analysis concerning increases in revenue or contribution assume no rapid deterioration in prevailing economic conditions.

Customers using these postage payment methods tender a significant amount of all Priority Mail volume. Because the new incentive will offset, in part, the increase in retail Priority Mail prices, these customers will see an average price increase of 2.2 percent.

B. Financial impact

For Fiscal Year 2008, these price changes are expected to increase total contribution by at least $59 million.

III. Parcel Select

The overall average price increase for Parcel Select service is 5.7 percent. The average increase for DDU is 5.2 percent and DBMC prices are increasing by about 6.6 percent. The higher price increase for DBMC parcels is designed to increase DBMC margins and further encourage customers to bring packages to the DDU.

A. Volume Incentives for DDU Parcels

Incentives will be available, in the form of declining block prices, for shippers with greater than $5 million annual Parcel Select postage, and whose volume increases from the previous twelve month period. Shippers with greater than $5 million of annual postage and whose volume increases from the previous twelve month period will receive incentives ranging from 0.25 percent to 1.5 percent for their qualified DDU volume,[3] depending on the amount of their annual postage.

Additionally, to encourage growth, incentives will be offered to incremental DDU volume for qualifying shippers when their annual Parcel Select volume grows more than 10 percent. There are three growth tiers:

* minimum of 10 percent up to 20 percent,
* between 20 and 30 percent,
* greater than 30 percent.

Customers who qualify for these incentives will receive rebates ranging from 2-14 percent of DDU postage based on their annual postage revenues. See Table 2 below.

Table 2: Parcel Select

Annual Parcel Select postage	$5MM	$25MM	$50MM	$100MM	$300MM	$500MM
Incentive	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%
Parcel Select annual growth rate	Rebate of DDU postage					
>10 %	2%	4%	6%	8%	10%	10%
>20 %	4%	6%	8%	10%	12%	12%
>30 %	6%	8%	10%	12%	14%	14%

[3] Some ZIP Codes where packages are delivered on dedicated routes would be excluded.

B. Financial Impact

Accounting for the effect of declining block price incentives, the overall price increase for Parcel Select service will be 5.7 percent. The baseline revenue will see modest adjustments. It is anticipated that the DDU declining block price incentives will result in rebates of less than $2 million. The growth incentive rebates only affect new business entered at the DDU. Introduction of these incentives should increase total contribution by $16 million in Fiscal Year 2009.

IV. Parcel Return Service

Parcel Return Service prices will have an overall price increase of 2 percent to encourage growth.

A. Reflect Value in RDU Prices

Currently, the price for retrieving parcels from the return delivery unit (RDU) is too high, especially as compared to the Parcel Select DDU rates. In this price change, the average RDU price is reduced by 21 percent. In addition, the current price structure, which has a single RDU price ($2.20) regardless of the weight of the piece being returned, is replaced by weight-based RDU prices, to reflect the additional value for handling heavier-weight items.

B. Improve Contribution from RBMC

RBMC prices will increase about 9 percent on average. This should improve the profitability of this service.

C. Financial Impact

The RDU price reductions are expected to encourage significant migration of RBMC volumes to RDU. If there are no new customers, these changes are expected to improve overall contribution from the product, even if gross revenue declines. Adding new users of PRS will produce a revenue increase.

V. International Mail

In May 2007, the Postal Service completed a major restructuring of its international services. The Postal Service streamlined its international mail offerings and more closely aligned each international service with its domestic counterpart, in order to improve ease of use and enhance their value to customers. Because of both the restructuring of services and the price increases that took place in May 2007, only a limited number of structural changes to international published prices and services are contemplated.

A. Global Express Guaranteed (GXG)

Published GXG prices will increase 5.2 percent, resulting in an approximately $170,000 contribution increase in Fiscal Year 2008. Price increases vary by country group and weight increments. An incentive of 10 percent for online purchase will continue to be offered. Table 3 illustrates the price change for Pacific Rim countries. The total increase for this country group is 6.0 percent.

Table 3: Global Express Guaranteed (Pacific Rim: Japan, Hong Kong, China)

	Price		Change	
	Current	New	Price per piece	Percent
½ Pound	$37.00	$38.95	$1.95	5.3%
5 Pounds	$77.00	$82.00	$5.00	6.5%

B. Express Mail International (EMI)

Prices for EMI will increase by 6.0 percent, resulting in a contribution increase of $3.8 million in Fiscal Year 2008. Price increases vary by country group and weight increments. Prices for the EMI Flat-Rate Envelope also are increasing. Table 4 illustrates the price change for Pacific Rim countries. The total increase for this country group is 6.4 percent.

Table 4: Express Mail International (Pacific Rim: Japan, Hong Kong, China)

	Price		Change	
	Current	New	Price per piece	Percent
½ Pound/Flat-Rate Envelope	$25.00	$25.95	$0.95	3.8%
5 Pounds	$44.00	$45.50	$1.50	3.4%

EMI customers using Click-N-Ship or other authorized online applications will continue to get an 8 percent incentive. In addition, two new incentive programs will be offered. The first will provide commercial mailers with an 8 percent price reduction for payment of postage by PERMIT imprint and use of authorized software to prepare their mail. For commercial mailers who use this authorized software and also pay postage through an Express Mail Corporate Account, price reductions of 8, 10, or 12 percent will be available, depending on the customer's volume or postage commitment.

The authorized software allows customers to create online Customs forms, print labels, and track packages door-to-door. The process is easy for customers and helps simplify the Customs clearance process, shortening delivery times. Furthermore, these incentives allow the Postal Service to avoid retail transactions that can increase customer wait time, and encourage small and medium-sized businesses to use the Postal Service's more efficient commercial services.

Few, if any, existing customers are expected to shift their volumes from retail prices to the lower incentive prices. Previously, EMI commercial incentives were available to customers under customized agreements. The previous volumes sent by these commercial customers never paid the retail price, but rather were mailed at the lower incentive prices offered under the agreements. Furthermore, any decrease in revenue resulting from a volume shift from the full retail prices to the lower incentive prices will be covered by the overall EMI price increase, and by the growth from new commercial customers taking advantage of the incentives.

C. Priority Mail International (PMI)

Prices for PMI are set to be profitable and to fit logically with other international services by being lower than EMI and higher than First-Class Mail International (FCMI). PMI prices will increase by 6.1 percent, with an expected Fiscal Year 2008 contribution increase of $6.7 million. Price increases vary by country group and weight increments. Prices for the PMI Flat-Rate Envelope and Regular Flat-Rate Box also will increase. Table 5 illustrates the price change for Pacific Rim countries. The total increase for this country group is 6.2 percent.

Table 5: Priority Mail International (Pacific Rim: Japan, Hong Kong, China)

	Price		Change	
	Current	New	Price per piece	Percent
½ Pound/Flat-Rate Envelope	$11.00	$11.95	$0.95	8.6%
5 Pound	$38.00	$40.50	$2.50	6.6%
Small Flat-Rate Box	$37.00	$38.95	$1.95	5.3%

Priority Mail International customers using Click-N-Ship or other authorized online applications will continue to get an incentive of 5 percent. A new 5 percent incentive will be provided to commercial customers for payment of postage by PERMIT imprint and use of authorized software to prepare their mail. The general PMI price increase should offset any revenue reduction from the incentive, even if volumes shift from the full retail prices to the lower incentive prices.

As with EMI, few, if any, volumes will shift from retail prices. Previously, PMI incentives were only available to mailers who entered into certain types of customized agreements with the Postal Service. These mailers were commercial mailers, not individual retail customers. The volumes sent by these commercial customers never paid the retail price, but rather were mailed at the lower prices offered under the agreements. The general availability of the 5 percent PMI incentive may attract commercial customers who may not have been aware that customized agreements for PMI incentives were available from the Postal Service.

D. International Direct Sacks – M-Bags

The International Direct Sack – M-Bag (Airmail M-Bag) prices will increase 5.9 percent on average, resulting in increased contribution in Fiscal Year 2008. In addition, the country group structure will change to match EMI, PMI, and the planned FCMI country group structures by expanding to 9 country groups. Price increases vary by country group and weight increments. The total increase for the Western Europe country group is 5.3 percent and is illustrated in Table 6.

Table 6: International Direct Sacks – M-Bags (Western Europe)

	Price		Change	
	Current	New	Price per pound	Percent
Per Pound	$2.85	$3.00	$0.15	5.3%

E. International Priority Airmail (IPA)/International Surface Air Lift (ISAL)

Costs for IPA and ISAL continue to rise and prices must increase to maintain an appropriate level of profitability. A published price schedule and incentives based on volume offered through customized agreements will continue to be available.

Published prices for IPA will increase by 12.5 percent, resulting in a contribution increase in Fiscal Year 2008. Table 7 shows examples of prices for IPA sent to country group 1, Canada, and country group 3, Western Europe.

Table 7: International Priority Airmail (IPA) - Country Groups 1 and 3

	Canada			Western Europe		
	Current Price	New Price	Percent Change	Current Price	New Price	Percent Change
Per-Piece	$0.33	$0.40	21.2%	$0.32	$0.40	25.0%
Full-Service per pound	$4.55	$5.44	19.6%	$7.50	$7.50	0%
Drop-Ship Per Pound	$3.55	$4.44	25.1%	$6.50	$6.50	0%

ISAL published prices for ISC Drop Shipment will increase 21.3 percent, resulting in an increase in contribution for Fiscal Year 2008. Published prices for Direct Shipment are eliminated and, in the future, will only be available through customized agreements. The price increases for country group 1, Canada, and country group 3, Western Europe are shown in Table 8.

Table 8: International Surface Air Lift (ISAL) - Country Groups 1 and 3

	Canada			Western Europe		
	Current Price	New Price	Percent Change	Current Price	New Price	Percent Change
Per-Piece	$0.32	$0.41	28.0%	$0.30	$0.43	41.8%
Full-Service Per Pound	$3.20	$3.61	12.8%	$4.00	$4.45	11.0%
Drop-Ship Per Pound	$2.20	$2.61	18.6%	$3.00	$3.45	14.9%

F. International Ancillary Services

Prices for International Ancillary Services used with competitive international mail services will increase. International Certificate of Mailing, International Registered Mail, International Return Receipt, International Restricted Delivery and certain International Insurance prices (Priority Mail International Insurance and Global Express Guaranteed Insurance) will increase.

VI. Summary

Based on the estimated increases in contribution for each product, in light of anticipated costs and volumes, the price changes will enable each competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2) and will result in competitive products as a whole complying with 39 U.S.C. § 3633(a)(3), which, as implemented by 39 C.F.R. § 3015.7 (c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 08-3

I hereby certify that the following Governors voted at their March 4, 2008, on adopting Governors' Decision No. 08-3:

Mickey D. Barnett
James H. Bilbray
Carolyn Lewis Gallagher
Louis J. Giuliano
Alan C. Kessler
Thurgood Marshall, Jr.
James C. Miller III
Katherine C. Tobin

The vote was 8 - 0 in favor.

_____ Date: March 10, 2008

Wendy A. Hocking, Esq.
Secretary of the Board of Governors

[FR Doc. E8–5925 Filed 3–26–08; 8:45 am]
BILLING CODE 7710–12–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57546; File No. 4–443]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures To Facilitate the Listing and Trading of Standardized Options To Add the Nasdaq Stock Market LLC as a Sponsor

March 21, 2008.

Pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on January 30, 2008, the Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan for the Purpose of Developing and Implementing Procedures to Facilitate the Listing and Trading of Standarized Options (''OLPP'').[3] The amendment proposes to add Nasdaq as a Sponsor of the OLPP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Description and Purpose of the Amendment

The current Sponsors of the OLPP are Amex, BSE, CBOE, ISE, NYSE Arca, OCC, and Phlx. The proposed amendment to the OLPP would add Nasdaq as a Sponsor of the OLPP. A national securities exchange may become a sponsor if it satisfies the requirement of Section 7 of the OLPP. Specifically an Eligible Exchange[4] may become a Sponsor of the OLPP by: (i) Executing a copy of the OLPP, as then in effect; (ii) providing each current Plan Sponsor with a copy of such executed Linkage Plan; and (iii) effecting an amendment to the OLPP, as specified in section 7(ii) of the OLPP.

Section 7(ii) of the OLPP sets forth the process by which an Eligible Exchange may effect an amendment to the OLPP. Specifically, an Eligible Exchange must: (a) Execute a copy of the OLPP with the only change being the addition of the new sponsor's name in Section 8 of the OLPP; and (b) submit the executed OLPP to the Commission. The OLPP then provides that such an amendment will be effective at the later of either the amendment being approved by the Commission of otherwise becoming effective pursuant to Section 11A of the Act. Nasdaq has submitted a signed copy of the OLPP to the Commission in accordance with the procedures set forth in the OLPP regarding new Plan Sponsors.

II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed OLPP amendment has become effective pursuant to Rule 608(c)(3)(iii)[5] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraphs (b)(1) of Rule 608,[6] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system 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 amendment 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 4–443 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 4–443. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–443 and should be submitted on or before April 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6253 Filed 3–26–08; 8:45 am]

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), International Securities Exchange LLC (''ISE''), Options Clearing Corporation (''OCC''), Philadelphia Stock Exchange, Inc. (''Phlx''), and Pacific Exchange, Inc. (''PCX'') (n/k/a NYSE Arca). *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, Boston Stock Exchange, Inc. (''BSE'') was added as a Sponsor to OLPP. *See* Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004).

[4] The OLPP defines an ''Eligible Exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that (1) has effective rules for the trading of options contracts issued and cleared by the Options Clearing Corporation (''OCC'') approved in accordance with the provisions of the Exchange Act and the rules and regulations thereunder and (2) is a party to the Plan for Reporting Consolidated Options Last Sale Reports and Quotation Information (the ''OPRA Plan''). Nasdaq has represented that it has met both the requirements for being considered an Eligible Exchange. *See* letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Elizabeth King, Associate Director, Division of Trading and Markets, Commission, dated March 20, 2008.

[5] 17 CFR 242.608(b)(3)(iii).

[6] 17 CFR 242.608(b)(1).

[7] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57545; File No. 4–429]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage To Add the Nasdaq Stock Market LLC as a Participant

March 21, 2008.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on January 30, 2008, the Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (''Linkage Plan'').[3] The amendment proposes to add Nasdaq as a Participant[4] to the Linkage Plan. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Description and Purpose of the Amendment

The current Participants in the Linkage Plan are Amex, BSE, CBOE, ISE, NYSE Arca, and Phlx. The proposed amendment to the Linkage Plan would add Nasdaq as a Participant in the Linkage Plan. Nasdaq has submitted a signed copy of the Linkage Plan to the Commission in accordance with the procedures set forth in the Linkage Plan regarding new Participants. Section 4(c) of the Linkage Plan provides for the admission of new Participants. Specifically an Eligible Exchange[5] may become a Participant in the Linkage Plan by: (i) Executing a copy of the Linkage Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Linkage Plan; (iii) effecting an amendment to the Linkage Plan, as specified in Section 5(c)(ii) of the Linkage Plan; and (iv) paying the applicable new Participant fee.

Section 5(c)(ii) of the Linkage Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Linkage Plan. Specifically, an Eligible Exchange must: (a) Execute a copy of the Linkage Plan with the only change being the addition of the new participant's name in Section 4(a) of the Linkage Plan; (b) submit the executed Linkage Plan to the Commission; and (c) pay the then current new participant fee. The Linkage Plan then provides that such an amendment will be effective at the later of either the amendment being approved by the Commission or otherwise becoming effective pursuant to Section 11A of the Act and the payment of the new Participant fee.

II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed Linkage Plan amendment has become effective pursuant to Rule 608(c)(3)(iii)[6] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraphs (b)(1) of Rule 608,[7] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system 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 amendment 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 4–429 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 4–429. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–429 and should be submitted on or before April 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6254 Filed 3–26–08; 8:45 am]

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), and International Securities Exchange LLC (''ISE''). *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc. (''Phlx''), Pacific Exchange, Inc. (''PCX'') (n/k/a NYSE Arca), and Boston Stock Exchange, Inc. (''BSE'') joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] The term ''Participant'' is defined as an Eligible Exchange whose participation has become effective pursuant to Section 4(c) of the Linkage Plan.

[5] The Linkage Plan defines an ''Eligible Exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is (a) a ''Participant Exchange'' in the Options Clearing Corporation (''OCC'') (as defined in OCC By-laws, Section VII) and (b) a party to the Options Price Reporting Authority (''OPRA'') Plan (as defined in the OPRA Plan, Section 1). Nasdaq has represented that it has met both the requirements for being considered an Eligible Exchange. *See* letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Elizabeth King, Associate Director, Division of Trading and Markets, Commission, dated March 20, 2008.

[6] 17 CFR 242.608(b)(3)(iii).

[7] 17 CFR 242.608(b)(1).

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57539; File No. SR–Amex–2008–17]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt Listing Rules for Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities

March 20, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 29, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On March 20, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt generic listing standards for Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities (collectively, the ''New Linked Securities'') and a technical change to section 107D of the Amex *Company Guide.* The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new sections 107G, 107H, and 107I of the Amex *Company Guide* to provide generic listing standards for the New Linked Securities. The purpose of the proposed rule change is to enable the listing and trading of the New Linked Securities pursuant to Rule 19b–4(e) [3] under the Act, without individual Commission approval of each such product pursuant to section 19(b)(2) of the Act.[4] The Exchange represents that within five business days after commencement of trading of a series of New Linked Securities under proposed sections 107G, 107H, and 107I of the Amex *Company Guide,* as applicable, the Exchange will file a Form 19b–4(e).[5]

General Issuer and Issue Eligibility

As with Index-Linked Securities under current Section 107D,[6] Commodity-Linked Securities under section 107E,[7] and Currency-Linked Securities under section 107F of the Amex *Company Guide,*[8] the New Linked Securities do not give the holder any right to receive a portfolio component or any other ownership right or interest in the portfolio or underlying components comprising the applicable Reference Asset (as defined herein) and may or may not provide for the repayment of the original principal investment amount. Likewise, the general standards set forth in section 107D(a)–(f), section 107E(a)–(f), and section 107F(a)–(f) of the Amex *Company Guide* will similarly apply to the New Linked Securities.[9] Specifically, the Exchange will apply the following requirements to all issuers of New Linked Securities:

- The issuer will be expected to have a minimum tangible net worth of $250,000,000 and to otherwise exceed certain earnings requirements. In the alternative, the issuer will be expected: (1) To have a minimum tangible net worth of $150,000,000; and (2) not to have issued index-linked note offerings (including the New Linked Securities), the original issue price of which, combined with all the issuer's other index-linked note offerings listed on a national securities exchange, exceeds 25% of the issuer's tangible net worth at the time of issuance.
- The issuer must be in compliance with Rule 10A–3 under the Act.[10] In addition, the Exchange will apply the following requirements to each issue of New Linked Securities:
- The issue must have a minimum public distribution of at least 1,000,000 trading units with a minimum of 400 public shareholders. This minimum public distribution and minimum public shareholders requirements will not be applicable to an issue traded in thousand dollar denominations or if the securities are redeemable at the option of the holders thereof on at least a weekly basis.
- The issue must have a principal amount/aggregate market value of not less than $4 million.
- The issue must have a term of at least one year, but not greater than 30 years.
- The issue must be the nonconvertible debt of the issuer.
- The payment at maturity may or may not provide for a multiple of the

[3] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Section (c)(1) of Rule 19b–4 (17 CFR 240.19b–4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. *See* 17 CFR 240.19b–4(e).

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 240.19b–4(e)(2)(ii); 17 CFR 249.820.

[6] Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. As part of this proposed rule change, the Exchange seeks to make a technical change to Section 107D of the Amex *Company Guide* to define such underlying index or indexes as the ''Equity Reference Asset.'' Such securities may or may not provide for the repayment of the original principal investment amount. *See* Section 107D and Section 107D(d) of the Amex *Company Guide.*

[7] Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more commodities, commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in Amex Rule 1200A), or a basket or index of any of the foregoing (the ''Commodity Reference Asset''). Such securities may or may not provide for the repayment of the original principal investment amount. *See* Section 107E of the Amex *Company Guide.*

[8] Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in Amex Rule 1200B), or a basket or index of any of the foregoing (the ''Currency Reference Asset''). Such securities may or may not provide for the repayment of the original principal investment amount. *See* Section 107F of the Amex *Company Guide.*

[9] *See* Section 107A of the Amex *Company Guide* (setting forth the ''General Criteria'' relating to minimum issuer eligibility requirements based on assets, earnings, and stockholders' equity, and minimum issue requirements based on public distribution, public shareholders, and principal amount/aggregate market value).

[10] *See* 17 CFR 240.10A–3.

direct or inverse performance of the underlying Reference Asset; however, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of the underlying Reference Asset.

Fixed Income-Linked Securities

Fixed Income-Linked Securities will be subject to the criteria proposed in new Section 107G of the Amex *Company Guide* for initial and continued listing. Fixed Income-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more indexes or portfolios of debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof, or a basket or index of any of the foregoing (collectively, ''Fixed Income Reference Asset'').

For the initial listing of Fixed Income-Linked Securities, the Fixed Income Reference Asset must either: (1) Have been approved for the trading of options or other derivatives by the Commission under section 19(b)(2) of the Act and the rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements, continue to be satisfied; or (2) meet the following requirements: [11]

- Components of the Fixed Income Reference Asset that, in the aggregate, account for at least 75% of the weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of $100 million or more;
- A component of the Fixed Income Reference Asset may be a convertible security; however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;
- No component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) may represent more than 30% of the weight of the Fixed Income Reference Asset, and the five highest weighted components in the Fixed Income Reference Asset may not, in the aggregate, account for more than 65% of the weight of the Fixed Income Reference Asset;
- An underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities) [12] must include a minimum of 13 non-affiliated issuers;
- Component securities that, in the aggregate, account for at least 90% of the weight of the Fixed Income Reference Asset must be one of the following: (1) From issuers that are required to file reports pursuant to sections 13 and 15(d) of the Act; [13] (2) from issuers that have a worldwide market value of their outstanding common equity held by non-affiliates of $700 million or more; (3) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (4) exempted securities as defined in Section 3(a)(12) of the Act; [14] or (5) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and
- The Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per trading day.

The Exchange will commence delisting or removal proceedings: [15]

- If any of the initial listing criteria for Fixed Income-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than $400,000;
- The value of the Fixed Income Reference Asset is no longer calculated or available, and a new Fixed Income Reference is substituted, unless the new Fixed Income Reference Asset meets the requirements of proposed section 107G of the *Company Guide;* or
- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Futures-Linked Securities

Futures-Linked Securities will be subject to the criteria in proposed Section 107H of the Amex *Company Guide* for initial and continued listing. Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more indexes or portfolios of: (1) Futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (2) interest rate futures or options or derivatives on the foregoing (collectively, ''Futures Reference Asset'').

The issue must meet one of the initial listing standards set forth below:

- The Futures Reference Asset must have been reviewed and approved for the trading of Futures Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for components of a Futures Reference Asset must be derived from a market which is an Intermarket Surveillance Group (''ISG'') member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the specified requirements; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, the issue must meet both of the following initial listing criteria: (1) The value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during trading on the Exchange; and (2) in the case of Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by one or more major market data

[11] The Exchange notes that the quantitative criteria for Fixed Income Reference Assets are substantially similar to those set forth under Commentary .02 to Amex Rule 1000–AEMI and Commentary .03 to Amex Rule 1000A–AEMI, relating to Portfolio Depositary Receipts and Index Fund Shares, respectively, based on a fixed income index or portfolio. *See* Securities Exchange Act Release No. 55437 (March 9, 2007), 72 FR 12233 (March 15, 2007) (SR–Amex–2006–118) (approving the adoption of ''fixed income'' and ''combination'' generic listing standards for exchange-traded funds).

[12] ''Exempted securities'' is defined in Section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)). The Exchange notes that, for purposes of a Fixed Income Reference Asset, an ''exempted security'' may include Treasury Securities, municipal securities and/or GSE Securities.

[13] *See* 15 U.S.C. 78m; 15 U.S.C. 78o(d).

[14] *See* 15 U.S.C. 78c(a)(12).

[15] The Exchange notes that the proposed continued listing standards for each of Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities are substantially similar to those standards under Sections 107D, 107E, and 107F currently applicable to Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, respectively. *See* Sections 107D, 107E, and 107F of the Amex *Company Guide.*

vendors on at least a 15-second basis during trading on the Exchange.

The Exchange will commence delisting or removal proceedings:

- If any of the initial listing criteria for Futures-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than $400,000;
- The value of the Futures Reference Asset is no longer calculated or available, and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of proposed section 107H of the Amex *Company Guide;* or
- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Combination-Linked Securities

Combination-Linked Securities will be subject to the criteria in proposed section 107I of the Amex *Company Guide* for initial and continued listing. Combination-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (collectively, ''Combination Reference Asset,'' and together with Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, and Futures Reference Assets, collectively, ''Reference Assets''). In addition, a Combination Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, London Interbank Offered Rate (''LIBOR''), Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates. The Exchange states that, for purposes of a notional investment as a component of a Multifactor Reference Asset, a long LIBOR weighting would represent a leverage charge offsetting long positions in the underlying Reference Assets.

For the initial listing of a series of Combination-Linked Securities, each component of the Combination Reference Asset must: (1) Have been reviewed and approved for the trading of options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continued to be satisfied; or (2) meet the following requirements:

- Each Reference Asset included in the Combination Reference Asset must meet the applicable initial and continued listing criteria set forth in sections 107D, 107E, 107F, 107G and/or 107H of the Amex *Company Guide;*
- The value of the Combination Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Combination-Linked Securities trade on the Exchange; and
- In the case of Combination-Linked Securities that are periodically redeemable, the indicative value of the Combination-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Combination-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings:

- If any of the initial listing criteria for Combination-Linked Securities are not continuously maintained;
- If the aggregate market value or the principal amount of the Combination-Linked Securities publicly held is less than $400,000;
- The value of the Combination Reference Asset is no longer calculated or available, and a new Combination Reference is substituted, unless the new Combination Reference Asset meets the requirements of section 107I of the Amex *Company Guide;* or
- If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Applicable Exchange Rules

The New Linked Securities traded on the Exchange's equity trading floor will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules and the Exchange's regular trading hours (9:30 a.m. to 4 p.m. Eastern Time) will apply to transactions in the New Linked Securities. New Linked Securities listed and traded as bond or debt securities will be subject to the rules applicable to bond or debt securities, however, those New Linked Securities redeemable at the option of the holders thereof on at least a weekly basis will be subject to the trading rules applicable to exchange-traded funds.[16]

Information Circular

Upon evaluating the nature and complexity of each New Linked Security, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to member organizations describing the products. Accordingly, the particular structure and corresponding risks of a New Linked Security will be highlighted and disclosed. The Information Circular will disclose whether the New Linked Security will trade as equity or debt, subject to appropriate trading rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and margin.

The Information Circular will also detail the Exchange's suitability rule that requires a member organization recommending a transaction in these Securities: (1) To determine that such transaction is suitable for the customer (Amex Rule 411); and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Information Circular will reference the requirement that Amex member organizations must deliver a prospectus to investors purchasing newly issued New Linked Securities prior to or concurrently with the confirmation of a transaction.

Surveillance

The Exchange states that it will closely monitor activity in the New Linked Securities to identify and deter any potential improper trading activity. Additionally, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the New Linked Securities. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, options, and exchange-traded funds.[17] The Exchange has developed procedures to closely monitor activity in the New Linked Securities and the underlying indexes and/or portfolios to identify and deter potential improper trading activity. To the extent applicable, the Exchange will be able to obtain trading and beneficial holder information from the primary trading markets for the portfolio components in relation to the New Linked Securities, either pursuant to bilateral information sharing agreements with those markets or because those markets are SRO members or affiliate members of ISG.

[16] *See* proposed Sections 107G(k), 107H(k), and 107I(k) of the Amex *Company Guide.*

[17] *See* proposed Sections 107G(j), 107H(j), and 107I(j) of the Amex *Company Guide.*

Firewall Procedures

If an underlying index is maintained by a broker-dealer, the broker-dealer is required to erect a ''firewall'' around the personnel responsible for the maintenance of such underlying index or who have access to information concerning changes and adjustments to the underlying index, and the underlying index must be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board, or similar entity that advises an index license provider or that makes decisions regarding the underlying index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable underlying index or portfolio.[18] The Exchange further proposes to apply Amex Rules 1203A and 1203B [19] and 1204A and 1204B [20] to Futures-Linked Securities and Combination-Linked Securities, to the extent such Combination-Linked Securities are comprised in part of Futures, Commodity, or Currency Reference Assets.

Trading Halts

If the indicative value or the Reference Asset value applicable to a series of New Linked Securities is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[21]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[22] in general, and furthers the objectives of section 6(b)(5) of the Act,[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Exchange believes the adoption of generic listing standards for Fixed Income-Linked Securities, Futures-Linked Securities, and Combination-Linked Securities would benefit the marketplace and investors by reducing the administrative burdens associated with the listing of such securities based on identifiable reference assets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2008–17 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–Amex–2008–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–17 and should be submitted on or before April 17, 2008.

[18] *See* proposed Sections 107G(i), 107H(i), and 107I(i) of the Amex *Company Guide.*

[19] Amex Rules 1203A and 1203B restrict the ability of the specialist firm for any issue of Commodity-Based Trust Shares and Currency Trust Shares or its affiliates to make markets in and trade the Commodity Reference Asset and/or Currency Reference Asset components, the commodities or currencies underlying the Commodity Reference Asset or Currency Reference Asset components, or options, futures, or options on futures on the Commodity Reference Asset or Currency Reference Asset, or any other derivatives based on the Commodity Reference Asset or Currency Reference Asset, any Commodity Reference Asset or Currency Reference Asset component, or any physical commodity or commodities underlying a Commodity Reference Asset component or any currency or currencies underlying a Currency Reference Asset component. *See* Amex Rules 1203A and 1203B. The Exchange maintains that these rules would similarly apply to the trading of the New Linked Securities to the extent such New Linked Securities are comprised in part of a Futures, Commodity, or Currency Reference Asset.

[20] Amex Rules 1204A and 1204B provide that specialists handling Commodity-Based Trust Shares and Currency Trust Shares provide the Exchange with all necessary information relating to their trading in underlying physical assets, commodities or currencies, related futures or options on futures, or any other related derivatives. *See* Amex Rules 1204A and 1204B. The Exchange maintains that these rules would similarly apply to the trading of New Linked Securities to the extent such New Linked Securities are comprised in part of a Futures, Commodity, or Currency Reference Asset.

[21] *See* proposed Sections 107G(h)(3), 107H(h)(3), and 107I(h)(3) of the Amex *Company Guide.*

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6249 Filed 3–26–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57540; File No. SR–Amex–2008–23]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Designated Amex Remote Traders to Amex's Revenue Sharing Program

March 20, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2008, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Designated Amex Remote Traders (''DARTs'') to Amex's existing revenue sharing program for ETF specialists and registered traders and to make related changes to its Exchange Traded Funds and Trust Issued Receipts Fee Schedule. The text of the proposed rule change is available on the Exchange's Web site at: *http://www.amex.com,* at the Exchange'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 28, 2007, the Exchange: (i) Amended its Exchange Traded Funds and Trust Issued Receipts Fee Schedule to eliminate charges for ETF transactions by ETF specialists and registered traders (collectively, ''ETF market makers''); and (ii) implemented a revenue sharing program whereby the Exchange would make certain payments, on a per-share executed basis out of general Exchange revenues, to ETF market makers which either buy or sell ETFs on the Exchange and provide liquidity in such transactions (*e.g.*, the specialist's quote is traded against or the specialist offsets an order imbalance as part of an opening or closing transaction).[3] The Exchange enacted the revenue sharing program to provide incentives to the ETF market makers to quote aggressively in Amex-traded ETFs.

On January 31, 2008, the Commission approved the Exchange's DARTs program, which established DARTs as a third category of ETF market maker. Like ETF specialists and registered traders, DARTs provide liquidity to the Exchange in the ETFs in which they are assigned.[4]

Because DARTs operate similarly to ETF specialists and registered traders—in that they will also exclusively be quoting in their assigned ETFs—the Exchange proposes to fold DARTs into the existing revenue sharing program described above to provide DARTs similar incentives to provide liquidity on the Exchange. Amex proposes that a DART will receive a revenue sharing payment of $0.0015 per share (or 15 cents per 100 shares) whenever the DART either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction, which places the DART rate between the specialist rate of $0.0020 per share and the registered trader rate of $0.0010 per share.[5] Further, like specialists and registered traders, a DART:

- Will not be assessed any transaction fees for ''taking'' liquidity;[6]
- Will not receive revenue sharing payments when another ETF market maker is a contra-party to the same transaction (*i.e.*, a specialist buying shares from a DART);
- Will receive revenue sharing payments on transactions in securities trading at less than $1.00, but only on the portion of a transaction for which the Exchange collects revenue;
- Will receive revenue sharing payments based only on the first 43,478 shares it executes in any particular transaction, given that customer transaction charges are capped at $100 per transaction (which means the transaction charge of $0.0023 per share is assessed on only the first 43,478 shares executed by a customer).

The revisions to the ETF Fee Schedule and the addition of DARTs to the revenue sharing program for ETF specialists and registered traders were implemented March 17, 2008, the date that DARTs were scheduled to commence trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of section 6(b)(4) of the Act[8] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to adopt for the DARTs, a new class of quoting participants in the Amex ETF marketplace, a fee structure and revenue sharing program similar to the one already in place for ETF specialists and registered traders, which are similarly-situated quoting participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55983 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR–Amex–2007–68) (''RSP Filing'').

[4] *See* Securities Exchange Act Release No. 57241 (January 31, 2008), 73 FR 7335 (February 7, 2008) (SR–Amex–2007–138).

[5] Revenue sharing payments for DARTs are set at a higher rate than for registered traders to compensate for the fact that DARTs, unlike registered traders, will not participate in any post-trade allocations in connection with auction trades under Rule 128B—AEMI(b). *See* e-mail from Daniel Mollin, Associate General Counsel, Amex, to Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, dated March 19, 2008.

[6] In the proposed rule change, the Exchange amended its Exchange Traded Funds and Trust Issued Receipts Fee Schedule to exclude DARTs from the customer transaction charges for transactions in ETFs. Specialists and registered traders were previously excluded from this fee pursuant to the terms of the revenue sharing program. *See* RSP Filing, *supra* note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(2) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to: *rule-comments@sec.gov.* Please include File No. SR–Amex–2008–23 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–Amex–2008–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–23 and should be submitted on or before April 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6250 Filed 3–26–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57541; File No. SR–Amex–2008–25]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Restore Amex's Revenue Sharing Program for ETF Quoting Participants

March 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2008, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to restore a previously-adopted revenue sharing program for ETF quoting participants on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to restore a revenue sharing program (''RSP'') for ETF quoting participants on the Exchange. The RSP was first implemented by the Exchange for ETF specialists and registered traders on July 1, 2007, and was to be in effect through December 31, 2007 unless otherwise extended.[3] The RSP was inadvertently allowed to lapse without the Exchange filing to extend it, so the purpose of the proposed rule change is to restore the RSP on a prospective basis, effective immediately, on the same terms that previously governed the RSP (described below). The Exchange will be submitting a separate filing to request retroactive approval of the RSP for the period January 1, 2008 through March 17, 2008.

RSP payments will be made from the Exchange's general revenues and will not be limited to a particular revenue source. In order to continue to provide ETF quoting participants (ETF specialists, registered traders, and, most recently, Designated Amex Remote Traders (DARTs) [4]) with a source of payments to provide incentives to quote

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55983 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR–Amex–2007–68).

[4] *See* Securities Exchange Act Release No. 57540 (March 20, 2008) (SR–Amex–2008–23) (adding DARTs to the RSP as of March 17, 2008).

aggressively in Amex-traded shares, the Exchange proposes to distribute revenue to quoting participants as outlined below. The program will be in effect through the end of September 2008.

The RSP will work as follows:

• ETF specialists will receive an aggregate RSP payment (calculated monthly) of $0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or sells its specialty ETF on the Exchange and is a provider of liquidity in that transaction (*e.g.*, the specialist's quote is traded against or the specialist offsets an order imbalance as part of an opening or closing transaction). The RSP payment is comprised of $0.0004 per share (or 4 cents per 100 shares) for all shares executed on the Exchange in their specialty ETF (irrespective of whether the specialist is the provider of liquidity), plus another $0.0020 (or 20 cents per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the RSP payment is limited to $0.0004 per share executed on the Exchange in its specialty ETF.

• Registered traders in ETFs will receive an RSP payment of $0.0010 per share (or 10 cents per 100 shares) whenever the registered trader either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.

• DARTs, as described in the Exchange's recent proposed rule change adding DARTs to the RSP,[5] will receive an RSP payment of $0.0015 per share (or 15 cents per 100 shares) whenever the DART either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.

No ETF quoting participant will receive an RSP payment when another ETF quoting participant is the contra-party to the transaction. Further, RSP payments will be made on transactions in securities trading at less than $1.00 only in amounts proportionate to the amount on which the Exchange collects revenue. Finally, as customer transaction charges are capped at $100 per transaction, meaning that the transaction charge of $0.0023 per share is assessed only on the first 43,478 shares executed, an ETF quoting participant would receive an RSP payment based only on the first 43,478 shares executed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(4) of the Act[7] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is restoring a revenue sharing program to maintain incentives for an increase in order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2008–25 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–Amex–2008–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–25 and should be submitted on or before April 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6251 Filed 3–26–08; 8:45 am]

BILLING CODE 8011–01–P

[5] *See id.*

[6] 15 U.S.C. 78f(b)

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–57538; File No. SR–NSX–2008–07]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Post Only Orders

March 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2008, the National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as one effecting a change in an existing order-entry system of a self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to clarify that a Post Only Order will be rejected without execution if it is immediately marketable against round-lot orders when entered. The Exchange will permit a Post Only Order to post if odd-lot orders are the only marketable orders in the book.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

1. Purpose

A Post Only Order is an order designed to encourage displayed liquidity on the Exchange. By its terms, a Post Only Order is posted on the Exchange and does not route away to another trading center. Currently, a Post Only Order is rejected by the Exchange if the order is immediately marketable against any order on the Exchange, even if the order is an odd-lot order.[5] The Exchange intends to change the operation of Post Only Orders so that such orders are rejected only if there are marketable round-lot orders in the book, resulting in Post Only Orders being posted when an odd lot order is the only marketable order in the book. In this way, the Exchange will enhance liquidity on the Exchange by permitting greater ability for the Post Only Order to be posted in the book.

NSX Rule 11.11(c)(5)(A) states that the ''Post Only Order that is not a Zero Display Reserve Order will be rejected without execution if it is immediately marketable when entered.'' To clarify this Rule, the Exchange is now amending the language to make clear that Post Only Orders will be rejected only if there are marketable round-lot orders in the book.[6] Orders marked Post Only will always be considered ''liquidity providing'' by the Exchange for purposes of application of the Exchange's fees and rebate programs. By making a Post Only designation, ETP Holders are able to avoid the risk that their orders will be considered ''liquidity taking'' for purposes of application of the Exchange's fees and rebate programs.

The Exchange's clarification of Rule 11.11(c)(5) is consistent with Regulation NMS. Only round-lot orders are subject to the requirements of Regulation NMS in that only round-lot orders must be included in the Exchange's automated quote.[7] In contrast, odd-lot orders are not displayed, and the prohibitions against both locked and crossed markets and trade-throughs do not apply to odd-lots. Exchanges are permitted to establish their own rules for handling odd-lot orders and the odd-lot portions of mixed-lot orders.[8]

The Exchange believes that this clarification to the Post Only Order will enhance the use of Post Only Orders. Further, allowing Post Only Orders greater opportunities to post in the book will increase the displayed liquidity in the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act[9] in general, and Section 6(b)(5) of the Act,[10] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(5) of Rule 19b–4 thereunder[12] because it effects a change in an existing order-entry system of a self-regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(5).

[5] In SR–NSX–2008–03, the Exchange adopted a new Zero Display Reserve Order type and changed the rule text to state that Post Only Orders that are not Zero Display Reserve Orders will be rejected without execution if immediately marketable. *See* Securities Exchange Act Release No. 57311 (February 12, 2008), 73 FR 9148 (February 19, 2008). The Zero Display Reserve Order type will commence trading in April 2008.

[6] The Exchange notes that odd lot orders are aggregated where possible to form round lots.

[7] Under Regulation NMS, Rule 600(b)(8) defines ''bid'' or ''offer'' as the bid price or offer price for one or more round lots of an NMS security. This definition is embedded in the definition of ''quotation'' in Rule 600(b)(62), as well as the definition of ''protected bid'' or ''protected offer'' in Rule 600(b)(57). 17 CFR 242.600(b).

[8] *See* Response No. 7.03 in ''Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS,'' Division of Trading and Markets, dated June 8, 2007.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(5).

organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. The rule change is simply a language clarification of an existing NSX rule. Furthermore, the rule change raises no novel issues for the Commission and is consistent with odd-lot order handling as contemplated by Regulation NMS. Accordingly, the proposal is effective upon Commission receipt of the filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NSX–2008–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2008–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2008–07 and should be submitted on or before April 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6248 Filed 3–26–08; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57542; File No. SR–DTC–2007–11]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Operational Arrangements as It Applies to Structured Securities

March 20, 2008.

I. Introduction

On September 7, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2007–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on November 26, 2007.[2] The Commission received four comments to the proposed rule change.[3] On December 14, 2007, DTC filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as Modified by Amendment No. 1, was published for comment in the **Federal Register**.[5] The Commission received one comment to Amendment No. 1.[6] For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

II. Description

DTC's Operational Arrangements is a contractual agreement between DTC, issuers, and paying agents that outlines the procedural and operational requirements for an issue to become and remain DTC eligible. The proposed rule change amends DTC's ''Operational Arrangements Necessary for an Issue to Become and Remain Eligible for DTC Services'' (''Operational Arrangements'') as it applies to Structured Securities in order to: extend the deadline by which paying agents of such securities must submit periodic payment rate information to DTC; establish Structured Securities classifications; establish an exception processing fee applied to certain Structured Securities whose features prevent paying agents from complying with the extended deadline; and provide that DTC track and make publicly available reports on paying agent performance as it relates to timeliness and accuracy of Structured Securities payment rate information submitted to DTC.

A Structured Security, such as a collateralized mortgage obligation or asset-backed security, is a bond backed by a pool of underlying financial assets. The underlying assets generally consist of receivables such as mortgages, credit card receivables, or student or other bank loans for which the timing of principal payments by the underlying obligors may be variable and unpredictable. A Structured Security may also incorporate credit enhancements or other rights that affect the amount and timing of payments to investors.

Communication of periodic payment rates of principal and interest (''P&I'') to the end investors in Structured Securities depends on application of

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 56795 (November 15, 2007), 72 FR 66009.

[3] Simon Griffiths, Vice President, JP Morgan (December 10, 2007); Tom Migneron, Principal, Edward Jones (December 11, 2007); Dan W. Schneider, Baker & McKenzie LLP, Counsel to the Association of Global Custodians, Chicago, Illinois (December 12, 2007); Norman Eaker, Chairman, Securities Industry and Financial Markets Association, Operations Committee, Gussie Tate, President, Securities Industry and Financial Markets Association, Dividend Division, and Thomas Hamilton, Vice Chairman, Securities Industry and Financial Markets Association, MBS and Securitized Products Division Executive Committee (December 19, 2007).

[4] As explained below, Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 removed reference to the imposition of a processing fee on January 1, 2008, and corrected the identity of the party that will identify an issue as conforming or non-conforming and will submit a written attestation giving the reason for non-conformance.

[5] Securities Exchange Act Release No. 57283 (February 6, 2008), 73 FR 8384.

[6] Carol A. Jameson, Vice President and Senior Counsel, The Depository Trust Company (March 5, 2008).

stringent time frames for information reporting and significant interdependencies among servicers of the underlying assets, specifically trustees, custodians, paying agents on the securities, DTC, and the financial intermediaries that act on behalf of the investors. Given the complexity of structure and calculations of cash flow from the underlying assets through the issuer to the end investor and given the interdependencies on timeliness and accuracy of performance throughout the chain of servicers and intermediaries, timely and accurate submission of payment rate information on Structured Securities may be difficult to achieve. As a result, payment rates typically are announced late on a significant number of issues, and the number of post-payable adjustments made to correct inaccurate payments resulting from inaccurate payment rate information is higher than for any other security type. Furthermore, the volume of P&I payments for Structured Securities processed through DTC has grown rapidly in recent years and currently represents approximately 25% of all P&I payments processed through DTC. Incorrect and late payment rate reporting causes increased operations processing costs, inefficient cash management, and loss of income.

1. Extending the Deadline for Reporting on Payment Detail

Currently, the majority of Structured Securities have features that prevent paying agents from being able to meet the current Operational Arrangements payment rate reporting deadline. DTC is amending the Operational Arrangements to require that the payment notification regarding Structured Securities be provided to DTC by the paying agent preferably five business days but no later than one business day prior to the payable date.[7] In addition, DTC is extending its current processing deadline for receipt of payment rate files from 7:00 p.m. to 11:30 p.m. The extended reporting period deadlines should allow paying agents to provide payment rates in a timely and accurate fashion for a majority of Structured Securities issues and should permit the securities to remain eligible for DTC's services while still providing DTC with adequate time to process the information and make timely payments to its participants.

2. Securities Classifications

Due to the complexity of certain Structured Securities, it is anticipated that the paying agents for certain issues will still not be able to meet the amended Operational Arrangements requirements for timely payment rate reporting even with the extended reporting period.[8] Therefore, DTC is categorizing Structured Securities as ''conforming'' or ''non-conforming.'' Non-conforming Structured Securities will be issues for which the underwriter and paying agent have concluded that the security has features that will likely preclude the paying agent from submitting payment rate information to DTC in conformity with the requirements of the Operational Arrangements. The conforming/non-conforming identification will be made at the time the security is made eligible at DTC. For each Structured Securities underwriting that the underwriter and paying agent identify as non-conforming, the underwriter and paying agent shall submit a written attestation giving the reason(s) why the paying agent will be unable to submit payment rate information to DTC in conformity with the requirements of the Operational Arrangements. DTC will in turn identify non-conforming Structured Securities to participants and other relevant parties and will add an indicator to the appropriate DTC systems functions to denote non-conforming securities. Paying agents also shall be required to evaluate their entire portfolio of Structured Securities that have previously been made eligible and are currently on deposit at DTC to identify non-conforming securities.

3. Exception Processing Fee Applicable to Non-Conforming Securities

Late payment rate reporting leads to increased costs to DTC and to servicers and intermediaries. In order to recoup the increased processing costs, DTC is imposing an exception processing fee to the managing underwriter of each non-conforming issue at the time of underwriting. No exception processing fee will be charged retroactively for issues already on deposit at DTC prior to the implementation of the fee. The exception processing fee of $4,200 per CUSIP was calculated based upon anticipated additional costs of P&I processing for non-conforming Structured Securities.[9]

The aggregate net amount of the exception processing fees will be allocated and rebated on a pro rata basis annually to the DTC participants for whom DTC processed Structured Securities P&I allocations. For each participant, DTC will compare the participant's total number of allocations to the total number of all participants' allocations, and the resulting percentage would be applied against the total exception processing fund with the resulting amount being rebated to the participant. The total exception processing fund will be the sum of all exception processing fees less DTC's cost to administer the program.

4. Evaluation and Publication of Paying Agent Performance

DTC will track and evaluate paying agent performance with regard to timeliness and accuracy of payment rate reporting on Structured Securities and make these evaluations available to DTC participants and to the public. The purpose of these evaluations is to identify poor reporting and payment performance by paying agents.

DTC plans to expand its paying agent evaluation reports (''Report Cards'') that are currently used to compare rate submission performance and accuracy of Structured Securities paying agents. Currently the Report Cards are only distributed among the paying agents being compared. DTC will now make the Report Cards available on its Web site. The Report Cards will track and will report on a monthly basis performance by paying agent with respect to the number of collateralized mortgage obligations and asset-backed securities announcements processed, the number of late and amended announcements, the payment dollars, late payment dollars, the number of payments, and the number of late payments. Timeliness of payment rate notification on non-conforming Structured Securities will not be included in the Report Cards. With respect to all the other items set forth above, paying agent performance information for both conforming and non-conforming Structured Securities will be included in the Report Cards.

III. Comment Letters

The Commission received five comments to the proposed rule change.[10] Four of the comment letters

[7] Prior to this filing, payment notifications regarding Structured Securities had to be provided to DTC by the paying agent preferably five business days but no later than two business day prior to the payable date.

[8] Although approximately 15% of Structured Security issues currently fail to have rates submitted to DTC in a timely manner, it is estimated that approximately only half of these have structural impediments to meeting the new requirements. Late reporting in other instances is believed to be curable by improved servicing and reporting on the securities.

[9] The fee was filed with the Commission as part of DTC's annual establishment of fees. Securities Exchange Act Release No. 34–57193 (January 24, 2008), 73 FR 5614.

[10] *Supra* notes 3 and 4.

were from industry participants, and one was from DTC in response to the other four comment letters. While all of the four industry commenters generally supported the proposal, two raised issues or sought clarification about the proposal.

The comment letters submitted by JP Morgan and Edward Jones both expressed their support for the: (1) Extension of the deadline for reporting on payment detail, (2) creation of the conforming and non-conforming securities classifications, (3) creation of the exception processing fee for non-conforming securities, and (4) evaluation and publication of paying agent performance.

The comment letter written on behalf of the Association of Global Custodians expressed its support for the: (1) Creation of the conforming and non-conforming securities classifications and (2) evaluation and publication of paying agent performance. Although the commenter expressed support for the extension of the deadline for reporting payment detail, the commenter stated that DTC should monitor paying agent performance to determine if the reporting of payment detail trends toward last-minute reporting or if the extended deadline does not correlate with a reduced incidence of errors and adjustments. Although the commenter expressed support for the creation of the exception processing fee for non-conforming securities, it suggested that the aggregate net amount of the exception processing fee should be rebated to participants based on their transactions in non-conforming securities only rather than to participants based on their transactions in all Structured Securities.

The comment letter written on behalf of the Securities Industry and Financial Markets Association expressed support for the: (1) Extension of the deadline for reporting on payment detail and (2) evaluation and publication of paying agent performance. Although the commenter expressed support for the creation of the conforming and non-conforming securities classifications, it requested guidance on the criteria to be used to determine whether a Structured Security is non-conforming, whether an issue's classification can be changed, and when the classification determination will be required to be submitted to DTC. The commenter questioned whether it was appropriate to require the underwriter to sign the classification attestation rather than allowing the underwriter to rely on the paying agent's attestation.

While the Securities Industry and Financial Markets Association expressed support for the creation of the exception processing fee, it questioned whether the underwriter is the appropriate party to pay the fee. It stated its belief that the costs created by late and erroneous submissions from conforming issues should not be borne by non-conforming issue underwriters. The commenter also suggested that the aggregate net amount of the exception processing fee should be rebated to participants based on their transactions in non-conforming securities only rather than to participants based on their transactions in all Structured Securities.

In its comment letter, DTC stated that the criteria for categorizing an issue as ''non-conforming'' would consist of a general good-faith expectation, based on information available at the time, as to whether it is anticipated that DTC's deadlines for submission of rate information will be met. It also stated that both the paying agent and the underwriter will be responsible to sign the classification attestation and that imposing the exception processing fee on the underwriter is equitable and consistent with DTC's general practice. Finally, the commenter confirmed that while it will allocate exception processing fee revenue pro rata to DTC participants for whom DTC processed any Structured Securities, it will review the policy toward the end of 2008 to determine whether future allocations should be directed to participants based only on their transactions in non-conforming securities.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),[11] which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission finds that by enabling more Structured Securities to be DTC-eligible and by helping to make the reporting of information about Structured Securities more accurate and timely, the proposed rule change, which should make the communication of payment rate information on Structured Securities quicker and more efficient, is consistent with this statutory obligation.

[11] 15 U.S.C. 78q–1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–DTC–2007–11), as modified by Amendment No. 1, be, and hereby is, approved.[14]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6256 Filed 3–26–08; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57543; File No. SR–OCC–2008–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Cross-Margining

March 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 29, 2008, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Article VI, Clearance of Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

Transactions, Section 24, Cross-Margining With Participating CCOs, paragraph (c) of OCC's By-Laws so that additional OCC-cleared products may be more easily added in the future by amending only the relevant Cross-Margining Agreement and not the By-Law provision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Existing cross-margining programs between OCC and certain other commodity clearing organizations (each a ''CCO'') permit positions in index futures and options on such futures cleared by the CCO to be cleared in a special proprietary or non-proprietary cross-margining account (''X-M Account'') at the CCO which is paired with a corresponding X-M account (proprietary or non-proprietary, as the case may be) at OCC in which securities options are cleared. A non-proprietary X-M account is limited to options market-makers and other ''market professionals.'' The non-proprietary cross-margining accounts are treated as futures customer accounts in that they are carried subject to the segregation provisions of Section 4d of the Commodity Exchange Act rather than as securities accounts subject to the Commission's Rule 15c3–3 and other customer protection rules under the Act. Paired X-M Accounts may be established by a ''joint clearing member'' of OCC and the CCO or by a ''pair of affiliated clearing members,'' one of which is a clearing member of OCC and the other of which is a clearing member of the CCO. The paired X-M Accounts are treated for margin purposes as if they were a single account, making it possible to margin the paired X-M Accounts based on the net risk of the potentially offsetting positions within them.

In referring to the types of cleared contracts that may be carried in an X-M Account at OCC, paragraph (c) of Section 24 of Article VI of OCC's By-Laws presently refers only to options. The purpose of the proposed rule change is to expand this reference to include security futures, as defined in the Act and in the CEA, on exchange-traded funds (''ETFs'') based on broad-based securities indices and any other cleared contract, as defined in OCC's By-Laws, that has been approved for cross-margining by OCC's Board of Directors.[5] The precise types of contracts that can be included in X-M Accounts in any particular cross-margining program are identified in a Cross-Margining Agreement between OCC and the CCO. The existing cross-margining programs are limited to index options and OCC-cleared options on ETFs and index futures cleared by a CCO. The immediate reason for expanding the types of cleared products that may be included in X-M Accounts at OCC is to permit security futures on ETFs based on broad-based securities indices to be included.[6] However, OCC has determined to amend Article VI, Section 24(c) to make it as broad as possible so that additional OCC-cleared products may be added in the future by amending only the relevant Cross-Margining Agreement and not this By-Law provision.

The inclusion of security futures in cross-margining is not novel. Under Article VI, Section 25 of the By-Laws, OCC's own internal cross-margining program for non-proprietary accounts already includes OCC-cleared security futures along with all other cleared securities that may be cross-margined against any OCC-cleared futures products that are cleared by OCC in its capacity as a derivatives clearing organization regulated by the CFTC. Unlike the other cross-margining accounts, the internal cross-margining accounts are not limited to index options, index futures, and OCC-cleared ETF options. OCC has broad authority to designate any cleared contract as eligible for these accounts provided the contract has sufficient price correlation with other eligible contracts to provide significant risk reduction when positions are on opposite sides of the market. As a result, no rule change is needed to allow OCC to include futures on ETFs in these accounts. Moreover, cross-margining of all OCC-cleared securities with OCC-cleared futures and futures options occurs automatically in the firm account and other proprietary accounts because OCC's By-Laws permit any OCC-cleared contract to be carried in these accounts.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it enhances the utility of existing cross-margining programs by permitting the inclusion of products that did not exist at the time the cross-margining programs were established. Cross-margining enhances the safety of the clearing system while providing lower clearing margin costs to participants. Therefore, expanding the positions that may be included in X–M Accounts is beneficial to the clearing system and its participants. The proposed rule change is not inconsistent with the other rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or

[4] The Commission has modified parts of these statements.

[5] ''Cleared contract'' is defined in Article I of OCC's By-Laws to mean ''a cleared security or a commodity future or futures option that is cleared by the Corporation.'' The term ''cleared security'' is defined as ''an option contract (other than a futures option), a security future or a BOUND.'' In effect, therefore, the term ''cleared contract'' includes any derivative contract cleared by OCC.

[6] The Chicago Mercantile Exchange Inc. (''CME'') also clears security futures contracts, which are reported to OCC under the terms of the Associated Clearinghouse Agreement between the organizations. Securities Exchange Act Release No. 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) (File No. SR–OCC–2002–07). Under the terms of the OCC–CME cross-margining agreement, such CME-cleared security futures are eligible contracts for purposes of cross-margining. However, OCC will not treat security futures on broad-based indices as eligible contracts until the CFTC issues an order providing relief from certain provisions of Section 4d(a) of the Commodity Exchange Act to permit the inclusion of such contracts as eligible contracts for purposes the OCC–CME cross-margining program.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission could summarily abrogate such rule change if it appears to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2008–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2008–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2008–03 and should be submitted on or before April 17, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6252 Filed 3–26–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57547; File No. SR–OCC–2008–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Flexibly Structured Foreign Currency Options

March 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 13, 2008, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify OCC's description of its pro rata assignment procedure to eliminate the reference to the procedure's application to exercises of physical delivery, flexibly structured Foreign Currency Options (''FCOs'').

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s–1(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC's pro rata assignment procedure is applied to options on the S&P 100 Index as well as to flexibly structured and cross-rate FCOs settled by physical delivery.[5] However, the Philadelphia Stock Exchange, Inc. (''Phlx'') has delisted all such FCOs and open interest in all such contracts has expired. Accordingly, OCC proposes to modify the description of its pro rata assignment procedure to eliminate the reference to its application to exercises of physical delivery, flexibly structured FCOs. While Phlx has proposed to trade flexibly structured FCOs that are settled in cash, exercises for these FCOS are to be assigned in accordance with OCC's standard assignment procedures.[6] The modified description of the pro rata assignment procedure is set forth in Exhibit 5 to File No. SR–OCC–2008–05.[7]

The proposed change is consistent with Section 17A of the Act because it promotes the prompt and accurate clearance and settlement of securities transactions, and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by updating the description of OCC's pro rata assignment procedure. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

[4] The Commission has modified parts of these statements.

[5] *See* Securities Exchange Act Release Nos. 56845 (November 27, 2007), 72 FR 67991 (December 3, 2007) (File No. SR–OCC–2007–014), 48908 (December 11, 2003), 68 FR 74689 (December 24, 2003) (File No. SR–OCC–2003–05), and 38165 (January 14, 1997), 62 FR 3070 (January 21, 1997) (File No. SR–OCC–96–19).

[6] *See* Securities Exchange Act Release No. 57265 (February 4, 2008), 73 FR 7622 (February 8, 2007) (File No. SR–Phlx–2007–68).

[7] SR–OCC–2008–05 can be found on OCC's Web site at *http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_05.pdf.*

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [8] and Rule 19b–4(f)(1) [9] promulgated thereunder because the proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2008–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2008–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2008–05 and should be submitted on or before April 17, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–6255 Filed 3–26–08; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New Systems of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Three Proposed New Systems of Records and Applicable Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish three new systems of records entitled, the *Recordings of Service Observations, Call Detail Management Information Report, and the Service Observation Database.*

DATES: We filed reports of the new systems of records and the applicable routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on *January 30, 2008.* These new systems of records and the new routine uses will become effective on *March 28, 2008* unless we receive comments warranting that they not be effective.

ADDRESSES: Interested individuals may comment on these publications by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Etter, Social Insurance Specialist, Disclosure Policy Development and Services Division One, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–8028, e-mail: *neil.etter@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Background

Under sections 205(a) and 702(a)(5) of the Social Security Act, we are establishing three related new Privacy Act systems of records. We discuss these systems of records below.

A. Recordings of Service Observations

We will record telephone conversations between members of the public and the National 800 Number Network (N8NN) employees or other Agency employees when designated as call agents. Authorized service observers will be able to listen to recorded conversations to evaluate the service provided and the agent's performance.

All N8NN answering agents are subject to service observation. Only managers and other authorized personnel (known as ''service observers'') monitor agent calls to ensure quality, identify training needs, and evaluate individual agent performance. Service observers in N8NN sites can access recorded conversations for evaluating service. Retrieval of information from the system of records is from the site where the calls are answered, the unit of the agent being observed, date and time of the call, type of call, and the service observer's name. For example, service observers may listen to a percentage of the incoming call conversations, every

call in a specific unit, every call evaluated by a specific observer, or every call for an entire office for a specific day or a span of time (e.g., September 1 through September 15). Service observers access records by using a personal identification number (PIN) and only those with authority to service observe may access the recordings. To provide support for the service observed evaluations, the recorded calls must document the quality of our responses to the public, identify training needs, and provide documentation for service observers to use in individual employee performance discussions. It is important that all service observers evaluate in a consistent and fair manner. The system generated evaluation form will facilitate uniform and consistent evaluations made by service observers.

B. Call Detail Management Information Report

SSA field offices with Voice over Internet Protocol (VoIP) Enterprise telephone systems have access to web-based management information reports about site telephone call data. All N8NN answering sites access online web-based management information reports of their site telephone call data. The data provided include calls made and received at employee telephone extensions. Only management personnel or other authorized employees (e.g., operations analysis staff analyst) may retrieve this management information. Data may be retrieved by site, unit, extension and skill groups (Spanish language speakers, Title II Claims, Title XVI Claims, General Inquiries, Administrative Lines, etc.), and date or date intervals. For example, a manager may request a summary report of all incoming and outgoing public calls for a specific extension, a specific unit, or an entire office for a specific day or a span of time (e.g., September 1 through September 30). Access is PIN-controlled and only those with authority to access the management information while performing their official duties will have access to the data.

The data will provide documentation to support billing disputes with the vendor, assess call workload volumes, and overall site telephone service. It will help determine staffing requirements for telephone coverage and provide documentation for managers in their individual employee performance discussions. The management information also provides the telephone number of incoming and outgoing calls to or from an SSA extension. This information is often helpful in congressional inquiry cases and in responding to threats of potential suicide.

By the end of 2010, all field sites will have VoIP Enterprise telephone systems and access to vendor-supplied, web-based management information reports. Furthermore, all components will eventually acquire new VoIP Enterprise telephone systems and have access to telephone call detail for their offices.

C. Service Observation Database

All N8NN answering agents are subject to service observation. Managers and other authorized employees (known as ''service observers'') are responsible for listening to agent calls to evaluate response quality. The new database system allows service observers to enter evaluation data directly to the automated Service Observation form. The quality evaluation data are accumulated into reports for the site, including unit, branch, section, and division. The new system stores the results of the call evaluations accumulating the data for management information. Only authorized service observers through a PIN-controlled process may retrieve the data. Service observers may retrieve data concerning the site, unit, name, or identification of the service observer and date and time of the call. A service observer may request a report of summary evaluation data for any unit or other level within the site for a particular date or span of time. Service observers will use the data to target training for error deficiencies, determine caller trends, and assess the quality of agent responses. Service observers may use the documentation in their individual employee performance discussions.

II. Collection and Maintenance of Data for the Three New Systems of Records

A. Recordings of Service Observations

The *Recordings of Service Observation* system of records will maintain identifying information on the representatives who conduct the service observation evaluation. The service observer completes and prints the evaluation form. At this point, personal information about individual agents automatically drops from the system. The only method of retrieving the call is by a service observer using the date or time of a call, the unit of the observed agent, and the type of call. Upon retrieval of the call, the management information displays how the call was evaluated by the original service observer (e.g., whether the call was satisfactory or needs improvement, whether there was a service or payment error, the reason for the call and whether a conduct or performance issue was identified).

B. Call Detail Management Information Report

The Call Detail Management Information Report systems of records will maintain call data for telephone extensions of all SSA employees who receive or make telephone calls involving SSA business with the public.

C. Service Observation Database

The *Service Observation Database* system of records maintains and accumulates call quality data for agent calls monitored by service observers. All calls involving SSA business with the public are subject to service observation monitoring.

III. Proposed Routine Use Disclosures of Data Maintained in the Three New Systems of Records

A. Proposed Routine Use Disclosures

We are proposing to establish the following routine use disclosures of information that we will maintain in the proposed three new systems of records.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We may disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in matters relating to information contained in these systems of records. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose data is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We may disclose information under this routine use only in situations in which the individual may ask his or her congressional representative to intercede in matters relating to information contained in these systems of records. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) SSA, or any component thereof;

(b) Or any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA

where it is authorized to do so) has agreed to represent the employee; or

(d) The United States, or any agency thereof, where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We may disclose information under this routine use only as necessary to enable DOJ to effectively represent or defend SSA, its components or employees in litigation involving this proposed system of records or when the United States is a party to litigation and SSA has an interest in the litigation.

4. To SSA contractors and to other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

SSA occasionally contracts out certain functions when this would contribute to effective and efficient operations. SSA must be able to give its contractor or another Federal agency whatever information SSA can legally provide in order for the contractor or Federal agency to fulfill its duties. In situations in which we use contractors, we provide safeguards in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

5. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. An example of such statutes and programs includes 5 U.S.C. 2753 regarding the College Work-Study Program. We may disclose information under this routine use only when SSA uses the services of these individuals, and they need access to information in these systems of records to perform their assigned agency duties.

6. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and the public, the security of the SSA workplace, and the operation of SSA facilities; or

(b) To assist investigations or prosecutions with respect to activities that affects such safety and security or activities that disrupt the operation of SSA facilities.

We may disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of the public, employees or workplaces or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating Federal or local law in connection with such activities.

7. To the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information which is not restricted from disclosure by Federal law for the use by those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are authorized by 44 U.S.C. 2904, as amended, to promulgate standards, procedures, and guidelines regarding record management and conducting records management studies. GSA and NARA are authorized to inspect Federal agencies' records, for records management purposes, and agencies are expected to cooperate with GSA and NARA (44 U.S.C. 2906). In such instances, the routine use will facilitate disclosure.

8. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

We may disclose information from the systems of records to the EEOC when SSA determines that an EEO complaint has been filed and the EEOC requires the systems of records information to perform its investigation to determine if the employee's complaint is justified.

9. To the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be authorized by law

We will disclose information under this routine use to the Merit Systems Protection Board or the Office of Special Counsel when requested in matters pending before the Merit Systems Protection Board or the Office of Special Counsel.

10. To the Federal Labor Relations Authority, the Office of the Special Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel (FSIP), or an arbitrator when information is requested in connection with the investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

We may disclose systems of records information to these entities when such organization is charged with making a determination on allegations of unfair practices, matters before an arbitrator or the FSIP.

11. To the Department of Justice for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) Representing the Commissioner; or

(c) Investigating issues of fraud or violation of civil rights by agency officers or employees.

We will disclose information under this routine use only as necessary to enable DOJ to represent SSA in matters concerning violations of the Social Security Act, to represent the Commissioner of Social Security, or to investigate issues of fraud or violations of civil rights by SSA officers or employees.

12. To appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs of SSA that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent,

minimize, or remedy such harm. SSA will use this routine use to respond only to those incidents involving an unintentional release of its records.

This routine use specifically permits the disclosure of SSA information in connection with response and remediation efforts in the event of an unintentional release of Agency information, otherwise known as a ''data security breach.'' This routine use serves to protect the interests of the people whose information is at risk by allowing us to take appropriate steps to facilitate a timely and effective response to a data breach. It will also help us to improve our ability to prevent, minimize, or remedy any harm that may result from a compromise of data maintained in these three systems of records.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. SSA's regulations at 20 CFR 401.150(c) permit us to disclose information under a routine use where necessary to carry out SSA programs. SSA's regulations at 20 CFR 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses will ensure efficient performance of our functions relating to the purpose and administration of the proposed *Call Detail Management Information Report,* the *Service Observation Database,* and the *Recordings of Service Observations* systems of records. In addition, Federal law requires the disclosures that we make under routine use number seven. Thus, the proposed routine uses are appropriate and meet the relevant statutory and regulatory criteria.

IV. Records Storage Medium and Safeguards for the Information Maintained in the Proposed Systems of Records

1. Recordings of Service Observations

The *Recordings of Service Observation* system of records is a repository for records in electronic form. Only authorized SSA personnel who have a need for the information in the performance of their official duties may access the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data, and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

SSA personnel having access to the data in this system of records will be informed of the criminal penalties provided in the Privacy Act, 5 U.S.C. 552a(i)(1), and other statutes for unauthorized access to or disclosure of information maintained in this system of records.

Contractor personnel having access to data in this system of records will be required to adhere to SSA rules concerning safeguards, access, and use of the data.

2. Call Detail Management Information Report

The *Call Detail Management Information Report* system of records is a repository for records in paper and electronic form. Only authorized SSA personnel who have a need for the information in the performance of their official duties may access the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data, and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

SSA personnel having access to the data in this system of records will be informed of the criminal penalties provided in the Privacy Act, 5 U.S.C. 552a(i)(1), and other statutes for unauthorized access to or disclosure of information maintained in this system of records.

Contractor personnel having access to data in this system of records will be required to adhere to SSA rules concerning safeguards, access, and use of the data.

3. Service Observation Database

The *Service Observation Database* system of records is a repository for records in paper and electronic form. Only authorized SSA personnel who have a need for the information in the performance of their official duties may access the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data, and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Any manually maintained records are stored in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

Contractor personnel having access to data in this system of records will be required to adhere to SSA rules concerning safeguards, access, and use of the data. SSA personnel having access to the data in this system of records will be informed of the criminal penalties provided in the Privacy Act, 5 U.S.C. 552a(i)(1), and other statutes for unauthorized access to or disclosure of information maintained in this system of records.

V. Effect of the Proposed System of Records on the Rights of Individuals

These systems of records will provide a variety of support for management in handling performance evaluation discussions with employees. This includes whether the call response by the employees were accurate, or if not, any reasons. These systems of records will also include employees' average call-talk time compared with office or unit averages, and they will facilitate evaluations submitted into automated Service Observation Report Forms. These forms, which are printed, permit the discussion of the employee's performance with the agent that handled the call.

In accordance with the Privacy Act, we will use and disclose data maintained in these systems of records.

We do not anticipate that these systems of records will have any unwarranted adverse effect on the rights of individuals about whom data will be maintained.

We will employ security measures that protect access to and preclude unauthorized disclosure of records in the three proposed systems of records. We will also use the information only for the purposes which are establishing the systems of records. Therefore, we do not anticipate that the proposed systems of records will have any unwarranted adverse effect on the privacy or other rights of individuals.

Dated: January 24, 2008.

Michael J. Astrue,

Commissioner.

Social Security Administration Notice of System of Records Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER:

60–0362.

SYSTEM NAME:

Recordings of Service Observations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The following locations will each have the equipment that enables service observers to use the vendor's telephone system to select and record agent calls: National 800 Number Network (N8NN) sites, regional Office of Quality Performance (OQP) sites, Office of Operations regional offices' N8NN directors and staff. Contact the system manager at the address below for the address of these sites. Records are also located in the central offices of OQP and the Office of Telephone Services. The address of these offices is Social Security Administration (SSA), 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All N8NN calls are subject to unannounced service observation. Recorded telephone conversations between public callers and SSA agents will be stored in the system of records. Service observers will document the evaluation and enter this data into the system of records. The system of records will accumulate data from the inputs of evaluations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Recorded calls between callers and SSA agents will be maintained in this system of records and will include date and time of the recorded call, the observer's name, the agent's unit or module number (not individual agent identifier) and caller's name (and address, if available).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and 902(a)(5)). The authority to conduct consensual service observation activities, cited in regulation 20 CFR Part 422, Listening-In to or Recording Telephone Conversations, must be renewed every 5 years. It was renewed on December 1, 2005.

PURPOSE(S):

Electronic recordings of service observations or results will be used for performance assessments, conduct issues, and disciplinary actions. These recordings will also determine individual employee, unit, and office-wide training needs, as well as the quality of responses, trends, public reactions to policies, legislation, and other public announcements. The recordings will be used to train service observers to ensure uniform and consistent evaluation criteria and as documentation for any disciplinary and performance-based actions.

Service observers will routinely record calls and access recordings of telephone conversations in the system of records. Service observers and possibly other site management will use recorded service observed call conversations for determining training needs, ensuring uniform and consistent evaluations, and improving the overall monitoring quality and performance management process. The manager uses the evaluations to assess agent response quality as well as support any conduct issues and disciplinary actions. OQP Headquarters and regional personnel will routinely record all calls for a particular site to evaluate a site's quality. OTS and regional N8NN director staffs will also use the system of records to evaluate the management of the service observation program, and the overall quality, integrity, and courtesy of agent responses. Moreover, they will be able to view the details about the calls observed, the reasons callers called the N8NN, the programs involved, and the types of errors for assessing training needs on a regional or national basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Routine uses disclosures are as indicated below:

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his/her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

a. SSA or any component thereof; or

b. Any SSA employee in his/her official capacity; or

c. Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. To SSA contractors and other Federal agencies, disclosure may be unrestricted as necessary, for assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

5. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

6. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and the public, the security of the SSA workplace, and the operation of SSA facilities; or

(b) To assist investigations or prosecutions with respect to activities that affects such safety and security or activities that disrupt the operation of SSA facilities.

7. To the General Services Administration and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information which is not restricted from disclosure by Federal law for the use by those agencies in conducting records management studies.

8. To the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

9. To the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be authorized by law.

10. To the Federal Labor Relations Authority, the Office of the Special Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator requesting information in connection with the investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

11. To the Department of Justice for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) Representing the Commissioner; or

(c) Investigating issues of fraud or violation of civil rights by agency officers or employees.

12. To appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs of SSA that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. SSA will use this routine use to respond only to those incidents involving an unintentional release of its records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM OF RECORDS:

STORAGE:

The records created from the Recordings of Service Observations system of records are electronic only.

RETRIEVABILITY:

The observers, management, OQP, and regional and Headquarters staffs authorized to conduct service observations will have access to the recordings. Recorded call data will be stored and retrieved by a combination of day, date, time of the call, the type of call, and the observer's name and the agent's unit number.

SAFEGUARDS:

Information is compartmentalized so that service observers who have an official need for the information in the performance of their duties at one site have access only to data or records at their sites, and that those authorized outside the site may only access site information within their jurisdictions. Regional office 800 number director staffs will have access to all sites in their respective regions. OQP and Headquarters observers will have nationwide access. Access is through a PIN-based authorization process.

Established safeguards for automated records are in accordance with the Systems Security Handbook. For computerized records electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Access *http://www.ssa.gov/foia/bluebook/app_g.htm* for additional information regarding the safeguards SSA employs to protect its paper and automated records.

RETENTION AND DISPOSAL:

When the service observer listens to a call, an automated Service Observation Report form is completed. Both the observer or manager and the agent sign the form. Per the current personnel file retention procedures, we will maintain paper copies of the Service Observation Report Form in the SF–7b extension personnel files. The system of records maintains recorded call conversations for 14 days, at which time the call conversations are automatically destroyed. If the employee's recorded service observation results in an unsatisfactory evaluation by the service observer, however, the call conversation is automatically retained for 60 days from the date of the call and then destroyed. The manager will archive the recording for a full two-year period from the date all actions are closed if the evaluation results in a performance or conduct issue, the recording is used to support a disciplinary action, the employee files a grievance, or if the employee files an Equal Employment Opportunity complaint. In these situations, the employee may request to listen to the recorded call, and management will then make the recording available for listening within five business days of the request, whenever possible. Management must be present while the employee listens to a recorded call. The employee receives a copy of the sanitized Service Observation Report Form, and the manager places the original sanitized form in the SF–7b extension file. When an EEO complaint is involved, the manager will download the recording to a disk and place the disk in the employee's SF–7b extension personnel file for the four-year retention period, or as long as is required for the duration of pending/ongoing litigation.

Only members of management may delete records from the system of records. If the agent conversation involves litigation, management will archive the recording in the system of records.

The Agency established a retention and disposal schedule for the retained recordings. Current policies set for retention and destruction of personnel records cover forms placed in the SF–7b extension file.

SYSTEM OF RECORDS MANAGER(S) AND ADDRESS(ES):

Associate Commissioner for Telephone Services, Office of the Deputy Commissioner for Operations, Office of Telephone Services, 6401 Security Boulevard, 4840 Annex Building, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system of records contains a record about him/her by writing to the system of records manager(s) at the above address and providing his/her name, work telephone number, or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a

photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels information in the record to which notification is being requested. If it is determined, that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual. Authentication will be conducted before connecting with both parties.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be. Moreover, that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. In addition, requesters should reasonably identify the record, specify the information they are contesting, and state the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

The source of electronic/paper records retained at sites is the software recording system provided by a vendor providing telecommunications services.

SYSTEM OF RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

Social Security Administration Notice of System of Records Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER:

60–0363.

SYSTEM NAME:

Call Detail Management Information Report.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The vendor responsible for providing new telephone systems provides call detail reports, which are immediately available in a web-based report format to management (known as service observers), at their desktops. Reports are also available from the N8NN telephone system automatic call distribution (ACD) equipment that give call details for all calls received or dialed.

Real time queries and reports, as well as historical summary data (half-hourly, hourly, daily, weekly, monthly, quarterly, and annually) are available by telephone extension, unit, branch, division, center, area, region, and national.

The locations of these records include field offices, teleservice centers, area director and regional offices, processing centers, Office of Central Operations (OCO) answering centers, and the Office of Disability Adjudication and Review (ODAR) Headquarters and regional hearing offices. Contact the system manager at the address below for the address of these sites. Records are also located at Social Security Administration (SSA) central office components. The SSA central office address is Social Security Administration (SSA), 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SSA employees who are assigned telephone numbers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Call detail reports contain all telephone extensions in SSA offices and include the telephone number(s) of callers to the office. Employees' names may be associated with an extension, but the system of records does not provide the name of the person who called from that number. However, it does provide the number dialed on outgoing calls and the employee's extension.

Automatic call distribution equipment also includes the caller's telephone number, the extension of the agent answering the call, unit number, date of call, and all the particulars of the call (e.g., duration, how long it took for the agent to answer the call, how much time was spent working after the call was completed, time on hold, transfer information, and employee skill set [e.g., Spanish speaking, Title II Claims, Title XVI Claims, General Inquiry]).

For offices with upgraded telephone systems, the system provides additional information when the office sets up the system to identify skill groups (e.g., the skill set of the employee assigned to that extension [claims representative, service representative]). In cases of skill group setups, the detail on the Web site would also provide that an extension that received or made the call is assigned to an employee in a Title II or Title XVI, General Inquiry, Administrative, Family Line, etc. In regional offices, processing centers, OCO call answering sites, components at Headquarters, ODAR Headquarters regional and local offices, the component name, site, division or branch title, section or unit identification, employee name, extension, etc., may be set up for identifying incoming or outgoing call destinations with the same call detail particulars already mentioned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM OF RECORDS:

Sections 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and 902(a)(5)).

PURPOSE(S):

This system of records provides immediate online call detail management information. SSA management will use call detail reports for the following purposes:

- To determine office, unit and employee performance and service efficiency (i.e., call-talk time of a claims representatives can help evaluate the average number of claims that can be taken within a specific period of time, which is helpful in determining staffing for that workload);
- For employee performance assessment, and determining any conduct issues and disciplinary action;
- To validate a complaint from a member of the public (i.e., verify which

extension received a call to be able to discuss the problem with the employee assigned to that extension);

- To trace or identify or associate call data regarding the number of a caller threatening the safety of the public, Federal employees, or Federal property;
- As documentation to rebut costs provided on a monthly bill from the telephone company or carrier;
- To help management determine if an employee receives or makes repeated personal calls from or to a number over a period of time;
- To verify numerous calls to or from the same number for litigation purposes; and
- To assist the Office of the Inspector General office representatives in an investigation; and
- To support any other SSA regional or Headquarters employees in their official capacity to provide employee counseling.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Routine uses disclosures are as indicated below:

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his/her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. To SSA contractors and other Federal agencies, disclosure may be unrestricted as necessary, for assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

5. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

6. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and the public, the security of the SSA workplace, and the operation of SSA facilities; or

(b) To assist investigations or prosecutions with respect to activities that affects such safety and security or activities that disrupt the operation of SSA facilities.

7. To the General Services Administration and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information which is not restricted from disclosure by Federal law for the use by those agencies in conducting records management studies.

8. To the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

9. To the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be authorized by law.

10. To the Federal Labor Relations Authority, the Office of the Special Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator requesting information in connection with the investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

11. To the Department of Justice for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) Representing the Commissioner; or

(c) Investigating issues of fraud or violation of civil rights by agency officers or employees.

12. To appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs of SSA that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. SSA will use this routine use to respond only to those incidents involving an unintentional release of its records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM OF RECORDS:

STORAGE:

The storage media is paper and electronic.

RETRIEVABILITY:

Date, employee name, employee unit number, extension number, retrieve records by billing number, site, unit, section, branch, division, component, area, region, and nation. Only authorized management personnel may retrieve call detail records during the three-year retention period.

SAFEGUARDS:

Paper records are stored in approved management filing cabinets, which only management may access. Only management personnel with management passwords and PINs may access electronic records.

Established safeguards for automated records are in accordance with the Systems Security Handbook. For computerized records electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an

audit trail. Access *http://www.ssa.gov/foia/bluebook/app_g.htm* for additional information regarding the safeguards SSA employs to protect its paper and automated records.

RETENTION AND DISPOSAL:

The Agency retains telephone detail records for three years, at which time they are destroyed.

SYSTEM OF RECORDS MANAGER(S) AND ADDRESS(ES):

Associate Commissioner, Office of Telephone Services, Office of the Deputy Commissioner for Operations, Social Security Administration, 6401 Security Boulevard, 4840 Annex Building, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system of records contains a record about him/her by writing to the system of records manager(s) at the above address and providing his/her name, work telephone number, or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels information in the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. In addition, requesters should reasonably identify the record, specify the information they are contesting, and state the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

The source of electronic and paper records retained at sites for call detail is from the telephone bill provided by the carrier or telephone company. Call detail is also available through a vendor provided web-based system of reports. The vendor supplies call detail reports electronically from automatic call distribution equipment.

SYSTEM OF RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

Social Security Administration Notice of System of Records Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER: 60–0364.

SYSTEM NAME:

Service Observation Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Denver Regional Office, Regional Communications Office, Social Security Administration, 1961 Stout Street, Room 1052, Denver, Colorado 80294.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Service Observers or monitors who conduct service observations of, or listen to, National 800 Number calls.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will store the service observer's evaluative data for accumulating management information about the type of call and the accuracy of the information we provide to callers. The accumulated management information in the system of records will be available at the unit, branch, section, division, and site levels. No personal information about the agent or the caller will be stored. The service observer completes and prints the automated Service Observation Report Form. The service observer sanitizes all information about the caller on the paper Service Observation Report Form and discusses the performance with the employee. After this discussion, the observer files the form in the employee's SF–7b personnel extension file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and 902(a)(5)).

PURPOSE(S):

This system of records provides immediate management information about the quality of agent responses and services provided by the N8NN. SSA management will use the database reports for the following purposes:

- To determine office and unit performance and service efficiency for specified periods of time;
- To assess caller behavior such as the reasons members of the public call SSA;
- To determine the quality of services provided by employees answering N8NN calls; and
- To determine training needs at all levels.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Routine uses disclosures are as indicated below:

12. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his/her behalf.

13. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

14. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity when DOJ (or SSA

when it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

15. To SSA contractors and other Federal agencies, disclosure may be unrestricted as necessary, for assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

16. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

17. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and the public, the security of the SSA workplace, and the operation of SSA facilities; or

(b) To assist investigations or prosecutions with respect to activities that affects such safety and security or activities that disrupt the operation of SSA facilities.

18. To the General Services Administration and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information which is not restricted from disclosure by Federal law for the use by those agencies in conducting records management studies.

19. To the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

20. To the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be authorized by law.

21. To the Federal Labor Relations Authority, the Office of the Special Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator requesting information in connection with the investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

22. To the Department of Justice for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) Representing the Commissioner; or

(c) Investigating issues of fraud or violation of civil rights by agency officers or employees.

12. To appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs of SSA that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. SSA will use this routine use to respond only to those incidents involving an unintentional release of its records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM OF RECORDS:

STORAGE:

Records are maintained in both electronic and paper form.

RETRIEVABILITY:

Managers retrieve database management information by the service observer name, region, site, division, branch, unit of monitored employee, date of call, and type of call.

SAFEGUARDS:

Limited access to SSA electronic records protects the *Service Observation Database* system of records files. The PIN and password process safeguards information by limiting access to only those employees with a need to know. Only management personnel with authorized security profiles in SSA's systems can access the records.

Established safeguards for automated records are in accordance with the Systems Security Handbook. For computerized records electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Access *http://www.ssa.gov/foia/bluebook/app_g.htm* for additional information regarding the safeguards SSA employs to protect its paper and automated records.

RETENTION AND DISPOSAL:

The Agency retains the management information contained in this system of records file for 3 years. A Request for Records Disposition Authority is available. *See* General Records Schedule 20, Transmittal No. 7, Section 4 approved by the National Archives and Records Administration.

SYSTEM OF RECORDS MANAGER(S) AND ADDRESS:

Deputy Commissioner for Budget, Finance, and Management, Social Security Administration, 6401 Security Boulevard, 800 Altmeyer Building, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if one of these systems of records contains a record about him or her by writing to the system of records manager(s) at the above address and providing his or her name, work telephone number, or other information that may be in the system of records that will identify him or her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his or her identity, the individual must certify in writing that he or she is the person that he or she claims to be and that he or she understands that the knowing and willful request for, or acquisition of, a

record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his or her identity by providing identifying information that parallels information in the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his or her name, Social Security Number, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his or her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his or her identity or must certify in the request that he or she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURE(S):

Same as Notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

The Service Observation Database is a conglomeration of service observation evaluations completed by service observers using the Service Observation Report Form.

SYSTEM OF RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E8–6232 Filed 3–26–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6158]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals (RFGP): Congressionally Mandated—One-time Grants Program—Competition B—Professional, Cultural, and Youth One-time Grants Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C–08-One-time-Comp.B

Catalog of Federal Domestic Assistance Number: 00.000

Key Dates:

Application Deadline: April 24, 2008.

Executive Summary: This competition is one of two competitions that the Bureau of Educational and Cultural Affairs is conducting as directed in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div J, Pub. L. 100–161) under ''Educational and Cultural Exchange Programs'' in support of a $10 million ''competitive one-time grants program.'' All applications must be submitted by, public or private non-profit organizations, meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3). Total funding for this ''one-time grants program'' is $10 million dollars. Five million dollars will be dedicated to this competition, (Competition B—Professional, Cultural and Youth One-time Grants Program-reference number ECA/PE/C–08-One-time-Comp.B), and $5 million will be dedicated to and announced simultaneously in a separate RFGP, (Competition A—Academic Programs One-time Grants Program—reference number ECA/A–08-One-time-Comp.A).

Please note: The Bureau reserves the right to reallocate funds it has initially allocated to each of these two competitions, based upon factors such as the number of applications received and responsiveness to the review criteria outlined in each of the solicitations.

Applicants may only submit *ONE proposal (TOTAL) to ONE* of the two competitions referenced above. In addition, applicants under this competition (ECA/PE/C–08-One-time-Comp.B) may only apply to administer one of the listed activities (total). If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process. Eligible applicants are strongly encouraged to read both RFGPs thoroughly, prior to developing and submitting proposals, to ensure that proposed activities are appropriate and responsive to the goals, objectives and criteria outlined in each of the solicitations.

As further directed by the Congress, ''The program shall be only for the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

The Bureau of Educational and Cultural Affairs announces a competition for grants that support international exchanges in order to increase mutual understanding and build relationships, through individuals and organizations, between the people of the United States and their counterparts in other countries. The Bureau welcomes proposals from organizations that have not had a previous grant from the Bureau as well as from those which have; see eligibility information below and in section III.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Background: The Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 100–161) under ''Educational and Cultural Exchange Programs'' includes $10 million ''for a competitive one-time grants program similar to proposals by both the House and Senate. In developing this competitive grants program, the Department of State is to be guided by criteria outlined in both the House Report 110–197 and Senate Report 110–

128, including the directive to consult with the Appropriations Committees, prior to submission of a program plan.''

ECA anticipates awarding approximately 20–25 grants under this *Competition B—Professional, Cultural, and Youth One-Time Grants Program.*

Purpose: In this competition, ECA seeks grant proposals that support two-way exchanges for one of the following three different groups: Emerging Youth Leaders, Emerging Young Professionals, and Emerging Cultural Leaders. Program development should begin by September 2008, with most exchange activities scheduled to take place in calendar year 2009, and continuing into 2010. These projects should be completed in less than two years.

Emerging Youth Leaders

Program Contact: Carolyn Lantz, tel: 202–203–7505, e-mail *LantzCS@state.gov*.

The *Emerging Youth Leaders* program provides opportunities for high school students (ages 15–17) and educators in the United States and in multiple countries around the world to participate in two-way exchanges, each three to four weeks in duration. Each project explores a particular theme designed to develop critical leadership skills for aspiring young leaders and will encourage respect for diversity, develop reconciliation and conflict management skills, and promote critical thinking. An essential element of all projects will be to build mutual understanding and respect among the people of the United States and the people of the exchange partner countries.

The overarching goals are:

1. To develop a sense of civic responsibility and commitment to our local and global communities;
2. To promote mutual understanding between the United States and the people of other countries around topics of common interest; and
3. To foster personal and institutional ties between participants and partner countries.

A successful project will be one that nurtures a cadre of students and educators to be actively engaged in addressing issues of concern in their schools and communities upon their return home. Project activities will equip youth with the knowledge, skills, and confidence to become citizen activists and ethical leaders. Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, seminars, and other activities that are designed to achieve the program's stated goals. Multiple opportunities for participants to interact with youth and educators in the host country must be included.

Grant recipients will recruit and select the participants in the United States, as well as in the partner country(ies) through close consultation with the relevant U.S. Embassies; organize all exchange activities in the participating countries; and implement follow-on activities in which participants may apply at home what they have learned during the exchange.

Applicants should select one of the four themes below. The projects will provide guidance and training that help the youth participants develop leadership skills, such as influential public speaking, team-building, and goal-setting, so that they are prepared to take action with what they have learned. They will also learn the tools of persuasion, negotiation, and mediation to effectively manage relationships and messages in a positive manner. The exchange activities will also examine diversity issues and how young people can develop skills in critical thinking and techniques in reconciliation and conflict management.

Themes:

Participants will develop these skills by undertaking projects that focus on one of the following specific themes:

(1) Media technology and media literacy:

Projects will review the new technologies, such as weblogs, online videos, and social networking sites that enable people around the world to share information with each other. The projects will also address the challenges that both old and new media present to effective cross-cultural communication, and will provide training on how to analyze the messages of mass media and individual voices for accuracy or bias. Participants will learn how to use technology and media to effect positive change in their communities.

(2) Cultural leadership:

Through these projects, participants will examine how historical and cultural sites in their communities reflect their identity, traditions, society, religion, values, and patterns of behavior. They will participate in workshops and seminars to see how cultural heritage sites can contribute to economic development through tourism and urban renewal, and demonstrate respect for diverse cultural identities. The project will include a community service activity related to preservation of historic treasures and interpreting their importance for contemporary residents and visitors.

(3) Environmental issues:

Projects will focus on a shared environmental interest of the participating countries (e.g., use of natural resources, pollution, sustainable energy). Participants will complete projects that illustrate the issue through hands-on activities and community service. These projects will also include a review of the impact of public interest and government policies on the issue, as well as a comprehensive discussion of proposed solutions.

(4) Business and entrepreneurial skills:

These projects will offer intensive study of applied economics, practical business skills, entrepreneurship, and related ethics and leadership education. Participants will gain an understanding of how a business plan can enable them to make an idea reality, and how good business practices are not only ethically right but also lead to prosperity through the development of consumer trust, loyalty, and accountability.

Proposed Partner Countries and Regions:

ECA will accept proposals for either single-country or multi-country projects. We are particularly interested in receiving proposals for projects with the countries listed below. Proposals that target these countries will be considered more competitive under the review criterion, ''Quality of the program idea and program planning.'' A single-country project is a two-way exchange between the United States and a single partner country. With a multi-country project, participants from the partner countries should travel to the United States together; the American participants' exchange travel may be to just one or to all of the partner countries, depending on the applicant organization's program design and objectives. Applicants should present a rationale for their approach. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed. Organizations should consider current U.S. Department of State travel advisories when selecting the countries with which they would like to work.

Central and South America: Single country projects, excluding Bolivia, Ecuador, Nicaragua, Peru, and Venezuela, where the Bureau already has youth exchange programs underway. Proposals that outline a merit-based selection process designed to ensure the participation of diverse populations—including marginalized youth—will be considered more competitive under the review criterion, ''Support of diversity.''

Europe and Eurasia:

Ireland—Single country projects.

The Balkans—Single country projects.
Turkey/Greece/Cyprus—Multi-country projects for all three countries together.
Armenia/Azerbaijan—Two-country projects.
Minorities in Western and Central Europe—Multi-country projects.
Africa:
Rwanda—Single country projects.
Trans-Sahara/West Africa—Multi-country projects.
South and Central Asia:
India/Pakistan—U.S. participants travel to India for reciprocal exchange component.
Central Asia—Multi-country projects, excluding Uzbekistan.
Middle East/North Africa:
Israel/Arab World—Multi-country projects with Israel and two-four Arab countries (which may include the Palestinian Authority).
Multi-Regional:
France and Canada—Multi-country projects with these countries.

U.S. applicants must have the necessary capacity in the partner country through their own offices or a partner institution. The requisite capacity overseas includes the ability to organize substantive exchange activities for the American participants, provide follow-on activities, and handle the logistical and financial arrangements.

Applicants should propose the time period of the two exchanges, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient. The program should be no less than three weeks and up to four weeks in duration.

These two-way exchanges should involve the same communities in each country, as the second reciprocal exchange will help reinforce the relationships and program content developed during the first exchange. Project staff should help facilitate regular program-oriented communication among the exchange participants between the two exchanges.

The exchange participants will be high school students between the ages of 15 and 17 who have demonstrated leadership abilities in their schools and/or communities, and have at least one year of high school remaining after the competition of the exchange. The adult participants will be high school teachers or community leaders who work with youth. They will have a demonstrated interest in youth leadership and will be expected to remain in positions where they can continue to work with youth. The ratio of youth to adults should be between 5:1 and 10:1. Participants will be proficient in the English language.

Emerging Young Professionals

Program Contact: Curtis Huff, tel: 202–453–8159, e-mail: *HuffCE@state.gov.*

The *Emerging Young Professionals* program offers opportunities for young adults (approximately 22–35 years old) to participate in two-way exchanges of approximately three to four weeks or more in duration to develop their leadership skills and to increase mutual understanding between their countries and the United States. ECA is especially interested in engaging marginalized populations and women from both the U.S. and partner countries in the exchanges. Exchange projects should build participants' leadership skills, including how to conceptualize and develop projects to reach diverse citizenry, using clear objectives, solid management structures and evaluation feedback mechanisms for projects at the local level. Participants should be community leaders, political leaders, educators, and/or advocates for youth, or persons who show the capacity to become effective in those roles.

Projects should be two-way in purpose and implementation, with approximately equal numbers of participants traveling to and from the United States for approximately equal periods of time. Consistent with this approach, project plans should promote learning and teaching for participants from all countries in the project to promote mutual understanding and build individual and institutional partnerships that are likely to continue beyond the grant project. Proposals that clearly delineate salient objectives in measurable terms and plan activities in a sequence that will progressively lead to achieving those objectives, will be considered more competitive under the review criterion, ''Ability to achieve program objectives.''

Projects should be planned around one of the following themes:

(1) *Media technology and media literacy:* These projects should introduce participants to new technologies, such as weblogs, online videos, and social networking sites that enable people around the world to share information with each other. The projects should also address the challenges that both old and new media present to effective cross-cultural communication, and should provide training on how to analyze the messages of mass media and individual voices for accuracy or bias. Participants will learn how to use media to effect positive change in their communities.

(2) *Reconciliation and conflict management:* These projects should allow participants to experience creative approaches to managing conflict and promoting tolerance and diversity. These projects may offer descriptive learning opportunities, but they must include hands-on experiential learning opportunities, as well. Participants should practice different methods and observe professional practitioners.

(3) *Community service:* These projects should introduce participants to volunteerism and the ways in which different NGOs and charities give service to their communities. They should learn how the needs of a community are identified, how service organizations find their niches, how service projects are funded, and how they are organized.

(4) *Cultural diversity:* These projects should introduce participants to each other's cultural backgrounds that form the basis of individual and group identity, and engage them in learning how differences in culture can be turned into respect for diversity and tolerance in communities. When possible, participants should interact with diverse communities in the United States and in the partner country, to develop a joint volunteer project.

(5) *Environmental issues:* These projects should focus on a shared environmental issue of the participating countries (e.g., use of natural resources, pollution, sustainable energy, recycling). Participants should jointly examine a problem or group of issues, through study of public interest and government policy statements, and then participate in experiential learning exercises to build mutual approaches to the issue, and develop their own recommendations for addressing it.

(6) *Entrepreneurial and business management skills:* These projects should introduce participants to the identification of business opportunities, the writing of business plans, the calculation of risks, and the management of new businesses in order to maximize the probability of success.

Proposed Partner Countries and Regions:

ECA will consider proposals for either single-country or multi-country projects. We are particularly interested in receiving proposals for projects with the countries listed below. Proposals that target these countries will be considered more competitive under the review criterion ''Quality of the program idea and program planning.'' A single-country project is a two-way exchange between the United States and a single partner country. A multi-country project involves participants from more than one country coming to the United States together, and American participants

traveling to those countries. The Bureau prefers projects that will engage both Americans and international participants deeply enough that relationships will continue beyond the grant-funded activities. Competitive proposals will be those that demonstrate why any country or group of countries has been identified for a specific project and outline why the specific group of participants to be selected from that country / countries is the most effective group to achieve project objectives. Projects proposed under theme (2)—reconciliation and conflict management—must involve *at least two* countries that are currently in conflict (e.g., Ireland and Northern Ireland, Armenia and Azerbaijan, etc.) No guarantee is made or implied that grants will be awarded in all themes and for all countries listed. Organizations should consider current U.S. Department of State travel advisories when selecting the countries with which they would like to work.

Europe: Ireland; the Balkans; Turkey/Greece/Cyprus; the Caucasus.

Middle East/North Africa: Israel and two-four Arab countries (which may include the Palestinian Authority).

Africa (Trans-Sahara): Algeria, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Sudan, Tunisia.

East Asia/Pacific: Philippines, Thailand.

Emerging Cultural Leaders

Program Contact: Makaria Green, tel: 202–203–7518, e-mail: GreenMN@state.gov.

The *Emerging Cultural Leaders* program provides opportunities for aspiring artists (ages 25–35) and their mentors/teachers in the United States and in multiple countries around the world to participate in two-way exchanges, each three to four weeks in duration. Each project will explore a particular theme designed to influence the way young people view their own identity and how they express that identity through their artistic medium. Projects should focus on aspiring artists from under-served populations with limited exposure to foreign artists. Such projects should compare American approaches to an art form—performing, visual, literary—with those of a different cultural heritage, and draw from that comparison a better understanding of, and respect for, cultural diversity. Projects should include hands-on artistic creation as well as contextual learning. They must include physical exchanges of teachers and aspiring artists, and may also include distance or networked projects. An essential element of all projects will be to build mutual understanding and respect among the people of the United States and the people of the exchange partner countries.

The overarching goals are:

1. To articulate identity through artistic expression, gain respect for the identity and artistic expression of another culture;
2. To incorporate cultural awareness and respect in demonstration of leadership;
3. To foster continuing personal and institutional ties between participants and partner countries.

A successful project will equip participating artists and teachers with the understanding and leadership skills to be actively engaged in addressing issues of concern to their communities when they return home. During their exchange experience, participants should engage in a variety of activities such as workshops, community- and/or learning-based programs, seminars, and other activities designed to achieve the program's stated goals. We encourage exchange projects that require collaborative work across cultures, and that include a public presentation.

U.S. applicant organizations must have the necessary capacity in the partner country through their own overseas offices or a partner institution to carry out the project. The requisite capacity includes the ability to recruit and select participants in both the United States and the partner countries in close consultation with the relevant U.S. Embassies; organize substantive exchange activities in the participating countries; handle the logistical and financial arrangements; and implement follow-on alumni activities in which participants may locally apply what they learned during the exchange. While Bureau funds may be used to support public programming, long-standing ECA practice is that *Bureau funds are not to be used for the public presentation of art works in the United States,* including such costs as shipping, framing, installation, gallery rental, or security. Cost sharing provided by the grantee organization may be used for presentation costs in the United States and should be noted in the budget.

Proposals must describe a selection process for American and international participants and demonstrate how the participant group represents an under-served community. For example, an under-served community could be economically disadvantaged, geographically isolated or experience low literacy rates. Selected participants should demonstrate a commitment to leadership in their communities. If participants are not fluent in English, proposals should include provision for interpretation as necessary.

Applicants should identify which artistic fields will be included in the exchange and demonstrate how each part of the two-way exchange will accomplish the over-arching goals of this competition. Proposals might focus exclusively on an exchange in one field, such as dance. Alternatively, a more community based project could include artists from various artistic fields, as a well as a representative of a community arts organization. All projects must include an examination of cultural diversity and the arts as a means of community engagement, and educational outreach.

Proposed Partner Countries

ECA will accept proposals for either single-country or multi-country projects. We are particularly interested in receiving proposals for projects with the countries listed below. Proposals that target these countries will be considered more competitive under the review criterion, ''Quality of the program idea and program planning.'' A single-country project is a two-way exchange between the United States and a single partner country. With a multi-country project, participants from the partner countries should travel to the United States together; the American participants' exchange travel may be to just one or to all of the partner countries, depending on the applicant organization's program design and objectives. Applicants should present a rationale for their approach. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed. Organizations should consider current U.S. Department of State travel advisories when selecting the countries with which they would like to work.

East Asia and the Pacific:

- China (for minority communities in Western China).
- China (cross straits).

Western Hemisphere:

- Brazil, Guatemala, Honduras, Mexico, Paraguay.

Applicants should propose the period of the two exchange components and explain how together the exchange in each direction will accomplish project objectives. The exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient. Each exchange component should be no less than three weeks and up to four weeks in duration. Program development should begin in late summer 2008. Applicants are encouraged to include letters of support in their proposals.

II. Award Information:

Type of Award: Grant Agreement.

Fiscal Year Funds: FY–2008.

Approximate Total Funding: $5 million.

Approximate Number of Awards: 20–25.

Approximate Average Award: $250,000.

Floor of Award Range: Depending upon an organization's length of experience in conducting international exchanges, grants could be awarded for less than $60,000. See section III.3.a., below.

Ceiling of Award Range: $500,000

Anticipated Award Date: August 2008.

Anticipated Project Completion Date: No later than approximately 24 months after the start date of the grant.

Additional Information: As stipulated in the legislation, this is a competitive one-time grants program.

III. Eligibility Information

III.1. Eligible Applicants

Applications must be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

Organizations listed in the Department of State, Foreign Operations, and Related Programs Appropriation Act, 2008 (Division J, Pub.L. 100–161) under ''Educational and Cultural Exchange Programs—a competitive one-time grants program'' are encouraged to apply.

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Therefore, applicants should explain their experience in conducting international exchanges, and, if that experience is less than four years, should limit their proposed grant budgets to $60,000.

As directed by the Congress, ''The program shall be only for the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

(b.) *Technical Eligibility:* All proposals must comply with the following:

Eligible applicants may only submit ONE proposal (TOTAL) for ONE of the two competitions referenced in the Executive Summary Section of this document. If multiple proposals are received, from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process. In addition, applicants under this competition (ECA/PE/C–08-One-time-Comp.B) may only apply to administer one of the listed activities (total).

– Proposals requesting funding for infrastructure development activities, sometimes referred to as ''bricks and mortar support'' are not eligible for consideration under this competition and will be declared technically ineligible and will receive no further consideration in the review process.

– The Bureau does not support proposals limited to conferences or seminars (*i.e.,* one to fourteen day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

– No funding is available exclusively to send U.S. citizens to conferences or conference type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Please refer to the Proposal Submission Instruction (PSI) document for additional requirements.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package

Please contact the Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel 202–453–8176, fax 202–453–8169, *RossAR@state.gov.* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C–08–One-time-Comp.B located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instructions (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Coordinator Alice Ross, and refer to the Funding Opportunity Number ECA/PE/C–08–One-time-Comp.B located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at: *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation ECA/EC/ECD—SA–44, Room 734, 301 Fourth Street, SW., Washington, DC 20547; Telephone: (202) 401–9810; Fax: (202) 401–9809.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other instrument plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of impact):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) *Travel.* International and domestic airfare; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau-sponsored programs.

(2) *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC.*

(3) Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

Application Deadline Date: April 24, 2008.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard copy, via nationally recognized overnight delivery service (*e.g.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

IV.3f.1. Submitting Printed, Hard Copy Applications Explanation of Deadlines:

The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–08-One-time-Comp.B, Program Management, ECA/EX/PM, Room 534, 301 Fourth Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*). Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support.

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC, time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible. Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any essential attachments, in Microsoft Word and/or Excel on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Sections at the U.S. Embassies for their review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. *Quality of the program idea and program planning:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative and well developed, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. The program plan should adhere to the program overview and guidelines described above.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in participant selection and exchange program design and content.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including solid programming and responsible fiscal management. The Bureau will consider the past performance, including compliance with all reporting requirements for past Bureau grants.

5. *Program evaluation:* The proposal should include a plan to evaluate the program's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Please see section IV.3d.3. of this announcement for more information.

6. *Cost-effectiveness and cost-sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. The following additional requirements apply:

For exchanges involving the Palestinian Authority, West Bank, and Gaza:

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Curt Huff (tel. 202–453–8159; e-mail: *HuffCE@state.gov*) for additional information.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://fa.statebuy.state.gov.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

1.) A final program and financial report no more than 90 days after the expiration of the award;

2.) Interim program and financial reports after each program phase, as required in the Bureau grant agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, please contact:

Emerging Youth Leaders, Carolyn Lantz, Youth Programs Division, Tel: (202) 203–7505; E-mail: *LantzCS@state.gov.*

Emerging Young Professionals, Curtis Huff, Professional Programs, Tel: (202) 453–8159; E-mail: *HuffCE@state.gov.*

Emerging Cultural Leaders, Makaria Green, Cultural Programs Division, Tel: (202) 203–7518, E-mail: *GreenMN@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–08–One-time-Comp.B.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 19, 2008.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E8–6280 Filed 3–26–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6159]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals (RFGP): Congressionally Mandated—One-Time Grants Program for Academic Programs

Announcement Type: New Grant.

Funding Opportunity Number: ECA/A–08-One-time-Comp. A.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: April 24, 2008.

Executive Summary: This competition is one of two competitions that the Bureau of Educational and Cultural Affairs is conducting as directed in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div.J, Pub. L. 100–161) under ''Educational and Cultural Exchange Programs'' in support of a $10 million competitive one-time grants program. Applications must be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3). Total funding for this ''one-time grants program'' is $10 million. Of this amount, $5 million will be dedicated to this competition for Academic Programs. (A separate RFGP has been announced in the **Federal Register** for the remaining $5 million dedicated to Professional and Cultural Programs, reference number ECA/PE/C–08 One-time Comp. B.) Please note: The Bureau reserves the right to reallocate funds it has initially allocated to each of these two competitions, based on submissions received under each competition.

Applicants may only submit ONE PROPOSAL (TOTAL) TO ONE of the two competitions referenced above. In addition, applicants under this competition (ECA/A–08-One-time-Comp. A) may only apply to administer one of the listed activities (total). If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process.

Eligible applicants are strongly encouraged to read both RFGPs thoroughly, prior to developing and submitting proposals, to ensure that proposed activities are appropriate and responsive to the goals, objectives and criteria outlined in each of the solicitations.

As further directed by the Congress, ''The program shall be only for the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

The Office of Academic Programs of the Bureau of Educational and Cultural Affairs announces a competition for grants to support exchanges and build relationships between America and people of other countries. These projects are designed to engage non-traditional participants and underserved groups, including the economically disadvantaged in the U.S. and overseas. The activities are designed to complement on-going ECA exchange programs, and to focus on exchanges with the developing world, serving audiences who do not have access to other exchange programs. The concepts involve community college students, undergraduates, teachers and junior faculty.

The Bureau is interested in receiving proposals from organizations with a strong interest, thematic expertise, institutional commitment and a successful track-record in conducting international exchanges. We welcome proposals from organizations that have not previously received ECA funding. Organizations that have the expertise, interest and institutional commitment but lack experience of conducting exchanges, or, where relevant, lack overseas infrastructure, may wish to consider developing proposals based on consortia type relationships with more experienced, eligible organizations. Specifically, as stated in Section III.3. below, grants to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Background: The Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 100–161) under ''Educational and Cultural Exchange Programs'' includes $10 million ''for a competitive one-time grants program similar to proposals by both the House and Senate. In developing this competitive grants program, the Department of State is to be guided by criteria outlined in both the House Report 110–197 and Senate Report 110–128, including the directive to consult with the Appropriations Committees, prior to submission of a program plan.''

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY08.

Approximate Total Funding: $5 million.

Approximate Number of Awards: Please refer to the individual entries below for anticipated numbers of awards and funding levels.

Anticipated Award Date: August 1, 2008.

Anticipated Project Completion Date: September 30, 2009.

Additional Information: As stipulated in legislation, this is a competitive one-time-grants program.

The Office of Academic Programs will accept proposals for the following one-time special initiatives. For each of the activities listed below, Bureau emphasis is given to engaging participants from select geographic regions; however, ECA will consider well justified proposals which engage participants from other world regions. Further details on specific program responsibilities are included in the Project Objectives, Goals, and Implementation (POGI) document for each initiative. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing proposals. Please refer to the solicitation package for further instructions.

1. Study of the United States Thematic Institutes for Foreign Undergraduate Students.

The U.S. Department of State is dedicated to increasing its engagement with undergraduate students worldwide who demonstrate the potential to become leaders and who represent indigenous, disadvantaged, or underrepresented communities. ECA offers exchange programs for undergraduate students from underserved sectors of society that increase participants' knowledge and understanding of the United States. The Bureau is seeking detailed proposals for three different Study of the U.S. Thematic Institutes for Foreign Undergraduate Student Leaders under the themes of: (1) The Environment; (2) Entrepreneurship and; (3) New Media in Society. For each program, applicants must select one region and demonstrate the expertise to provide participants with a program that provides them with knowledge and experiences they can apply in their region when they return home.

Purpose: The purpose of the Study of the United States Thematic Institutes for Undergraduate Student Leaders is to provide outstanding first, second, and third-year undergraduate students with intensive and collaborative five-week academic programs on current developments in their respective fields of study, as well as broad exposure to U.S. society, and leadership development. Each program will include 20–23 undergraduate students whose major course of study or demonstrated interests are appropriate for the thematic focus of the institute.

Program Design: Each five-week institute should be a specially designed intensive academic program that creatively combines seminars, discussions, readings, debates, local site visits, and educational travel into a coherent whole. The institutes must not simply replicate existing or previous lectures, workshops, or group activities designed for American students.

Within this context, the institutes should provide practical skills development while also improving the participants' leadership skills. The academic program should include group discussions, training and exercises that focus on the essential attributes of leadership, teambuilding, collective problem-solving skills, effective communication, and management skills for diverse organizational settings.

In addition to providing academic study in a specific discipline and practical skills development, these institutes are intended to promote a better understanding of the United States. Participants will gain a deeper understanding of the history and evolution of U.S. society, culture, values and institutions.

During each program, participants will spend approximately five weeks at the host institution for the academic residency component, and approximately one week on an educational study tour, including two to three days in Washington, DC, at the conclusion of the institute.

The educational travel component should directly complement the academic program, and should allow participants to observe varied aspects of American life in cities and other sites of interest in the region around the host institution(s).

The program also should provide opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries. This should include a community service component, in which the students experience firsthand how not-for-profit organizations and volunteerism play key roles in American civil society.

Undergraduate student participants will be recruited and selected on the basis of academic merit and leadership potential by U.S. Embassy Public Affairs Sections or Fulbright Commissions in the students' home countries. Participants will come from non-elite backgrounds, from both rural and urban sectors, and with little or no prior experience in the U.S. or elsewhere outside their home country. It is anticipated that the selection of participants will reflect each region's geographic, institutional, ethnic, and gender diversity.

Institute Themes

(1) Study of the United States Institute on the Environment should provide participants insight into the history and evolution up to present time on the U.S. environmental movement, from local grassroots activism to federal government policies and regulation. The institute should address current issues in the field including, but not limited to, ecotourism, natural resource management, sustainable development/sustainable agricultural practices, and public-private partnerships for environmental action. Regions of emphasis: Central America and the Caribbean; or, Southeast Asia; or, Sub-Saharan Africa.

(2) Study of the United States Institute on Entrepreneurship should provide participants with an overview of U.S. economic and social development, especially as it relates to entrepreneurship, and current U.S. trends in small/local business development, and youth employment. Topics may include, but are not limited to, the importance of experimentation and innovation in entrepreneurship, strategic business planning, business leadership and decision making, and women and minorities in business and entrepreneurship. Regions of emphasis: Central America and the Caribbean; or, the Middle East.

(3) Study of the United States Institute on New Media in Society should provide participants with an overview

of the foundations of the free press in the United States, and the impact of new trends and technologies in journalism on U.S. society. Topics may include, but are not limited to, professional journalism and traditional media, new media and online journalism, and the role of ''citizen journalists,'' non-profit organizations, and think tanks in the mainstream press. Regions of emphasis: Central America and the Caribbean; or, the Middle East; or, Sub-Saharan Africa.

A total of one to three grants will be awarded to administer Thematic Institutes for Undergraduate Student Leaders. Applicant organizations may submit a proposal to administer one, two, or three institutes working with separate host institutions for each institute through sub-grant agreements. Note that individual institutions may not host more than one undergraduate student leader institute under the Thematic Institutes Program. Participating countries within regions will be determined by ECA, in consultation with Public Affairs Sections at U.S. embassies abroad. Proposals should demonstrate regional expertise. It is anticipated that the total amount of funding for administrative and program costs under the undergraduate student leaders category will be $1,050,000.

Approximate Number of Awards: 1–3.

Floor of Award Range: $350,000.

Ceiling of Award Range: $1,050,000.

Contact: Brendan Walsh *WalshBM@state.gov;* 202–453–8532.

2. Undergraduate Intensive English Language Study Program: The U.S. Department of State is dedicated to increasing its engagement with undergraduate students worldwide who demonstrate the potential to become student leaders and who represent indigenous, disadvantaged or underrepresented communities. ECA offers exchange programs for undergraduates from underserved sectors of society that increase participants' knowledge and understanding of the United States. This program will enroll foreign undergraduate students in eight-week intensive English language courses at colleges and universities in the United States, and provide them with an introduction to American institutions, society and culture. ECA expects to fund up to ten cohorts of 20 students each for a total of 200 students. Regions of emphasis: the Middle East, Southeast Asia, and Central America.

Purpose: The Undergraduate Intensive English Language Study Program will provide promising, first, second, and third-year undergraduate students from underserved disadvantaged sectors, who would not otherwise qualify for U.S. exchange opportunities based on English language ability, an opportunity to increase their English language skills through a substantive U.S. exchange experience, and thereby make them more competitive to participate in other U.S. government-sponsored exchanges and for later graduate admission to U.S. institutions.

Program Design: The program will consist of up to ten (10) separate programs lasting eight weeks. Each of these programs should provide participants with intensive English language training, including English for Academic Purposes, as well as the development of general reading, writing, speaking and listening skills, and the testing of those skills.

Student participants will be undergraduates and will be recruited and selected by U.S. Embassy Public Affairs Sections or Fulbright Commissions in the students' home countries. Participants will come from non-elite backgrounds, from both rural and urban sectors, and with little or no prior experience in the United States or elsewhere outside their home country. It is anticipated that the selection of participants will reflect each region's geographic, institutional, ethnic, and gender diversity. Most of the students selected will have a basic knowledge of the English language through formal study.

The grant recipient(s) will be expected to identify the participating U.S. colleges and universities that will host students in groups of no more than 20 each. In identifying the participating host institutions, the proposal should make clear why these institutions have been recommended, and how those institutions will specifically meet the purposes as outlined above.

It is anticipated that all program activities will take place between September 2008 and September 2009. At each campus program, it is essential that participants be placed in classes with students of various nationalities who are also attending these intensive English language programs. Students cannot be placed in study programs only with other speakers of their native language. Applicants should therefore design a program that will offer an academic residency component of eight weeks, the central element of which is an intensive English language training course (English for Academic Purposes), together with other instructional elements that will develop the participants' general reading, writing, speaking and listening skills. Provision should also be made for the testing of those skills.

The program also should provide opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries. This should include a community service component, in which the students experience firsthand how not-for-profit organizations and volunteerism play key roles in American civil society.

A total of one to five grants will be awarded for the administration of up to ten intensive English language study programs. Applicant organizations must propose to administer at minimum two cohorts of 20 students each and may propose to administer up to ten cohorts of 20 students each. Applicant organizations may propose to administer single-region or multi-region student cohorts but should provide a pedagogical rationale. ECA reserves the right to adjust the regional composition of student cohorts according to Bureau or program priorities. Participating countries within regions will be determined by ECA, in consultation with Public Affairs Sections at U.S. embassies abroad. Proposals should demonstrate regional expertise. It is anticipated that the total amount of funding for administrative and program costs will be $2,200,000.

Approximate Number of Awards: 1–5.

Floor of Award Range: $440,000.

Ceiling of Award Range: $2,200,000.

Contact: Victoria Augustine *AugustineVR@state.gov;* 202–453–8120.

3. Study Project for Secondary School Teachers.

The project will bring teachers to a U.S. university school of education for a semester to develop their teaching skills, increase their subject-matter expertise, learn U.S. methodologies such as student-centered and project-based learning for six to eight weeks in the summer of 2009.

Regions of emphasis: An applicant organization may submit a proposal to administer and implement a program for one or both of the following two groups of participants: (a) 35 teachers of English as a Foreign Language (EFL) or social studies from the Caribbean and Central America, or (b) 35 teachers of math or science from Sub-Saharan Africa.

Purpose: Program goals are (1) to contribute to the improvement of teaching in the participating countries; (2) to provide professional development opportunities in the U.S. for under-served populations, especially women,

to enhance their ability to contribute to national development; (3) to provide key professionals and social influencers with a deeper understanding of the U.S. as a basis for sharing their experiences of living in a diverse democratic society with students and teachers in their home communities; and (4) to develop productive and ongoing relationships encouraging mutual understanding between Americans and international teachers.

Program Design: Participants will be younger teaching professionals with five or more years of classroom experience and a TOEFL Paper Based Test score of at least 400 or the equivalent of approximately 97 on the Computer Based Test score. Countries within the regions will be determined by ECA, in consultation with Public Affairs Sections at U.S. embassies abroad. Proposals should demonstrate regional expertise. Applicant organizations will coordinate the recruitment and nomination of candidates in collaboration with the Public Affairs Sections of U.S. Embassies and the Bureau's program office. While in the U.S., participants will attend professional development seminars, workshops, and conferences on education-related and pedagogical topics, and be exposed to U.S. classrooms and schools. U.S. host universities will also provide opportunities for participants to share information about their home countries with U.S. audiences. The Bureau anticipates funding up to two grants for a total not to exceed $700,000.

Approximate Number of Awards: Up to 2.

Approximate Average Award: $350,000.

Ceiling of Award Range: $700,000.

Contact: Mary Ellen Sariti *saritime@state.gov;* 202–453–8877.

4. Junior Foreign Faculty Enhancement Program: This program, aimed at junior faculty in mathematics and science, will bring a minimum of 12 participants to the U.S. for a 6–8 week comprehensive academic exchange experience. Region of emphasis: Central America and the Caribbean.

Purpose: The purpose of the Faculty Enhancement Program is to provide young faculty who might not otherwise have the chance to come to the U.S. on an exchange program, the opportunity to upgrade their knowledge in their professional/academic fields and to enhance their pedagogical skills, as well as to gain exposure to U.S. society and culture.

Program Design: The faculty participants will come from the fields of mathematics and the natural and physical sciences. Grant applicants may propose a program that would be of broad interest and benefit to faculty from all these fields, or a program tailored to faculty from a specific field in mathematics or the sciences, such as environmental science, chemistry, biology, etc. In either case, the primary goals of the program are to provide junior, university-level instructors the opportunity to develop their knowledge of their specific fields, to become better teachers, to initiate or further academic research, and to promote contacts between their home and host institutions.

Participants will be junior faculty at public and private universities. The U.S. Embassy Public Affairs sections in the participants' home countries will conduct recruitment and selection. Participants in most cases will have a bachelor's degree or its equivalent in the field they teach; in some cases they may have a master's degree or other additional education beyond the bachelor's degree. Participants will likely teach at more than one institution in their home countries, and may hold other professional employment in addition to their teaching responsibilities. Participants will typically have little experience in the United States but will have a good command of the English language. All program activities should be conducted in English.

The program should provide a range of activities including: short-course instruction in pedagogy and subject area issues customized for the participants, auditing undergraduate or graduate courses offered during the summer term of 2009, attendance at academic and professional conferences or workshops, and/or working with a U.S. faculty mentor on individual research projects, and/or on improving their teaching skills.

The program also should provide opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries. This should include a community service component, in which the students experience firsthand how not-for-profit organizations and volunteerism play key roles in American civil society.

One grant of $300,000 will be awarded to administer this program. Estimated funding available is based on participation of 12 junior faculty in a 12-week U.S. university-based academic program. Applicant organizations proposing programs of less than 12 weeks should accommodate a larger number of participants. Because some countries operate on a different academic calendar, the 6–12 week program may take place during one of two periods: (1) between December 2008 and February 2009, or (2) between June 2009 and August 2009.

Number of Awards: 1.

Award Amount: $300,000.

Contact: Thomas Ingalls *ingallstd@state.gov;* (202) 453–8632.

5. U.S. Undergraduate Study and U.S. Faculty Development Abroad

The following three programs to support U.S. undergraduate study abroad will reach beyond the traditional participation in such programs to include non-traditional study abroad destinations and underserved populations both in the United States and overseas. Countries within the regions will be determined by ECA, in consultation with Public Affairs Sections at U.S. embassies abroad. Proposals should demonstrate regional expertise.

A. Capacity Building for Undergraduate Study Abroad

Purpose: The project will encourage the development of new undergraduate study abroad programs.

Program Design: Awards will support exploratory visits of U.S. faculty and/or study abroad administrators from accredited U.S. higher education institutions. Programs should focus on increasing the capacity of foreign institutions to host U.S. undergraduate students interested in pursuing quality academic programs in non-traditional study abroad destinations.

Regions of Emphasis: Sub-Saharan Africa, South America, Central America, Southeast Asia. The Bureau anticipates funding approximately three projects at levels not to exceed $75,000 with total Bureau funding not to exceed $225,000.

Approximate Number of Awards: 3.

Approximate Average Award: $75,000.

Ceiling of Award Range: $225,000.

Contact: Amy Forest *forestal@state.gov;* 202–453–8866.

B. Junior Faculty Development

Purpose: Awards will support efforts of accredited U.S. higher education institutions to develop exchanges for U.S. junior faculty, including faculty teaching foreign languages, to build their international skills, and through substantive travel visits become on-campus resources for students about study abroad programs.

Program Design: Awards will support visits by U.S. junior faculty, especially in foreign language teaching, from

accredited U.S. higher education institutions. Programs should focus on increasing the skills and ability of American junior faculty to teach foreign language and subject areas with an international component, to collaborate with foreign faculty and institutions, and upon return to the U.S. to counsel U.S. students about study abroad opportunities. Regions of emphasis: the Middle East and East Asia. The Bureau anticipates funding approximately up to four projects with total Bureau funding not to exceed $240,000.

Approximate Number of Awards: 4.

Approximate Average Award: $60,000.

Ceiling of Award Range: $240,000.

Contact: Amy Forest *forestal@state.gov;* 202–453–8866.

C. Community College Study Abroad

Purpose: This project aims to encourage greater participation of U.S. undergraduate community college students in study abroad programs.

Program Design: Awards will support the development of projects for U.S. students to study and to participate in practical training and/or service learning projects. Proposals in the fields of public health, agriculture, and tourism/hospitality are encouraged. Proposed student programs should complement participants' U.S. courses of study and contribute to their educational and degree goals. Programs should be designed to address the particular needs of community college students desiring to study abroad with reference both to cost and program duration, to ensure that programs are feasible and attractive to community college students. Regions of emphasis: Central and South America. The Bureau anticipates supporting one project, with Bureau costs not to exceed $350,000.

Approximate Number of Awards: 1.

Approximate Average Award: $350,000.

Ceiling of Award Range: $350,000.

Contact: Coleen Gatehouse *gatehousecn@state.gov;* 202–453–8887.

III. Eligibility Information

III.1. Eligible applicants: Applications must be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

Organizations listed in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, PUB. L. 100–161) under ''Educational and Cultural Exchange Programs—a competitive one-time grants program'' are encouraged to apply.

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed to that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: (a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

As directed by the Congress, ''The program shall be only for the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

(b) Technical Eligibility: All proposals must comply with the following:

—Eligible applicants may only submit ONE proposal (TOTAL) for ONE of the two competitions referenced in the Executive Summary Section of this document. In addition, applicants under this competition (ECA/A–08–One-time-Comp. A) may only apply to administer one of the listed activities (total). If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process.

—Proposals requesting funding for infrastructure development activities, sometimes referred to as ''bricks and mortar support'' are not eligible for consideration under this competition and will be declared technically ineligible and will receive no further consideration in the review process.

—The Bureau does not support proposals limited to conferences or seminars (i.e., one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

—No funding is available exclusively to send U.S. citizens to conferences or conference type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

—Please refer to the Proposal Submission Instruction (PSI) document for additional requirements.

IV. Application and Submission Information:

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information: Please refer to the contact information following each initiative description in this RFGP, and refer to Funding Opportunity Number ECA/A–08–One-time-Comp. A when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. The package also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government.

This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package containing the mandatory Proposal Submission Instructions (PSI) document and POGI guidelines for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to all Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

Please refer to the POGI guidelines for further information on issuance of DS–2019 forms to participants in these programs.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, Fax: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when

particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: i.e. sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements etc.

IV.3e. The following should be taken into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. Application Deadline and Methods of Submission:

Application Deadline Date: April 24, 2008.

Reference Number: ECA/A–08-One-time-Comp. A.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A–08-One-time-Comp. A, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2.—Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes. IV.3f.3.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the U.S. Embassy Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the Program Plan and Ability to Achieve Program Objectives:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Objectives should be reasonable, feasible, and

flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue, and program evaluation) and program content (orientation and wrap-up sessions, program meetings, and resource materials).

3. *Evaluation and Follow-Up:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the conclusion of the program. A draft survey questionnaire or other technique, plus a description of a methodology used to link outcomes to original project objectives, are strongly recommended. Proposals should also discuss provisions for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

4. *Cost-effectiveness/Cost-Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

5. *Institutional Capacity and Track Record:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants, as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the project's goals.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. The following additional requirements apply: For exchanges involving the Palestinian Authority, West Bank, and Gaza.

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Donna Ives at (202) 453–8097 or *IvesDA@state.gov* for additional information.

VI.2. Administrative and National Policy Requirements:

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements: The grantee organization must provide ECA with a hard copy original plus one copy of the final program and financial report no more than 90 days after the expiration of the award. Other reporting requirements are outlined in the accompanying POGI.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact the program officer designated at the end of each program description.

All correspondence with the Bureau concerning this RFGP should reference, ''Congressionally Mandated—One-time Grants Program—for Academic Programs (ECA/A–08–One-time-Comp. A).

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the

availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 19, 2008.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E8–6286 Filed 3–26–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6157]

Culturally Significant Objects Imported for Exhibition Determinations: Ernst Ludwig Kirchner: The Berlin ''Street Scenes''

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 Ernst Ludwig Kirchner: The Berlin ''Street Scenes'', 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 Museum of Modern Art, New York, New York, from on or about August 3, 2008, until on or about November 10, 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 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: March 21, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–6270 Filed 3–26–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6156]

Culturally Significant Objects Imported for Exhibition Determinations: ''Giinaquq—Like A Face''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition ''Giinaquq—Like A Face,'' 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 Alutiiq Museum and Archaeological Repository, Kodiak, AK, from on or about May 23, 2008, until on or about September 28, 2008; Anchorage Museum of History and Art, Anchorage, AK, from on or about October 10, 2008, until on or about January 5, 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 Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 20, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–6273 Filed 3–26–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6155]

Culturally Significant Objects Imported for Exhibition Determinations: ''Piet Mondrian in Pittsburgh''

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 ''Piet Mondrian in Pittsburgh,'' 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 Andy Warhol Museum, Pittsburgh, Pennsylvania, from on or about May 3, 2008, until on or about August 31, 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 Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 21, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–6271 Filed 3–26–08; 8:45 am]

BILLING CODE 4710–05–P

Federal Register

Thursday,
March 27, 2008

Part II

Environmental Protection Agency

40 CFR Parts 50 and 58

National Ambient Air Quality Standards for Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 58

[EPA–HQ–OAR–2005–0172; FRL–8544–3]

RIN 2060–AN24

National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Based on its review of the air quality criteria for ozone (O_3) and related photochemical oxidants and national ambient air quality standards (NAAQS) for O_3, EPA is making revisions to the primary and secondary NAAQS for O_3 to provide requisite protection of public health and welfare, respectively. With regard to the primary standard for O_3, EPA is revising the level of the 8-hour standard to 0.075 parts per million (ppm), expressed to three decimal places. With regard to the secondary standard for O_3, EPA is revising the current 8-hour standard by making it identical to the revised primary standard. EPA is also making conforming changes to the Air Quality Index (AQI) for O_3, setting an AQI value of 100 equal to 0.075 ppm, 8-hour average, and making proportional changes to the AQI values of 50, 150 and 200.

DATES: This final rule is effective on May 27, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0172. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742. The telephone number for the Public Reading Room is 202–566–1744.

FOR FURTHER INFORMATION CONTACT: Dr. David J. McKee, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504–06, Research Triangle Park, NC 27711; *telephone:* 919–541–5288; *fax:* 919–541–0237; *e-mail: mckee.dave@epa.gov*.

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I. Background

A. Summary of Revisions to the O_3 NAAQS

Based on its review of the air quality criteria for O_3 and related photochemical oxidants and national ambient air quality standards (NAAQS) for O_3, EPA is making revisions to the primary and secondary NAAQS for O_3 to provide protection of public health and welfare, respectively, that is appropriate under section 109, and is making corresponding revisions in data handling conventions for O_3.

With regard to the primary standard for O_3, EPA is revising the level of the 8-hour standard to a level of 0.075 parts per million (ppm), to provide increased protection for children and other ''at risk'' populations against an array of O_3-related adverse health effects that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity including emergency department visits and hospital admissions for respiratory causes, and possibly cardiovascular-related morbidity as well as total nonaccidental and cardiorespiratory mortality. EPA is specifying the level of the primary standard to the nearest thousandth ppm.

With regard to the secondary standard for O_3, EPA is revising the standard by making it identical to the revised primary standard.

B. Legislative Requirements

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list ''air pollutants'' emissions of which ''in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare,'' whose ''presence * * * in the ambient air results from numerous or diverse mobile or stationary sources,'' and for which the Administrator plans to issue air quality criteria, and to issue air quality criteria for those that are listed. Air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air, in varying quantities * * *.'' Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants listed under section 108. Section 109(b)(1) defines a primary standard as one ''the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' [1] A secondary standard, as defined in section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.'' [2]

The requirement that primary standards provide an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA*, 647 F.2d 1130, 1154 (DC Cir 1980), *cert. denied*, 449 U.S. 1042 (1980); *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1186 (DC Cir. 1981), *cert. denied*, 455 U.S. 1034 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The CAA does not require the Administrator to establish a primary NAAQS at a zero-risk level or at background concentration levels, *see Lead Industries Association* v. *EPA*, 647 F.2d at 1156 n. 51, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA*, 647 F.2d at 1161–62. In addressing the requirement for an adequate margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the population(s) at risk, and the kind and degree of the uncertainties that must be addressed.

In setting standards that are ''requisite'' to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. *Whitman* v. *America Trucking Associations*, 531 U.S. 457, 473. Further the Supreme Court ruled that ''[t]he text of § 109(b), interpreted in its statutory and historical context and with appreciation for its importance to the CAA as a whole, unambiguously bars cost considerations from the NAAQS–setting process * * *'' *Id.* at 472.[3]

Section 109(d)(1) of the CAA requires that ''not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards * * * and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 108 and [109(b)].'' Section 109(d)(2) requires that an independent scientific review committee ''shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate under section 108 and [section 109(b)].'' This independent review function is performed by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board.

C. Review of Air Quality Criteria and Standards for O_3

Ground-level O_3 is formed from biogenic and anthropogenic precursor emissions. Naturally occurring O_3 in the troposphere can result from biogenic organic precursors reacting with naturally occurring nitrogen oxides (NO_X) and by stratospheric O_3 intrusion into the troposphere. Anthropogenic precursors of O_3, specifically NO_X and volatile organic compounds (VOC), originate from a wide variety of stationary and mobile sources. Ambient O_3 concentrations produced by these emissions are directly affected by temperature, solar radiation, wind speed and other meteorological factors.

The last review of the O_3 NAAQS was completed on July 18, 1997, based on the 1996 O_3 Air Quality Criteria Document (EPA, 1996a) and 1996 O_3 Staff Paper (EPA, 1996b). EPA revised the primary and secondary O_3 standards on the basis of the then latest scientific evidence linking exposures to ambient O_3 to adverse health and welfare effects at levels allowed by the 1-hour average standards (62 FR 38856). The O_3 standards were revised by replacing the existing primary 1-hour average standard with an 8-hour average O_3 standard set at a level of 0.08 ppm, which is equivalent to 0.084 ppm using the standard rounding conventions. The form of the primary standard was changed to the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years. The secondary O_3 standard was changed by making it identical in all respects to the revised primary standard.

EPA initiated this current review in September 2000 with a call for information (65 FR 57810) for the development of a revised Air Quality

[1] The legislative history of section 109 indicates that a primary standard is to be set at ''the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population,'' and that for this purpose ''reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group'' [S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970)].

[2] Welfare effects as defined in section 302(h) (42 U.S.C. 7602(h)) include, but are not limited to, ''effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

[3] In considering whether the CAA allowed for economic considerations to play a role in the promulgation of the NAAQS, the Supreme Court rejected arguments that because many more factors than air pollution might affect public health, EPA should consider compliance costs that produce health losses in setting the NAAQS. 531 U.S. at 466. Thus, EPA may not take into account possible public health impacts from the economic cost of implementation. *Id.*

Criteria Document for O_3 and Other Photochemical Oxidants (henceforth the ''Criteria Document''). A project work plan (EPA, 2002) for the preparation of the Criteria Document was released in November 2002 for CASAC O_3 Panel [4] (henceforth, ''CASAC Panel'') and public review. EPA held a series of workshops in mid-2003 on several draft chapters of the Criteria Document to obtain broad input from the relevant scientific communities. These workshops helped to inform the preparation of the first draft Criteria Document (EPA, 2005a), which was released for CASAC Panel and public review on January 31, 2005; a CASAC Panel meeting was held on May 4–5, 2005 to review the first draft Criteria Document. A second draft Criteria Document (EPA, 2005b) was released for CASAC Panel and public review on August 31, 2005, and was discussed along with a first draft Staff Paper (EPA, 2005c) at a CASAC Panel meeting held on December 6–8, 2005. In a February 16, 2006 letter to the Administrator, the CASAC Panel offered final comments on all chapters of the Criteria Document (Henderson, 2006a), and the final Criteria Document (EPA, 2006a) was released on March 21, 2006. In a June 8, 2006 letter (Henderson, 2006b) to the Administrator, the CASAC Panel offered additional advice to the Agency concerning chapter 8 of the final Criteria Document (Integrative Synthesis) to help inform the second draft Staff Paper.

A second draft Staff Paper (EPA, 2006b) was released on July 17, 2006 and reviewed by the CASAC Panel on August 24 and 25, 2006. In an October 24, 2006 letter to the Administrator, CASAC Panel provided advice and recommendations to the Agency concerning the second draft Staff Paper (Henderson, 2006c). A final Staff Paper (EPA, 2007a) was released on January 31, 2007. Around the time of the release of the final Staff Paper in January 2007, EPA discovered a small error in the exposure model that when corrected resulted in slight increases in the human exposure estimates. Since the exposure estimates are an input to the lung function portion of the health risk assessment, this correction also resulted in slight increases in the lung function risk estimates as well. The exposure and risk estimates discussed in this final rule reflect the corrected estimates, and thus are slightly different than the exposure and risk estimates cited in the January 31, 2007 Staff Paper.[5] In a March 26, 2007 letter (Henderson, 2007), the CASAC Panel offered additional advice to the Administrator with regard to recommendations and revisions to the primary and secondary O_3 NAAQS.

The schedule for completion of this review has been governed by a consent decree resolving a lawsuit filed in March 2003 by a group of plaintiffs representing national environmental and public health organizations, alleging that EPA had failed to complete the current review within the period provided by statute.[6] The modified consent decree that currently governs this review provides that EPA sign for publication notices of proposed and final rulemaking concerning its review of the O_3 NAAQS no later than June 20, 2007 and March 12, 2008, respectively. The proposed decision (henceforth ''proposal'') was signed on June 20, 2007 and published in the **Federal Register** on July 11, 2007.

A large number of comments were received from various commenters on the proposed revisions to the O_3 NAAQS. Significant issues raised in the public comments are discussed throughout the preamble of this final action. A comprehensive summary of all significant comments, along with EPA's responses (henceforth ''Response to Comments''), can be found in the docket for this rulemaking.

Various commenters have referred to and discussed a number of new scientific studies on the health effects of O_3 that had been published recently and therefore were not included in the Criteria Document (EPA, 2006a, henceforth ''Criteria Document).[7] EPA has provisionally considered any significant ''new'' studies, including those submitted during the public comment period. The purpose of this effort was to ensure that the Administrator was fully aware of the ''new'' science before making a final decision on whether to revise the current O_3 NAAQS. EPA provisionally considered these studies to place their results in the context of the findings of the Criteria Document.

As in prior NAAQS reviews, EPA is basing its decision in this review on studies and related information included in the Criteria Document and Staff Paper, which have undergone CASAC and public review. The studies assessed in the Criteria Document, and the integration of the scientific evidence presented in that document, have undergone extensive critical review by EPA, CASAC, and the public during the development of the Criteria Document. The rigor of that review makes these studies, and their integrative assessment, the most reliable source of scientific information on which to base decisions on the NAAQS, decisions that all parties recognize as of great import. NAAQS decisions can have profound impacts on public health and welfare, and NAAQS decisions should be based on studies that have been rigorously assessed in an integrative manner not only by EPA but also by the statutorily mandated independent advisory committee, as well as the public review that accompanies this process. As described above, EPA's provisional consideration of these studies did not and could not provide that kind of in-depth critical review.

This decision is consistent with EPA's practice in prior NAAQS reviews. Since the 1970 amendments, the EPA has taken the view that NAAQS decisions are to be based on scientific studies and related information that have been assessed as a part of the pertinent air quality criteria, and has consistently followed this approach. See 71 FR 61144, 61148 (October 17, 2006) (final decision on review of PM NAAQS) for a detailed discussion of this issue and EPA's past practice.

As discussed in EPA's 1993 decision not to revise the NAAQS for O_3 ''new'' studies may sometimes be of such significance that it is appropriate to delay a decision on revision of a NAAQS and to supplement the pertinent air quality criteria so the studies can be taken into account (58 FR at 13013–13014, March 9, 1993). In the present case, EPA's provisional consideration of ''new'' studies concludes that, taken in context, the ''new'' information and findings do not materially change any of the broad scientific conclusions regarding the health effects of O_3 exposure made in the Criteria Document. For this reason, reopening the air quality criteria review would not be warranted even if there were time to do so under the court order

[4] The CASAC O_3 Review Panel includes the seven members of the chartered CASAC, supplemented by fifteen subject-matter experts appointed by the Administrator to provide additional scientific expertise relevant to this review of the O_3 NAAQS.

[5] EPA made available corrected versions of the final Staff Paper (EPA, 2007b, henceforth, ''Staff Paper'') and the human exposure and health risk assessment technical support documents on July 31, 2007 on the EPA Web site *http://www.epa.gov/ttn/naaqs*.

[6] *American Lung Association* v. *Whitman* (No. 1:03CV00778, D.D.C. 2003).

[7] For ease of reference, these studies will be referred to as ''new'' studies or ''new'' science, using quotation marks around the word new. Referring to studies that were published too recently to have been included in the 2004 Criteria Document as ''new'' studies is intended to clearly differentiate such studies from those that have been published since the last review and are included in the 2004 Criteria Document (these studies are sometimes referred to as new (without quotation marks) or more recent studies, to indicate that they were not included in the 1996 Criteria Document and thus are newly available in this review.

governing the schedule for this rulemaking. Accordingly, EPA is basing the final decisions in this review on the studies and related information included in the O_3 air quality criteria that have undergone CASAC and public review. EPA will consider the newly published studies for purposes of decision making in the next periodic review of the O_3 NAAQS, which will provide the opportunity to fully assess them through a more rigorous review process involving EPA, CASAC, and the public. Further discussion of these ''new'' studies can be found in the Response to Comments document.

This action presents the Administrator's final decisions on the review of the current primary and secondary O_3 standards. Throughout this preamble a number of conclusions, findings, and determinations made by the Administrator are noted. They identify the reasoning that supports this final decision and are intended to be final and conclusive.

D. Summary of Proposed Revisions to the O_3 NAAQS

For reasons discussed in the proposal, the Administrator proposed to revise the current primary and secondary O_3 standards. With regard to the primary O_3 standard, the Administrator proposed to revise the level of the 8-hour O_3 standard to a level within the range of 0.070 ppm to 0.075 ppm, based on a 3-year average of the fourth-highest maximum 8-hour average concentration. Related revisions for O_3 data handling conventions and for the reference method for monitoring O_3 were also proposed. These revisions were proposed to provide increased protection for children and other ''at risk'' populations against an array of O_3-related adverse health effects that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity, including emergency department visits and hospital admissions for respiratory causes, and possibly cardiovascular-related morbidity, as well as total nonaccidental and cardiorespiratory mortality. EPA also proposed to specify the level of the primary standard to the nearest thousandth ppm. EPA solicited comment on alternative levels down to 0.060 ppm and up to and including retaining the current 8-hour standard of 0.08 ppm (effectively 0.084 ppm using current data rounding conventions).

With regard to the secondary standard for O_3, EPA proposed to revise the current 8-hour standard with one of two options to provide increased protection against O_3-related adverse impacts on vegetation and forested ecosystems. One option was to replace the current standard with a cumulative, seasonal standard expressed as an index of the annual sum of weighted hourly concentrations, cumulated over 12 hours per day (8 am to 8 pm) during the consecutive 3-month period within the O_3 season with the maximum index value, set at a level within the range of 7 to 21 ppm-hours. The other option was to make the secondary standard identical to the proposed primary 8-hour standard. EPA solicited comment on specifying a cumulative, seasonal standard in terms of a 3-year average of the annual sums of weighted hourly concentrations; on the range of alternative 8-hour standard levels for which comment was being solicited for the primary standard, including retaining the current secondary standard, which is identical to the current primary standard; and on an alternative approach to setting a cumulative, seasonal secondary standard.

E. Organization and Approach to Final O_3 NAAQS Decisions

This action presents the Administrator's final decisions regarding the need to revise the current primary and secondary O_3 standards. Revisions to the primary standard for O_3 are addressed below in section II, and a discussion on communication of public health information regarding revisions to the primary O_3 standard is presented in section III. The secondary O_3 standard is addressed below in section IV. Related data completeness and data handling and rounding conventions are addressed in section V, and federal reference methods for monitoring O_3 are addressed below in section VI. Future implementation steps and related control requirements are discussed in section VII. A discussion of statutory and executive order reviews is provided in section VIII.

Today's final decisions are based on a thorough review in the Criteria Document of scientific information on known and potential human health and welfare effects associated with exposure to O_3 at levels typically found in the ambient air. These final decisions also take into account: (1) Staff assessments in the Staff Paper of the most policy-relevant information in the Criteria Document as well as quantitative exposure and risk assessments based on that information; (2) CASAC Panel advice and recommendations, as reflected in its letters to the Administrator, its discussions of drafts of the Criteria Document and Staff Paper at public meetings, and separate written comments prepared by individual members of the CASAC Panel; (3) public comments received during the development of these documents, either in connection with CASAC Panel meetings or separately; and (4) extensive public comments received on the proposed rulemaking.

II. Rationale for Final Decisions on the Primary O_3 Standard

A. Introduction

1. Overview

This section presents the Administrator's final decisions regarding the need to revise the current primary O_3 NAAQS, and the appropriate revision to the level of the 8-hour standard. As discussed more fully below, the rationale for the final decision on appropriate revisions to the primary O_3 NAAQS includes consideration of: (1) Evidence of health effects related to short-term exposures to O_3; (2) insights gained from quantitative exposure and health risk assessments; (3) public and CASAC Panel comments received during the development and review of the Criteria Document, Staff Paper, exposure and risk assessments and on the proposal notice.

In developing this rationale, EPA has drawn upon an integrative synthesis of the entire body of evidence [8] relevant to examining associations between exposure to ambient O_3 and a broad range of health endpoints (EPA, 2006a, Chapter 8), focusing on those health endpoints for which the Criteria Document concluded that the associations are causal or likely to be causal. This body of evidence includes hundreds of studies conducted in many countries around the world. In its assessment of the evidence judged to be most relevant to decisions on elements of the primary O_3 standards, EPA has placed greater weight on U.S. and Canadian studies, since studies conducted in other countries may well reflect different demographic and air pollution characteristics.

As discussed below, a significant amount of new research has been conducted since the last review, with important new information coming from epidemiological, toxicological, controlled human exposure, and dosimetric studies. Moreover, the newly available research studies evaluated in the Criteria Document have undergone intensive scrutiny through multiple layers of peer review, with extended

[8] The word ''evidence'' is used in this notice to refer to studies that provide information relevant to an area of inquiry, which can include studies that report positive or negative results or that provide interpretative information.

opportunities for review and comment by CASAC Panel and the public. As with virtually any policy-relevant scientific research, there is uncertainty in the characterization of health effects attributable to exposure to ambient O_3, most generally with regard to whether observed health effects and associations are causal or likely causal in nature and, if so, the certainty of causal associations at various exposure levels. While important uncertainties remain, the review of the health effects information has been extensive and deliberate. In the judgment of the Administrator, this intensive evaluation of the scientific evidence provides an adequate basis for regulatory decision making at this time. This review also provides important input to EPA's research plan for improving our future understanding of the relationships between exposures to ambient O_3 and health effects.

The health effects information and quantitative exposure and health risk assessment were summarized in sections II.A and II.B of the proposal (72 FR at 37824–37862) and are only briefly outlined below in sections II.A.2 and II.A.3. Subsequent sections of this preamble provide a more complete discussion of the Administrator's rationale, in light of key issues raised in public comments, for concluding that the current standard is not requisite to protect public health with an adequate margin of safety, and it is appropriate to revise the current primary O_3 standards to provide additional public health protection (section II.B), as well as a more complete discussion of the Administrator's rationale for retaining or revising the specific elements of the primary O_3 standards (section II.C), namely the indicator (section II.C.1); averaging time (section II.C.2); form (section II.C.3); and level (section II.C.4). A summary of the final decisions on revisions to the primary O_3 standards is presented in section II.D.

2. Overview of Health Effects

This section outlines the information presented in Section II.A of the proposal on known or potential effects on public health which may be expected from the presence of O_3 in ambient air. The decision in the last review focused primarily on evidence from short-term (e.g., 1 to 3 hours) and prolonged (6 to 8 hours) controlled-exposure studies reporting lung function decrements, respiratory symptoms, and respiratory inflammation in humans, as well as epidemiology studies reporting excess hospital admissions and emergency department visits for respiratory causes. The Criteria Document prepared for this review emphasizes a large number of epidemiological studies published since the last review with these and additional health endpoints, including the effects of acute (short-term and prolonged) and chronic exposures to O_3 on lung function decrements and enhanced respiratory symptoms in asthmatic individuals, school absences, and premature mortality. It also emphasizes important new information from toxicology, dosimetry, and controlled human exposure studies. Highlights of the evidence include:

(1) Two new controlled human-exposure studies are now available that examine respiratory effects associated with prolonged O_3 exposures at levels at and below 0.080 ppm, which was the lowest exposure level that had been examined in the last review.

(2) Numerous recent controlled human-exposure studies have examined indicators of O_3-induced inflammatory response in both the upper respiratory tract (URT) and lower respiratory tract (LRT), while other studies have examined changes in host defense capability following O_3 exposure of healthy young adults and increased airway responsiveness to allergens in subjects with allergic asthma and allergic rhinitis exposed to O_3.

(3) New evidence from controlled human exposure studies showing that asthmatics have greater respiratory-related physiological responses than healthy subjects and new evidence from epidemiological studies showing associations between O_3 exposure and lung function and respiratory symptom responses; these findings differ from the presumption in the last review that people with asthma had generally the same magnitude of respiratory responses to O_3 as those experienced by healthy individuals.

(4) Animal toxicology studies provide new information regarding potential mechanisms of action, increased susceptibility to respiratory infection, and biological plausibility of acute effects as well as chronic, irreversible respiratory damage observed in animals.

(5) Numerous epidemiological studies published during the past decade offer added evidence of associations between acute ambient O_3 exposures and lung function decrements and respiratory symptoms in physically active healthy subjects and asthmatic subjects, as well as new evidence regarding additional health endpoints, including relationships between ambient O_3 concentrations and school absenteeism and between ambient O_3 and cardiac-related physiological endpoints.

(6) Several additional studies have been published over the last decade examining the temporal associations between acute O_3 exposures and both emergency department visits for respiratory diseases and respiratory-related hospital admissions.

(7) A large number of newly available epidemiological studies have examined the effects of acute exposure to PM and O_3 on premature mortality, notably including large multi-city studies that provide much more robust information than was available in the last review, as well as recent meta-analyses that have evaluated potential sources of heterogeneity in O_3-mortality associations.

Section II.A of the proposal provides a detailed summary of key information contained in the Criteria Document (chapters 4–8) and in the Staff Paper (chapter 3), on the known and potential effects of O_3 exposure and information on the effects of O_3 exposure in combination with other pollutants that are routinely present in the ambient air (72 FR 37824–37851). The information there summarizes:

(1) New information available on potential mechanisms for morbidity and mortality effects associated with exposure to O_3, including potential mechanisms or pathways related to direct effects on the respiratory system, systemic effects that are secondary to effects in the respiratory system (e.g., cardiovascular effects);

(2) The nature of effects that have been associated directly with exposure to O_3 or indirectly with the presence of O_3 in ambient air, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency department visits), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health;

(3) An integrative interpretation of the health effects evidence, focusing on the biological plausibility and coherence of the evidence and key issues raised in interpreting epidemiological studies, along with supporting evidence from experimental (e.g., dosimetric and toxicological) studies as well as the limitations of the evidence; and

(4) Considerations in characterizing the public health impact of O_3, including the identification of sensitive and vulnerable subpopulations that are potentially at risk to such effects, including active people, people with pre-existing lung and heart diseases, children and older adults, and people with increased responsiveness to O_3.

3. Overview of Human Exposure and Health Risk Assessments

To put judgments about health effects that are adverse for individuals into a broader public health context, EPA developed and applied models to estimate human exposures and health risks. This broader public health context included consideration of the size of particular population groups at risk for various effects, the likelihood that exposures of concern would occur for individuals in such groups under varying air quality scenarios, estimates of the number of people likely to experience O_3-related effects, the variability in estimated exposures and risks, and the kind and degree of uncertainties inherent in assessing the exposures and risks involved.

As discussed in more detail in section II.B of the proposal, there are a number of important uncertainties that affect the exposure and health risk estimates. It is also important to note that there have been significant improvements since the last review in both the exposure and health risk models. The CASAC Panel expressed the view that the exposure analysis represents a state-of-the-art modeling approach and that the health risk assessment was ''well done, balanced and reasonably communicated'' (Henderson, 2006c).

In modeling exposures and health risks associated with just meeting the current and alternative O_3 standards, EPA simulated air quality just meeting these standards based on O_3 air quality patterns in several recent years and on how the shape of the O_3 air quality distributions has changed over time based on historical trends in monitored O_3 air quality data. As discussed in the proposal notice and in the Staff Paper (section 4.5.8), recent O_3 air quality distributions were statistically adjusted to simulate just meeting the current and selected alternative standards. Specifically, the exposure and risk assessment included estimates for a recent year of air quality and for air quality adjusted to simulate just meeting the current and alternative standards based on O_3 season data from a recent three-year period (2002–2004). The O_3 season in each area included the period of the year for which routine hourly O_3 monitoring data are available. Typically this period spans from March or April through September or October, although in some areas it includes the entire year. Three years were modeled to reflect the substantial year-to-year variability that occurs in O_3 levels and related meteorological conditions, and because the standard is specified in terms of a three-year period. The year-to-year variability observed in O_3 levels is due to a combination of different weather patterns and the variation in emissions of O_3 precursors. Nationally, 2002 was a relatively high year with respect to the 4th highest daily maximum 8-hour O_3 levels observed in urban areas across the U.S. (see Staff Paper, Figure 2–16), with the mean of the distribution of annual 4th highest daily maximum 8-hour O_3 levels for urban monitors nationwide being in the upper third among the years 1990 through 2004. In contrast, on a national basis, 2004 was the lowest year on record with respect to the mean of the distribution of annual 4th highest daily maximum 8-hour O_3 levels for this same 15 year period. The 4th highest daily maximum 8-hour levels observed in most, but not all of the 12 urban areas included in the exposure and risk assessment, were relatively low in 2004 compared to other recent years. The 4th highest daily maximum 8-hour O_3 levels observed in 2003 in the 12 urban areas and nationally generally were between those observed in 2002 and 2004. As a result of the variability in air quality, the exposure and risk estimates associated with just meeting the current or any alternative standard also will vary depending on the year chosen for the analysis. Thus, exposure and risk estimates based on 2002 air quality generally show relatively higher numbers of children affected and the estimates based on 2004 air quality generally show relatively fewer numbers of children affected.

These simulations do not reflect any consideration of specific control programs or strategies designed to achieve the reductions in emissions required to meet the specified standards. Further, these simulations do not represent predictions of when, whether, or how areas might meet the specified standards.[9] Instead these simulations represent a projection of the kind of air quality levels that would be likely to occur in areas just attaining various alternative standards, when historical patterns of air quality, reflecting averages over many areas, are applied in the urban areas examined.

a. Exposure Analyses

As discussed in section II.B.1 of the proposal, EPA conducted human exposure analyses using a simulation model to estimate O_3 exposures for the general population, school age children (ages 5–18), and school age children with asthma living in 12 U.S. metropolitan areas representing different regions of the country where the current 8-hour O_3 standard is not met. The emphasis on children reflected the finding of the last review that children are an important at-risk group. Exposure estimates were developed using a probabilistic exposure model that is designed to explicitly model the numerous sources of variability that affect people's exposures. This exposure assessment is more fully described and presented in the Staff Paper and in a technical support document, *Ozone Population Exposure Analysis for Selected Urban Areas* (EPA, 2007c; henceforth ''Exposure Analysis TSD''). As noted in the proposal, the scope and methodology for this exposure assessment were developed over the last few years with considerable input from the CASAC Panel and the public.

As discussed in the proposal notice and in greater detail in the Staff Paper (chapter 4) and Exposure Analysis TSD, EPA recognized that there are many sources of variability and uncertainty inherent in the input to this assessment and that there was uncertainty in the resulting O_3 exposure estimates. In EPA's judgment, the most important uncertainties affecting the exposure estimates are related to the modeling of human activity patterns over an O_3 season, the modeling of variations in ambient concentrations near roadways, and the modeling of air exchange rates that affect the amount of O_3 that penetrates indoors. Another important uncertainty that affects the estimation of how many exposures are associated with moderate or greater exertion is the characterization of energy expenditure for children engaged in various activities. As discussed in more detail in the Staff Paper (section 4.3.4.7), the uncertainty in energy expenditure values carries over to the uncertainty of the modeled breathing rates, which are important since they are used to classify exposures occurring at moderate or greater exertion. These are the relevant exposures since O_3-related effects observed in clinical studies only are observed when individuals are engaged in some form of exercise. The uncertainties in the exposure model inputs and the estimated exposures have been assessed using quantitative uncertainty and sensitivity analyses. Details are discussed in the Staff Paper (section 4.6) and in a technical memorandum describing the exposure modeling uncertainty analysis (Langstaff, 2007).

The exposure assessment, which provided estimates of the number of people exposed to different levels of

[9] For informational purposes only, modeling that projects how areas might attain alternative standards in a future year as a result of Federal, State, local, and Tribal efforts is presented in the final Regulatory Impact Analysis being prepared in connection with this decision.

ambient O_3 while at elevated exertion [10], served two purposes. First, the entire range of modeled personal exposures to ambient O_3 was an essential input to the portion of the health risk assessment based on exposure-response functions from controlled human exposure studies, discussed in the next section. Second, estimates of personal exposures to ambient O_3 concentrations at and above specified benchmark levels while at elevated exertion provided some perspective on the public health impacts of health effects that we cannot currently evaluate in quantitative risk assessments but that may occur at current air quality levels, and the extent to which such impacts might be reduced by meeting the current and alternative standards. In the proposal, we referred to exposures at and above these benchmark levels while at elevated exertion as ''exposures of concern.''

Based on the observation from the exposure analyses conducted in the prior review that children represented the population subgroup with the greatest exposure to ambient O_3, EPA chose to model 8-hour exposures at elevated exertion for all school age children, and separately for asthmatic school age children, as well as for the general population in the current exposure assessment. While outdoor workers and other adults who engage in moderate or greater exertion for prolonged periods while outdoors during the day in areas experiencing elevated O_3 concentrations also are at risk for O_3-related health effects, EPA did not focus on developing quantitative exposure estimates for these population subgroups due to the lack of information about the number of individuals who regularly work or exercise outdoors. Thus, as presented in the proposal and in the Staff Paper the exposure estimates are most useful for making relative comparisons of estimated exposures in school age children across alternative air quality scenarios. This assessment does not provide information on exposures for adult subgroups within the general population associated with the air quality scenarios.

EPA noted in the proposal key observations that were important to consider in comparing exposure estimates associated with just meeting the current NAAQS and alternative standards considered. These included:

(1) As shown in Table 6–1 of the Staff Paper, the patterns of exposures in terms of percentages of the population exceeding given exposure levels were very similar for the general population and for asthmatic and all school age (5–18) children, although children were about twice as likely as the general population to be exposed at any given level.

(2) As shown in Table 1 in the proposal (72 FR 37855), the number and percentage of asthmatic and all school age children aggregated across the 12 urban areas estimated to experience 1 or more exposures of concern declined from simulations of just meeting the current standard to simulations of alternative 8-hour standards by varying amounts, depending on the benchmark level, the population subgroup considered, and the air quality year chosen.[11]

(3) Substantial year-to-year variability in exposure estimates was observed over the three-year modeling period.

(4) There was substantial variability observed across the 12 urban areas in the percent of the population subgroups estimated to experience exposures at and above specified benchmark levels while at elevated exertion.

(5) Of particular note, there is high inter-individual variability in responsiveness such that only a subset of individuals who were exposed at and above a given benchmark level while at elevated exertion would actually be expected to experience any such potential adverse health effects.

(6) In considering these observations, it was important to take into account the variability, uncertainties, and limitations associated with this assessment, including the degree of uncertainty associated with a number of model inputs and uncertainty in the model itself.

b. Quantitative Health Risk Assessment

As discussed in section II.B.2 of the proposal, the approach used to develop quantitative risk estimates associated with exposures to O_3 builds upon the risk assessment conducted during the last review.[12] The expanded and updated assessment conducted in this review includes estimates of (1) risks of lung function decrements in all and asthmatic school age children, respiratory symptoms in asthmatic children, respiratory-related hospital admissions, and non-accidental and cardiorespiratory-related mortality associated with recent short-term ambient O_3 levels; (2) risk reductions and remaining risks associated with just meeting the current 8-hour O_3 NAAQS; and (3) risk reductions and remaining risks associated with just meeting various alternative 8-hour O_3 NAAQS in a number of example urban areas. The health risk assessment was discussed in the Staff Paper (chapter 5) and presented more fully in a technical support document, *Ozone Health Risk Assessment for Selected Urban Areas* (Abt Associates, 2007a). As noted in the proposal, the scope and methodology for this risk assessment was developed over several years with considerable input from the CASAC Panel and the public.

EPA recognized that there were many sources of uncertainty and variability inherent in the inputs to these assessments and that there was a high degree of uncertainty in the resulting O_3 risk estimates. Such uncertainties generally relate to a lack of clear understanding of a number of important factors, including, for example, the shape of exposure-response and concentration-response functions, particularly when, as here, effect thresholds can neither be discerned nor determined not to exist; issues related to selection of appropriate statistical models for the analysis of the epidemiologic data; the role of potentially confounding and modifying factors in the concentration-response relationships; and issues related to simulating how O_3 air quality distributions will likely change in any given area upon attaining a particular standard, since strategies to reduce emissions are not yet fully defined. While some of these uncertainties were addressed quantitatively in the form of estimated confidence ranges around central risk estimates, other uncertainties and the variability in key inputs were not reflected in these confidence ranges, but rather were partially characterized through separate sensitivity analyses or discussed qualitatively.

Key observations and insights from the O_3 risk assessment, together with important caveats and limitations, were discussed in section II.B of the proposal. In general, estimated risk reductions associated with going from current O_3 levels to just meeting the current and

[10] As discussed in section II.A of the proposal, O_3 health responses observed in controlled human exposure studies are associated with exposures while subjects are engaged in moderate or greater exertion on average over the exposure period (hereafter referred to as ''elevated exertion'') and, therefore, these are the exposures of interest.

[11] While the proposal notice stated in the text that ''approximately 2 to 4 percent of all and asthmatic children'' were estimated to experience exposures of concern at and above the 0.070 ppm benchmark level for standards in the range of 0.070 to 0.075 ppm (72 FR 37879), the correct range is about 1 to 5 perecent consistent with the estimates provided in Table 1 of the proposal (72 FR 37855).

[12] The methodology, scope, and results from the risk assessment conducted in the last review are described in Chapter 6 of the 1996 Staff Paper (EPA, 1996) and in several technical reports (Whitfield *et al.*, 1996; Whitfield, 1997) and publication (Whitfield *et al.*, 1998).

alternative 8-hour standards show patterns of increasing estimated risk reductions associated with just meeting the lower alternative 8-hour standards considered. Furthermore, the estimated percentage reductions in risk were strongly influenced by the baseline air quality year used in the analysis (see Staff Paper, Figures 6–1 through 6–6)

Key observations important in comparing estimated health risks associated with attainment of the current NAAQS and alternative standards included:

(1) As discussed in the Staff paper (section 5.4.5), EPA has greater confidence in relative comparisons in risk estimates between alternative standards than in the absolute magnitude of risk estimates associated with any particular standard.

(2) Significant year-to-year variability in O_3 concentrations combined with the use of a 3-year design value to determine the amount of air quality adjustment to be applied to each year analyzed, results in significant year-to-year variability in the annual health risk estimates upon just meeting the current and potential alternative standards.

(3) There is noticeable city-to-city variability in estimated O_3-related incidence of morbidity and mortality across the 12 urban areas analyzed for both recent years of air quality and for air quality adjusted to simulate just meeting the current and selected potential alternative standards. This variability is likely due to differences in air quality distributions, differences in estimated exposure related to many factors including varying activity patterns and air exchange rates, differences in baseline incidence rates, and differences in susceptible populations and age distributions across the 12 urban areas.

(4) With respect to the uncertainties about estimated policy-relevant background (PRB) concentrations,[13] as discussed in the Staff Paper (section 5.4.3), alternative assumptions about background levels had a variable impact depending on the health effect considered and the location and standard analyzed in terms of the absolute magnitude and relative changes in the risk estimates. There was relatively little impact on either absolute magnitude or relative changes in lung function risk estimates due to alternative assumptions about background levels.[14] With respect to O_3-related non-accidental mortality, while notable differences (i.e., greater than 50 percent) were observed in some areas, particularly for more stringent standards, the overall pattern of estimated reductions, expressed in terms of percentage reduction relative to the current standard, was significantly less impacted.

(5) Concerning the part of the risk assessment based on effects reported in epidemiological studies, important uncertainties include uncertainties (1) surrounding estimates of the O_3 coefficients for concentration-response relationships used in the assessment, (2) involving the shape of the concentration-response relationship and whether or not a population threshold or non-linear relationship exists within the range of concentrations examined in the studies, (3) related to the extent to which concentration-response relationships derived from studies in a given location and time when O_3 levels were higher or behavior and /or housing conditions were different provide accurate representations of the relationships for the same locations with lower air quality distributions and/or different behavior and/or housing conditions, and (4) concerning the possible role of co-pollutants which also may have varied between the time of the studies and the current assessment period. An important additional uncertainty for the mortality risk estimates is the extent to which the associations reported between O_3 and non-accidental and cardiorespiratory mortality actually reflect causal relationships.

As discussed in the proposal, some of these uncertainties have been addressed quantitatively in the form of estimated confidence ranges around central risk estimates; others are addressed through separate sensitivity analyses (e.g., the influence of alternative estimates for policy-relevant background levels) or are characterized qualitatively. For both parts of the health risk assessment, statistical uncertainty due to sampling error has been characterized and is expressed in terms of 95 percent credible intervals. EPA recognizes that these credible intervals do not reflect all of the uncertainties noted above.

B. Need for Revision of the Current Primary O_3 Standard

1. Introduction

The initial issue to be addressed in this review of the primary O_3 standard is whether, in view of the advances in scientific knowledge reflected in the Criteria Document and Staff Paper, the current standard should be revised. As discussed in section II.C of the proposal, in evaluating whether it was appropriate to propose to retain or revise the current standard, the Administrator built upon the last review and reflected the broader body of evidence and information now available. In the proposal, EPA presented information, judgments, and conclusions from the last review, which revised the level, averaging time, and form of the standard, from the Staff Paper's evaluation of the adequacy of the current primary standard, including both evidence- and exposure/risk-based considerations, as well as from the CASAC Panel's advice and recommendations. The Staff Paper evaluation, CASAC Panel's views, and the Administrator's proposed conclusions on the adequacy of the current primary standard are presented below.

a. Staff Paper Evaluation

The Staff Paper considered the evidence presented in the Criteria Document as a basis for evaluating the adequacy of the current O_3 standard, recognizing that important uncertainties remain. The extensive body of human clinical, toxicological, and epidemiological evidence, highlighted above in section II.A.2 and discussed in section II.A of the proposal, serves as the basis for judgments about O_3-related health effects, including judgments about causal relationships with a range of respiratory morbidity effects, including lung function decrements, increased respiratory symptoms, airway inflammation, increased airway responsiveness, and respiratory-related hospitalizations and emergency department visits in the warm season, and about the evidence being highly suggestive that O_3 directly or indirectly contributes to non-accidental and cardiorespiratory-related mortality.

[13] PRB O_3 concentrations used in the O_3 risk assessment were defined in chapter 2 of the Staff Paper (EPA, 2007, pp. 2–48, 2–54) as the O_3 concentrations that would be observed in the U.S. in the absence of anthropogenic emissions of precursors (e.g., VOC, NO_X, and CO) in the U.S., Canada, and Mexico. Based on runs of the GEOS–CHEM model (a global tropospheric O_3 model) applied for the 2001 warm season (i.e., April to September), monthly background daily diurnal profiles for each of the 12 urban areas for each month of the O_3 season were simulated using meteorology for the year 2001. Based on these model runs, the Criteria Document states that current estimates of PRB O_3 concentrations are generally in the range of 0.015 to 0.035 ppm in the afternoon, and they are generally lower under conditions conducive to high O_3 episodes. They are highest during spring due to contributions from hemispheric pollution and stratospheric intrusions. The Criteria Document states that the GEOS–CHEM model applied for the 2001 warm season reports PRB O_3 concentrations for afternoon surface air over the United States that are likely 10 ppbv too high in the southeast in summer, and accurate within 5 ppbv in other regions and seasons.

[14] Sensitivity analyses examining the impact of alternative assumptions about PRB were only conducted for lung function decrements and non-accidental mortality.

These judgments take into account important uncertainties that remain in interpreting this evidence. For example, with regard to the utility of time-series epidemiological studies to inform judgments about a NAAQS for an individual pollutant, such as O_3, within a mix of highly correlated pollutants, such as the mix of oxidants produced in photochemical reactions in the atmosphere, the Staff Paper noted that there are limitations especially at ambient O_3 concentrations below levels at which O_3-related effects have been observed in controlled human exposure studies. The Staff Paper also recognized that the available epidemiological evidence neither supports nor refutes the existence of thresholds at the population level for effects such as increased hospital admissions and premature mortality. There are limitations in epidemiological studies that make discerning thresholds in populations difficult, including low data density in the lower concentration ranges, the possible influence of exposure measurement error, and variability in susceptibility to O_3-related effects in populations.

While noting these limitations in the interpretation of the findings from the epidemiological studies, the Staff Paper concluded that if a population threshold level does exist, it would likely be well below the level of the current O_3 standard and possibly within the range of background levels. This conclusion is supported by several epidemiological studies that have explored the question of potential thresholds either by using a statistical curve-fitting approach to evaluate whether linear or non-linear models fit the data better using, or by analyzing, sub-sets of the data where days over or under a specific cutpoint (e.g., 0.080 ppm or even lower O_3 levels) were excluded and then evaluating the association for statistical significance. In addition to consideration of the epidemiological studies, findings from controlled human exposure studies indicate that prolonged exposures produced statistically significant group mean FEV_1 decrements and symptoms in healthy adult subjects at levels down to at least 0.060 ppm, with a small percentage of subjects experiencing notable effects (e.g., >10 percent FEV_1 decrement, pain on deep inspiration). Controlled human exposure studies evaluated in the last review also found significant responses in indicators of lung inflammation and cell injury at 0.080 ppm in healthy adult subjects. The effects in these controlled human exposure studies were observed in healthy young adult subjects, and it is likely that more serious responses, and responses at lower levels, would occur in people with asthma and other respiratory diseases. These physiological effects can lead to aggravation of asthma and increased susceptibility to respiratory infection. The observations provide support for the conclusion in the Staff Paper that the associations observed in the epidemiological studies, particularly for respiratory-related effects such as increased medication use, increased school and work absences, increased visits to doctors' offices and emergency departments, and increased hospital admissions, extend down to O_3 levels well below the current standard (i.e., 0.084 ppm) (p. 6–7).

The newly available information reinforces the judgments in the Staff Paper from the last review about the likelihood of causal relationships between O_3 exposures and respiratory effects and broadens the evidence of O_3-related associations to include additional respiratory-related endpoints, newly identified cardiovascular-related health endpoints, and mortality. Newly available evidence also led the Staff Paper to conclude that people with asthma are likely to experience more serious effects than people who do not have asthma. The Staff Paper also concluded that substantial progress has been made since the last review in advancing the understanding of potential mechanisms by which ambient O_3, alone and in combination with other pollutants, is causally linked to a range of respiratory-related health endpoints, and may be causally linked to a range of cardiovascular-related health endpoints. Thus, the Staff Paper found strong support in the evidence available since the last review, for consideration of an O_3 standard that is at least as protective as the current standard and finds no support for consideration of an O_3 standard that is less protective than the current standard. This conclusion is consistent with the advice and recommendations of the CASAC Panel and with the views expressed by all interested parties who provided comments on drafts of the Staff Paper. While the CASAC Panel and some commenters on drafts of the Staff Paper supported revising the current standard to provide increased public health protection and other such commenters supported retaining the current standard, no one who provided comments on drafts of the Staff Paper supported a standard that would be less protective than the current standard.

i. Evidence-Based Considerations

In looking more specifically at the controlled human exposure and epidemiological evidence, the Staff Paper first noted that controlled human exposure studies provide the clearest and most compelling evidence for an array of human health effects that are directly attributable to acute exposures to O_3 *per se.* Evidence from such human studies, together with animal toxicological studies, help to provide biological plausibility for health effects observed in epidemiological studies. In considering the available evidence, the Staff Paper focused on studies that examined health effects that have been demonstrated to be caused by exposure to O_3, or for which the Criteria Document judges associations with O_3 to be causal or likely causal, or for which the evidence is highly suggestive that O_3 contributes to the reported effects.

In considering the epidemiological evidence as a basis for reaching conclusions about the adequacy of the current standard, the Staff Paper focused on studies reporting effects in the warm season, for which the effect estimates are more consistently positive and statistically significant than those from all-year studies. The Staff Paper considered the extent to which such studies provide evidence of associations that extend down to ambient O_3 concentrations below the level of the current standard, which would thereby call into question the adequacy of the current standard. In so doing, the Staff Paper noted that if a population threshold level does exist for an effect observed in such studies, it would likely be at a level well below the level of the current standard. The Staff Paper also attempted to characterize whether the area in which a study was conducted likely would or would not have met the current standard during the time of the study, although it recognizes that the confidence that would appropriately be placed on the associations observed in any given study, or on the extent to which the association would likely extend down to relatively low O_3 concentrations, is not dependent on this distinction. Further, the Staff Paper considered studies that examined subsets of data that include only days with ambient O_3 concentrations below the level of the current O_3 standard, or below even lower O_3 concentrations, and continue to report statistically significant associations. The Staff Paper judged that such studies are directly relevant to considering the adequacy of the current standard, particularly in light of reported responses to O_3 at

levels below the current standard found in controlled human exposure studies.

The Staff Paper evaluation of such studies is discussed below and in section II.C.2.a of the proposal, focusing in turn on studies of (1) lung function, respiratory symptoms and other respiratory-related physiological effects, (2) respiratory hospital admissions and emergency department visits, and (3) mortality.

(1) Lung function, respiratory symptoms and other respiratory-related physiological effects. Health effects for which the Criteria Document continued to find clear evidence of causal associations with short-term O_3 exposures include lung function decrements, respiratory symptoms, pulmonary inflammation, and increased airway responsiveness. In the last review, these O_3-induced effects were demonstrated with statistical significance down to the lowest level tested in controlled human exposure studies at that time (i.e., 0.080 ppm). Two new studies are notable in that they are the only controlled human exposure studies that examined respiratory effects, including lung function decrements and respiratory symptoms, in healthy adults at lower exposure levels than had previously been examined. EPA's reanalysis of the data from the most recent study shows small group mean decrements in lung function responses to be statistically significant at the 0.060 ppm exposure level, while the author's analysis did not yield statistically significant lung function responses but did yield some statistically significant respiratory symptom responses toward the end of the exposure period. These studies report a small percentage of subjects experiencing lung function decrements (≥ 10 percent) at the 0.060 ppm exposure level. These studies provide very limited evidence of O_3-related lung function decrements and respiratory symptoms at this lower exposure level.

The Staff Paper noted that evidence from controlled human exposures studies indicates that people with moderate-to-severe asthma have somewhat larger decreases in lung function in response to O_3 relative to healthy individuals. In addition, lung function responses in people with asthma appear to be affected by baseline lung function (i.e., magnitude of responses increases with increasing disease severity). This newer information expands our understanding of the physiological basis for increased sensitivity in people with asthma and other airway diseases, recognizing that people with asthma present a different response profile for cellular, molecular, and biochemical responses than people who do not have asthma. New evidence indicates that some people with asthma have increased occurrence and duration of nonspecific airway responsiveness, which is an increased bronchoconstrictive response to airway irritants. Controlled human exposure studies also indicate that some people with allergic asthma and rhinitis have increased airway responsiveness to allergens following O_3 exposure. Exposures to O_3 exacerbated lung function decrements in people with pre-existing allergic airway disease, with and without asthma. Ozone-induced exacerbation of airway responsiveness persists longer and attenuates more slowly than O_3-induced lung function decrements and respiratory symptom responses and can have important clinical implications for asthmatics.

The Staff Paper also concluded that newly available human exposure studies suggest that some people with asthma also have increased inflammatory responses, relative to non-asthmatic subjects, and that this inflammation may take longer to resolve. The new data on airway responsiveness, inflammation, and various molecular markers of inflammation and bronchoconstriction indicate that people with asthma and allergic rhinitis (with or without asthma) comprise susceptible groups for O_3-induced adverse effects. This body of evidence qualitatively informs the Staff Paper's evaluation of the adequacy of the current O_3 standard in that it indicates that controlled human exposure and epidemiological panel studies of lung function decrements and respiratory symptoms that evaluate only healthy, non-asthmatic subjects likely underestimate the effects of O_3 exposure on asthmatics and other susceptible populations.

The Staff Paper noted that in addition to the experimental evidence of lung function decrements, respiratory symptoms, and other respiratory effects in healthy and asthmatic populations discussed above, epidemiological studies have reported associations of lung function decrements and respiratory symptoms in several locations. Two large U.S. panel studies which together followed over 1,000 asthmatic children on a daily basis (Mortimer *et al.*, 2002, the National Cooperative Inner-City Asthma Study, or NCICAS; and Gent *et al.*, 2003), as well as several smaller U.S. and international studies, have reported robust associations between ambient O_3 concentrations and measures of lung function, daily respiratory symptoms (e.g., chest tightness, wheeze, shortness of breath), and increased asthma medication use in children with moderate to severe asthma. Mortimer *et al.* (2002) found that of the pollutants measured (including O_3, NO_2, SO_2 and PM_{10}), O_3 was the only one that had a statistically significant effect on lung function. (Mortimer *et al.* 2002) also found associations between NO_2, SO_2 and PM_{10} and respiratory symptoms that were stronger than those between O_3 and respiratory symptoms. Gent *et al.* (2003) found that in co-pollutant models, O_3 but not $PM_{2.5}$ significantly predicted increased risk of respiratory symptoms and rescue medication use among children using asthma maintenance medication. Overall, the multi-city NCICAS (Mortimer *et al.*, 2002), (Gent *et al.* 2003), and several other single-city studies indicate a robust positive association between ambient O_3 concentrations and increased respiratory symptoms and increased medication use in asthmatic children.

In considering the large number of single-city epidemiological studies reporting lung function or respiratory symptoms effects in healthy or asthmatic populations, the Staff Paper noted that most such studies that reported positive and often statistically significant associations in the warm season were conducted in areas that likely would not have met the current standard. In considering the large multi-city NCICAS (Mortimer *et al.*, 2002), the Staff Paper noted that the 98th percentile 8-hour daily maximum O_3 concentrations at the monitor reporting the highest O_3 concentrations in each of the study areas ranged from 0.084 ppm to > 0.10 ppm. However, the authors indicate that less than 5 percent of the days in the eight urban areas had 8-hour daily O_3 concentrations exceeding 0.080 ppm. Moreover, the authors observed that when days with 8-hour average O_3 levels greater than 0.080 ppm were excluded, similar effect estimates were seen compared to estimates that included all of the days. There are also a few other studies in which the relevant air quality statistics provide some indication that lung function and respiratory symptom effects may be occurring in areas that likely would have met the current standard (EPA, 2007b, p. 6–12).

(2) Respiratory hospital admissions and emergency department visits. At the time of the last review, many time-series studies indicated positive associations between ambient O_3 and increased respiratory hospital admissions and emergency room visits, providing strong evidence for a relationship between O_3 exposure and increased exacerbations of

preexisting lung disease extending below the level of the then current 1-hour O_3 standard (EPA 2007b, section 3.3.1.1.6). Analyses of data from studies conducted in the northeastern U.S. indicated that O_3 air pollution was consistently and strongly associated with summertime respiratory hospital admissions.

Since the last review, new epidemiological studies have evaluated the association between short-term exposures to O_3 and unscheduled hospital admissions for respiratory causes. Large multi-city studies, as well as many studies from individual cities, have reported positive and often statistically significant O_3 associations with total respiratory hospitalizations as well as asthma- and chronic obstructive pulmonary disease (COPD)-related hospitalizations, especially in studies analyzing the O_3 effect during the summer or warm season. Analyses using multipollutant regression models generally indicate that copollutants do not confound the association between O_3 and respiratory hospitalizations and that the O_3 effect estimates were robust to PM adjustment in all-year and warm-season only data. The Criteria Document concluded that the evidence supports a causal relationship between acute O_3 exposures and increased respiratory-related hospitalizations during the warm season.

In looking specifically at U.S. and Canadian respiratory hospitalization studies that reported positive and often statistically significant associations (and that either did not use GAM or were reanalyzed to address GAM-related problems), the Staff Paper noted that many such studies were conducted in areas that likely would not have met the current O_3 standard, with many providing only all-year effect estimates, and with some reporting a statistically significant association in the warm season. Of the studies that provide some indication that O_3-related respiratory hospitalizations may be occurring in areas that likely would have met the current standard, the Staff Paper noted that some are all-year studies, whereas others reported statistically significant warm-season associations.

Emergency department visits for respiratory causes have been the focus of a number of new studies that have examined visits related to asthma, COPD, bronchitis, pneumonia, and other upper and lower respiratory infections, such as influenza, with asthma visits typically dominating the daily incidence counts. Among studies with adequate controls for seasonal patterns, many reported at least one significant positive association involving O_3. However, inconsistencies were observed which were at least partially attributable to differences in model specifications and analysis approach among various studies. In general, O_3 effect estimates from summer-only analyses tended to be positive and larger compared to results from cool season or all-year analyses. Almost all of the studies that reported statistically significant effect estimates were conducted in areas that likely would not have met the current standard. The Criteria Document concluded that analyses stratified by season generally supported a positive association between O_3 concentrations and emergency department visits for asthma in the warm season. These studies provide evidence of effects in areas that likely would not have met the current standard and evidence of associations that likely extend down to relatively low ambient O_3 concentrations.

(3) Mortality. The 1996 Criteria Document concluded that an association between daily mortality and O_3 concentrations for areas with high O_3 levels (e.g., Los Angeles) was suggested. However, due to inconsistencies in the results from the very limited number of studies available at that time, there was insufficient evidence to determine whether the observed association was likely causal, and thus the possibility that O_3 exposure may be associated with mortality was not relied upon in the 1997 decision on the O_3 primary standard.

Since the last review, the body of evidence with regard to O_3-related health effects has been expanded by animal, controlled human exposure, and epidemiological studies and now identifies biologically plausible mechanisms by which O_3 may affect the cardiovascular system. In addition, there is stronger information linking O_3 to serious morbidity outcomes, such as hospitalization, that are associated with increased mortality. Thus, there is now a coherent body of evidence that describes a range of health outcomes from lung function decrements to hospitalization and premature mortality.

Newly available large multi-city studies and related analyses (Bell *et al.*, 2004; Huang *et al.*, 2005; and Schwartz, 2005) designed specifically to examine the effect of O_3 and other pollutants on mortality have provided much more robust and credible information. Together these studies have reported significant associations between O_3 and mortality that were robust to adjustment for PM and different adjustment methods for temperature and suggest that the effect of O_3 on mortality may be immediate but may also persist for several days. Further analysis of one of these multi-city studies (Bell *et al.*, 2006) examined the shape of the concentration-response function for the O_3-mortality relationship in 98 U.S. urban communities for the period 1987 to 2000 specifically to evaluate whether a threshold level exists. Results from various analytic methods all indicated that any threshold, if it exists, would likely occur at very low concentrations, far below the level of the current O_3 NAAQS and nearing background levels.

New data are also available from several single-city studies conducted worldwide, as well as from several meta-analyses that have combined information from multiple studies. Three recent meta-analyses evaluated potential sources of heterogeneity in O_3-mortality associations. All three analyses reported common findings, including effect estimates that were statistically significant and larger in warm season analyses. Reanalysis of results using default GAM criteria did not change the effect estimates, and there was no strong evidence of confounding by PM.

Overall, the Criteria Document (p. 8–78) found that the results from U.S. multi-city time-series studies, along with the meta-analyses, provide relatively strong evidence for associations between short-term O_3 exposure and all-cause mortality even after adjustment for the influence of season and PM. The results of these analyses of studies considered in this review indicate that copollutants generally do not appear to substantially confound the association between O_3 and mortality. In addition, several single-city studies observed positive associations of ambient O_3 concentrations with total nonaccidental and cardiorespiratory mortality.

Finally, from those studies that included assessment of associations with specific causes of death, it appears that effect estimates for associations with cardiovascular mortality are larger than those for total mortality; effect estimates for respiratory mortality are less consistent in size, possibly due to reduced statistical power in this subcategory of mortality. For cardiovascular mortality, the Criteria Document (p. 7–106) suggested that effect estimates are consistently positive and more likely to be larger and statistically significant in warm season analyses. The Criteria Document (p. 8–78) concluded that these findings are highly suggestive that short-term O_3 exposure directly or indirectly contributes to nonaccidental and cardiorespiratory-related mortality, but

additional research is needed to more fully establish underlying mechanisms by which such effects occur.[15]

ii. Exposure- and Risk-Based Considerations

In evaluating the adequacy of the current standard, the Staff Paper also considered estimated quantitative exposures and health risks, and important uncertainties and limitations in those estimates, which are highlighted above in section II.A.3 and discussed in section II.B of the proposal. These estimates are derived from an EPA assessment of exposures and health risks associated with recent air quality levels and with air quality simulated to just meet the current standard to help inform judgments about whether or not the current standard provides adequate protection of public health.

The Staff Paper (and the CASAC Panel) recognized that the exposure and risk analyses could not provide a full picture of the O_3 exposures and O_3-related health risks posed nationally. The Staff Paper did not have sufficient information to evaluate all relevant at-risk groups (e.g., outdoor workers, children under age 5) or all O_3-related health outcomes (e.g., increased medication use, school absences, and emergency department visits that are part of a broader pyramid of effects), and the scope of the Staff Paper analyses was generally limited to estimating exposures and risks in 12 urban areas across the U.S., and to only five or just one area for some health effects included in the risk assessment. Thus, due to the limited geographic scope of the exposure and risk assessments, EPA recognizes that national-scale public health impacts of ambient O_3 exposures would be much larger than the quantitative exposure and risk estimates associated with recent air quality or air quality that just meets the current or alternative standards in the 12 urban areas analyzed. On the other hand, inter-individual variability in responsiveness means that only a subset of individuals in each group estimated to experience exposures at and above a given benchmark level while at elevated exertion would actually be expected to experience such adverse health effects.

The Staff Paper estimated exposures and risks for the three most recent years (2002–2004) for which data were available at the time of the analyses. As discussed above in section II.A.3.a, within this 3-year period, 2002 was a year with relatively higher O_3 levels in most, but not all, areas and simulation of just meeting the current standard based on 2002 air quality data provides a generally higher-end estimate of exposures and risks, while 2004 was a year with relatively lower O_3 levels in most, but not all, areas and simulation of just meeting the current standard using 2004 air quality data provides a generally lower-end estimate of exposures and risks.

The Staff Paper consideration of such exposure and risk analyses is discussed below and in section II.C.2.b of the proposal, focusing on both the exposure analyses and the human health risk assessment.

(1) Exposure analyses. EPA's exposure analysis estimated personal exposures to ambient O_3 levels at and above specific benchmark levels while at elevated exertion to provide some perspective on the potential public health impacts of respiratory symptoms and respiratory-related physiological effects that cannot currently be evaluated in quantitative risk assessments but that may occur at current air quality levels, and the extent to which such impacts might be reduced by meeting the current and alternative standards. As noted above in section II.A.3, the Staff Paper referred to exposures at and above these benchmark levels as ''exposures of concern.'' The Staff Paper noted that potential public health impacts likely occur across a range of O_3 exposure levels, such that there is no one exposure level that addresses all relevant public health impacts. Therefore, with the concurrence of the CASAC Panel, the Staff Paper estimated exposures of concern not only at 0.080 ppm O_3, a level at which there are demonstrated effects, but also at 0.070 and 0.060 ppm O_3. The Staff Paper recognized that there will be varying degrees of concern about exposures at each of these levels, based in part on the population subgroups experiencing them. Given that there is clear evidence of inflammation, increased airway responsiveness, and changes in host defenses in healthy people exposed to 0.080 ppm O_3 and reason to infer that such effects will continue at lower exposure levels, but with increasing uncertainty about the extent to which such effects occur at lower O_3 concentrations, the Staff Paper focused on exposures at or above benchmark levels of 0.070 and 0.060 ppm O_3 while at elevated exertion for purposes of evaluating the adequacy of the current standard.

Exposure estimates were presented in the Staff Paper and in section II.B (Table 1) of the proposal for the number and percent of all school age children and asthmatic school age children exposed, and the number of person-days (occurrences) of exposures, with daily 8-hour maximum exposures at or above several benchmark levels while at intermittent moderate or greater exertion. The percent of population exposed at any given level is very similar for all and asthmatic school age children. Substantial year-to-year variability in exposure estimates is observed, ranging to over an order of magnitude at the current standard level, in estimates of the number of children and the number of occurrences of exposures at both of these benchmark levels while at elevated exertion. The Staff Paper stated that it is appropriate to consider not just the average estimates across all years, but also to consider public health impacts in years with relatively higher O_3 levels. The Staff Paper also noted that there is substantial city-to-city variability in these estimates, and notes that it is appropriate to consider not just the aggregate estimates across all cities, but also to consider the public health impacts in cities where these estimates are higher than the average upon meeting the current standard.

About 50 percent of asthmatic of all school age children, representing nearly 1.3 million asthmatic children and about 8.5 million school age children in the 12 urban areas examined, are estimated to experience exposures at or above the 0.070 ppm benchmark level while at elevated exertion (i.e., these individuals are estimated to experience 8-hour O_3 exposures at or above 0.070 ppm while engaged in moderate or greater exertion 1 or more times during the O_3 season) associated with 2002 O_3 air quality levels. In contrast, about 17 percent of asthmatic and all school age children are estimated to experience exposures at or above the 0.070 ppm benchmark level while at elevated exertion associated with 2004 O_3 air quality levels. Just meeting the current standard results in an aggregate estimate of about 20 percent of asthmatic or 18 percent of all school age children likely to experience exposures at or above the

[15] In commenting on the Criteria Document, the CASAC Ozone Panel raised questions about the implications of these time-series results in a policy context, emphasizing that ''* * * while the time-series study design is a powerful tool to detect very small effects that could not be detected using other designs, it is also a blunt tool'' (Henderson, 2006b). They note that ''* * * not only is the interpretation of these associations complicated by the fact that the day-to-day variation in concentrations of these pollutants is, to a varying degree, determined by meteorology, the pollutants are often part of a large and highly correlated mix of pollutants, only a very few of which are measured'' (Henderson, 2006b). Even with these uncertainties, the CASAC Ozone Panel, in its review of the Staff Paper, found ''* * * premature total non-accidental and cardiorespiratory mortality for inclusion in the quantitative risk assessment to be appropriate.'' (Henderson, 2006b)

0.070 ppm benchmark level while at elevated exertion using the 2002 simulation. The exposure estimates for this benchmark level range up to about 40 percent of asthmatic or all school age children in the single city with the highest estimate among the cities analyzed. Just meeting the current standard based on the 2004 simulation, results in an aggregate estimate of about 1 percent of asthmatic or all school age children experiencing exposures exceeding the 0.070 ppm benchmark level while at elevated exertion.

At the benchmark level of 0.060 ppm, about 70 percent of all or asthmatic school age children are estimated to experience exposures at or above this benchmark level while at elevated exertion for the aggregate of the 12 urban areas associated with 2002 O_3 levels. Just meeting the current standard would result in an aggregate estimate of about 45 percent of asthmatic or all school age children likely to experience exposures at or above the 0.060 ppm benchmark level while at elevated exertion using the 2002 simulation. The exposure estimates for this benchmark level range up to nearly 70 percent of all or asthmatic school age children in the single city with the highest estimate among the cities analyzed associated with just meeting the current standard using the 2002 simulation. The Staff Paper indicated an aggregate estimate of about 10 percent of asthmatic or all school age children would experience exposures at or above the 0.060 ppm benchmark level while at elevated exertion associated with just meeting the current standard using the 2004 simulation.

(2) Risk assessment. The health risk assessment estimated risks for several important health endpoints, including: (1) Lung function decrements (i.e., ≥ 15 percent and ≥ 20 percent reductions in FEV_1) in all school age children for 12 urban areas; (2) lung function decrements (i.e., ≥ 10 percent and ≥ 20 percent reductions in FEV_1) in asthmatic school age children for 5 urban areas (a subset of the 12 urban areas); (3) respiratory symptoms (i.e., chest tightness, shortness of breath, wheeze) in moderate to severe asthmatic children for the Boston area; (4) respiratory-related hospital admissions for 3 urban areas; and (5) nonaccidental and cardiorespiratory mortality for 12 urban areas for three recent years (2002 to 2004) and for just meeting the current standard using a 2002 simulation and a 2004 simulation.

With regard to estimates of moderate lung function decrements, meeting the current standard substantially reduces the estimated number of school age children experiencing one or more occurrences of FEV_1 decrements ≥ 15 percent for the 12 urban areas, going from about 1.3 million children (7 percent of children) under 2002 air quality to about 610,000 (3 percent of children) based on the 2002 simulation, and from about 620,000 children (3 percent of children) to about 230,000 (1 percent of children) using the 2004 simulation. In asthmatic children, the estimated number of children experiencing one or more occurrences of FEV_1 decrements ≥ 10 percent for the 5 urban areas goes from about 250,000 children (16 percent of asthmatic children) under 2002 air quality to about 130,000 (8 percent of asthmatic children) using the 2002 simulation, and from about 160,000 (10 percent of asthmatic children) to about 70,000 (4 percent of asthmatic children) using the 2004 simulation. Thus, even when the current standard is met, about 4 to 8 percent of asthmatic school age children are estimated to experience one or more occurrences of moderate lung function decrements, resulting in about 1 million occurrences (using the 2002 simulation) and nearly 700,000 occurrences (using the 2004 simulation) in just 5 urban areas. Moreover, the estimated number of occurrences of moderate or greater lung function decrements per child is on average approximately 6 to 7 in all children and 8 to 10 in asthmatic children in an O_3 season, even when the current standard is met, depending on the year used to simulate meeting the current standard. In the 1997 review of the O_3 standard a general consensus view of the adversity of such moderate responses emerged as the frequency of occurrences increases, with the judgment that repeated occurrences of moderate responses, even in otherwise healthy individuals, may be considered adverse since they may well set the stage for more serious illness.

With regard to estimates of large lung function decrements, the Staff Paper noted that FEV_1 decrements > 20 percent would likely interfere with normal activities in many healthy individuals, therefore single occurrences would be considered to be adverse. In people with asthma, large lung function responses would likely interfere with normal activities for most individuals and would also increase the likelihood that these individuals would use additional medication or seek medical treatment. Single occurrences would be considered to be adverse to asthmatic individuals under the ATS definition. They also would be cause for medical concern in some individuals. While the current standard reduces the occurrences of large lung function decrements in all children and asthmatic children from about 60 to 70%, in a year with relatively higher O_3 levels (2002), there are estimated to be about 500,000 occurrences in all school children across the entire 12 urban areas, and about 40,000 occurrences in asthmatic children across just 5 urban areas. As noted above, it is clear that even when the current standard is met over a three-year period, O_3 levels in each year can vary considerably, as evidenced by relatively large differences between risk estimates based on 2002 to 2004 air quality. The Staff Paper expressed the view that it was appropriate to consider this yearly variation in O_3 levels allowed by the current standard in judging the extent to which impacts on members of at-risk groups in a year with relatively higher O_3 levels remain of concern from a public health perspective.

With regard to other O_3-related health effects, the estimated risks of respiratory symptom days in moderate to severe asthmatic children, respiratory-related hospital admissions, and non-accidental and cardiorespiratory mortality, respectively, are not reduced to as great an extent by meeting the current standard as are lung function decrements. For example, just meeting the current standard reduces the estimated average incidence of chest tightness in moderate to severe asthmatic children living in the Boston urban area by 11 to 15%, based on 2002 and 2004 simulations, respectively, resulting in an estimated incidence of about 23,000 to 31,000 per 100,000 children attributable to O_3 exposure (Table 6–4). Just meeting the current standard is estimated to reduce the incidence of respiratory-related hospital admissions in the New York City urban area by about 16 to 18%, based on 2002 and 2004 simulations, respectively, resulting in an estimated incidence per 100,000 population of 4.6 to 6.4, respectively. Across the 12 urban areas, the estimates of non-accidental mortality incidence per 100,000 relevant population range from 0.4 to 2.6 (for 2002) and 0.5 to 1.5 (for 2004). Meeting the current standard results in a reduction of the estimated incidence per 100,000 population to a range of 0.3 to 2.4 based on the 2002 simulation and a range of 0.3 to 1.2 based on the 2004 simulation. Estimates for cardiorespiratory mortality show similar patterns.

In considering the estimates of the proportion of population affected and the number of occurrences of the health effects that are included in the risk assessment, the Staff Paper noted that

these limited estimates are indicative of a much broader array of potential O_3-related health endpoints that we consider part of a ''pyramid of effects'' that include various indicators of morbidity that could not be included in the risk assessment (e.g., school absences, increased medication use, emergency department visits) and which primarily affect members of at-risk groups. While the Staff Paper had sufficient information to estimate and consider the number of symptom days in children with moderate to severe asthma, it recognized that there are many other effects that may be associated with symptom days, such as increased medication use, school and work absences, or visits to doctors' offices, for which there was not sufficient information to estimate risks but which are important to consider in assessing the adequacy of the current standard. The same is true for more serious, but less frequent effects. The Staff Paper estimated hospital admissions, but there was not sufficient information to estimate emergency department visits in a quantitative risk assessment. Consideration of such unquantified risks in the Staff Paper reinforced the Staff Paper conclusion that consideration should be given to revising the standard so as to provide increased public health protection, especially for at-risk groups such as people with asthma or other lung diseases, as well as children and older adults, particularly those active outdoors, and outdoor workers.

iii. Summary of Staff Paper Considerations

The Staff Paper concluded that the overall body of evidence clearly calls into question the adequacy of the current standard in protecting at-risk groups against an array of adverse health effects that range from decreased lung function and respiratory symptoms to serious indicators of respiratory morbidity including emergency department visits and hospital admissions for respiratory causes, nonaccidental mortality, and possibly cardiovascular effects. These at-risk groups notably include asthmatic children and other people with lung disease, as well as all children and older adults, especially those active outdoors, and outdoor workers.[16] The available information provides strong support for consideration of an O_3 standard that would provide increased health protection for these at-risk groups. The Staff Paper also concluded that risks projected to remain upon meeting the current standard are indicative of risks to at-risk groups that can be judged to be important from a public health perspective. This information reinforced the Staff Paper conclusion that consideration should be given to revising the level of the standard so as to provide increased public health protection.

b. CASAC Views

The CASAC Panel unanimously concluded in a letter to the Administrator that there is ''no scientific justification for retaining'' the current primary O_3 standard, and the current standard ''needs to be substantially reduced to protect human health, particularly in sensitive subpopulations'' (Henderson, 2006c, pp. 1–2). In its rationale for this conclusion, the CASAC Panel concluded that ''new evidence supports and builds-upon key, health-related conclusions drawn in the 1997 O_3 NAAQS review'' (id., p. 3). The Panel noted that several new single-city studies and large multi-city studies have provided more evidence for adverse health effects at concentrations lower than the current standard, and that these epidemiological studies are backed-up by evidence from controlled human exposure studies. The Panel specifically noted evidence from the recent Adams (2006) study that reported statistically significant decrements in the lung function of healthy, moderately exercising adults at a 0.080 ppm exposure level, and importantly, also reported adverse lung function effects in some healthy individuals at 0.060 ppm. The CASAC Panel concluded that these results indicate that the current standard ''is not sufficiently health-protective with an adequate margin of safety,'' noting that while similar studies in sensitive groups such as asthmatics have yet to be conducted, ''people with asthma, and particularly children, have been found to be more sensitive and to experience larger decrements in lung function in response to O_3 exposures than would healthy volunteers (Mortimer *et al.*, 2002)'' (Henderson, 2006c, p. 4).

The CASAC Panel also highlighted a number of O_3-related adverse health effects that are associated with exposure to ambient O_3, below the level of the current standard based on a broad range of epidemiological studies (Henderson, 2006c). These adverse health effects include increases in school absenteeism, respiratory hospital emergency department visits among asthmatics and patients with other respiratory diseases, hospitalizations for respiratory illnesses, symptoms associated with adverse health effects (including chest tightness and medication usage), and premature mortality (nonaccidental, cardiorespiratory deaths) reported at exposure levels well below the current standard. ''The CASAC considers each of these findings to be an important indicator of adverse health effects'' (Henderson, 2006c).

The CASAC Panel expressed the view that more emphasis should be placed on the subjects in controlled human exposure studies with FEV_1 decrements greater than 10 percent, which can be clinically significant, rather than on the relatively small average decrements. The Panel also emphasized significant O_3-related inflammatory responses and markers of injury to the epithelial lining of the lung that are independent of spirometric responses. Further, the Panel expressed the view that the Staff Paper did not place enough emphasis on serious morbidity (e.g., hospital admissions) and mortality observed in epidemiological studies. On the basis of the large amount of recent data evaluating adverse health effects at levels at and below the current O_3 standard, it was the unanimous opinion of the CASAC Panel that the current primary O_3 standard is not adequate to protect human health, that the relevant scientific data do not support consideration of retaining the current standard, and that the current standard needs to be substantially reduced to be protective of human health, particularly in sensitive subpopulations (Henderson, 2006c, pp. 4–5).

Further, the CASAC letter noted that ''there is no longer significant scientific uncertainty regarding the CASAC's conclusion that the current 8-hour primary NAAQS must be lowered'' (Henderson, 2006c, p. 5). The Panel noted that a ''large body of data clearly demonstrates adverse human health effects at the current level'' of the standard, such that ''[R]etaining this standard would continue to put large numbers of individuals at risk for respiratory effects and/or significant impact on quality of life including asthma exacerbations, emergency room visits, hospital admissions and mortality'' (Henderson, 2006c).

c. Administrator's Proposed Conclusions

At the time of proposal, in considering whether the current primary standard should be revised, the Administrator carefully considered the conclusions contained in the Criteria Document, the rationale and recommendations contained in the Staff Paper, the advice and recommendations

[16] In defining at-risk groups this way we are including both groups with greater inherent sensitivity and those more likely to be exposed.

from CASAC, and public comments to date on this issue. In so doing, the Administrator noted the following: (1) That evidence of a range of respiratory-related morbidity effects seen in the last review has been considerably strengthened, both through toxicological and controlled human exposure studies as well as through many new panel and epidemiological studies; (2) that new evidence from controlled human exposure and epidemiological studies identifies people with asthma (including children with asthma) as an important susceptible population for which estimates of respiratory effects in the general population likely underestimate the magnitude or importance of these effects; (3) that new evidence about mechanisms of toxicity further contributes to the biological plausibility of O_3-induced respiratory effects and is beginning to suggest mechanisms that may link O_3 exposure to cardiovascular effects; (4) that there is now relatively strong evidence for associations between O_3 and total nonaccidental and cardiopulmonary mortality, even after adjustment for the influence of season and PM; and (5) the limits of the available evidence. Relative to the information that was available to inform the Agency's 1997 decision to set the current standard, the newly available evidence increased the Administrator's confidence that respiratory morbidity effects such as lung function decrements and respiratory symptoms are causally related to O_3 exposures, that indicators of respiratory morbidity such as emergency department visits and hospital admissions are causally related to O_3 exposures, and that the evidence is highly suggestive that O_3 exposures during the O_3 season contribute to premature mortality.

The Administrator judged that there is important new evidence demonstrating that exposures to O_3 at levels below the level of the current standard are associated with a broad array of adverse health effects, especially in at-risk populations that include people with asthma or other lung diseases who are likely to experience more serious effects from exposure to O_3, children and older adults with increased susceptibility, as well as those who are likely to be vulnerable as a result of spending a lot of time outdoors engaged in physical activity, especially active children and outdoor workers. Examples of this important new evidence include demonstration of O_3-induced lung function effects and respiratory symptoms in some healthy individuals down to the previously observed exposure level of 0.080 ppm, as well as very limited new evidence at exposure levels well below the level of the current standard. In addition, there is now epidemiological evidence of statistically significant O_3-related associations with lung function and respiratory symptom effects, respiratory-related emergency department visits and hospital admissions, and increased mortality, in areas that likely would have met the current standard. There are also many epidemiological studies done in areas that likely would not have met the current standard but which nonetheless report statistically significant associations that generally extend down to ambient O_3 concentrations that are below the level of the current standard. Further, there are a few studies that have examined subsets of data that include only days with ambient O_3 concentrations below the level of the current standard, or below even much lower O_3 concentrations, and continue to report statistically significant associations with respiratory morbidity outcomes and mortality. The Administrator recognized that the evidence from controlled human exposure studies, together with animal toxicological studies, provides considerable support for the biological plausibility of the respiratory morbidity associations observed in the epidemiological studies and for concluding that the associations extend below the level of the current standard. However, the Administrator recognized that in the body of epidemiological evidence, many studies reported positive and statistically significant associations, while others reported positive results that were not statistically significant, and a few did not report any positive O_3-related associations. In addition, the Administrator judged that evidence of a causal relationship between adverse health outcomes and O_3 exposures became increasingly uncertain at lower levels of exposure.

Based on the strength of the currently available evidence of adverse health effects, and on the extent to which the evidence indicates that such effects likely result from exposures to ambient O_3 concentrations below the level of the current standard, the Administrator judged that the current standard does not protect public health with an adequate margin of safety and that the standard should be revised to provide such protection, especially for at-risk groups, against a broad array of adverse health effects.

In reaching this judgment, the Administrator had also considered the results of both the exposure and risk assessments conducted for this review, to provide some perspective on the extent to which at-risk groups would likely experience ''exposures of concern'' [17] and on the potential magnitude of the risk of experiencing various adverse health effects when recent air quality data (from 2002 to 2004) are used to simulate meeting the current standard and alternative standards in a number of urban areas in the U.S.[18] In considering the results of the health risk assessment, as discussed in the proposal notice (section II.C.2), the Administrator noted that there were important uncertainties and assumptions inherent in the risk assessment and that this assessment was most appropriately used to simulate trends and patterns that could be expected, as well as providing informed, but still imprecise, estimates of the potential magnitude of risks.

In considering the exposure assessment results at the time of proposal, the Administrator considered analyses that define ''exposures of concern'' by three benchmark exposure levels: 0.080, 0.070, and 0.060 ppm. Estimates of exposures in at-risk groups at and above these benchmark levels while at elevated exertion, using O_3 air quality data in 2002 and 2004, provide some indication of the potential magnitude of the incidence of health outcomes that cannot currently be evaluated in a quantitative risk assessment, such as increased airway responsiveness, increased pulmonary inflammation, increased cellular permeability, and decreased pulmonary defense mechanisms. These respiratory-related physiological effects have been demonstrated to occur in healthy people at O_3 exposures as low as 0.080 ppm, the lowest level tested for these effects. These physiological effects provide plausible mechanisms underlying observed associations with aggravation of asthma, increased medication use, increased school and work absences,

[17] As discussed in section II.A.3 above, ''exposures of concern'' are estimates of personal exposures while at moderate or greater exertion to 8-hour average ambient O_3 levels at and above specific benchmark levels which represent exposure levels at which O_3-related health effects are known or can with varying degrees of certainty be inferred to occur in some individuals. Estimates of exposures of concern provide some perspective on the public health impacts of health effects that may occur in some individuals at recent air quality levels but cannot be evaluated in quantitative risk assessments, and the extent to which such impacts might be reduced by meeting the current and alternative standards.

[18] As noted above in section II.A.3, recent O_3 air quality distributions have been statistically adjusted to simulate just meeting the current and selected alternative standards. These simulations do not represent predictions of when, whether, or how areas might meet the specified standards.

increased susceptibility to respiratory infection, increased visits to doctors' offices and emergency departments, and increased admissions to hospitals. In addition, these physiological effects, if repeated over time, have the potential to lead to chronic effects such as chronic bronchitis or long-term damage to the lungs that can lead to reduced quality of life.

In considering these various benchmark levels for exposures of concern at the time of proposal, the Administrator focused primarily on estimated exposures at and above the 0.070 ppm benchmark level while at elevated exertion as an important surrogate measure for potentially more serious health effects in at-risk groups such as people with asthma. This judgment was based on the strong evidence of effects in healthy people at the 0.080 ppm exposure level and the new evidence that people with asthma are likely to experience larger and more serious effects than healthy people at the same level of exposure. In the Administrator's view at the time of proposal, this evidence did not support a focus on exposures at and above the benchmark level of 0.080 ppm O_3, as it would not adequately account for the increased risk of harm from exposure for members of at-risk groups, especially people with asthma. The Administrator also judged that the evidence of demonstrated effects is too limited to support a primary focus on exposures down to the lowest benchmark level considered of 0.060 ppm. The Administrator particularly noted that although the analysis of ''exposures of concern'' was conducted to estimate exposures at and above three discrete benchmark levels (0.080, 0.070, and 0.060 ppm) while at elevated exertion, the concept is appropriately viewed as a continuum. In so doing, the Administrator sought to balance concern about the potential for health effects and their severity with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower O_3 exposure levels.

The Administrator observed that based on the aggregate exposure estimates for the 2002 simulation (summarized in section II.B.1, Table 1, of the proposal) for the 12 U.S. urban areas included in the exposure analysis, upon just meeting the current standard up to about 20 percent of asthmatic or all school age children are likely to experience one or more exposures at and above the 0.070 ppm benchmark level while at elevated exertion; the 2004 simulation yielded an estimate of about 1 percent of such children. The Administrator noted from this comparison that there is substantial year-to-year variability, ranging up to an order of magnitude or more in estimates of the number of people and the number of occurrences of exposures at and above this benchmark level while at elevated exertion. Moreover, within any given year, the exposure assessment indicates that there is substantial city-to-city variability in the estimates of the children exposed or the number of occurrences of exposure at and above this benchmark level while at elevated exertion. For example, city-specific estimates of the percent of asthmatic or all school age children likely to experience exposures at and above the benchmark level of 0.070 ppm while at elevated exertion ranges from about 1 percent up to about 40 percent across the 12 urban areas upon just meeting the current standard based on the 2002 simulation; the 2004 simulation yielded estimates that range from about 0 up to about 7 percent. The Administrator judged that it was important to recognize the substantial year-to-year and city-to-city variability in considering these estimates.

With regard to the results of the risk assessment, the Administrator focused on the risks estimated to remain upon just meeting the current standard. Based on the aggregate risk estimates (summarized in section II.B.2, Table 2, of the proposal), the Administrator observed that upon just meeting the current standard based on the 2002 simulation, approximately 8 percent of asthmatic school age children across 5 urban areas (ranging up to about 11 percent in the city with the highest estimate among the cities analyzed) would still be estimated to experience moderate or greater lung function decrements one or more times within an O_3 season. These estimated percentages would be approximately 3 percent of all school age children across 12 urban areas (ranging up to over 5 percent in the city with the highest estimate among the cities analyzed). The Administrator recognized that, as with the estimates of exposures of concern, there is substantial year-to-year and city-to-city variability in these risk estimates.

In addition to the percentage of asthmatic or all children estimated to experience one or more occurrences of an effect, the Administrator recognized that some individuals are estimated to have multiple occurrences. For example, across all the cities in the assessment, approximately 6 to 7 occurrences of moderate or greater lung function decrements per child are estimated to occur in all children and approximately 8 to 10 occurrences are estimated to occur in asthmatic children in an O_3 season, even upon just meeting the current standard. In the last review, a general consensus view of the adversity of such responses emerged as the frequency of occurrences increases, with the judgment that repeated occurrences of moderate responses, even in otherwise healthy individuals, may be considered adverse since they may well set the stage for more serious illness. The Administrator continued to support this view.

Large lung function decrements (i.e., $\geq$ 20 percent FEV_1 decrement) would likely interfere with normal activities in many healthy individuals, therefore single occurrences would be considered to be adverse. In people with asthma, large lung function responses (i.e., $\geq$ 20 percent FEV_1 decrement), would likely interfere with normal activities for most individuals and would also increase the likelihood that these individuals would use additional medication or seek medical treatment. Not only would single occurrences be considered to be adverse to asthmatic individuals under the ATS definition, but they also would be cause for medical concern for some individuals. Upon just meeting the current standard based on the 2002 simulation, close to 1 percent of asthmatic and all school age children are estimated to experience one or more occurrences of large lung function decrements in the aggregate across 5 and 12 urban areas, respectively, with close to 2 percent of both asthmatic and all school age children estimated to experience such effects in the city that receives relatively less protection from this standard. These estimates translate into approximately 500,000 occurrences of large lung function decrements in all children across 12 urban areas, and about 40,000 occurrences in asthmatic children across 5 urban areas upon just meeting the current standard based on the 2002 simulation; the 2004 simulation yielded estimates that translate into approximately 160,000 and 10,000 such occurrences in all children and asthmatic children, respectively.

Upon just meeting the current standard based on the 2002 simulation, the estimate of the O_3-related risk of respiratory symptom days in moderate to severe asthmatic children in the Boston area is about 8,000 symptom days; the 2004 simulation yielded an estimate of about 6,000 such symptoms days. These estimates translate into as many as one symptom day in six, and one symptom day in eight, respectively, that are attributable to O_3 exposure during the O_3 season of the total number of symptom days associated with all

causes of respiratory symptoms in asthmatic children during those years.

The estimated O_3-related risk of respiratory-related hospital admissions upon just meeting the current standard based on the 2002 simulation is greater than 500 hospital admissions in the New York City area alone, or about 1.5 percent of the total incidence of respiratory-related admissions associated with all causes; the 2004 simulation yielded an estimate of approximately 400 such hospital admissions. For nonaccidental mortality, just meeting the current standard based on the 2002 simulation results in an estimated incidence of from 0.3 to 2.4 per 100,000 population; the 2004 simulation resulted in an estimated incidence of from 0.3 to 1.2 per 100,000 population. Estimates for cardiorespiratory mortality show similar patterns (Abt Associates, 2007a, Table 4–26).

The Administrator recognized that in considering the estimates of the proportion of population affected and the number of occurrences of those specific health effects that are included in the risk assessment, these limited estimates based on 2002 and 2004 simulations are indicative of a much broader array of O_3-related health endpoints that are part of a ''pyramid of effects'' (discussed in section II.A.4.d of the proposal) that include various indicators of morbidity that could not be included in the risk assessment (e.g., school absences, increased medication use, emergency department visits) and which primarily affect members of at-risk groups. Moreover, the Administrator noted that the CASAC Panel supported a qualitative consideration of the much broader array of O_3-related health endpoints, and specifically referred to respiratory emergency department visits in asthmatics and people with other lung diseases, increased medication use, and increased respiratory symptoms reported at exposure levels well below the current standard.

The Administrator expressed the view in the proposal that the exposure and risk estimates discussed in the Staff Paper and summarized above are important from a public health perspective and indicative of potential exposures and risks to at-risk groups. In reaching this proposed judgment, the Administrator considered the following factors: (1) The estimates of numbers of persons exposed at and above the 0.070 ppm benchmark level; (2) the risk estimates of the proportion of the population and number of occurrences of various health effects in areas upon just meeting the current standard; (3) the year-to-year and city-to-city variability in both the exposure and risk estimates; (4) the uncertainties in these estimates; and (5) recognition that there is a broader array of O_3-related adverse health outcomes for which risk estimates could not be quantified (that are part of a broader ''pyramid of effects'') and that the scope of the assessment was limited to just a sample of urban areas and to some but not all at-risk populations, leading to an incomplete estimation of public health impacts associated with O_3 exposures across the country. The Administrator also noted that it was the unanimous conclusion of the CASAC Panel that there is no scientific justification for retaining the current primary O_3 standard, that the current standard is not sufficiently health-protective with an adequate margin of safety, and that the standard needs to be substantially reduced to protect human health, particularly in at-risk subpopulations.

Based on all of these considerations, the Administrator proposed that the current O_3 standard is not requisite to protect public health with an adequate margin of safety because it does not provide sufficient protection and that revision would result in increased public health protection, especially for members of at-risk groups.

2. Comments on the Need for Revision

The above section outlines the health effects evidence and assessments used by the Administrator to inform his proposed judgments about the adequacy of the current O_3 primary standard. General comments received on the proposal that either supported or opposed the proposed decision to revise the current O_3 primary standard are addressed in this section. Comments on the health effects evidence, which includes evidence from controlled human exposure and epidemiological studies, are considered in section II.B.2.a below. Comments on human exposure and health risk assessments are considered in section II.B.2.b, and comments on other policy-related issues are considered in section II.B.2.c, below. Comments on specific issues, health effects evidence, or the human exposure and health risk assessments that relate to consideration of the appropriate averaging time, form, or level of the O_3 standard are addressed below in sections II.C.3 and II.C.4. General comments based on implementation-related factors that are not a permissible basis for considering the need to revise the current standard are noted in the Response to Comments document.

a. Consideration of Health Effects Evidence

With regard to the need to revise the current primary O_3 standard, sharply divergent comments were received from two general sets of commenters. Many public comments received on the proposal asserted that the current O_3 standard is insufficient to protect public health, especially the health of sensitive groups, with an adequate margin of safety and revisions to the standard are appropriate. Among those calling for revisions to the current primary standard were medical groups, including for example, the American Medical Association (AMA), the American Thoracic Society (ATS), the American Academy of Pediatrics (AAP), and the American College of Chest Physicians (ACCP), as well as medical doctors and academic researchers. For example, the ATS stated:

> We believe that the Administrator has correctly stated that, beyond any degree of scientific uncertainty, convincing and compelling evidence has demonstrated that exposure to ozone at levels below the current standard is responsible for measurable and significant adverse health effects, both in terms of morbidity and mortality. * * * The known respiratory, cardiac and perinatal effects of ozone pollution are each in their own right major public health issues. In combination they provide immediate, actionable information and require a meaningful public health policy response from the EPA. [ATS *et al.* pp. 1, 11]

Similar conclusions were also reached in comments by many national, State, and local public health organizations, including, for example, the American Lung Association (ALA) in a joint set of comments with several environmental groups, the American Heart Association (AHA), the American Nurses Association (ANA), the American Public Health Association (APHA), and the National Association of County and City Health Officials (NACCHO), as well as in letters to the Administrator from EPA's advisory panel on children's environmental health (Children's Health Protection Advisory Committee; Marty *et al.*, 2007a, 2007b). Environmental groups also commented in support of revising the standard, including the Sierra Club, Environmental Defense, the Natural Resources Defense Council (NRDC), Earthjustice, and the U.S. Public Interest Research Group (US PIRG). All of these medical, environmental and public health commenters stated that the current O_3 standard needs to be revised and that an even more protective standard than proposed by EPA is needed to protect the health of sensitive population

groups. Many individual commenters also expressed such views.

The majority of State and local air pollution control authorities who commented on the O_3 standard supported revision of the current O_3 standard, as did the National Tribal Air Association (NTAA). Environmental agencies that supported revising the standard include agencies from: Arkansas; California; Delaware; Iowa; Illinois; Michigan; North Carolina; New Mexico; New York; Oklahoma; Oregon; Pennsylvania; Utah; Wisconsin; and Washington, DC. State organizations, including the National Association of Clean Air Agencies (NACAA), Northeast States for Coordinated Air Use Management (NESCAUM), and the Ozone Transport Commission (OTC) urged that EPA revise the O_3 standard. All of these commenters supported revisions to the current standard, with most supporting a standard consistent with CASAC's recommendations.

In general, the commenters noted above primarily based their views on the body of evidence assessed in the Criteria Document, finding it to be stronger and more compelling than in the last review. Some specifically agreed with the weight of evidence approach taken by the Criteria Document. These commenters generally placed much weight on CASAC's interpretation of the body of available evidence and the results of EPA's exposure and risk assessments, both of which formed the basis for CASAC's recommendation to revise the O_3 standard to provide increased public health protection.

> In recent years, a broad scientific consensus has emerged that EPA's current air quality standards for ozone are not sufficient to protect public health, and that the levels and form must be greatly tightened. This consensus is evidenced by the by the strong unanimous comments of the CASAC, which was backed by the endorsement of over 100 leading independent air quality scientists, EPA's Children's Health Protection Advisory Committee, and many others. In the face of this strong consensus, it is untenable to cite ''uncertainty'' as a rationale for failing to propose tighter standards. [ALA *et al.*, p. 15]

Medical and public health commenters also expressed the view that EPA must not use uncertainty in the scientific evidence as justification for retaining the current O_3 standard.

EPA generally agrees with these commenters' conclusion regarding the need to revise the current primary O_3 standard. The scientific evidence-related health effects to O_3 exposure noted by these commenters was generally the same as that assessed in the Criteria Document and the proposal. EPA agrees that this information provides a basis for concluding that the current O_3 standard is not adequately protective of public health. For reasons discussed below in sections II.C.3 and II.C.4, however, EPA disagrees with aspects of these commenters' views on the level of protection that is appropriate and supported by the available scientific information.

Another group of commenters representing industry associations and businesses opposed revising the current primary O_3 standard. These views were extensively presented in comments from the Utility Air Regulatory Group (UARG), representing a group of electric generating companies and organizations and several national trade associations, and in comments from other industry and business associations including, for example: Exxon Mobil Corporation; the Alliance of Automobile Manufacturers (AAM); the National Association of Manufacturers (NAM), the American Petroleum Institute (API). The API sponsored a workshop at the University of Rochester in June 2007 to review the scientific information and health risk assessment considered by EPA during the review of the O_3 NAAQS. Although the report (hereafter, ''Rochester Report'') from this workshop does not offer judgments on the specific elements of the current or proposed standard, it has been cited in a number of public comments that opposed revision of the current 8-hour standard. The Annapolis Center for Science-Based Public Policy issued a report (hereafter, ''Annapolis Center'') on the science and health effects of O_3, which explicitly opposed revising the current O_3 primary standard. Several State environmental agencies also opposed revising the current O_3 primary standard, including agencies from: Georgia; Indiana; Kentucky; Louisiana; Nevada; and Texas.

As discussed more fully below in sections dealing with specific comments, these and other commenters in this group generally mentioned many of the same studies from the body of evidence in the Criteria Document that were cited by the commenters who supported revising the standards, but highlighted different aspects of these studies in reaching substantially different conclusions about their strength and the extent to which progress has been made in reducing uncertainties in the evidence since the last review. They then considered whether the evidence that has become available since the last review has established a more certain risk or a risk of effects that is significantly different in character from those that provided a basis for the current standards, or whether the evidence demonstrates that the risk to public health upon attainment of the current standards would be greater than was understood when EPA established the current O_3 standard in 1997. These commenters generally expressed the view that the current standard provides the requisite degree of public health protection.

In supporting their view that the present primary O_3 standard continues to provide the requisite public health protection and should not be revised, UARG and others generally stated: That the effects of concern have not changed significantly since 1997; that the uncertainties in the underlying health science are as great or greater than in 1997; that the estimated number of exposures of concern and health risks upon attainment of the current O_3 standard has not changed or decreased since 1997; and that ''new'' studies not included in the Criteria Document continue to demonstrate uncertainties about possible health risks associated with exposure to O_3 at levels below the current standard. As noted above, EPA disagrees with this general assessment, and agrees with the general position that the available information provides a basis for concluding that the current O_3 standard is not adequately protective of public health. The rationale for this position is discussed more fully in the responses to specific comments that are presented below.

More specific comments on the evidence and EPA's responses are discussed below. Section II.B.2.a.i contains comments on evidence from controlled human exposure studies; section II.B.2.a.ii contains comments on evidence from epidemiological studies, including interpretation of the evidence and specific methodological issues. Comments on evidence pertaining to at-risk subgroups for O_3-related effects can be found in section II.B.2.a.iii below. EPA notes here that most of the issues and concerns raised by commenters concerning the health effects evidence, including both the interpretation of the evidence and specific technical or methodological issues, were essentially restatements of issues raised during the review of the Criteria Document and the Staff Paper. Most of these issues were highlighted and thoroughly discussed during the review of these documents by the CASAC. More detailed responses related to the interpretation of the health effects evidence and its role in the decision on the O_3 NAAQS are contained in the Response to Comments document.

i. Evidence from Controlled Human Exposure Studies

As noted in the overview of health effects evidence, section II.A.2 above, two new controlled human-exposure studies (Adams 2002, 2006) are now available that examine respiratory effects associated with prolonged O_3 exposures at levels at and below 0.080 ppm, which was the lowest exposure level that had been examined in the last review. One group of commenters that included national medical (e.g., ATS, AMA, ACCP) and national environmental and public health organizations (e.g., ALA in a joint set of comments with Environmental Defense, Sierra Club), agreed with EPA's reanalysis of the Adams' data while disagreeing with EPA's characterization of the evidence from the Adams studies as ''very limited'' (72 FR 37870). These commenters expressed the view that the Adams studies provide evidence of effects at lower concentrations than had previously been reported. They noted that Adams, while finding small group mean changes at 0.060 ppm, reported total subjective symptom scores reached statistical significance (relative to pre-exposure) at 5.6 and 6.6 hours, with the triangular exposure scenario, and that pain on deep inspiration values followed a similar pattern to total subjective symptoms scores. In addition, Adams (2002) reports that ''some sensitive subjects experience notable effects at 0.060 ppm,'' based on a greater than 10% reduction in FEV_1. These commenters made the point that the responses of individuals are more important than group mean responses and that when the Adams (2002, 2006) study data are corrected for the effects of exercise in clean air, 7 percent of subjects experience FEV_1 decrements greater than 10% at the 0.040 and 0.060 ppm exposure levels. They expressed the view that while 2 of 30 tested subjects responding at the 0.060 ppm level may seem like a small number, a 7 percent response rate is far from trivial. Seven percent of the U.S. population is 21.2 million people (ALA *et al.*, p. 51). Noting that the subjects in the Adams' studies were all healthy adults, these groups expressed concern that ''in some vulnerable populations the magnitude of the response would be greater and the exposure level at which responses are observed to occur would be lower'' (ATS, p. 4).

These commenters generally supported EPA's reanalysis of the Adams' data, stating that EPA has undertaken a careful reanalysis of the underlying data in the Adams studies to assess the change in FEV_1 following exposure to 0.060 ppm O_3 and filtered air, and concluding that ''the reanalysis employs the standard approach used by other researchers, and supported by CASAC'' (ALA *et al.*, p. 49), and ''we believe that the Adams study shows significant health effects at 0.06 ppm exposure levels'' (ATS, p. 5). The American Thoracic Society, AMA and other medical organizations conclude:

> The Adams study confirms our understanding that in healthy populations, an important fraction of the population will experience larger-than-average decrements in FEV_1 when exposed to low levels of ozone. It is reasonable to assume that these effects would be even greater when extrapolated to other populations known to have sensitivities to ozone (children, asthmatics, COPD patients). We feel the correct conclusion to draw from the Adams study is that there is a significant fraction of the population that will express significant responses to low levels of ozone. [ATS, p. 5]

EPA generally agrees with most of the comments summarized above, while placing more emphasis on the limited nature of the evidence addressing O_3-related lung function and respiratory symptom responses at the 0.060 and 0.040 ppm exposure levels. As characterized in the proposal notice, EPA's reanalysis of the data from the most recent Adams study shows small group mean decrements in lung function responses to be statistically significant at the 0.060 ppm exposure level, while acknowledging that the author's analysis did not yield statistically significant lung function responses. The Adams studies report a small percentage of subjects experiencing lung function decrements (≥10 percent) at the 0.060 ppm exposure level. EPA disagrees with these commenters that the percent of subjects that experienced FEV_1 decrements greater than 10% in this study of 30 subjects can appropriately be generalized to the U.S. population. The Administrator concludes that these studies provide very limited evidence of O_3-related lung function decrements and respiratory symptoms at this lower exposure level.

The second group of commenters, who opposed revision of the standard, raised many concerns about the role of the Adams studies and EPA's reanalysis of the Adams data in the decision. With regard to the results reported by Adams, these commenters expressed the view that the group mean FEV_1 decrement measured at 0.060 ppm was small, less than 3%, which is within the 3 to 5% range of normal measurement variability for an individual (UARG, p. 12). Moreover even the reported group mean FEV_1 decrements in Adams subjects when exposed to an O_3 concentration of 0.080 ppm were described as quite minimal, likely non-detectable by the subjects and within the range that the EPA would consider to be normal or mild (UARG, p. 13); With respect to the larger decrements in FEV_1 (≥ 10%) experienced by some subjects in the Adams studies, these commenters stated the view that such decrements would not be considered adverse in healthy individuals, and that ''reliance on the individual responses of such a miniscule number of subjects (2 of 30) is woefully inadequate as any basis for a nationwide O_3 standard'' (UARG, p.14). Some of these commenters put the results of the Adams studies (2002, 2006) in the context of the 1997 decision on the O_3 standard to reach the conclusion that there is no basis for revising that standard. They stated that the data from Adams (2002, 2006) on O_3 levels below 0.080 ppm was too limited to support a revised standard, and noted that responses reported in the Adams studies at 0.080 ppm were similar to responses reported previously (Horstmann *et al.*, 1990 and McDonnell *et al.*, 1991), and therefore, provided no new information on O_3 that was not known at the time of EPA's last review (Exxon Mobil, pp. 5–6).

These commenters raised one or more of the following concerns about EPA's reanalysis of the Adams data: (1) EPA's re-analysis was not published or peer-reviewed, and therefore neither the scientific community nor the public was afforded opportunity to appropriately review the analysis (Exxon Mobil, p. 6); (2) EPA has misinterpreted the studies of Dr. Adams, and over his objections used a different analytical methodology to reach a different conclusion; (3) EPA's reanalysis did not employ an appropriate statistical test; the ANOVA statistical test employed by Adams was preferred over the statistical test used in EPA's reanalysis (paired t-test); and (4) the reanalysis of the Adams data is evidence that EPA interpreted and presented scientific information in a systematically biased manner, reflecting purposeful bias because the reanalysis supported staff policy recommendations and Adams' own analysis did not, and the 10% decrement in FEV_1 was a post-hoc threshold chosen for compatibility with EPA staff policy recommendations (NAM, p. 19).

First, EPA agrees that the group mean lung function decrement observed in the Adams study at the 0.060 ppm exposure level is relatively small. However, EPA and the CASAC Panel observed that the study showed some individuals experienced lung function decrements ≥ 10 percent, which is the most

important finding from this study in terms of public health implications. The magnitude of changes in the group mean do not address whether a subset of the population is at risk of health effects. The clinical evidence to date makes it clear that there is significant variability in responses across individuals, so it is important to look beyond group mean to the response of subsets of the group to evaluate the potential impact for sensitive or susceptible parts of the population. The Administrator also agrees with both EPA staff and CASAC's views that this level of response may not represent an adverse health effect in healthy individuals but does represent a level that should be considered adverse for asthmatic individuals.

Second, EPA notes that its reanalysis of the Adams (2006) study was prepared in response to the issues and analysis raised by a public commenter who made a presentation to the CASAC Panel at its March 5, 2007 teleconference. EPA replicated the analysis and addressed issues raised in these public comments concerning the statistical significance of 0.060 ppm O_3 exposure on lung function response in the Adams (2006) publication. EPA documented its response in a technical memorandum (Brown, 2007), which was placed in the rulemaking docket prior to publication of the proposal. EPA has clearly stated that the additional statistical analyses conducted by both the public commenter and by EPA staff do not contradict or undercut the statistical analysis presented by Dr. Adams in his published study, as EPA and the author were addressing different questions. While the author of the original study was focused on determining whether the changes observed on an hour-by-hour basis were statistically significant for different exposure protocols, EPA's reanalysis was focused on the different question of whether there was a statistically significant difference in lung function decrement before and after the entire 6.6 hour exposure period between the 0.060 ppm exposure protocol and filtered air.

Third, with respect to the concerns raised by Dr. Adams and other commenters that EPA had used an inappropriate statistical approach to address the question regarding statistical significance of the average lung function response at 0.060 ppm, members of the CASAC Panel noted on the March 5, 2007 teleconference the very conservative nature of the approach used by Adams to evaluate the research questions posed by the author. These same CASAC Panel members also supported the use of the statistical approach (i.e., paired-t test) used in the analysis prepared by the public commenter, which was the same approach later used in EPA's reanalysis, as the preferred method for analyzing the pre-minus post-exposure lung function responses reported in this study. EPA agrees with the characterization of the Adams (2006) study in the Rochester Report, which stated, ''Although these findings have not been confirmed or replicated, the responses to 0.06 ppm ozone in this [Adams] study are consistent with the presence of an exposure-response curve with responses that do not end abruptly below 0.08 ppm.'' This same report also concluded,

> The statistical test used in Adams (2006) did not identify the response of the 0.06 ppm exposure as statistically different from that of the filtered air exposure. However, alternative statistical tests suggest that the observed small group mean response in FEV_1 induced by exposure to 0.06 ppm compared to filtered air is not the result of chance alone. [Rochester Report, p. 56].

Fourth, EPA rejects the contention that the conduct and presentation of its reanalysis of the Adams (2006) study to address issues raised by public commenters represents purposeful bias and was developed only to support a pre-determined policy position. As discussed above, EPA's reanalysis addressed a different question than the author's analysis contained in the publication. Other controlled human exposure studies had routinely examined the same question EPA's reanalysis addressed, whether or not there was a statistically significant group mean response for the entire exposure period compared to filtered air.

ii Evidence from Epidemiological Studies

This section contains major comments on EPA's assessment of epidemiological studies in the proposal and the Agency's general responses to those comments. Many of the issues discussed below are addressed in more detail in the Response to Comments document. Comments on EPA's interpretation and assessment of the body of epidemiological evidence are discussed first and then comments on methodological issues and particular study designs are discussed. EPA notes here that most of the issues and concerns raised by commenters on the interpretation of the epidemiological evidence and methodological issues are essentially restatements of issues raised during the review of the Criteria Document and Staff Paper. EPA presented and the CASAC Panel reviewed the interpretation of the epidemiological evidence in the Criteria Document and the integration of the evidence with policy considerations in the development of the policy options presented in the Staff Paper for consideration by the Administrator. CASAC reviewed both the O_3 Criteria Document and O_3 Staff Paper and approved of the scientific content and accuracy of both documents. The CASAC chairman sent to the Administrator one letter (Henderson, 2006a) for the O_3 Criteria Document and another letter for the O_3 Staff Paper (Henderson, 2006c) indicating that these documents provided an appropriate basis for use in regulatory decision making regarding the O_3 NAAQS.

As with evidence from controlled human exposure studies, sharply divergent comments were received on the evidence from epidemiological studies, including EPA's interpretation of the evidence. One group of commenters from medical, public health and environmental organizations, in general, supported EPA's interpretation of the epidemiological evidence (72 FR 37838, section II.a.3.a–c) with regard to whether the evidence for associations is consistent and coherent and whether there is biological plausibility for judging whether exposure to O_3 is causally related to respiratory and cardiovascular morbidity and mortality effects. Comments of public health and environmental groups, including a joint set of comments from ALA and several environmental groups, note that more than 250 new epidemiological studies, published from 1996 to 2005, were included in the Criteria Document and point to a figure from the Staff Paper and proposal (72 FR 37842, Figure 1) of short-term O_3 exposures and respiratory health outcome showing consistency in an array of positive effects estimates and health endpoints observed in multiple locations in Canada and the U.S. Medical commenters, including ATS and AMA, stated that these ''real world'' studies support the findings of chamber studies to show adverse respiratory health effects at levels below the current 8-hour O_3 standard. These commenters generally expressed agreement with the weight of evidence approach taken by the Criteria Document and the conclusions reached, which were reviewed by CASAC, that the effects of O_3 on respiratory symptoms, lung function changes, emergency department visits for respiratory and cardiovascular effects, and hospital admissions can be considered causal.

EPA generally agrees with this interpretation of the epidemiological evidence. The Criteria Document concludes that positive and robust

associations were found between ambient O_3 concentrations and various respiratory disease hospitalization outcomes and emergency department visits for asthma, when focusing particularly on results of warm-season analyses. These positive and robust associations are supported by the human clinical, animal toxicological, and epidemiological evidence for lung function decrements, increased respiratory symptoms, airway inflammation, and increased airway responsiveness. Taken together, the overall evidence supports a causal relationship between acute ambient O_3 exposures and increased respiratory morbidity outcomes resulting in increased emergency department visits and hospitalizations during the warm season (EPA, 2006a, p. 8–77).

However, in contrast with EPA, these commenters from ALA and other environmental, medical and public health groups asserted that the causal associations extend down to the lowest ambient O_3 concentrations reported in these studies. These commenters also expressed the view that the respiratory and cardiovascular system effects are well-supported by the Hill criteria[19] of judging causality: strength of association, consistency between studies, coherence among studies, and biological plausibility (ALA *et al.*, pp. 51–52). They also noted that recent studies provide compelling evidence that exposure to O_3 results in adverse cardiovascular health effects (ATS, p. 6–7).

EPA disagrees with the assertion of these commenters that the causal associations extend down to the lowest ambient O_3 concentrations reported in these studies. The biological plausibility of the epidemiological associations is generally supported by controlled human exposure and toxicological evidence of respiratory morbidity effects for levels at and below 0.080 ppm, but that biological plausibility becomes increasingly uncertain at much lower levels. Further, at much lower levels, it becomes increasingly uncertain as to whether the reported associations are related to O_3 alone rather than to the broader mix of air pollutants present in the ambient air. With regard to cardiovascular health outcomes, the Criteria Document concludes that the generally limited body of evidence from animal toxicology, human controlled exposure, and epidemiologic studies is suggestive that O_3 can directly and/or indirectly contribute to cardiovascular-related morbidity, and that for cardiovascular mortality the Criteria Document suggests that effects estimates are more consistently positive and statistically significant in warm season analyses but that additional research is needed to more fully establish the underlying mechanisms by which such mortality effects occur (EPA, 2006a, pp. 8–77–78).

The second group of commenters, mostly representing industry associations and some businesses opposed to revising the primary O_3 standard, disagreed with EPA's interpretation of the epidemiological evidence. These commenters expressed the view that while many new epidemiological studies have been published since the current primary O_3 standard was promulgated, the inconsistencies and uncertainties inherent in these studies as a whole should preclude any reliance on them as justification for a more stringent primary O_3 NAAQS. They contend that the purported consistency is the result of inappropriate selectivity in focusing on specific studies and specific results within those studies (UARG, p. 15). With regard to daily mortality, the proposal emphasizes the multi-city studies, suggesting that they have the statistical power to allow the authors to reliably distinguish even weak relationships from the null hypothesis with statistical confidence. However, these commenters note that these studies are not consistent, with regard to the findings concerning individual cities analyzed in the multi-city analyses. One commenter asserted that each of the multi-city studies and meta-analyses cited by EPA involves cities for which the city-specific estimates of O_3 effects have been observed to vary over a wide range that includes negative [i.e., beneficial] effects (API, p. 15). To illustrate this point, many commenters point to EPA's use of the study by Bell *et al.*, 2004. They note that in focusing on the national estimate from Bell of the association between 24-hour average O_3 levels and daily mortality, the Administrator overlooks the very significant and heterogeneous information of the individual analyses of the 95 cities used to produce the national estimate and, based on this inconsistency, question whether what is being seen is actually an O_3 mortality association at all (UARG, p. 16).

EPA has accurately characterized the inconsistencies and uncertainties in the epidemiological evidence and strongly denies that it has inappropriately focused on specific positive studies or specific positive results within those studies. EPA's assessment of the health effects evidence in the Criteria Document has been reviewed by the CASAC Panel. EPA has appropriately characterized the heterogeneity in O_3 health effects in assessing the results of the single-city and multi-city studies and the meta-analyses, as discussed in section 7.6.6 of the Criteria Document. In general, in the proposal, the Administrator recognized that in the body of epidemiological evidence, many studies reported positive and statistically significant associations, while others reported positive results that were not statistically significant, and a few did not report any positive O_3-related associations. In addition, the Administrator judged that evidence of a causal relationship between adverse health outcomes and O_3 exposures became increasingly uncertain at lower levels of exposure.

More specifically, the Bell *et al.* (2004) study observed a statistically significant, positive association between short-term O_3 concentrations (24-hour average) and all-cause mortality using data from 95 U.S. National Morbidity, Mortality, and Air Pollution Study (NMMAPS) communities. The objective of the NMMAPS was to develop an overall national effect estimate using multi-city time-series analyses, by drawing on information from all of the individual cities. The strength of this approach is the use of a uniform analytic methodology, avoidance of selection bias, and larger statistical power. Significant intercity heterogeneity was noted in the Bell *et al.* and other multi-city studies, probably due to many factors, including city-specific differences in pollution characteristics, the use of air conditioning, time spent indoors versus outdoors, and socioeconomic factors. Levy *et al.* (2005) found suggestive evidence that air conditioning prevalence was a predictor of heterogeneity in O_3 risk estimates in their meta-analysis.

Several commenters argued that EPA overstates the probability of causal links between health effects and exposure to O_3, especially at the lower concentrations examined, and that the statistical associations found in the cited epidemiological studies do not automatically imply that a causal relationship exists. These commenters expressed the view that the correlation between health effects and O_3 exposure must be rigorously evaluated according to a standard set of criteria before concluding that there is a causal link and that EPA fails to articulate and

[19] The Hill criteria, published by Sir Bradford Hill (1965), are commonly used criteria for reaching judgments about causality from observed associations, and these criteria were the basis for the critical assessment of the epidemiological evidence presented in the Criteria Document (pp. 7–3–7–4).

follow the weight of the evidence or established causality criteria for evaluating epidemiological studies in drawing conclusion regarding causality (Exxon Mobil, pp. 10–11).

In the proposal, EPA explicitly stated that epidemiological studies are not themselves direct evidence of a causal link between exposure to O_3 and the occurrence of effects (72 FR 37879). Throughout the O_3 review, a standard set of criteria have been used to evaluate evidence of a causal link. The critical assessment of epidemiological evidence presented in the Criteria Document was conceptually based upon consideration of salient aspects of the evidence of associations so as to reach fundamental judgments as to the likely causal significance of the observed associations in accordance with the Hill criteria (Criteria Document, pp. 7–3—7–4). Moreover, consistent with the proposal the Administrator has specifically considered evidence from epidemiological studies in the context of all the other available evidence in evaluating the degree of certainty that O_3-related adverse health effects occur at various levels at and below 0.080 ppm, including the strong evidence from controlled human exposure studies and the toxicological studies that demonstrate biological plausibility and mechanisms for effects. More detailed discussion of the criteria used to evaluate evidence with regard to judgments about causality can be found in the Response to Comments document.

Several commenters made the point that the results of the new epidemiological studies included in this review are not coherent. They state that although EPA notes that estimates of risk from cardiovascular mortality are higher than those for total mortality and indicates that these findings are highly suggestive that short-term O_3 exposure directly or indirectly contributes to cardiovascular mortality, the Agency fails to contrast the mortality studies to studies of hospital admissions for cardiovascular causes. Most studies of cardiovascular causes have not found statistically significant associations with O_3 exposures (UARG, pp. 16–17).

EPA strongly disagrees that it has failed to appropriately characterize the association between O_3 exposure and potential cardiovascular morbidity and mortality effects. As noted above, the Criteria Document characterizes the overall body of evidence as limited, but highly suggestive, and concludes that much needs to be done to more fully integrate links between ambient O_3 exposures and adverse cardiovascular outcomes (EPA, 2006a, p. 8–77). Some field/panel studies that examined associations between O_3 and various cardiac physiologic endpoints have yielded limited epidemiological evidence suggestive of a potential association between acute O_3 exposure and altered HRV, ventricular arrhythmias, and incidence of myocardial infarction (Criteria Document, section 7.2.7). In addition, there were approximately 20 single-city studies of emergency department visits and hospital admissions for all cardiovascular diseases or specific diseases (i.e., myocardial infarction, congestive heart failure, ischemic heart disease, dysrhythmias). In the studies using all year data, many showed positive results but few were statistically significant. Given the strong seasonal variations in O_3 concentrations and the changing relationship between O_3 and other copollutants by season, inadequate adjustment for seasonal effects might have masked or underestimated the associations. In the limited number of studies that analyzed data by season (6 studies), statistically significant associations were observed in all but one study (Criteria Document, section 7.3.4). Newly available animal toxicology data provide some plausibility for the observed associations between O_3 and cardiovascular outcomes. EPA believes that its characterization of the evidence for O_3-related cardiovascular system effects is appropriate. It is clear that coherence is stronger in the much larger body of evidence of O_3-related respiratory morbidity and mortality effects.

Many commenters who did not support revising the current O_3 primary standard also submitted comments on specific methodological issues related to the epidemiological evidence, including: The adequacy of exposure data; confounding by copollutants; model selection; evidence of mortality; and, new studies not included in the Criteria Document. Some of the major comments on methodological issues raised by these commenters are discussed below. The Response to Comments document contains more detailed responses to many of these comments, as well as responses to other comments not considered here.

(1) Adequacy of exposure data. Many commenters expressed concern about the adequacy of exposure data both for time-series and panel studies. These commenters argued that almost all of the epidemiological studies on which EPA relies in recommending a more stringent O_3 standard are based on data from ambient monitors for which there is a poor correlation with the actual personal exposure subjects receive during their daily activities. They questioned the Administrator's conclusion that in the absence of available data on personal O_3 exposure, the use of routinely monitored ambient O_3 concentrations as a surrogate for personal exposures is not generally expected to change the principal conclusions from epidemiological studies. These commenters also note that, in its June 2006 letter, the CASAC Panel raised the issue of exposure error, concluding that it called into question whether observed associations could be attributed to O_3 alone (API, p. 17). One of these commenters cited studies (e.g., Sarnat *et al.*, 2001; Sarnat *et al.*, 2005) that show a lack of correlation between personal exposures and ambient concentrations (NAM, p. 22). Another cited studies (Sarnat *et al.*, 2001, 2005, and 2006; and Koutrakis *et al.*, 2005) that have found that the ability of ambient gas monitors to represent personal exposure to such gases is similarly quite limited, including: (1) Most personal exposures are so low as to be not detectable at a level of 5 parts per billion (ppb), resulting in very low correlation between concentrations reported from central ambient monitors and personal monitors; (2) O_3 measurements from ambient monitors are a better surrogate for personal exposure to $PM_{2.5}$ than to O_3; and (3) populations expected to be potentially susceptible to O_3, including children, the elderly, and those with COPD, are at the low end of the population exposure distribution (Exxon Mobil, pp. 15–16). These commenters contended that without such a correlation there is no legitimate way for EPA to conclude that O_3 exposure has caused the reported health effects, or to conclude that use of routinely monitored ambient O_3 concentrations as a surrogate for personal exposures is adequate. Some of these commenters also contended that EPA incorrectly concludes that the exposure error in epidemiological studies results in an underestimate of risk (Exxon Mobil, p. 20).

With regard to the views on exposure measurement error expressed by CASAC, while the commenter is correct that the CASAC Panel raised the question of exposure error and whether observed associations could be attributed to O_3 alone, the commenter failed to note that CASAC's comment was focused on the association between O_3 and mortality, at very low O_3 concentrations and in the group of people most susceptible to premature mortality. The CASAC Panel in its June 2006 letter stated:

The population that would be expected to be potentially susceptible to dying from exposure to ozone is likely to have ozone exposures that are at the lower end of the ozone population distribution, in which case the population would be exposed to very low ozone concentrations, and especially so in winter. Therefore it seems unlikely that the observed associations between short-term ozone concentrations and daily mortality are due solely to ozone itself. [Henderson 2006b, pp. 3–4]

This section of the quote, which was not addressed in the comment submitted by API, together with the conclusions in the final CASAC letter (Henderson, 2007), leads EPA to conclude that contrary to the commenters' assertion, the CASAC Panel was not calling into question the association between O_3 exposure and the full range of morbidity effects found in panel or time-series studies that rely on ambient monitoring data as a surrogate for personal exposure data. It is important to note that EPA agrees that the evidence is only highly suggestive that O_3 directly or indirectly contributes to mortality, as compared to the stronger evidence of causality for respiratory morbidity effects.

EPA agrees that exposure measurement error may result from the use of stationary ambient monitors as an indicator of personal exposure in population studies. There is a full discussion of measurement error and its effect on the estimates of relative risk in section 7.1.3.1 of the Criteria Document. However, the possibility of measurement error does not preclude the use of ambient monitoring data as a surrogate for personal exposure data in time-series or panel studies. It simply means that in some situations where the likelihood of measurement error is greatest, effects estimates must be evaluated carefully and that caution must be used in interpreting the results from these studies. Throughout this review, EPA has recognized this concern. The Criteria Document states that there is supportive evidence that ambient O_3 concentrations from central monitors may serve as valid surrogate measures for mean personal O_3 exposures experienced by the population, which is of most relevance to time-series studies, in which individual variations in factors affecting exposure tend to average out across the study population. This is especially true for respiratory hospital admission studies for which much of the response is attributable to O_3 effects on asthmatics. In children, for whom asthma is more prevalent than for adults, ambient monitors are more likely to correlate reasonably well with personal exposure to O_3 of ambient origin because children tend to spend more time outdoors than adults in the warm season. EPA does not agree that the correlation between personal exposure and ambient monitoring data is necessarily poor, especially in children. Moreover, the CASAC Panel supported this view as they noted that ''[p]ersonal exposures most likely correlate better with central site values for those subpopulations that spend a good deal of time outdoors, which coincides, for example, with children actively engaged in outdoor activities, and which happens to be a group that the ozone risk assessment focuses upon.'' (Henderson, 2006c. p. 10). However, the Criteria Document notes that there is some concern in considering certain mortality and hospitalization time-series studies regarding the extent to which ambient O_3 concentrations are representative of personal O_3 exposures in another particularly susceptible group of individuals, the debilitated elderly, as the correlation between the two measurements has not been examined in this population. A better understanding of the relationship between ambient concentrations and personal exposures, as well as of the factors that affect the relationship, will improve the interpretation of observed associations between ambient concentration and population health response.

With regard to the specific comments that reference the findings of studies by Sarnat *et al.* (2001, 2005, 2006) and Koutrakis *et al.* (2005), the fact that personal exposure monitors cannot detect O_3 levels of 5 ppb and below may in part explain why there was a poor correlation between personal exposure measurements and ambient monitoring data in the winter relative to the correlation in the warm season, along with differences in activity patterns and building ventilation. In one study conducted in Baltimore, Sarnat *et al.* (2001) observed that ambient O_3 concentrations showed stronger associations with personal exposure to $PM_{2.5}$ than to O_3; however, in a later study conducted in Boston (Sarnat *et al.*, 2005), ambient O_3 concentrations and personal O_3 exposures were found to be significantly associated in the summer. Another study cited by the commenter, but not included in the Criteria Document, conducted in Steubenville (Sarnat *et al.*, 2006), also observed significant associations between ambient O_3 concentrations and personal O_3. The authors noted that the city-specific discrepancy in the results may be attributable to differences in ventilation. Though the studies by Sarnat *et al.* (2001, 2005, and 2006) included senior citizens, the study selection criteria required them to be nonsmoking and physically healthy. EPA is not relying on studies that are not in the Criteria Document, such as Sarnat *et al.* (2006), to refute the commenters. However, EPA notes that Sarnat *et al.* (2006) does not support the conclusion drawn by the commenters that this study shows very limited associations between ambient O_3 concentrations and personal exposures.

Existing epidemiologic models may not fully take into consideration all the biologically relevant exposure history or reflect the complexities of all the underlying biological processes. Using ambient concentrations to determine exposure generally overestimates true personal O_3 exposures (by approximately 2- to 4-fold in the various studies described in the Criteria Document, section 3.9), which assuming the relationship is causal, would result in biased descriptions of underlying concentration-response relationships (i.e., in attenuated effect estimates). From this perspective, the implication is that the effects being estimated in relationship to ambient levels occur at fairly low personal exposures and the potency of O_3 is greater than these effect estimates indicate. On the other hand, as very few studies evaluating O_3 health effects with personal O_3 exposure measurements exist in the literature, effect estimates determined from ambient O_3 concentrations must be evaluated and used with caution to assess the health risks of O_3 (Criteria Document, pp. 7–8 to 7–10). Nonetheless, as noted in section II.C.3 of the proposal, the use of routinely monitored ambient O_3 concentrations as a surrogate for personal exposures is not generally expected to change the principal conclusions from O_3 epidemiologic studies. Therefore, population risk estimates derived using ambient O_3 concentrations from currently available observational studies, with appropriate caveats about personal exposure considerations, remain useful (72 FR 37839).

(2) Confounding by copollutants. Many commenters argued that known confounders are inadequately controlled in the epidemiological studies of O_3 and various health outcomes and that the health effects of O_3 are often not statistically significant when epidemiological studies consider the effects of confounding air pollutants (e.g., $PM_{2.5}$, CO, nitrogen dioxide (NO_2) in multi-pollutant models. For example, Mortimer *et al.* (2002), a large multi-city asthma panel study, found that when

other pollutants, i.e., sulfur dioxide (SO_2), NO_2, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), were placed in a multi-pollutant model with O_3, the O_3-related associations with respiratory symptoms and lung function became non-significant.

The National Cooperative Inner-City Asthma Study (Mortimer *et al.*, 2002) evaluated air pollution health effects in 846 asthmatic children in 8 urban areas. The pollutants evaluated included O_3, PM_{10}, SO_2, and NO_2. Three effects were evaluated: (1) Daily percent change in lung function, measured as peak expiratory flow rate (PEFR); (2) incidence of (≥ 10% reduction in lung function (PEFR); and, (3) incidence of symptoms (i.e., cough, chest tightness, and wheeze). EPA notes that in this study, O_3 was the only pollutant associated with reduction in lung function. Nitrogen dioxide had the strongest effect on morning symptoms, and the authors concluded it ''* * * may be a better marker for the summer-pollutant mix in these cities'' but had no association with morning lung function. In a two-pollutant model with NO_2, the O_3 effect on morning symptoms remained relatively unchanged. Sulfur dioxide had statistically significant effects on morning symptoms but no association with morning lung function. Particulate matter (PM_{10}), which was measured daily in 3 cities, had no statistically significant effect on morning lung function. In a two-pollutant model with O_3, the PM_{10} estimate for morning symptoms was slightly reduced and there was a larger reduction in the O_3 estimate, which remained positive but not statistically significant. A more general discussion and response to this issue concerning confounding by copollutants is presented in the Response to Comments document.

(3) Model selection. Commenters who did not support revision of the primary O_3 standard raised issues regarding the adequacy of model specification including control of temporal and weather variables in the time-series epidemiological studies that EPA has claimed support the finding of O_3-related morbidity and mortality health outcomes. Specifically, concerns were expressed regarding the following issues: (i) Commenters noted that recent meta-analyses have confirmed the important effects of model selection in the results of the time-series studies, including the choice of models to address weather and the degree of smoothing, in direct contradiction of the Staff Paper's conclusion on the robustness of the models used in the O_3 time-series studies (Exxon Mobil, p. 41); (ii) commenters contended that there were no criteria for how confounders such as temperature or other factors were to be addressed, resulting in arbitrary model selection potentially impacting the resulting effect estimates; and (iii) commenters expressed the view that to appropriately address concerns about model selection in the O_3 time-series studies, EPA should rely on an alternative statistical approach, Bayesian model averaging, that incorporates a range of models addressing confounding variables, pollutants, and lags rather than a single model.

In response to the first issue, EPA agrees that the results of the meta-analyses do support the conclusion that there are important effects of model selection and that, for example, alternative models to address weather might make a difference of a factor of two in the effect estimates. However, as noted in the Criteria Document, one of the meta-analyses (Ito *et al.*, 2005) suggested that the stringent weather model used in the Bell *et al.* (2004) NMMAPS study may tend to yield smaller effect estimates than those used in other studies (Criteria Document, p. 7–96), and, thus concerns about appropriate choice of models could result in either higher or lower effect estimates than reported. In addressing this issue, the Criteria Document concluded,

> Considering the wide variability in possible study designs and statistical model specification choices, the reported O_3 risk estimates for the various health outcomes are in reasonably good agreement. In the case of O_3-mortality time-series studies, combinations of choices in model specifications * * * alone may explain the extent of difference in O_3 risk estimates across studies. (Criteria Document, p. 7–174)

Second, the issues surrounding sensitivity to model specifications were thoroughly discussed in the Criteria Document (see section 7.1.3.6) and evaluated in some of the meta-analyses reviewed in the Criteria Document and Staff Paper. As stated in the Criteria Document, O_3 effect estimates ''were generally more sensitive to alternative weather models than to varying degrees of freedom for temporal trend adjustment'' (Criteria Document, p. 7–176). The Criteria Document also concluded that ''although there is some concern regarding the use of multipollutant models * * * results generally suggest that the inclusion of copollutants into the models do not substantially affect O_3 risk estimates'' and the results of the time-series studies are ''robust and independent of the effects of other copollutants'' (Criteria Document, p. 7–177). Overall, EPA continues to believe that based on its integrated assessment, the time-series studies provide strong support for concluding there are O_3-related morbidity effects, including respiratory-related hospital admissions and emergency department visits during the warm season, and that the time-series studies provide findings that are highly suggestive that short-term O_3 exposure directly or indirectly contributes to non-accidental and cardiorespiratory-related mortality.

The Administrator acknowledges that uncertainties concerning appropriate model selection are an important source of uncertainty affecting the specific risk estimates included in EPA's risk assessment and that these quantitative risk estimates must be used with appropriate caution, keeping in mind these important uncertainties, as discussed above in section II.A.3. As discussed later in this notice, the Administrator is not relying on any specific quantitative effect estimates from the time-series studies or any risk estimates based on the time-series studies in reaching his judgment about the need to revise the current 8-hour O_3 standard.

Third, in response to commenters who suggested that EPA adopt an alternative statistical approach, i.e., Bayesian model averaging, to address concerns about potential arbitrary selection of models, the Criteria Document evaluated the strengths and weaknesses of such methods in the context of air pollution epidemiology. The Criteria Document noted several limitations, especially where there are many interaction terms and meteorological variables and where variables are highly correlated, as is the case for air pollution studies, which makes it very difficult to interpret the results using this alternative approach. EPA believes further research is needed to address concerns about model selection and to develop appropriate methods addressing these concerns.

(4) Evidence of mortality. Many commenters, including those that argued for revising the current O_3 standard as well as those that argued against revisions, focused on the new evidence from multi-city time-series analyses and meta-analyses linking O_3 exposure with mortality. Again, the comments were highly polarized. One set of commenters, including medical, public health, and environmental organizations argued that recent published research has provided more robust, consistent evidence linking O_3 to cardiovascular and respiratory

mortality. The ATS, AMA, and others stated that data from single-city studies, multiple-city studies, and meta-analyses show a consistent relationship between O_3 exposure and mortality from respiratory and cardiovascular causes. These commenters noted that this effect was observed after controlling for co-pollutants and seasonal impacts. These commenters stated that research has demonstrated that exposure to O_3 pollution is causing premature deaths, and has also provided clues on the possible mechanisms that lead to premature mortality (ATS, p. 4). These commenters noted that people may die from O_3 exposure even when the concentrations are well below the current standard. They pointed to a study (Bell *et al.*, 2006) in which the authors followed up on their 2004 multi-city study to estimate the exposure-response curve for O_3 and the risk of mortality and to evaluate whether a threshold exists below which there is no effect. The authors applied several statistical models to data on air pollution, weather, and mortality for 98 U.S. urban communities for the period 1987 to 2000. The study reported that O_3 and mortality results did not appear to be confounded by temperature or PM and showed that any threshold, if it existed, would have to be at very low concentrations, far below the current standard (ALA *et al.*, p. 74). Another approach also indicated that the mortality effect is unlikely to be confounded by temperature. A case-crossover study (Schwartz 2005) of over one million deaths in 14 U.S. cities, designed to control for the effect of temperature on daily deaths attributable to O_3, found that the association between O_3 and mortality risk reported in the multi-city studies is unlikely to be due to confounding by temperature (ALA *et al.*, p. 76). These commenters argue that meta-analyses also provide compelling evidence that the O_3-mortality findings are consistent. They point to three independent analyses conducted by separate research groups at Johns Hopkins University, Harvard University and New York University, using their own methods and study criteria, which reported a remarkably consistent link between daily O_3 levels and total mortality.

In response, EPA notes that the Criteria Document states that the results from the U.S. multi-city time-series studies provide the strongest evidence to date for O_3 effects on acute mortality. Recent meta-analyses also indicate positive risk estimates that are unlikely to be confounded by PM; however, future work is needed to better understand the influence of model specifications on the risk coefficient (EPA, 2006a, p. 7–175). The Criteria Document concludes that these findings are highly suggestive that short-term O_3 exposure directly or indirectly contributes to non-accidental and cardiorespiratory-related mortality but that additional research is needed to more fully establish the underlying mechanisms by which such effects occur (72 FR 37836). Thus while EPA generally agrees with the direction of the comment, EPA believes the evidence supports a view as noted above. In addition, it must be noted that the Administrator did not focus on mortality as a basis for proposing that the current O_3 standard was not adequate. In the proposal, the Administrator focused on the very strong evidence of respiratory morbidity effects in healthy people at the 0.080 ppm exposure level and new evidence that people with asthma are likely to experience larger and more serious effects than healthy people at the same level of exposure (72 FR 37870). With regard to the ambient concentrations at which O_3-related mortality effects may be occurring, EPA recognized in the proposal that evidence of a causal relationship between adverse health effects and O_3 exposures becomes increasingly uncertain at lower levels of exposure (72 FR 37880). This is discussed more fully in section (b) below.

Several industry organizations argued against placing any reliance on the time-series epidemiological studies, especially those studies related to mortality effects. The Annapolis Center (p. 46) makes the point that although there may be somewhat more positive associations than negative associations, there is so much noise or variability in the data that identifying which positive associations may be real health effects and which are not is beyond the capability of current methods. They cite the view that the CASAC Panel expressed in a June 2006 letter (Henderson, 2006b), noting that ''Because results of time-series studies implicate all of the criteria pollutants, findings of mortality time-series studies do not seem to allow us to confidently attribute observed effects specifically to individual pollutants.''

Because of the importance of the O_3 mortality multi-city studies in EPA's analysis of this issue, several of these commenters focused on them in particular, arguing that, although these studies have the statistical power to distinguish weak relationships between daily O_3 and mortality, they do not provide reliable or consistent evidence implicating O_3 exposures as a cause of mortality. Several reasons were given, including: (a) The multi-city studies cited by EPA involve a wide range of city-specific effects estimates, including some large cities that have very slight or negligible effects (e.g., Los Angeles) (Bell *et al.*, 2004), thus causing several commenters to question the relevance of a ''national'' effect of O_3 on mortality and argue that a single national O_3 concentration-mortality coefficient should be used and interpreted with caution (Rochester Report p. 4); (b) the multi-city mortality studies did not sufficiently account for other pollutants, for example, Bell *et al.* (2004) adjusted for PM_{10} but did not have the necessary air quality data to adequately adjust for $PM_{2.5}$, which EPA has concluded also causes mortality and is correlated with O_3, especially in the summer months (Annapolis Center, p. 42); and (c) these studies contain several findings that are inconsistent or implausible, such as premature mortality reported at such low levels as to imply that O_3-related mortality is occurring at levels well within natural background, which is not biologically plausible (Annapolis Center, p. 42).

Evidence supporting an association between short-term O_3 exposure and premature mortality is not limited to multi-city time-series studies. Most single-city studies show elevated risk of total, non-accidental mortality, cardiorespiratory, and respiratory mortality (> 20 studies), including one study in an area that would have met current standard (Vedal *et al.*, 2003). Three large meta-analyses, which pool data from many single-city studies to increase statistical power, reported statistically significant associations and examined sources of heterogeneity in those associations (Bell *et al.*, 2005; Ito *et al.*, 2005; Levy *et al.* 2005). These studies found: (1) Larger and more significant effects in the warm season than in the cool season or all year; (2) no strong evidence of confounding by PM; and (3) suggestive evidence of publication bias, but significant associations remain even after adjustment for the publication bias.

Moreover, EPA asserts that the biological plausibility of the epidemiological mortality associations is generally supported by controlled human exposure and toxicological evidence of respiratory morbidity effects for levels at and below 0.080 ppm, but that biological plausibility becomes increasingly uncertain especially below 0.060 ppm, the lowest level at which effects were observed in controlled human exposure studies. Further, at lower levels, it becomes increasingly

uncertain as to whether the reported associations are related to O_3 alone rather than to the broader mix of air pollutants present in the ambient air. EPA agrees that the multi-city times series studies evaluated in this review do not completely resolve this issue. It also becomes increasingly uncertain as to whether effect thresholds exist but cannot be clearly discerned by statistical analyses. Thus, when considering the epidemiological evidence in light of the other available information, it is reasonable to judge that at some point the epidemiological associations cannot be interpreted with confidence as providing evidence that the observed health effects can be attributed to O_3 alone.

In the letter cited, the CASAC Panel did raise the issue of the utility of time-series studies in the standard setting process with regard to time-series mortality studies. Nevertheless, in a subsequent letter to the Administrator, CASAC noted these mortality studies as evidence to support a recommendation to revise the current primary O_3 standard. ''Several new single-city studies and large multi-city studies designed specifically to examine the effects of ozone and other pollutants on both morbidity and mortality have provided more evidence for adverse health effects at concentrations lower than the current standard (Henderson, 2006c, p. 3).''

With regard to the specific issues raised in the comments as to why the times-series mortality studies do not provide reliable or consistent evidence implicating O_3 exposure as a cause of mortality, EPA has the following responses:

(a) The purpose of the NMMAPS approach is not to single out individual city results but rather to estimate the overall effect from the 95 communities. It was designed to provide a general, nationwide estimate. With regard to the very slight or negligible effects estimates for some large cities (e.g., Los Angeles), an important factor to consider is that the Bell *et al.* (2004) study used all available data in their analyses. Bell *et al.,* reported that the effect estimate for all available (including 55 cities with all year data) and warm season (April–October) analyses for the 95 U.S. cities were similar in magnitude; however, in most other studies, larger excess mortality risks were reported in the summer season (generally June–August when O_3 concentrations are the highest) compared to all year or the cold season. Though the effect estimate for Los Angeles is small compared to some of the other communities, it should be noted that all year data (combined warm and cool seasons) was used in the analyses for this city, which likely resulted in a smaller effect estimate. Because all year data was used for Los Angeles, the median O_3 concentration for Los Angeles is fairly low compared to the other communities, ranked 23rd out of 95 communities. The median 24-hour average O_3 concentration for Los Angeles in this dataset was 22 ppb, with a 10th percentile of 8 ppb to a 90th percentile of 38 ppb. The importance of seasonal differences in O_3-related health outcomes has been well documented.

(b) In section 7.4.6, O_3 mortality risk estimates adjusting for PM exposure, the Criteria Document states that the main confounders of interest for O_3, especially for the northeast U.S., are ''summer haze-type'' pollutants such as acid aerosols and sulfates. Since very few studies included these chemical measurements, PM (especially $PM_{2.5}$) data, may serve as surrogates. However, due to the expected high correlation among the constituents of the ''summer haze mix,'' multipollutant models including these pollutants may result in unstable coefficients; and, therefore, interpretation of such results requires some caution.

In this section, Figure 7–22 shows the O_3 risk estimates with and without adjustment for PM indices using all-year data in studies that conducted two-pollutant analyses. Approximately half of the O_3 risk estimates increased slightly, whereas the other half decreased slightly with the inclusion of PM in the models. In general, the O_3 mortality risk estimates were robust to adjustment for PM in the models.

The U.S. 95 communities study by Bell *et al.* (2004) examined the sensitivity of acute O_3-mortality effects to potential confounding by PM_{10}. Restricting analysis to days when both O_3 and PM_{10} data were available, the community-specific O_3-mortality effect estimates as well as the national average results indicated that O_3 was robust to adjustment for PM_{10} (Bell *et al.*, 2004). As commenters noted, there were insufficient data available to examine potential confounding by $PM_{2.5}$. One study (Lipfert *et al.*, 2000) reported O_3 risk estimates with and without adjustment for sulfate, a component of $PM_{2.5}$. Lipfert *et al.* (2000) calculated O_3 risk estimates based on mean (45 ppb) less background (not stated) levels of 1-hour max O_3 in seven counties in Pennsylvania and New Jersey. The O_3 risk estimate was not substantially affected by the addition of sulfate in the model (3.2% versus 3.0% with sulfate) and remained statistically significant.

Several O_3 mortality studies examined the effect of confounding by PM indices in different seasons (Figure 7–23, section 7.4.6, Criteria Document). In analyses using all-year data and warm-season only data, O_3 risk estimates were once again fairly robust to adjustment for PM indices, with values showing both slight increases and decreases with the inclusion of PM in the model. In the analyses using cool season data only, the O_3 risk estimates all increased slightly with the adjustment of PM indices, although none reached statistical significance.

The three recent meta-analyses (Bell *et al.*, 2005; Ito *et al.*, 2005; Levy *et al.*, 2005) all examined the influence of PM on O_3 risk estimates. No substantial influence was observed in any of these studies. In the analysis by Bell *et al.* (2005), the combined estimate without PM adjustment was 1.75% (95% PI: 1.10, 2.37) from 41 estimates, and the combined estimate with PM adjustment was 1.95% (95% PI: −0.06, 4.00) from 11 estimates per 20 ppb increase in 24-hour average O_3. In the meta-analysis of 15 cities by Ito *et al.* (2005), the combined estimate was 1.6% (95% CI: 1.1, 2.2) and 1.5% (95% CI: 0.8, 2.2) per 20 ppb in 24-hour average O_3 without and with PM adjustment, respectively. The additional time-series analysis of six cities by Ito *et al.* found that the influence of PM by season varied across alternative weather models but was never substantial. Levy *et al.* (2005) examined the regression relationships between O_3 and PM indices (PM_{10} and $_{2.5}$) with O_3-mortality effect estimates for all year and by season. Positive slopes, which might indicate potential confounding, were observed for $PM_{2.5}$ on O_3 risk estimates in the summer and all-year periods, but the relationships were weak. The effect of one causal variable (i.e., O_3) is expected to be overestimated when a second causal variable (e.g., PM) is excluded from the analysis, if the two variables are positively correlated and act in the same direction. However, EPA notes that the results from these meta-analyses, as well as several single- and multiple-city studies, indicate that copollutants, including PM, generally do not appear to substantially confound the association between O_3 and mortality.

(c) With regard to the biological plausibility of O_3-related mortality occurring at levels well within natural background, EPA concluded in the proposal that additional research is needed to more fully establish underlying mechanisms by which mortality effects occur (72 FR 37836). Such research would likely also help determine whether it is plausible that mortality would occur at such low levels. As noted above, the multi-city

times series studies evaluated in this review can not resolve the issue of whether the reported associations at such low levels are related to O_3 alone rather than to the broader mix of air pollutants present in the ambient air.

(5) ''New'' studies not included in the Criteria Document. Many commenters identified ''new'' studies that were not included in the Criteria Document that they stated support arguments both for and against the revision of the current O_3 standard. Commenters who supported revising the current O_3 standard identified new studies that generally supported EPA's conclusions about the associations between O_3 exposure and a range of respiratory and cardiovascular health outcomes. These commenters also identified new studies that provide evidence for associations with health outcomes that EPA has not linked to O_3 exposure, such as cancer, and populations that EPA has not identified as being susceptible or vulnerable to O_3 exposure, including African-American men and women. Commenters who did not support revision of the current O_3 standard often submitted the same ''new'' studies, but focused on different aspects of the findings. Commenters who did not support revision of the current O_3 standard stated that these ''new'' studies provide inconsistent and sometimes conflicting findings that do little to resolve uncertainties regarding whether O_3 has a causal role in the reported associations with adverse health outcomes, including premature mortality and various morbidity outcomes. More detail about the topic areas covered in the ''new'' studies can be found in the Response to Comments document.

To the extent that these commenters included ''new'' scientific studies, studies that were published too late to be considered in the Criteria Document, in support of their arguments for revising or not revising the standards, EPA notes, as discussed in section I above, that as in past NAAQS reviews, it is basing the final decisions in this review on the studies and related information included in the O_3 air quality criteria that have undergone CASAC and public review and will consider newly published studies for purposes of decision making in the next O_3 NAAQS review. In provisionally evaluating commenters' arguments, as discussed in the Response to Comments document, EPA notes that its provisional consideration of ''new'' science found that such studies did not materially change the conclusions in the Criteria Document.

iii. Evidence Pertaining to At-Risk Subgroups for O_3-Related Effects

This section contains major comments on EPA's assessment of the body of evidence, including controlled human exposure and epidemiological studies, related to the effects of O_3 exposure on sensitive subpopulations. Since new information about the increased responsiveness of people with lung disease, especially children and adults with asthma, was an important consideration in the Administrator's proposed decision that the current O_3 standard is not adequate, many of the comments focused on this information and the conclusions drawn from it. There were also comments on other sensitive groups identified by EPA, as well as comments suggesting that additional groups should be considered at increased risk from O_3 exposure. Many of the issues discussed below, as well as other related issues, are addressed in more detail in the Response to Comments document.

As with the comments on controlled human exposure and epidemiological studies, upon which judgments about sensitive subpopulations were based, the comments about EPA's delineation of these groups were highly polarized. In general, one group of commenters who supported revising the current O_3 primary standard, including medical associations, public health and environmental groups, agreed in part with EPA's assessment of the subpopulations that are at increased risk from O_3 exposure, but commented that there are additional groups that need to be considered. A comment from ATS, AMA and other medical associations noted:

> Within this population exists a number of individuals uniquely at much higher risk for adverse health effects from ozone exposures, including children, people with respiratory illness, the elderly, outdoor workers and healthy children and adults who exercise outdoors. [ATS, p. 2]

These commenters agreed with EPA that, based on evidence from controlled human exposure and epidemiology studies, people with asthma, especially children, are likely to have greater lung function decrements and respiratory symptoms in response to O_3 exposure than people who do not have asthma, and are likely to respond at lower levels. Because of this, these commenters make the point that controlled human exposure studies that employ healthy subjects will underestimate the effects of O_3 exposures in people with asthma.

These commenters agreed with EPA's assessment that epidemiological studies provide evidence of increased morbidity effects, including lung function decrements, respiratory symptoms, emergency department visits and hospital admissions, in people with asthma and that controlled human exposure studies provide biological plausibility for these morbidity outcomes. Further, the Rochester Report, funded by API, evaluated some of the same the studies that EPA did and found similar results with regard to the increased inflammatory responses and increased airway responsiveness of people with asthma when exposed to O_3. The Rochester Report reached the same conclusion that EPA did, that this increased responsiveness provides biological plausibility for the respiratory morbidity effects found in epidemiological studies.

> Several new studies have demonstrated that exposure of individuals with atopic asthma to sufficient levels of ozone produces an increase in specific airway responsiveness to inhaled allergens* * * These findings, in combination with previously observed effects of ozone on nonspecific airway responsiveness and airway inflammation, supports the idea that ambient ozone exposure could result in exacerbation of asthma several days following exposure, and provides biological plausibility for the epidemiologic studies in which ambient ozone concentration has been associated with increased asthma symptoms, medication use, emergency room visits, and hospitalizations for asthma. [Rochester Report, pp. 57–58]

Commenters also often mentioned the increased susceptibility of people with COPD, and in this case cited new studies not considered in the Criteria Document.

They identify one potentially susceptible subpopulation that EPA did not focus on in the proposal is infants. Commenters from medical associations, and environmental and public health groups expressed the view that O_3 exposure can have important effects on infants, including reduced birth weight, pre-term birth, and increased respiratory morbidity effects in infants. Exposure to O_3 during pregnancy, especially during the second and third trimesters, was associated with reduced birth weight in full-term infants. Although this effect was noted at relatively low O_3 exposure levels, the ATS notes that, ''* * * the reduced birth weight in infants in the highest ozone exposures communities equaled the reduced birth weight observed in pregnant women who smoke'' (ATS, p. 7).

In general, EPA agrees with comments that there is very strong evidence from controlled human exposure and epidemiological studies that people with lung disease, especially children and adults with asthma, are susceptible to O_3 exposure and are likely to

experience more serious effects than those people who do not have lung disease. This means that controlled human exposure studies that employ subjects who do not have lung disease will likely underestimate effects in those people that do have asthma or other lung diseases.

In summarizing the epidemiological evidence related to birth-related health outcomes, the Criteria Document (p. 7–133) concludes that O_3 was not an important predictor of several birth-related outcomes including premature births and low birth weight. Birth-related outcomes generally appeared to be associated with air pollutants that tend to peak in the winter and are possibly traffic-related. However, given that most of these studies did not analyze the data by season, seasonal confounding may have therefore influenced the reported associations. One study reported some results suggestive of associations between exposures to O_3 in the second month of pregnancy and birth defects, but further evaluation of such potential associations is needed. With regard to comments about effect in infants, EPA notes that some of the studies cited by commenters were not considered in the Criteria Document. More detailed responses to studies submitted by commenters but not considered in the Criteria Document can be found in the Response to Comments document.

The second group of commenters, mostly representing industry associations and some businesses opposed to revising the primary O_3 standard, asserted that EPA is wrong to claim that new evidence indicates that the current standard does not provide adequate health public health protection for people with asthma. In support of this position, these commenters made the following major comments: (1) Lung function decrements and respiratory symptoms observed in controlled human exposure studies of asthmatics are not clinically important; (2) EPA postulates that asthmatics would likely experience more serious responses and responses at lower levels than the subjects of controlled human exposure experiments, but that hypothesis is not supported by scientific evidence; and, (3) EPA recognized asthmatics as a sensitive subpopulation in 1997, and new information does not suggest greater susceptibility than was previously believed.

With regard to the first point, these commenters expressed the view that asthmatics are not likely to experience medically significant lung function changes or respiratory symptoms at ambient O_3 concentrations at or even above the level of the current standard. Many of these commenters cited the opinion of one physician who was asked on behalf of a group of trade associations and companies to provide his views on the health significance for asthmatics of the types of responses that have been reported in controlled human exposure studies of O_3. This commenter (McFadden) reviewed earlier controlled human exposure studies of asthmatics (from the last review) as well as the recent controlled human exposure studies of healthy individuals (Adams 2002, 2003a,b, and 2006) at 0.12, 0.08, 0.06, and 0.04 ppm and expressed the view that ''* * * these studies on asthmatics indicate that ozone exposures at ~0.12 ppm do not produce medically significant functional changes and are right around the inflection point where one begins to see an increase in symptoms; however, that increase is small'' (McFadden, p. 3). This commenter went on to express the view that responses to O_3 exposure at levels < 0 .08 ppm would be even less and that the available data are not sufficiently robust to indicate that such exposures would present a significant health concern even to sensitive people like asthmatics.

EPA notes that this commenter based his comment on the group mean functional and respiratory symptom changes in the studies he reviewed. EPA agrees that group mean changes at these levels are relatively small and has described them as such in both the previous review and this one (72 FR 37828). The importance of group mean changes is to evaluate the statistical significance of the association between the exposures and the observed effects, to try to determine if the observed effects are likely due to O_3 exposure rather than chance. In the previous review as well as in this one, EPA has also focused on the fact that some individuals experience more severe effects that may be clinically significant. With regard to the significance of individual responses, this commenter (McFadden, p. 2) states ''* * * transient decreases in FEV_1 of 10–20% are not by themselves significant or meaningful to asthmatics* * *. It has been my experience from examining and studying thousands of patients for both clinical and research purposes that asthmatics typically will not begin to sense bronchoconstriction until their FEV_1 falls about 50% from normal.'' EPA strongly disagrees with this assessment. As stated in the Criteria Document (Table 8–3, p. 8–68) for people with lung disease, even moderate functional responses (e.g., FEV_1 decrements ≥ 10% but < 20%) would likely interfere with normal activities for many individuals, and would likely result in more frequent medication use. EPA notes that in the context of standard setting, CASAC indicated (Henderson, 2006c) that a focus on the lower end of the range of moderate functional responses (e.g., FEV_1 decrements ≥ 10%) is most appropriate for estimating potentially adverse lung function decrements in people with lung disease.

With regard to the second point, whether asthmatics would likely experience more serious responses and responses at lower levels than the subjects of controlled human exposure experiments and EPA's discussion of the relationship of increased airway responsiveness and inflammation experienced by asthmatics to exacerbation of asthma, this commenter stated that ''there simply are no data to support the sequence described'' and that ''the assumption that these responses would lead to clinical manifestations in terms of exacerbations of asthma or other adverse health effects remains unproven theory'' (McFadden, p. 3).

In these sections of the proposal (72 FR 37826 and 37846–37847), EPA describes the evidence indicating that people with asthma are as sensitive as, if not more sensitive than, normal subjects in manifesting O_3-induced pulmonary function decrements. Controlled human exposure studies show that asthmatics present a differential response profile for cellular, molecular, and biochemical parameters that are altered in response to acute O_3 exposure. Asthmatics have greater O_3-induced inflammatory responses and increased O_3-induced airway responsiveness (both incidence and duration) that could have important clinical implications.

There are two ways to interpret these comments. One way to interpret them is that because these controlled human exposure studies have not produced exacerbations of asthma in study subjects resulting in the need for medical attention, there are no data to support the clinical significance of the results. EPA rejects this interpretation because it would be unethical to knowingly conduct a controlled human exposure study that would lead to exacerbation of asthma. Controlled human exposure studies are specifically designed to avoid these types of responses. The other interpretation is that the commenter does not agree that the differences in lung function, inflammation and increased airway responsiveness found in these

controlled human exposure studies support the inference that asthmatics are likely to have more serious responses than healthy subjects, and that these responses could have important clinical implications. EPA rejects this interpretation as well. EPA did not base its increased concern for asthmatics solely on the results of the controlled human exposure studies, but has appropriately used a weight of evidence approach, integrating evidence from animal toxicological, controlled human exposure and epidemiological studies as a basis for this concern. The Criteria Document concludes that the positive and robust epidemiological associations between O_3 exposure and emergency department visits and hospitalizations in the warm season are supported by the human clinical, animal toxicological and epidemiological evidence for lung function decrements, increased respiratory symptoms, airway inflammation, and increased airway responsiveness (72 FR 37832). The CASAC Panel itself expressed the view that people with asthma, especially children, have been found to be more sensitive to O_3 exposure, and indicated that EPA should place more weight on inflammatory responses and serious morbidity effects, such as increased respiratory-related emergency department visits and hospitalizations (Henderson, p. 4). Moreover, the Rochester Report, cited above, reaches essentially the same conclusions as EPA did, that the evidence from controlled human exposure studies provides biological plausibility for the epidemiological studies in which ambient O_3 concentrations have been associated with increased asthma symptoms, medication use, emergency room visits, and hospitalizations for asthma. Therefore, EPA continues to assert that there is strong evidence that asthmatics likely have more serious responses to O_3 exposure than people without asthma, and that these responses have the potential to lead to exacerbation of asthma as indicated by the serious morbidity effects, such as increased respiratory-related emergency department visits and hospitalizations found in epidemiological studies.

With regard to the third point, commenters expressed the view that there is no significant new evidence establishing greater risk to asthmatics than was accepted in 1997, when EPA concluded that the existing NAAQS was sufficiently stringent to protect public health—including asthmatics—with an adequate margin of safety (UARG, pp. 22–23). To support this view, these commenters noted the points made above and expressed the view that epidemiological studies of asthmatics that provide new evidence of respiratory symptoms and medication use in asthmatic children are subject to the limitations of epidemiological studies discussed above (e.g., confounding by co-pollutants, heterogeneity of results). In addition, these commenters identified a new, large multi-city panel study, not included in the Criteria Document, by Schildcrout *et al.* (2006), which the commenters characterize as reporting no association between O_3 concentrations and exacerbation of asthma.

At the time of the last review, EPA concluded that people with asthma were at greater risk because the impact of O_3-induced responses on already-compromised respiratory systems would noticeably impair an individual's ability to engage in normal activity or would be more likely to result in increased self-medication or medical treatment. At that time there was little evidence that people with pre-existing disease were more responsive than healthy individuals in terms of the magnitude of pulmonary function decrements or symptomatic responses. The new results from controlled exposure and epidemiologic studies indicate that individuals with preexisting lung disease, especially people with asthma, are likely to have more serious responses than people who do not have lung disease and therefore are at greater risk for O_3 health effects than previously judged in the 1997 review. EPA notes that comments on the limitations of epidemiological studies and evidence from ''new'' studies (not in the Criteria Document) have been addressed above. As with other ''new'' studies, this study by Schildcrout *et al.* (2006) is specifically discussed in the Response to Comments document.

b. Consideration of Human Exposure and Health Risk Assessments

Section II.A.3 above provides a summary overview of the exposure and risk assessment information used by the Administrator to inform judgments about exposure and health risk estimates associated with attainment of the current and alternative standards. EPA notes here that most of the issues and concerns raised by commenters concerning the methods used in the exposure and risk assessments are essentially restatements of concerns raised during the review of the Criteria Document and the development and review of these quantitative assessments as part of the preparation and review of the Staff Paper and the associated analyses. EPA presented and the CASAC Panel reviewed in detail the approaches used to assess exposure and health risk, the studies and health effect categories selected for which exposure-response and concentration-response relationships were estimated, and the presentation of the exposure and risk results summarized in the Staff Paper. As stated in the proposal notice, EPA believes and CASAC Panel concurred, that the model selected to estimate exposure represent the state of the art and that the risk assessment was ''well done, balanced and reasonably communicated'' and that the selection of health endpoints for inclusion in the quantitative risk assessment was appropriate (Henderson, 2006c). EPA does not believe that the exposure or risk assessments are fundamentally biased in one direction or the other as claimed in some of the comments.

Comments received after proposal related to the development of exposure and health risk assessments, interpretation of exposure and risk results, and the role of the quantitative human exposure and health risk assessments in considering the need to revise the current 8-hour O_3 standard generally fell into two groups. One group of commenters that included national environmental and public health organizations (e.g., joint set of comments by ALA and several environmental groups including Environmental Defense and Sierra Club), NESCAUM, and some State and local health and air pollution agencies argued that the exposure and health risk assessments underestimated exposure and risks for several reasons including: (1) The geographic scope was limited to at most only 12 urban areas and thus underestimates national public health impacts due to exposures to O_3; (2) the assessments did not include all relevant at risk population groups and excluded populations such as pre-school children, outdoor workers, adults who exercise outdoors; and (3) the risk assessment did not include all of the health effect endpoints for which there is evidence that there are O_3-related health effects (e.g., increased medicine use by asthmatics, lung function decrements and respiratory symptoms in adults, increased doctors' visits, emergency department visits, school absences, inflammation, and decreased resistance to infection among children and adults); and (4) EPA's exposure assessment underestimates exposures since it considers average children, not active children who spend more time outdoors and repeated exposures are also underestimated. The joint set of

comments from ALA and several environmental groups contended that the ''exposures of concern'' metric presented in the Staff Paper and proposal is ''an inappropriate basis for decisionmaking'' and urged EPA to set the standard based on the concentrations shown by health studies to cause adverse effects, not on how much O_3 Americans inhale. This same set of commenters stated that if exposures of concern were to be considered then the benchmark level of 0.060 ppm should be the focus, and not higher benchmark levels. These same commenters also stated that EPA should have estimated and considered total risk without excluding risks associated with PRB levels because there is no rational basis for excluding natural and anthropogenic sources from outside North America and that the NAAQS must protect against total exposure. While disagreeing with EPA's approach of estimating risks only above PRB, these same commenters supported the use of the GEOS–CHEM model as the ''best tool available to derive background concentrations'' should EPA continue to pursue this approach. These comments are discussed in turn below.

EPA agrees that the exposure and health risk assessments are limited to certain urban areas and do not capture all of the populations at risk for O_3-related effects, and that the risk assessment does not include all potential O_3-related health effects. The criteria and rationale for selecting the populations and health outcomes included in the quantitative assessments were presented in the draft Health Assessment Plan, Staff Paper, and technical support documents for the exposure and health risk assessments that were reviewed by the CASAC Panel and the public. The CASAC Panel indicated in its letter that the health outcomes included in the quantitative risk assessment were appropriate, while recognizing that other health outcomes such as emergency department visits and increased doctors' visits should be addressed qualitatively (Henderson, 2006c). The Staff Paper (and the CASAC Panel) clearly recognized that the exposure and risk analyses could not provide a full picture of the O_3 exposures and O_3-related health risks posed nationally. The proposal notice made note of this important point and stated that ''national-scale public health impacts of ambient O_3 exposures are clearly much larger than the quantitative estimates of O_3-related incidences of adverse health effects and the numbers of children likely to experience exposures of concern associated with recent air quality or air quality that just meets the current or alternative standards'' (72 FR 37866).

However, as stated in the proposal notice, EPA also recognizes that inter-individual variability in responsiveness to O_3 shown in controlled human exposure studies for a variety of effects means that only a subset of individuals in any population group estimated to experience exposures exceeding a given benchmark exposure of concern level would actually be expected to experience such adverse health effects. The Administrator continues to recognize that there is a broader array of O_3-related adverse health outcomes for which risk estimates could not be quantified (that are part of a broader ''pyramid of effects'') and that the scope of the assessment was limited to just a sample of urban areas and to some but not all at-risk populations, leading to an incomplete estimation of public health impacts associated with O_3 exposures across the country. The Administrator is fully mindful of these limitations, along with the uncertainties in these estimates, in reaching his conclusion that observations from the exposure and health risk assessments provide additional support for his judgment that the current 8-hour standard does not protect public health with an adequate margin of safety and must be revised. For reasons discussed below in section II.C.4, however, the Administrator disagrees with aspects of these commenters' views on the level of the standard that is appropriate and supported by the available health effects evidence and quantitative assessments associated with just meeting alternative standards.

EPA does not agree that consideration of exposure estimates is not permitted or is somehow inappropriate in decisions concerning the primary standard. EPA has considered population exposure estimates as a consideration in prior NAAQS review decisions, including the 1997 revision of the O_3 primary standard and the 1994 decision on the carbon monoxide (CO) standard. As indicated in the proposal, estimating exposures of concern is important because it provides some indication of potential public health impacts of a range of O_3-related health outcomes, such as lung inflammation, increased airway responsiveness, and changes in host defenses. These particular health effects have been demonstrated to occur in some individuals in controlled human exposure studies at levels as low as 0.080 ppm O_3 but have not been evaluated at lower levels. While there is very limited evidence addressing lung function and respiratory symptom responses at 0.060 ppm, this evidence does not address these other health effects.

As noted in the proposal, EPA emphasized that although the analysis of ''exposures of concern'' was conducted using three discrete benchmark levels (0.080, 0.070, 0.060 ppm), the concept was more appropriately viewed as a continuum, with greater confidence and less uncertainty about the existence of health effects at the upper end and less confidence and greater uncertainty as one considers increasingly lower O_3 exposure levels. EPA recognized that there was no sharp breakpoint within the continuum ranging from at and above 0.080 ppm down to 0.060 ppm. In considering the concept of exposures of concern, the proposal noted that it was important to balance concerns about the potential for health effects and their severity with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower levels.

As noted above, environmental and public health group comments expressed the view that if exposures of concern were considered, then the Administrator should focus only on the 0.060 ppm benchmark based on the contention that adverse health effects had been demonstrated down to this level. In contrast, other commenters, primarily industry and business groups focused on comparisons of the exposures of concern at the 0.080 ppm benchmark level based on their view that there was no convincing evidence demonstrating adverse health effects at levels below this benchmark. In view of the comments received related to the definition and use of the term ''exposure of concern'' at the time of proposal, the Administrator recognizes that that there is a risk for confusion, as it could be read to imply a determination that a certain benchmark level of exposure has been shown to be causally associated with adverse health effects. As a consequence, the Administrator believes that it is more appropriate to consider such exposure estimates in the context of a continuum rather than focusing on any one discrete benchmark level, as was done at the time of proposal, since the Administrator does not believe that the underlying scientific evidence is certain enough to support a focus on any single bright-line benchmark level. Thus, the Administrator believes it is appropriate to consider a range of benchmark levels from 0.080 down to 0.060 ppm, recognizing that exposures of concern must be considered in the

context of a continuum of the potential for health effects of concern, and their severity, with increasing uncertainty associated with the likelihood of such effects at lower O_3 exposure levels.

EPA recognizes that the 0.080 ppm benchmark level represents a level at which several health outcomes including lung inflammation, increased airway responsiveness, and decreased resistance to infection have been shown to occur in healthy adults. The Administrator places relatively great weight on the public health significance of exposures at and above this benchmark level given these physiological effects measured in healthy adults at O_3 exposures of 0.080 ppm and the evidence from controlled human exposure studies showing that people with asthma have more serious responses than people without asthma. However, the Administrator does not agree with those commenters who would only consider this single benchmark level. While the Administrator places less weight on exposures at and above the 0.070 pm benchmark level, given the increased uncertainty about the fraction of the population and severity of the health responses that might occur associated with exposures at and above this level, he believes that it is appropriate to consider exposures at and above this benchmark as well in judging the adequacy of the current standard to protect public health. Considering exposures at and above the 0.070 ppm benchmark level provides some consideration for the fact that the effects observed at 0.080 ppm were in healthy adult subjects but sensitive population groups such as asthmatics are likely to respond at lower O_3 levels than healthy individuals. The Administrator considered but placed very little weight on exposures at and above the 0.060 ppm benchmark given the very limited scientific evidence supporting a conclusion that O_3 is causally related to various health outcomes at this exposure level.

EPA does not agree that it is inappropriate or impermissible to assess risks that are in excess of PRB or that EPA must focus on total risks when using a risk assessment to inform decisions on the primary standard. Consistent with the approach used in the risk assessment for the prior O_3 standard review and consistent with the approach used in risk assessments for other prior NAAQS reviews, estimating risks in excess of PRB is judged to be more relevant to policy decisions regarding the ambient air quality standard than risk estimates that include effects potentially attributable to uncontrollable background O_3 concentrations. EPA also notes that with respect to the adequacy of the current standard taking total risks into account would not impact the Administrator's decision, since he judges that the current standard is not adequate even when risks in excess of current PRB estimates are considered. In addition, EPA notes that consideration of the evidence itself, as well as exposures at and above benchmark levels in the range of 0.060 to 0.080 ppm, are not impacted at all by consideration of current PRB estimates.

EPA does agree with the ALA and environmental groups comment that the GEOS–CHEM model represents the best tool currently available to estimate PRB as recognized in the Criteria Document evaluation of this issue and the CASAC Panel support expressed during the review of the Criteria Document.

The second group of commenters mostly representing industry associations, businesses, and some State and local officials opposed to revising the 8-hour standard, and most extensively presented in comments from UARG, API, Exxon-Mobil, AAM, and NAM, raised one or more of the following concerns: (1) That exposures of concern and health risk estimates have not changed significantly since the prior review in 1997; (2) that uncertainties and limitations underlying the exposure and risk assessments make them too speculative to be used in supporting a decision to revise the standard; (3) that EPA should have defined PRB differently and that EPA underestimated PRB levels which results in health risk reductions associated with more stringent standards being overestimated; (4) that exposures are overestimated based on specific methodological choices made by EPA including, for example, O_3 measurements at fixed-site monitors can be higher than other locations where individuals are exposed, the exposure estimates do not account for O_3 avoidance behaviors, and the exposure model overestimates elevated breathing rates; and (5) that health risks are overestimated based on specific methodological choices made by EPA including, for example, selection of inappropriate effect estimates from health effect studies and EPA's approach to addressing the shape of exposure-response relationships and whether or not to incorporate thresholds into its models for the various health effects analyzed. These comments are discussed in turn below. Additional detailed comments related to the development, presentation, and interpretation of EPA's exposure and health risk assessments, along with EPA's responses to the specific issues raised by these commenters can be found in the Response to Comments document.

(1) In asserting that the estimated exposures and risks associated with air quality just meeting the current standard have not appreciably changed since the prior review, comments from Exxon-Mobil, the Annapolis Center and others have compared results of EPA's lung function risk assessment done in the last review with those from the Agency's risk assessment done as part of this review and have concluded that lung function risks upon attainment of the current O_3 standard are below those that were predicted in 1997 and that uncertainties about other health effects based on epidemiological studies remain the same. These commenters used this conclusion as the basis for a claim that there is no reason to depart from the Administrator's 1997 decision that the current 8-hour standard is requisite to protect public health.

EPA believes that this claim is fundamentally flawed for three reasons, as discussed in turn below: (i) It is factually inappropriate to compare the quantitative risks estimated in 1997 with those estimated in the current rulemaking; (ii) it fails to take into account that with similar risks, increased certainty in the risks presented by O_3 implies greater concern than in the last review, and (iii) it fails to recognize that the Administrator has used these estimates in a supportive role, in light of significant uncertainties in the exposure and risk estimates, to inform the conclusions drawn primarily from integrative assessment of the controlled human exposure and epidemiological evidence on whether ambient O_3 levels allowed under the current standard present a serious public health problem warranting revision of the O_3 standard.

With respect to the first point, the 1997 risk estimates, or any comparison of the 1997 risk estimates to the current estimates, are irrelevant for the purpose of judging the adequacy of the current 8-hour standard, as the 1997 estimates reflect outdated analyses that have been updated in this review to reflect the current science. Just comparing the results for lung function decrements ignores these differences. In particular, as discussed in section 4.6.1 of the Staff Paper, there have been significant improvements to the exposure model and the model inputs since the last review that make comparisons inappropriate between the prior and current review. For example, the geographic areas modeled are larger

than in the previous review and when modeling a larger area, extending well beyond the urban core, there will be more people exposed, but a smaller percentage of the modeled population will be exposed at high levels, if O_3 concentrations are lower in the extended areas. In the prior review, only typical years, in terms of O_3 air quality were modeled, while the current review used the most recent three-year period (i.e., 2002–2004). Also, the prior review estimated exposures for children who spent more time outdoors, while the assessment for the current review included all school age and all asthmatic school age children. Therefore, the population groups examined in the exposure assessment are different between those considered in the 1997 and current review, making comparison of the resulting estimates inappropriate. Another important difference making comparison between the 1997 health risk assessment and the current assessment inappropriate is that a number of additional health effects were included in the current review (e.g., respiratory symptoms in moderate/severe asthmatic children, non-accidental and cardiorespiratory mortality) based on health effects observed in epidemiological studies that were not included in the risk assessment for the prior review. These commenters only compare the risk estimates with respect to lung function decrement, and fail to account for differences in additional and more severe health endpoints not covered in the 1997 assessment, as well as the fact that there are somewhat different and more urban areas included in the current assessment.

Second, it is important to take into account EPA's increased level of confidence in the associations between short-term O_3 exposures and morbidity and mortality effects. In comparing the scientific understanding of the risk presented by exposure to O_3 between the last and current reviews, one must examine not only the quantitative estimate of risk from those exposures (e.g. the numbers of increased hospital admissions at various levels) but also the degree of confidence that the Agency has that the observed health effects are causally linked to O_3 exposure at those levels. As documented in the Criteria Document and the recommendations and conclusions of CASAC, EPA recognizes significant advances in our understanding of the health effects of O_3 based on new epidemiological studies, new human and animal studies documenting effects, new laboratory studies identifying and investigating biological mechanisms of O_3 toxicity, and new studies addressing the utility of using ambient monitors to assess population exposures to ambient O_3. As a result of these advances, EPA is now more certain that ambient O_3 presents a significant risk to public health at levels at or above the range of levels that the Agency had considered for these standards in 1997. From this more comprehensive perspective, since the risks presented by O_3 are more certain and the current quantitative risk estimates include additional important health effects, O_3-related risks for a wider range of health effects are now of greater concern at the current level of the standard than in the last review.

Third, quantitative risk estimates were not the only basis for EPA's decision in setting a level for the O_3 standard in 1997, and they do not set any quantified ''benchmark'' for the Agency's decision to revise the O_3 standard at this time. While EPA believes that confidence in the causal relationships between short-term exposures to O_3 and various health effects reported in epidemiological studies has increased markedly since 1997, the Administrator also recognizes that the risk estimates for these effects must be considered in the light of uncertainties about whether or not these O_3-related effects occur at very low O_3 concentrations. The Administrator continues to believe that the exposure and risk estimates associated with just meeting the current standard discussed in the Staff Paper and summarized in the proposal notice are important from a public health perspective and are indicative of potential exposures and risks to at-risk groups. In considering the exposure and risk estimates, the Administrator has considered the year-to-year and city-to-city variability in both the exposure and risk estimates, the uncertainties in these estimates, and recognition that there is a broader array of O_3-related adverse health outcomes for which risk estimates could not be quantified (that are part of a broader ''pyramid of effects'') and that the scope of the assessment was limited to just a sample of urban areas and to some, but not all, at-risk populations, leading to an incomplete estimation of public health impacts associated with O_3 exposures across the country.

(2) In asserting that uncertainties and limitations associated with the exposure and health risk assessments make them too speculative to be used in supporting a decision to revise the standard, comments from industry associations and others cited a number of issues including: (i) Uncertainties about the air quality adjustment approach used to simulate just meeting the current and alternative standards; (ii) uncertainties and limitations associated with the definition and estimation of PRB concentrations; (iii) uncertainties about whether the respiratory symptoms, hospital admissions, and non-accidental and cardiorespiratory mortality effects included in the health risk assessment are actually causally related to ambient O_3 concentrations, particularly at levels well below the current standard; and (iv) uncertainties about the shape of the exposure-response relationships for lung function responses and concentration-response relationships for the health effects based on findings from epidemiological studies and the assumption of a linear non-threshold relationship for these responses. In summary, these commenters contend that the substantial uncertainties present in the exposure and risk assessments preclude the Administrator from using any of the results to support a conclusion that the current 8-hour standard does not adequately protect public health.

Several of the issues raised, including whether EPA's judgments about causality for the effects included in the risk assessment are appropriate, the shape of concentration-response relationships, and use of a linear non-threshold relationship for the health outcomes based on the epidemiological evidence, have been discussed in the previous section on health effects evidence. Concerns expressed about the definition and estimation of PRB levels for O_3 and the role of PRB in the risk assessment are addressed as a separate item below. These issues also are addressed in more detail in the Response to Comments document.

With respect to the air quality adjustment approach used in the current review to simulate air quality just meeting the current and alternative O_3 standards, as discussed in the Staff Paper (section 4.5.6) and in more detail in a staff memorandum (Rizzo, 2006), EPA concluded that the quadratic air quality adjustment approach generally best represented the pattern of reductions across the O_3 air quality distribution observed over the last decade in areas implementing control programs designed to attain the O_3 NAAQS. While EPA recognizes that future changes in air quality distributions are area-specific, and will be affected by whatever specific control strategies are implemented in the future to attain a revised NAAQS, there is no empirical evidence to suggest that future reductions in ambient O_3 will be significantly different from past

reductions with respect to impacting the overall shape of the O_3 distribution.

As discussed in the proposal notice, EPA recognizes that the exposure and health risk assessments necessarily contain many sources of uncertainty including those noted by these commenters, and EPA has accounted for such uncertainties to the extent possible. EPA developed and presented an uncertainty analysis addressing the most significant uncertainties affecting the exposure estimates. With respect to the health risk assessment, EPA conducted and presented sensitivity analyses addressing the impact on risk estimates of different assumptions about the shape of the exposure-response relationship for lung function decrements and alternative assumptions about PRB levels. EPA notes that most of the comments summarized above concerning limitations and uncertainties in these assessments are essentially restatements of concerns raised during the development and review of these quantitative assessments as part of the preparation and review of the Staff Paper and assessments. The CASAC Panel reviewed in detail the approaches used to assess exposure and health risks and the presentation of the results in the Staff Paper. EPA believes, and the CASAC Panel concurred, that the model used to estimate exposures represents a state-of-the-art approach and that ''there is an explicit discussion of the limitations of the APEX model in terms of variability and quality of the input data, which is appropriate and fine'' (Henderson, 2006c, p. 11). The CASAC Panel also found the risk chapter in the Staff Paper and the risk assessment ''to be well done, balanced, and reasonably communicated'' (Henderson, 2006c, p. 12). Although EPA agrees that important limitations and uncertainties remain, and that future research directed toward addressing these uncertainties is warranted, EPA believes that overall uncertainties about population exposure and possible health risks associated with short-term O_3 exposure have diminished since the last review. The Administrator has carefully considered the limitations and uncertainties associated with these quantitative assessments but continues to believe that they provide general support for concluding that exposures and health risks associated with meeting the current 8-hour standard are important from a public health perspective and that the 8-hour standard needs to be revised to provide additional protection in order to protect public health with an adequate margin of safety.

(3) Comments from several industry organizations, businesses, and others related to PRB included: (i) That EPA should have defined PRB differently so as to include anthropogenic emissions from Canada and Mexico; (ii) that EPA underestimated PRB levels by relying on estimates from the GEOS–CHEM model using 2001 meteorology and EPA should instead rely on O_3 levels observed at remote monitoring locations or sites that represent PRB conditions; and (iii) that the use of underestimated PRB levels in the risk assessment results in overestimated health risks associated with air quality just meeting the current standard. Finally, some commenters cited concerns expressed by the CASAC Panel that ''the current approach to determining PRB is the best method to make this estimation'' (Henderson, 2007, p. 2). Each of these concerns is addressed below and in more detail in the Response to Comments document.

First, the U.S. government has influence over emissions at our borders that affect ambient O_3 concentrations entering the U.S. from Canada and Mexico through either regulations or international agreements, and therefore EPA does not agree that these emissions are uncontrollable. PRB is designed to identify O_3 levels that result from emissions that are considered uncontrollable because the U.S. has little if any influence on their control, and in that context anthropogenic emissions from Mexico or Canada should be excluded from PRB. EPA has consistently defined PRB as excluding anthropogenic emissions from Canada and Mexico in NAAQS reviews over more than two decades and sees no basis in the comments to alter this definition.

Second, the criticisms raised concerning the use of a modeling approach (GEOS–CHEM using 2001 meteorology) and the alternative approach of using remote monitoring data to estimate PRB were considered by EPA's scientific staff and the CASAC Panel during the course of reviewing the Criteria Document. Both EPA's experts and CASAC endorsed the use of the peer-reviewed, thoroughly evaluated modeling approach (GEOS–CHEM) described in the Criteria Document as the best current approach for estimating PRB levels. The Criteria Document reviewed detailed evaluations of GEOS–CHEM with O_3 observations at U.S. surface sites (Fiore *et al.*, 2002, 2003) and comparisons of GEOS–CHEM predictions with observations at Trinidad Head, CA (Goldstein *et al.*, 2004) and found no significant differences between the model predictions and observations for all conditions, including those reflecting those given in the current PRB definition. The Criteria Document states that the current model estimates indicate that PRB in the U.S. is generally 0.015 to 0.035 ppm that declines from spring to summer and is generally < 0.025 ppm under conditions conducive to high O_3 episodes. The Criteria Document acknowledges that PRB can be higher, especially at elevated sites in the spring due to stratospheric exchange. However, unusually high springtime O_3 episodes tied to stratospheric intrusion are rare and generally occur at elevated locations and these can be readily identified and excluded under EPA's exceptional events rule (72 FR 13560) to avoid any impact on attainment/non-attainment status of an area.

Third, many of the commenters who raised the concern that EPA's estimates of PRB were too low and had the impact of exaggerating the risks associated with the current standard ignored the fact that the risk assessment included a sensitivity analysis which showed the potential impact of both lower and higher estimates of PRB or only focused on the impact of higher estimates of PRB. The choices of lower and higher estimates of PRB included in the risk assessment sensitivity analyses were based on the peer-reviewed evaluation of the accuracy of GEOS–CHEM model. The Criteria Document states ''in conclusion, we estimate that the PRB O_3 values reported by Fiore *et al.* (2003) for afternoon surface air over the United States are likely 10 parts per billion by volume (ppbv) too high in the southeast in summer, and accurate within 5 ppbv in other regions and seasons.'' These error estimates are based on comparison of model output with observations for conditions which most nearly reflect those given in the PRB definition, i.e., at the lower end of the probability distribution. As discussed in the Criteria Document and Staff Paper, it can be seen that GEOS–CHEM overestimates O_3 for the southeast and underestimates it by a small amount for the northeast. These commenters generally ignored the scientific conclusion presented in the Criteria Document that for some regions of the country the evidence suggests that the model actually overestimates PRB. Thus, the influence of alternative estimates of PRB on risks in excess of PRB associated with meeting the current standard can be to lower or increase the risk estimates. While the choice of estimates for PRB contributes to the uncertainty in the risk estimates, EPA does not agree that the approach used is biased since peer-reviewed evaluations of the model have shown relatively good

agreement (i.e., generally within 5 ppb for most regions of the country).

Finally, EPA believes that some commenters have misread the CASAC Panel concern ''that the current approach to determining PRB is the best method to make this estimation'' (Henderson, 2007, p. 2) as a criticism of the use of the GEOS–CHEM modeling approach and/or support for primary reliance on estimates based on remote monitoring sites. However, the CASAC Panel went on to state that one reason for its concern was that the contribution to PRB from beyond North America was uncontrollable by EPA and that ''a better scientific understanding of intercontinental transport of air pollutants could serve as the basis for a more concerted effort to control its growth . . .'' (Henderson, 2007, p. 3). Hence, CASAC's concern appeared to be more with defining what emissions to include in defining PRB, and the role that PRB should play, as compared to the technical question of the best way to estimate PRB levels. In reviewing the Staff Paper, the atmospheric modeling expert on the CASAC Panel in his comments on how PRB had been estimated using the GEOS–CHEM model concluded that the ''current approach has been peer-reviewed, and is appropriate'' (Henderson, 2006b, p. D–48).

(4) Some commenters raised concerns about aspects of the exposure modeling that they felt resulted in overestimates of modeled exposures, including: (i) O_3 measurements at downwind monitors are usually higher than the overall area and may not reflect the overall outdoor exposures in the area; (ii) O_3 exposures near roadways will be below that measured at the monitor due to titration of O_3 from automobile emissions of NO; (iii) O_3 concentrations are lower at a person's breathing height compared to measurement height, (iv) exposure estimates do not account for O_3 avoidance behaviors; and (v) the APEX model over predicts elevated ventilation rate occurrences, which results in an overestimation of the number of exposures of concern and risk estimates for lung function decrements.

The concern raised in the first point is unfounded since all O_3 monitors in each area are used to take into account the spatial variations of O_3 concentrations. The geographic variation of O_3 concentration is accounted for by using measurements from the closest O_3 monitor to represent concentrations in a neighborhood and the measurements at downwind monitors are applied only to the downwind areas.

Second, the reduction in O_3 concentrations near roadways due to titration of O_3 from automobile emissions of NO is accounted for and explicitly modeled in APEX and thus does not bias estimates of exposures. This phenomenon was modeled through the use of ''proximity factors,'' which adjust the monitored concentrations to account for the titration of O_3 by NO emissions (the monitored concentrations are multiplied by the proximity factors). Three proximity factor distributions were developed, one for local roads, one for urban roads, and one for interstates, with mean factors of 0.75, 0.75, and 0.36 respectively (section 3.10.2, Exposure Analysis TSD). Furthermore, the uncertainty of these proximity factor distributions was included in the exposure uncertainty analysis.

Third, as discussed in the exposure uncertainty analysis, data were not available to quantify the potential biases of differences between O_3 concentrations at a person's breathing height compared to the heights of nearby monitors. EPA believes that these biases, to the extent that they exist, are relatively small during warm summer afternoons when O_3 concentrations tend to be higher.

Fourth, behavior changes in response to O_3 pollution or in response to AQI notification alerts (''avoidance behavior'') is not explicitly taken into account in the exposure modeling. There is not much information about the extent to which people currently modify their activities in response to O_3 alerts. However, under the scenarios modeled for just meeting alternative standards, O_3 alerts would be infrequent relative to the number of alerts that currently occur in the nonattainment areas modeled. Consequently, EPA does not feel that this is an influential factor in the estimation of exposure for the scenarios simulating just meeting the current or proposed standards.

Fifth, a comparison of ventilation rates predicted by APEX to measurements showed APEX overpredicting ventilation rates for ages 5 to 10, underpredicting ventilation rates for ages 11 to 29 and greater than 39, and in close agreement for ages 30 to 39. The overall agreement was judged favorable, and the errors of the predicted ventilation rates were partially incorporated into the overall uncertainty analysis with the uncertainties of the metabolic equivalents (METs), which are the primary drivers of ventilation rates.

(5) Comments from a number of industry organizations, businesses, and others contended that EPA's health risk assessment was biased and that the resulting risk assessment is ''much higher than would have been obtained using objective methods'' (NAM), and commenters raised one or more of the following points in support of this view: (i) EPA inappropriately based its risk assessment for respiratory symptoms, hospital admissions, and non-accidental and cardiorespiratory mortality on positive studies with high risk coefficients while ignoring negative studies and studies with lower coefficients; (ii) EPA focused on combined ''national'' effect estimates from multi-city studies when it should have relied on individual city effect estimates from these studies in its risk assessment; (iii) the risk assessment presented single-pollutant model results that overstate the likely impact of O_3 when co-pollutant model results were available which should have been used; (iv) the risk assessment used linear concentration-response relationships for the health endpoints based on epidemiological studies when non-linear or threshold models should have been used; and (v) the lung function portion of the risk assessment should not rely on what they characterized as ''outlier'' information to define exposure-response relationships, with reference to the data from the Adams (2006) study, but rather should focus on group central tendency response levels. Each of these issues is discussed below and in more detail in the Response to Comments document.

First, several commenters asserted that the results of time-series studies should not be used at all in quantitative risk assessments, that risk estimates from single-city time-series studies should not be used since they are highly heterogeneous and influenced by publication bias, and that the panel study which served as the basis for the concentration-response relationships for respiratory symptoms in asthmatic children suffered from various weaknesses and was contradicted by a more recent study. EPA notes that the selection of specific studies and effect estimates was based on a careful evaluation of the evidence evaluated in the Criteria Document and that the criteria and rationale for selection of studies and effect estimates were presented and extensively reviewed and discussed by the CASAC Panel and in public comments presented to the CASAC Panel. EPA notes that the CASAC Panel judged the selection of the endpoints based on the epidemiological studies for inclusion in the quantitative risk assessment to be ''appropriate'' and that the risk

assessment chapter of the Staff Paper and its accompanying risk assessment were ''well done, balanced and reasonably communicated'' (Henderson, 2006c, p. 12).

While EPA notes that two of the meta-analyses, Bell *et al.* (2005) and Ito *et al.* (2005), provided suggestive evidence of publication bias, O_3-mortality associations remained after accounting for that potential bias. The Criteria Document (p. 7–97) concludes that the ''positive O_3 effects estimates, along with the sensitivity analyses in these three meta-analyses, provide evidence of a robust association between ambient O_3 and mortality.'' Concerns about the heterogeneity of responses observed across different urban areas, particularly for O_3-related mortality are addressed in the section above on health effect considerations.

Second, as discussed in more detail in the Staff Paper (section 5.3.2.3), there are different advantages associated with use of single-city and multi-city effect estimates as the basis for estimating health risks in specific urban areas. Therefore, the risk assessment included estimates based on both types of effect estimates where such information was available.

Third, the risk assessment included risk estimates based on both single pollutant and multi-pollutant concentration-response relationships where such information was available for the health outcomes included in the assessment. Issues related to the consideration of single versus multi-pollutant models have been addressed in the section above on health effects evidence.

Fourth, EPA's approach of using linear concentration-response relationships for the health outcomes based on epidemiological studies and whether or not to include any non-linear models or assumed threshold were reviewed and discussed by the CASAC Panel during the development of the Staff Paper and risk assessment, and the Panel concurred with the approach used. As discussed in the proposal notice, Staff Paper (section 3.4.5), and above in the prior section on health effects evidence, EPA recognizes that the available epidemiological evidence neither supports or refutes the existence of thresholds at the population level for effects such as increased hospital admissions and premature mortality. Noting the limitations of epidemiological evidence to address such questions, EPA concluded that if a population threshold does exist, it would likely be well below the level of the current O_3 standard. The Administrator is very mindful of the uncertainties related to whether the observed associations between O_3 concentrations at levels well below 0.080 ppm and the health outcomes reported in the epidemiological studies reflect actual causal relationships, and has taken this into account in considering the risk assessment estimates in his decision.

Fifth, consistent with the prior review, the lung function component of the risk assessment has focused on the number and percentage of children that are estimated to experience a degree of lung function decrement that represents an adverse health effect. EPA does not agree that the focus of the quantitative risk assessment should be on the average lung function response in the population, since such an assessment would not address the public health policy question concerning to extent to which a portion of the population would likely experience health effects of concern. Looking at just the average for the population would ignore the evidence of health effects for sensitive subpopulations, an important aspect of public health impact in this and other O_3 reviews. EPA believes that it is appropriate to include all of the individual data from the series of controlled human exposure studies that address lung function responses associated with 6.6-hour exposures to O_3 and which were reviewed and included in the final Criteria Document, and this includes the Adams (2006) study. EPA notes that the CASAC Panel clearly did not judge the responses observed in this study to be an ''outlier.'' Rather, CASAC stated in its comments on the Staff Paper's discussion of this study, ''there were clearly a few individuals who experienced declines in lung function at these lower concentrations. These were healthy subjects so the percentage of asthmatic subjects, if they had been studied, would most likely be considerably greater'' (Henderson, 2006c, p. 10).

Having considered comments on the quantitative exposure and health risk assessments from both groups of commenters, the Administrator finds no basis to change his position on these quantitative assessments that was taken at the time of proposal. That is, as discussed above, while the Administrator recognizes that the assessments rest on a more extensive body of data and is more comprehensive in scope than the assessment conducted in the last review, he is mindful that significant uncertainties continue to underlie the resulting quantitative exposure and risk estimates. Nevertheless, the Administrator concludes that the exposure and risk estimates are sufficiently reliable to inform his judgment about the significance of the exposures and risk of health effects in susceptible and vulnerable populations at O_3 levels associated with just meeting the current 8-hour standard. However, the Administrator disagrees with aspects of these commenters' views on the level of the standard that is appropriate and supported by the available health effects evidence and quantitative assessments associated with just meeting alternative standards.

3. Conclusions Regarding the Need for Revision

Having carefully considered the public comments, as discussed above, the Administrator believes the fundamental scientific conclusions on the effects of O_3 reached in the Criteria Document and Staff Paper, briefly summarized above in section II.A.2 and discussed more fully in section II.A of the proposal, remain valid. In considering whether the primary O_3 standard should be revised, the Administrator places primary consideration on the body of scientific evidence available in this review on the health effects associated with O_3 exposure, as summarized above in section II.B.1. The Administrator notes that there is much new evidence that has become available since the last review, including an especially large number of new epidemiological studies. The Administrator believes that this body of scientific evidence is very robust, recognizing that it includes large numbers of various types of studies, including toxicological studies, controlled human exposure studies, field panel studies, and community epidemiological studies, that provide consistent and coherent evidence of an array of O_3-related respiratory morbidity effects and possibly cardiovascular-related morbidity as well as total nonaccidental and cardiorespiratory mortality. The Administrator observes that (1) the evidence of a range of respiratory-related morbidity effects seen in the last review has been considerably strengthened, both through toxicological and controlled human exposure studies as well as through many new panel and epidemiological studies; (2) newly available evidence from controlled human exposure and epidemiological studies identifies people with asthma as an important susceptible population for which estimates of respiratory effects in the general population likely underestimate the magnitude or importance of these effects; (3) newly available evidence

about mechanisms of toxicity more completely explains the biological plausibility of O_3-induced respiratory effects and is beginning to suggest mechanisms that may link O_3 exposure to cardiovascular effects; and (4) there is now relatively strong evidence for associations between O_3 and total nonaccidental and cardiopulmonary mortality, even after adjustment for the influence of season and PM. The Administrator believes that this very robust body of evidence, taken together, enhances our understanding of O_3-related effects relative to what was known at the time of the last review. Further, he believes that the available evidence provides increased confidence that respiratory morbidity effects such as lung function decrements and respiratory symptoms are causally related to O_3 exposures, that indicators of respiratory morbidity such as emergency department visits and hospital admissions are causally related to O_3 exposures, and that the evidence is highly suggestive that O_3 exposures during the warm O_3 season contribute to premature mortality.

Further, the Administrator judges that there is important new evidence demonstrating that exposures to O_3 at levels below the level of the current standard are associated with a broad array of adverse health effects. This is especially true in at-risk populations that include people with asthma or other lung diseases, who are likely to experience more serious effects from exposure to O_3, children, and older adults with increased susceptibility, as well as those who are likely to be vulnerable as a result of spending a lot of time outdoors engaged in physical activity, especially active children and outdoor workers. The Administrator notes that this important new evidence demonstrates O_3-induced lung function effects and respiratory symptoms in some healthy individuals down to the previously observed exposure level of 0.080 ppm, as well as very limited new evidence at exposure levels well below the level of the current standard. In addition, the Administrator notes that (1) there is now epidemiological evidence of statistically significant O_3-related associations with lung function and respiratory symptom effects, respiratory-related emergency department visits and hospital admissions, and increased mortality, in areas that likely would have met the current standard; (2) there are also many epidemiological studies done in areas that likely would not have met the current standard but which nonetheless report statistically significant associations that generally extend down to ambient O_3 concentrations that are below the level of the current standard; (3) there are a few studies that have examined subsets of data that include only days with ambient O_3 concentrations below the level of the current standard, or below even much lower O_3 concentrations, and continue to report statistically significant associations with respiratory morbidity outcomes and mortality; and (4) the evidence from controlled human exposure studies, together with animal toxicological studies, provides considerable support for the biological plausibility of the respiratory morbidity associations observed in the epidemiological studies and for concluding that the associations extend below the level of the current standard.

Based on the available evidence, the Administrator agrees with the CASAC Panel and the majority of public commenters that the current standard is not requisite to protect public health with an adequate margin of safety because it is does not provide sufficient protection and that revision of the current O_3 standard is needed to provide increased public health protection. The Administrator notes that extensive critical review of this body of evidence and related uncertainties during the criteria and standard review process, including review by the CASAC Panel and the public of the basis for EPA's proposed decision to revise the primary O_3 standard, has identified a number of issues about which different reviewers disagree and for which additional research is warranted. Nonetheless, on balance, the Administrator believes that the remaining uncertainties in the available evidence do not diminish confidence in the causal relationships between O_3 exposures and indicators of serious respiratory morbidity effects, or the highly suggestive evidence of associations between O_3 exposures and premature mortality, nor do they diminish confidence in the conclusion that the associations extend below the level of the current standard.

Beyond a primary consideration of the available evidence, the Administrator has also taken into consideration the Agency's exposure and risk assessments to help inform his evaluation of the adequacy of the current standard. As at the time of proposal, the Administrator believes the results of those assessments inform his judgment on the adequacy of the current standard to protect against health effects of concern. In considering the exposure analysis results at this time, the Administrator recognizes that that there is a risk for confusion in the term ''exposure of concern'' that was used at the time of proposal, as it could be read to imply a determination that a certain benchmark level of exposure has been shown to be causally associated with adverse health effects. As a consequence, the Administrator believes that it is more appropriate to consider such exposure estimates in the context of a continuum rather than focusing on any one discrete benchmark level, as was done at the time of proposal, since the Administrator does not believe that the underlying scientific evidence is certain enough to support a focus on any bright-line benchmark level. In so doing, the Administrator recognizes that associations between O_3 exposures and health effects of concern become increasingly uncertain at lower O_3 exposure levels. Thus, the Administrator has taken into consideration the pattern of such exposure estimates across the range of discrete benchmark levels considered in EPA's exposure assessment to provide some indication of the potential magnitude of the incidence of health outcomes that could not be evaluated in the Agency's quantitative risk assessment but which have been demonstrated to occur in healthy people at O_3 exposures as low as 0.080 ppm, the lowest level at which such health outcomes have been tested.[20]

More specifically, the Administrator has considered the pattern of reductions in such exposures across the benchmark levels of 0.080, 0.070, and 0.060 ppm, which span the level at which there is strong evidence of effects in healthy people down to a level at which the Administrator judges the evidence of effects to be very limited. The Administrator observes that based on the aggregated exposure estimates for the 2002 simulation for the 12 urban areas included in the exposure analysis, upon just meeting the current standard, the percentages of asthmatic or all school age children likely to experience one of more exposures at and above these benchmark levels of 0.080, 0.070, and 0.060 ppm (while at moderate or greater exertion) are approximately 4%,

[20] As noted above, such health outcomes include increased airway responsiveness, increased pulmonary inflammation, increased cellular permeability, and decreased pulmonary defense mechanisms. These physiological effects provide plausible mechanisms underlying observed associations with aggravation of asthma, increased medication use, increased school and work absences, increased susceptibility to respiratory infection, increased visits to doctors' offices and emergency departments, and increased admissions to hospitals. In addition, these physiological effects, if repeated over time, have the potential to lead to chronic effects such as chronic bronchitis or long-term damage to the lungs that can lead to reduced quality of life.

20%, and 45%, respectively. As noted at the time of proposal, the Administrator recognizes that there is substantial year-to-year and city-to-city variability in these estimates and that it is important to recognize this variability in considering these estimates. For example, for the 0.080, 0.070, and 0.060 ppm benchmark levels, these percentages are estimated to range from approximately 1 to 10%, 1 to 40%, and 7 to 65%, respectively, across each of the 12 urban areas based on the 2002 simulation, and from approximately 0 to 1%, 0 to 7%, and 1 to 25%, respectively, based on the 2004 simulation.

With regard to the results of the risk assessment, the Administrator again considered the risks estimated to remain upon just meeting the current standard. The Administrator takes note of the estimated magnitudes of such risks, which are presented above in section II.B.1.c for a range of health effects including moderate and large lung function decrements (including percentages of children and number of occurrences), respiratory symptom days, respiratory-related hospital admissions, and nonaccidental and cardiorespiratory mortality, as well as year-to-year and city-to-city variability, and the uncertainties in these estimates. Further, the Administrator recognizes that these estimated risks for the specific health effects that could be analyzed in the Agency's risk assessment are indicative of a much broader array of O_3-related health endpoints that are part of a ''pyramid of effects'' that include various indicators of morbidity that could not be included in the risk assessment (e.g., school absences, increased medication use, emergency department visits) and which primarily affect members of at-risk groups.

In considering these quantitative exposure and risk estimates, as well as the broader array of O_3-related health endpoints that could not be quantified, the Administrator believes that they are important from a public health perspective and indicative of potential exposures and risks to at-risk groups. The Administrator thus finds that the exposure and risk estimates provide additional support to the evidence-based conclusion, reached above, that the current standard needs to be revised. Based on these considerations, and consistent with CASAC Panel's unanimous conclusion that there is no scientific justification for retaining the current standard, the Administrator concludes that the current primary O_3 standard is not sufficient and thus not requisite to protect public health with an adequate margin of safety, and that revision is needed to provide increased public health protection. It is important to note that this conclusion, and the reasoning on which it is based, does not address the question of what specific revisions are appropriate. That requires looking specifically at the current indicator, averaging time, form, and level of the O_3 standard, and evaluating the evidence relevant to determining whether and to what extent any of these elements should be revised, as is discussed in the following section.

C. Conclusions on the Elements of the Primary O_3 Standard

1. Indicator

In the last review of the air quality criteria for O_3 and other photochemical oxidants and the O_3 standard, as in other prior reviews, EPA focused on a standard for O_3 as the most appropriate surrogate for ambient photochemical oxidants. In this review, while the complex atmospheric chemistry in which O_3 plays a key role has been highlighted, no alternatives to O_3 have been advanced as being a more appropriate surrogate for ambient photochemical oxidants.

The Staff Paper (section 2.2.2) noted that it is generally recognized that control of ambient O_3 levels provides the best means of controlling photochemical oxidants. Among the photochemical oxidants, the acute exposure chamber, panel, and field epidemiological human health database provides specific evidence for O_3 at levels commonly reported in the ambient air, in part because few other photochemical oxidants are routinely measured. However, recent investigations on copollutant interactions have used simulated urban photochemical oxidant mixes. These investigations suggest the need for similar studies to help in understanding the biological basis for effects observed in epidemiological studies that are associated with air pollutant mixtures, where O_3 is used as the surrogate for the mix of photochemical oxidants. Meeting the O_3 standard can be expected to provide some degree of protection against potential health effects that may be independently associated with other photochemical oxidants but which are not discernable from currently available studies indexed by O_3 alone. Since the precursor emissions that lead to the formation of O_3 generally also lead to the formation of other photochemical oxidants, measures leading to reductions in population exposures to O_3 can generally be expected to lead to reductions in population exposures to other photochemical oxidants.

The Staff Paper noted that while the new body of time-series epidemiological evidence cannot resolve questions about the relative contribution of other photochemical oxidant species to the range of morbidity and mortality effects associated with O_3 in these types of studies, control of ambient O_3 levels is generally understood to provide the best means of controlling photochemical oxidants in general, and thus of protecting against effects that may be associated with individual species and/or the broader mix of photochemical oxidants, independent of effects specifically related to O_3. No public comments specifically suggested changing the indicator for the O_3 NAAQS.

In its letter to the Administrator, the CASAC Panel noted that O_3 is ''the key indicator of the extent of oxidative chemistry and serves to integrate multiple pollutants.'' The CASAC also stated that ''although O_3 itself has direct effects on human health and ecosystems, it can also be considered as indicator of the mixture of photochemical oxidants and of the oxidizing potency of the atmosphere'' (Henderson, 2006c, p. 9).

Based on the available information, and consistent with the views of EPA staff and the CASAC, the Administrator concludes that it is appropriate to continue to use O_3 as the indicator for a standard that is intended to address effects associated with exposure to O_3, alone or in combination with related photochemical oxidants. In so doing, the Administrator recognizes that measures leading to reductions in population exposures to O_3 will also reduce exposures to other photochemical oxidants.

2. Averaging Time

a. Short-Term and Prolonged (1 to 8 Hours)

The current 8-hour averaging time for the primary O_3 NAAQS was set in 1997. At that time, the decision to revise the averaging time of the primary standard from 1 hour to 8 hours was supported by the following key observations and conclusions:

(1) The 1-hour averaging time of the previous NAAQS was originally selected primarily on the basis of health effects associated with short-term (i.e., 1- to 3-hour) exposures.

(2) Substantial health effects information was available for the 1997 review that demonstrated associations between a wide range of health effects (e.g., moderate to large lung function

decrements, moderate to severe respiratory symptoms and pulmonary inflammation) and prolonged (i.e., 6- to 8-hour) exposures below the level of the then current 1-hour NAAQS.

(3) Results of the quantitative risk analyses showed that reductions in risks from both short-term and prolonged exposures could be achieved through a primary standard with an averaging period of either 1 hour or 8 hours. Thus establishing both a 1-hour and an 8-hour standard would not be necessary to reduce risks associated with the full range of observed health effects.

(4) The 8-hour averaging time was more directly associated with health effects of concern at lower O_3 concentrations than the 1-hour averaging time. It was thus the consensus of the CASAC ''that an 8-hour standard was more appropriate for a human health-based standard than a 1-hour standard.'' (Wolff, 1995)

(5) An 8-hour averaging resulted in a significantly more uniformly protective national standard than the then current 1-hour standard.

(6) An 8-hour averaging time effectively limits both 1- and 8-hour exposures of concern.

In looking at the new information that is discussed in section 7.6.2 of the current Criteria Document, the Staff Paper noted that epidemiological studies have used various averaging periods for O_3 concentrations, most commonly 1-hour, 8-hour and 24-hour averages. As described more specifically in sections 3.3 and 3.4 of the Staff Paper, in general the results presented from U.S. and Canadian studies showed no consistent difference for various averaging times in different studies. Because the 8-hour averaging time continues to be more directly associated with health effects of concern from controlled human exposure studies at lower concentrations than do shorter averaging periods, the Staff Paper did not evaluate alternative averaging times in this review and did not conduct exposure or risk assessments for standards with averaging times other than 8 hours.

The Staff Paper discussed an analysis of a recent three-year period of air quality data (2002 to 2004) which was conducted to determine whether the comparative 1- and 8-hour air quality patterns that were observed in the last review continue to be observed based on more recent air quality data. This updated air quality analysis (McCluney, 2007) was very consistent with the analysis done in the last review in that it indicated that only two urban areas of the U.S. have such ''peaky'' air quality patterns such that the ratio of 1-hour to 8-hour design values is greater than 1.5. This suggested that based on recent air quality data, it was again reasonable to conclude that an 8-hour average standard at or below the current level would generally be expected to provide protection equal to or greater than the previous 1-hour standard of 0.12 ppm in almost all urban areas. Thus, the Staff Paper again concluded that setting a standard with an 8-hour averaging time can effectively limit both 1- and 8-hour exposures of concern and is appropriate to provide adequate and more uniform protection of public health from both short-term and prolonged exposures to O_3 in the ambient air. In its letter to the Administrator, the CASAC Panel unanimously supported the continued use of an 8-hour averaging time for the primary O_3 standard (Henderson 2007, p. 2).

With respect to comments received on the proposal, most public commenters did not address the issue of whether EPA should consider additional or alternative averaging time standards. A few commenters, most notably the CA EPA and joint comments by ALA and several environmental groups, expressed the view that consideration should be given to setting or reinstating a 1-hour standard, in addition to maintaining the use of an 8-hour averaging time, to protect people in those parts of the country with relatively more ''peaky'' exposure profiles (e.g., Los Angeles). These commenters pointed out that when controlled exposure studies using triangular exposure patterns (with relatively higher 1-hour peaks) have been compared to constant exposure patterns with the same aggregate O_3 dose (in terms of concentration multiplied by time), ''peaky'' exposure patterns are seen to lead to higher risks. The CA EPA made particular note of this point, expressing the view that a 1-hour standard would more closely represent actual exposures, in that many people spend only 1 to 2 hours a day outdoors, and that it would be better matched to O_3 concentration profiles along the coasts where O_3 levels are typically high for shorter averaging periods than 8 hours.

For the reasons discussed in the Staff Paper and summarized above and considering the unanimous views of the CASAC Panel supporting the continued use of an 8-hour averaging time for the primary O_3 standard, the Administrator finds that, in combination with the decisions on form and level described below, the 8-hour standard provides adequate protection from both short-term (1 to 3 hours) and prolonged (6 to 8 hours) exposures to O_3 in the ambient air and that it is appropriate to continue use of the 8-hour averaging time for the O_3 NAAQS.

b. Long-term

During the last review, there was a large animal toxicological database for consideration that provided clear evidence of associations between long-term (e.g., from several months to years) exposures and lung tissue damage, with additional evidence of reduced lung elasticity and accelerated loss of lung function. However, there was no corresponding evidence for humans, and the state of the science had not progressed sufficiently to allow quantitative extrapolation of the animal study findings to humans. For these reasons, consideration of a separate long-term primary O_3 standard was not judged to be appropriate at that time, recognizing that the 8-hour standard would act to limit long-term exposures as well as short-term and prolonged exposures.

Taking into consideration the currently available evidence on long-term O_3 exposures, discussed above in section II.A.2.a.ii, the Staff Paper concluded that a health-based standard with a longer-term averaging time than 8 hours is not warranted at this time. The Staff Paper noted that while potentially more serious health effects have been identified as being associated with longer-term exposure studies of laboratory animals and in epidemiology studies, there remains substantial uncertainty regarding how these data could be used quantitatively to develop a basis for setting a long-term health standard. Because long-term air quality patterns would be improved in areas coming into attainment with an 8-hour standard, the potential risk of health effects associated with long-term exposures would be reduced in any area meeting an 8-hour standard. Thus, the Staff Paper did not recommend consideration of a long-term, health-based standard at this time.

In its final letter to the Administrator, the CASAC Panel offered no views on the long-term exposure evidence, nor did it suggest that consideration of a primary O_3 standard with a long-term averaging time was appropriate, and instead the CASAC Panel agreed with the choice of an 8-hour averaging time for the primary O_3 NAAQS suggested by Agency staff (Henderson, 2007). Similarly, no public commenters expressed support for considering such a long-term standard. Taking into account the evidence, the CASAC Panel's views, and the public comments, the Administrator finds that there is not a sufficient basis for setting

a long-term primary O_3 NAAQS at this time.

c. Administrator's Conclusions on Averaging Time

In considering the information discussed above, the CASAC Panel's views and public comments, the Administrator concludes that a standard with an 8-hour averaging time can effectively limit both 1- and 8-hour exposures of concern and that an 8-hour averaging time is appropriate to provide adequate and more uniform protection of public health from both short-term (1- to 3-hour) and prolonged (6- to 8-hour) exposures to O_3 in the ambient air. This conclusion is based on the observations summarized above, particularly: (1) The fact that the 8-hour averaging time is more directly associated with health effects of concern at lower O_3 concentrations than are averaging times of shorter duration and (2) results from quantitative risk analyses showing that attaining an 8-hour standard reduces the risk of experiencing health effects associated with both 8-hour and shorter duration exposures. Furthermore, the Administrator observes that the CASAC Panel agreed with the choice of averaging time (Henderson, 2007). Therefore, the Administrator finds it appropriate to retain the 8-hour averaging time and to not set a separate 1-hour standard. The Administrator also concludes that a standard with a long-term averaging time is not warranted at this time.

3. Form

In 1997, the primary O_3 NAAQS was changed from a ''1-expected-exceedance'' form per year over three years [21] to a concentration-based statistic, specifically the 3-year average of the annual fourth-highest daily maximum 8-hour concentrations. The principal advantage of the concentration-based form is that it is more directly related to the ambient O_3 concentrations that are associated with health effects of concern. With a concentration-based form, days on which higher O_3 concentrations occur would weigh proportionally more than days with lower concentrations, since the actual concentrations are used in determining whether the standard is attained. That is, given that there is a continuum of effects associated with exposures to varying levels of O_3, the extent to which public health is affected by exposure to ambient O_3 is related to the actual magnitude of the O_3 concentration, not just whether the concentration is above a specified level.

During the 1997 review, consideration was given to a range of alternative forms, including the second-, third-, fourth- and fifth-highest daily maximum 8-hour concentrations in an O_3 season, recognizing that the public health risks associated with exposure to a pollutant without a clear, discernable threshold can be appropriately addressed through a standard that allows for multiple exceedances to provide increased stability, but that also significantly limits the number of days on which the level may be exceeded and the magnitude of such exceedances. Consideration was given to setting a standard with a form that would provide a margin of safety against possible, but uncertain, chronic effects and would also provide greater stability to ongoing control programs. The fourth-highest daily maximum was selected because it was decided that the differences in the degree of protection against potential chronic effects afforded by the alternatives within the range were not well enough understood to use any such differences as a basis for choosing the most restrictive forms. On the other hand, the relatively large percentage of sites that would experience O_3 peaks well above 0.08 ppm and the number of days on which the level of the standard may be exceeded even when attaining a fifth-highest 0.08 ppm concentration-based standard, argued against choosing that form.

As an initial matter, the Staff Paper considered whether it is appropriate to continue to specify the level of the O_3 standard to the nearest hundredth (two decimal places) ppm, or whether the precision with which ambient O_3 concentrations are measured supports specifying the standard level to the thousandth (three decimal places) ppm (i.e., to the part per billion (ppb)). The Staff Paper discussed an analysis conducted by EPA staff to determine the impact of ambient O_3 measurement error on calculated 8-hour average O_3 design value concentrations, which are compared to the level of the standard to determine whether the standard is attained (Cox and Camalier, 2006). The results of this analysis suggested that instrument measurement error, or possible instrument bias, contribute very little to the uncertainty in design values. More specifically, measurement imprecision was determined to contribute less than 1 ppb to design value uncertainty, and a simulation study indicated that randomly occurring instrument bias could contribute approximately 1 ppb. EPA staff interpreted this analysis as being supportive of specifying the level of the standard to the thousandth ppm. If the current standard were to be specified to this degree of precision, the current standard would effectively be at a level of 0.084 ppm, reflecting the data rounding conventions that are part of the definition of the current 0.08 ppm 8-hour standard. This information was provided to the CASAC Panel and made available to the public.

In evaluating alternative forms for the primary standard in conjunction with specific standard levels, the Staff Paper considered the adequacy of the public health protection provided by the combination of the level and form to be the foremost consideration. In addition, the Staff Paper recognized that it is important to have a form of the standard that is stable and insulated from the impacts of extreme meteorological events that are conducive to O_3 formation. Such instability can have the effect of reducing public health protection, because frequent shifting in and out of attainment due of meteorological conditions can disrupt an area's ongoing implementation plans and associated control programs. Providing more stability is one of the reasons that EPA moved to a concentration-based form in 1997.

The Staff Paper considered two concentration-based forms of the standard: the nth-highest maximum concentration and a percentile-based form. A percentile-based statistic is useful for comparing datasets of varying length because it samples approximately the same place in the distribution of air quality values, whether the dataset is several months or several years long. However, a percentile-based form would allow more days with higher air quality values in locations with longer O_3 seasons relative to places with shorter O_3 seasons. An nth-highest maximum concentration form would more effectively ensure that people who live in areas with different length O_3 seasons receive the same degree of public health protection. For this reason, the exposure and risk analyses were based on a form specified in terms of an nth-highest concentration, with n ranging from 3 to 5.

The results of some of these analyses are shown in the Staff Paper (Figures 6–1 through 6–4) and specifically discussed in chapter 6. These figures illustrate the estimated percent change in risk estimates for the incidence of moderate or greater decrements in lung function ($\geq$ 15 percent FEV_1) in all school age children and moderate or

[21] The 1-expected-exceedance form essentially requires that the fourth-highest air quality value in 3 years, based on adjustments for missing data, be less than or equal to the level of the standard for the standard to be met at an air quality monitoring site.

greater lung function decrements (≥ 10 percent FEV_1) in asthmatic school age children, associated with going from meeting the current standard to meeting alternative standards with alternative forms based on the 2002 and 2004 simulations. Figures 6–5 and 6–6 illustrate the estimated percent change in the estimated incidence of non-accidental mortality, associated with going from meeting the current standard to meeting alternative standards, based on the 2002 and 2004 simulations. These results are generally representative of the patterns found in all of the analyses. The estimated reductions in risk associated with different forms of the standard, ranging from third- to fourth-highest daily maximum concentrations at 0.084 ppm, and from third- to fifth-highest daily maximum concentrations at 0.074 ppm, are generally less than the estimated reductions associated with the different levels that were analyzed. As seen in these figures, there is much city-to-city variability, particularly in the percent changes associated with going from a fourth-highest to third-highest form at the current level of 0.084 ppm, and with estimated reductions associated with the fifth-highest form at a 0.074 ppm level. In most cities, there are generally only small differences in the estimated reductions in risks associated with the third- to fifth-highest forms at a level of 0.074 ppm simulated using 2002 and 2004 O_3 monitoring data.

The Staff Paper noted that there is not a clear health-based rationale for selecting a particular nth-highest daily maximum form of the standard from among the ones analyzed. It also noted that the changes in the form considered in the analyses result in only small differences in the estimated reductions in risks in most cities, although in some cities larger differences are estimated. The Staff Paper concluded that a range of concentration-based forms from the third-to the fifth-highest daily maximum 8-hour average concentration is appropriate for consideration in setting the standard. Given that there is a continuum of effects associated with exposures to varying levels of O_3, the extent to which public health is affected by exposure to ambient O_3 is related to the actual magnitude of the O_3 concentration, not just whether the concentration is above a specified level. The principal advantage of a concentration-based form is that it is more directly related to the ambient O_3 concentrations that are associated with health effects. Robust, concentration-based forms, in the range of the third- to fifth-highest daily maximum 8-hour average concentration, including the current 4th-highest daily maximum form, minimize the inherent lack of year-to-year stability of exceedance-based forms and provide insulation from the impacts of extreme meteorological events. Such instability can have the effect of reducing public health protection by disrupting ongoing implementation plans and associated control programs.

With regard to the precision of the standard, in its letter to the Administrator, the CASAC concluded that current monitoring technology ''allows accurate measurement of O_3 concentrations with a precision of parts per *billion*'' (Henderson, 2006c). The CASAC recommended that the specification of the level of the O_3 standard should reflect this degree of precision (Henderson, 2006c). While the CASAC Panel unanimously supported specifying the level of the standard to this degree of precision, public comments were mixed. Environmental organizations (e.g., ALA *et al.*) and some State/regional agencies (e.g., NESCAUM, PA Department of Environmental Protection) supported the proposed increased precision and but did not support truncating to the third decimal. However, several industry associations (e.g., API, EMA, AAAM) suggested that there is not sufficient evidence to modify the 1997 decision to round to two decimal places. These comments are addressed in the Response to Comments document.

The Administrator concludes that the level of the standard should be specified to the thousandth ppm (three decimal places), based on the staff's analysis and conclusions discussed in the Staff Paper that current monitoring technology allows accurate measurement of O_3 to support specifying the 8-hour standard to this degree of precision, and on the CASAC Panel's reasoning and recommendation with respect to this aspect of the standard.

With regard to the form of the standard, in its letter to the Administrator prior to proposal, the CASAC recommended that ''a range of concentration-based forms from the third-to the fifth-highest daily maximum 8-hour average concentration'' be considered (Henderson, 2006c, p. 5). Several commenters supported maintaining the current form of the standard because it strikes an appropriate balance between stability and protection, as well as because EPA used this form in their analyses (e.g., EMA, NESCAUM, and Pennsylvania Department of Environmental Protection). Some public commenters that expressed the view that the current primary O_3 standard is not adequate also submitted comments that supported a more health-protective form of the standard than the current form (e.g., a second-or third-highest daily maximum form) (e.g., ALA *et al.*). Most commenters who expressed the view that the current standard should not be revised did not provide any views on alternative forms that would be appropriate for consideration should the Administrator consider revisions to the standard. A few industry association and business commenters supported changing to a 5th highest form (e.g., Dow Chemical, AAM). One commenter (Oklahoma Department of Transportation) suggested the use of a 6th or 7th highest daily maximum form.

The Administrator recognizes that there is not a clear health-based threshold for selecting a particular nth-highest daily maximum form of the standard from among the ones analyzed in the Staff Paper and that the current form of the standard provides a stable target for implementing programs to improve air quality. The Administrator also agrees that the adequacy of the public health protection provided by the combination of the level and form is a foremost consideration. Based on this, the Administrator finds that the form of the current standard, 4th-highest daily maximum 8-hour average concentration, should be retained, recognizing that the public health protection that would be provided by this standard is based on combining this form with the increased health protection provided by the lower level of the standard discussed in the section below.

4. Level

a. Proposed Range

For the reasons discussed below, and taking into account information and assessments presented in the Criteria Document and Staff Paper, the advice and recommendations of the CASAC, and the public comments received prior to proposal, the Administrator proposed to revise the existing 8-hour primary O_3 standard. Specifically, the Administrator proposed to revise the level of the primary O_3 standard to within a range from 0.070 to 0.075 ppm.

The Administrator's consideration of alternative levels of the primary O_3 standard builds on his proposal, discussed above, that the overall body of evidence indicates that the current 8-hour O_3 standard is not requisite to protect public health with an adequate margin of safety because it does not provide sufficient protection, and that revision would result in increased public health protection, especially for

members of at-risk groups, notably including asthmatic children and other people with lung disease, as well as all children and older adults, especially those active outdoors, and outdoor workers, against an array of adverse health effects. These effects range from health outcomes that could be quantified in the risk assessment, including decreased lung function, respiratory symptoms, serious indicators of respiratory morbidity such as hospital admissions for respiratory causes, and nonaccidental mortality, to health outcomes that could not be directly estimated, including pulmonary inflammation, increased medication use, emergency department visits, and possibly cardiovascular-related morbidity effects. In reaching a proposed decision about the level of the O_3 primary standard, the Administrator considered: the evidence-based considerations from the Criteria Document and the Staff Paper; the results of the exposure and risk assessments discussed above and in the Staff Paper, giving weight to the exposure and risk assessments as judged appropriate; CASAC advice and recommendations, as reflected in discussions of drafts of the Criteria Document and Staff Paper at public meetings, in separate written comments, and in CASAC's letters to the Administrator; EPA staff recommendations; and public comments received during the development of these documents, either in connection with CASAC meetings or separately. In considering what 8-hour standard is requisite to protect public health with an adequate margin of safety, the Administrator noted at the time of proposal that he was mindful that this choice requires judgment based on an interpretation of the evidence and other information that neither overstates nor understates the strength and limitations of the evidence and information nor the appropriate inferences to be drawn.

The Administrator noted that the most certain evidence of adverse health effects from exposure to O_3 comes from the clinical studies and that the large bulk of this evidence derives from studies of exposures at levels of 0.080 and above. At those levels, there is consistent evidence of lung function decrements and respiratory symptoms in healthy young adults, as well as evidence of inflammation and other medically significant airway responses. Moreover, there is no evidence that the 0.080 ppm level is a threshold for these effects. Although the Administrator took note of the very limited new evidence of lung function decrements and respiratory symptoms in some healthy individuals at the 0.060 ppm exposure level, he judged this evidence too limited to support a primary focus at this level. The Administrator also noted that clinical studies, supported by epidemiological studies, provide important new evidence that people with asthma were likely to experience larger and more serious effects than healthy people from exposure to O_3. There were also epidemiological studies that provide evidence of statistically significant associations between short-term O_3 exposures and more serious health effects, such as emergency department visits, hospital admissions, and premature mortality, in areas that likely would have met the current standard. The Administrator also took note of the many epidemiological studies done in areas that likely would not have met the current standard but which nonetheless report statistically significant associations that generally extend down to ambient O_3 concentrations that were below the level of the current standard. Further, there were a few studies that have examined subsets of data that include only days with ambient O_3 concentrations below the level of the current standard, or below even much lower O_3 concentrations, and continued to report statistically significant associations with respiratory morbidity outcomes and mortality. In considering this evidence, the Administrator noted that the extent to which these studies provide evidence of causal relationships with exposures to O_3 alone, down to the lowest levels observed, remains uncertain. EPA sought comment on the degree to which associations observed in epidemiological studies reflect causal relationships between important health endpoints and exposure to O_3 alone at ambient O_3 levels below the current standard.

Therefore, the Administrator judged at the time of proposal, and continues to judge as discussed in section II.B.3, that revising the current standard to protect public health with an adequate margin of safety is warranted and would reduce risk to public health, based on: (1) The strong body of clinical evidence in healthy people at exposure levels of 0.080 and above of lung function decrements, respiratory symptoms, pulmonary inflammation, and other medically significant airway responses, as well as some indication of lung function decrements and respiratory symptoms at lower levels; (2) the substantial body of clinical and epidemiological evidence indicating that people with asthma are likely to experience larger and more serious effects than healthy people; and (3) the body of epidemiological evidence indicating associations are observed for a wide range of serious health effects, including respiratory emergency department visits, hospital admissions, and premature mortality, at and below 0.080 ppm. The Administrator also judged at the time of proposal and continues to conclude that the estimates of exposures of concern and risks remaining upon just meeting the current standard or a standard at the 0.080 ppm level provide additional support for this view. For the same reasons stated in the proposal notice and discussed above in section II.B on the adequacy of the current standard, the Administrator judges that the standard should be set below 0.080 ppm, a level at which the evidence provides a high degree of certainty about the adverse effects of O_3 exposure even in healthy people.

The Administrator next considered what standard level below 0.080 ppm would be requisite to protect public health with an adequate margin of safety that is sufficient, but not more than necessary, to achieve that result, recognizing that such a standard would result in increased public health protection. The assessment of a standard level calls for consideration of both the degree of additional protection that alternative levels of the standard might be expected to provide as well as the certainty that any specific level will in fact provide such protection. In the circumstances present in this review, there is no evidence-based bright line that indicates a single appropriate level. Instead there is a combination of scientific evidence and other information that needs to be considered holistically in making this public health policy judgment and selecting a standard level from a range of reasonable values.

The Administrator noted that at exposure levels below 0.080 ppm there is only a very limited amount of evidence from clinical studies, indicating effects in some healthy individuals at levels as low as 0.060 ppm. The great majority of the evidence concerning effects below 0.080 ppm is from epidemiological studies. The epidemiological studies do not identify any bright-line threshold level for effects. At the same time, the epidemiological studies are not in and of themselves direct evidence of a causal link between exposure to O_3 and the occurrence of the effects. The Administrator considers these studies in the context of all the other available evidence in evaluating the degree of

certainty that O_3-related adverse health effects would occur at various ambient levels below 0.080 ppm, including the strong human clinical studies and the toxicological studies that demonstrate the biological plausibility and mechanisms for the effects of O_3 on airway inflammation and increased airway responsiveness at exposure levels of 0.080 ppm and above.

Based on consideration of the entire body of evidence and information available at this time, as well as the recommendations of the CASAC, the Administrator proposed that a standard within the range of 0.070 to 0.075 ppm would be requisite to protect public health with an adequate margin of safety. As noted at the time of proposal, a standard level within this range is estimated to reduce the risk of a variety of health effects associated with exposure to O_3, including the respiratory symptoms and lung function effects demonstrated in clinical studies, and in emergency department visits, hospital admissions, and mortality effects indicated in the epidemiological studies. All of these effects are indicative of a much broader array of O_3-related health endpoints, as represented by the pyramid of effects, such as school absences and increased medication use that are plausibly linked to these observed effects.

The Administrator also considered the degree of improvements in public health that potentially could be achieved by a standard of 0.070 to 0.075 ppm, giving weight to the exposure and risk assessments as he judged appropriate. As discussed in the proposal notice (section II.D.4) in considering the results of the exposure assessment, the Administrator primarily focused on exposures at and above the 0.070 ppm benchmark level as an important surrogate measure for potentially more serious health effects for at-risk groups, including people with asthma. In so doing, the Administrator noted that although the analysis of ''exposures of concern'' was conducted to estimate exposures at and above three discrete benchmark levels, the concept is appropriately viewed as a continuum. As discussed above, the Administrator strives to balance concern about the potential for health effects and their severity with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower O_3 exposure levels. In focusing on this benchmark, the Administrator noted that upon just meeting a standard within the range of 0.070 to 0.075 ppm based on the 2002 simulation, the number of school age children likely to experience exposures at and above this benchmark level in aggregate (for the 12 cities in the assessment) was estimated to be approximately 2 to 4 percent of all and asthmatic children and generally less than 10 percent of children even in cities that receive the least degree of protection from such a standard in a recent year with relatively high O_3 levels. A standard within the 0.070 to 0.075 ppm range would thus substantially reduce exposures of concern by about 90 to 80 percent, respectively, from those estimated to occur upon just meeting the current standard. While placing less weight on the results of the risk assessment, in light of the important uncertainties inherent in the assessment, the Administrator noted that the results indicated that a standard set within this range would likely reduce risks to at-risk groups from the O_3-related health effects considered in the risk assessment, and by inference across the much broader array of O_3-related health effects that could only be considered qualitatively, relative to the level of protection afforded by the current standard. This lent support to the proposed range.

The Administrator judged that a standard set within the range of 0.070 to 0.075 ppm would provide a degree of reduction in risk that is important from a public health perspective and that a standard within this range would be requisite to protect public health, including the health of at-risk groups, with an adequate margin of safety. EPA's evaluation of the body of scientific evidence and quantitative estimates of exposures and risks indicated that substantial reductions in public health risks would occur throughout this range. As noted in the proposal notice, because there is no bright line clearly directing the choice of level within this reasonable range, the choice of what is appropriate, considering the strengths and limitations of the evidence, and the appropriate inference to be drawn from the evidence and the exposure and risk assessments is a public health policy judgment. To further inform this judgment, EPA sought public comment on the extent to which the epidemiological and clinical evidence provide guidance as to the level of a standard that would be requisite to protect public health with an adequate margin of safety, especially for at-risk groups.

In considering the available information, the Administrator also judged that a standard level below 0.070 ppm would not be appropriate. In reaching this judgment, the Administrator noted that there was only quite limited evidence from clinical studies at exposure levels below 0.080 ppm O_3. Moreover, the Administrator recognized that in the body of epidemiological evidence, many studies reported positive and statistically significant associations, while others reported positive results that were not statistically significant, and a few did not report any positive O_3-related associations. In addition, the Administrator judged that evidence of a causal relationship between adverse health outcomes and O_3 exposures became increasingly uncertain at lower levels of exposure.

The Administrator also considered the results of the exposure assessments in reaching his judgment that a standard level below 0.070 ppm would not be appropriate. The Administrator noted that in considering the results from the exposure assessment, a standard set at the 0.070 ppm level, with the same form as the current standard, was estimated to provide substantial reductions in exposures of concern (i.e., approximately 90 to 92 percent reductions in the numbers of school age children and 94 percent reduction in the total number of occurrences) for both all and asthmatic school age children relative to just meeting the current standard based on a simulation of a recent year with relatively high O_3 levels (2002). Thus, a 0.070 ppm standard would be expected to provide protection from the exposures of concern that the Administrator had primarily focused on for over 98 percent of all and asthmatic school age children even in a year with relatively high O_3 levels, increasing to over 99.9 percent of children in a year with relatively low O_3 levels (2004).

In considering the results of the health risk assessment, as discussed in the proposal notice (section II.C.2), the Administrator noted that there were important uncertainties and assumptions inherent in the risk assessment and that this assessment was most appropriately used to simulate trends and patterns that could be expected, as well as providing informed, but still imprecise, estimates of the potential magnitude of risks. The Administrator particularly noted that as lower standard levels were modeled, including a standard set at a level below 0.070 ppm, the risk assessment continued to assume a causal link between O_3 exposures and the occurrence of the health effects examined, such that the assessment continued to indicate reductions in O_3-related risks upon meeting a lower standard level. As discussed above, however, the Administrator recognized

that evidence of a causal relationship between adverse health effects and O_3 exposures becomes increasingly uncertain at lower levels of exposure. Given all of the information available to him at the time of the proposal, the Administrator judged that the increasing uncertainty of the existence and magnitude of additional public health protection that standards below 0.070 ppm might provide suggested that such lower standard levels would likely be below what is necessary to protect public health with an adequate margin of safety.

In addition, the Administrator judged that a standard level higher than 0.075 ppm would also not be appropriate. This judgment took into consideration the information discussed in the proposal notice (sections II.A and B) and was based on the strong body of clinical evidence in healthy people at exposure levels of 0.080 ppm and above, the substantial body of clinical and epidemiological evidence indicating that people with asthma are likely to experience larger and more serious effects than healthy people, the body of epidemiological evidence indicating that associations are observed for a wide range of more serious health effects at levels below 0.080 ppm, and the estimates of exposure and risk remaining upon just meeting a standard set at 0.080 ppm. The much greater certainty of the existence and magnitude of additional public health protection that such levels would forego provides the basis for judging that levels above 0.075 ppm would be higher than what is requisite to protect public health, including the health of at-risk groups, with an adequate margin of safety.

For the reasons discussed in more detail in the proposal notice and summarized above, the Administrator proposed to revise the level of the primary O_3 standard to within the range of 0.070 to 0.075 ppm.

At the time of proposal, the Administrator recognized that sharply divergent views on the appropriate level of this standard had been presented to EPA as part of the NAAQS review process, and he solicited comment on a wide range of standard levels and alternative approaches to characterizing and addressing scientific uncertainties. One such alternative view focused very strongly on the uncertainties inherent in the controlled human exposure and epidemiological studies and quantitative exposure and health risk assessments as the basis for concluding that no change to the current 8-hour O_3 standard of 0.084 ppm was warranted. In sharp contrast, others viewed the controlled human exposure and epidemiological studies as strong and robust, and generally placed more weight on the results of the quantitative exposure and risk assessments and the unanimous CASAC recommendations as a basis for concluding that an 8-hour standard at or below 0.070 ppm was warranted. As discussed below, the same sharply divergent views were generally repeated in comments on the proposal by the two distinct groups of commenters identified in II.B.2 above.

b. Comments on Level

i. Health Evidence Considerations

With regard to the evaluation and consideration of the health effects evidence and how such information should be considered in the decision on the standard level, EPA notes that the commenters fell into the same two groups discussed above in section II.B.2. The two groups often cited the same studies and evidence, but they reached sharply divergent conclusions as to what standard level is supported by the health effects evidence. The general views of both groups on the interpretation and use of the health effects evidence are presented above in section II.B.2.a, with most comments from one group arguing that this evidence supports a decision to revise the 8-hour standard to 0.060 ppm or below, and the other group arguing that it supports a decision not to revise the current 8-hour standard.

With regard to the evidence from controlled human exposure studies, commenters that included public health and environmental groups who supported revising the current standard expressed the view that the large body of evidence available at the time of the last review, demonstrating an array of adverse health effects (i.e., reduced lung function, respiratory symptoms, increased airway responsiveness, inflammation, and increased susceptibility to respiratory infection), at concentrations of 0.080 ppm O_3, indicated that the standard should have been set at a lower level. These commenters noted that standards must be set below the level shown to cause effects in healthy subjects in order to protect sensitive populations with an adequate margin of safety. As discussed in section II.B.2.a above, these commenters focused on the results of the Adams studies (2002, 2006) as evidence that exposure to 0.060 ppm O_3 will result in a significant proportion (i.e., 7%) of the adult population who do not have asthma or other lung diseases experiencing notable lung function decrements (FEV_1 decrement (≥10%), and furthermore that larger decrements in FEV_1 would be expected in more susceptible populations. This evidence caused these commenters to reject EPA's proposed range:

> Clearly, EPA's proposed standard of 0.070 to 0.075 ppm cannot be considered protective of public health in light of experimental evidence demonstrating adverse respiratory effects in healthy individuals exposed to 0.060 ppm, and the legal requirements to protect sensitive populations with an adequate margin of safety. [ALA *et al.*, p. 51]

The second group of commenters, who opposed revision of the standard, expressed the view that the group mean changes reported in the Adams studies (2002, 2006) were small, that such decrements should not be considered to be adverse, and that the individuals who experienced larger responses were too few to serve as a basis for a revised O_3 standard. This group included virtually all commenters representing industry associations and businesses. These general comments are addressed above in section II.B.2.a and in more detail in the Response to Comments document.

In considering comments received on controlled human exposure studies, and how these studies support a focus on particular standard levels, the Administrator observes that in general the comments support his original view that these studies provide the most certain evidence of adverse health effects, and that the large bulk of evidence derives from studies of exposures at levels of 0.080 ppm and above. The Administrator notes that since the last review important new evidence includes demonstration of O_3-induced lung function effects and respiratory symptoms in some healthy adults down to the previously observed exposure level of 0.080 ppm, as well as very limited new evidence of the same effects at exposure levels well below the level of the current standard (Adams, 2002, 2006). EPA disagrees with these commenters that the percent of subjects that experienced FEV_1 decrements greater than 10% in this study of 30 subjects can appropriately be generalized to the U.S. population. Based on careful consideration of the comments, the Administrator again concludes that while the Adams studies provide evidence that some healthy individuals will experience lung function decrements and respiratory symptoms at the 0.060 ppm exposure level, this evidence is too limited to support a primary focus at this level. Moreover, the Administrator notes that while the CASAC Panel supported a level of 0.060 ppm, they also supported a level above 0.060, indicating that they disagree with the commenters' view that

the results of Adams studies mean that the level of the standard has to be set at 0.060 ppm.

With regard to the information from epidemiological studies, commenters representing public health, environmental, and medical organizations generally asserted that the large body of new epidemiological studies provides evidence of causal associations between O_3 exposures and a wide array of respiratory and cardiovascular morbidity effects, including emergency department visits and hospital admissions. They expressed the view that a significant body of strong, consistent evidence links short-term exposures to premature mortality and noted that this evidence is supported by new research that provides biological plausibility for such effects. These commenters noted that various approaches, including air quality assessments which show that statistically significant associations occurred in areas that likely would have met the current standard, or statistical approaches that examined subsets of the data which indicate that statistically significant associations remain down to very low ambient O_3 levels, show effects well below the level of the current standard. Moreover they identified particular studies, including some ''new'' studies not considered in the Criteria Document, that indicated there are additional sub-populations that are likely to be sensitive to O_3, including infants, women, and African-Americans, that should be considered in deciding the requisite level of protection. They asserted that this information supports a standard set at a level no higher than 0.060 ppm O_3.

With regard to the information from epidemiological studies, the second group of commenters focused strongly on EPA's interpretation of the epidemiological evidence and the uncertainties they saw in this evidence as a basis for concluding that no change to the current level of the 8-hour O_3 standard is warranted. In commenting on the proposed range of levels, these commenters generally relied on the same arguments presented above in section II.B.2.a as to why they believed it would be inappropriate for EPA to make any revisions to the primary O_3 standard. That is, they asserted that the health effects of concern associated with short-term or prolonged exposures to O_3 have not changed significantly since 1997; that the inconsistencies and uncertainties inherent in these studies as a whole should preclude any reliance on them as justification for a more stringent standard; and that ''new'' science not included in the Criteria Document continues to increase uncertainty about possible health risks associated with exposure to O_3. Specific methodological issues cited as additional support for their conclusions included: adequacy of exposure data; potential confounding by copollutants; model selection; inconsistent evidence relating O_3 exposure to mortality, and ''new'' studies that provide additional evidence of inconsistencies. These general comments are addressed above in section II.B.2.a, and in greater detail in the Response to Comments document.

In considering these comments on the epidemiological evidence with regard to the interpretation of the epidemiological evidence and methodological issues, the Administrator notes that in general, most of the issues and concerns raised by those who do not support any revisions to the primary O_3 standard with regard to the interpretation of the epidemiological evidence and methodological issues, are essentially restatements if issues raised during the review of the Criteria Document and Staff Paper. The same is true of the views of commenters who supported a level of the standard no higher than 0.060 ppm O_3. EPA presented and the CASAC Panel reviewed the interpretation of the epidemiological evidence in the Criteria Document and the integration of the evidence with policy considerations in the development of the policy options presented in the Staff Paper for consideration by the Administrator. CASAC reviewed the scientific content of both the Criteria Document and Staff Paper and advised the Administrator that these documents provided an appropriate basis for use in regulatory decision making. Therefore, these comments do not provide a basis for the Administrator to reach fundamentally different conclusions than he reached at the time of proposal.

Moreover, the Administrator notes that epidemiological evidence is most appropriately evaluated in the context of all available evidence, including evidence from controlled human exposure and toxicological studies. In general, the Administrator agrees with the weight of evidence approach used in the Criteria Document and believes that this body of scientific evidence across all types of studies is very robust, recognizing that it includes a large number of various types of studies that provide consistent and coherent evidence of an array of O_3-related respiratory morbidity effects and possibly cardiovascular-related morbidity as well as total nonaccidental and cardiorespiratory mortality. More specifically, the Administrator judges that the body of epidemiological evidence indicating associations with a wide range of serious health effects, including respiratory emergency department visits and hospital admissions and premature mortality, at and below 0.080 ppm supports revising the current standard to protect public health. While the great majority of evidence concerning effects below 0.080 ppm was from epidemiological studies, the epidemiological studies do not identify any bright-line threshold level for effects. At the same time, the epidemiological studies are not themselves direct evidence of a causal link between exposure to O_3 and the occurrence of the effects. Therefore, Administrator has considered these studies in the context of all the other available evidence in evaluating the degree of certainty that O_3-related adverse health effects would occur at various ambient levels below 0.080 ppm. In that context, there is only quite limited evidence from controlled human exposure studies at exposure levels below 0.080 ppm O_3. The Administrator recognizes that in the body of epidemiological evidence, many studies reported positive and statistically significant associations, while others reported positive results that were not statistically significant, and a few did not report any positive O_3-related associations. In addition, the Administrator judged that evidence of a causal relationship between adverse health outcomes and O_3 exposures became increasingly uncertain at lower levels of exposure. Based on this the Administrator continues to believe that the body of epidemiological evidence does not support setting a standard as low as 0.060 as suggested by some commenters.

The Administrator also notes the many epidemiological studies done in areas that likely would not have met the current standard but which nonetheless report statistically significant associations that generally extend down to ambient O_3 concentrations that were below the level of the current standard. Further, there were a few studies that have examined subsets of data that include only days with ambient O_3 concentrations below the level of the current standard, or below even much lower O_3 concentrations, and continued to report statistically significant associations with respiratory morbidity outcomes and mortality. In the context of the strong clinical evidence of adverse effect in healthy adults at 0.080, the Administrator finds that the body of epidemiological evidence does not

support retaining a standard of 0.080, as suggested by commenters.

Both groups of commenters also considered evidence from controlled human exposure and epidemiological studies of increased susceptibility in people with lung disease, especially people with asthma, but they reached sharply divergent conclusions about what standard level is supported by this evidence. As discussed above in section II.B.2.a, medical organizations and public health and environmental groups agreed with EPA that, based on evidence from controlled human exposure and epidemiological studies, people with asthma, especially children, are likely to have greater lung function decrements and respiratory symptoms in response to O_3 exposure than people who do not have asthma, and are likely to respond at lower levels. Furthermore, these commenters noted that epidemiological studies have identified other potentially sensitive subpopulations, including for example, infants, women and African-Americans, and that effects in these groups should be part of the consideration in providing an adequate margin of safety. These commenters concluded that the appropriate level for the primary O_3 standard is 0.060 ppm, to provide protection for members of sensitive groups, especially people with asthma, who are likely to have more serious responses and to respond at lower levels that healthy people. They also contended that a standard set at this level also would provide protection against anticipated, but as yet unproven effects in the additional groups cited. The Administrator agrees with these commenters that important new evidence shows that asthmatics have more serious responses, and are more likely to respond at lower O_3 levels, than healthy individuals. Moreover, he agrees that this evidence supports a standard set at a level below 0.080 ppm O_3, based on the strong evidence from human clinical studies in healthy adults at this level. However, for the reasons described above, he does not agree that the controlled human exposure and epidemiological evidence provide support for a standard set at 0.060 ppm, for the reasons discussed above.

In contrast, industry association and business commenters asserted that EPA is wrong to claim that new evidence indicates that the current standard does not provide adequate health public health protection for people with asthma. In support of this position, these commenters made the following major comments: (1) The lung function decrements and respiratory symptoms observed in clinical studies of asthmatics are not clinically important; (2) EPA postulates that asthmatics would likely experience more serious responses and responses at lower levels than the subjects of controlled human exposure experiments, but that hypothesis is not supported by scientific evidence; and, (3) EPA recognized asthmatics as a sensitive subpopulation in 1997, and new information does not suggest greater susceptibility than was previously believed. EPA has generally responded to these comments and those summarized in the paragraph above in section II.B.2.a above, and in greater detail in the Response to Comments document.

After careful consideration of these comments, the Administrator continues to judge that there is important new evidence demonstrating that exposures to O_3 at levels below the level of the current standard are associated with a broad array of adverse health effects, especially in at-risk populations that include people with asthma or other lung diseases who are likely to experience more serious effects from exposure to O_3, as well as children and older adults with increased susceptibility, and those who are likely to be vulnerable as a result of spending a lot of time outdoors engaged in physical activity, especially active children and outdoor workers. The Administrator notes that this important new evidence demonstrates O_3-induced lung function effects and respiratory symptoms in some healthy individuals down to the previously observed exposure level of 0.080 ppm, as well as very limited new evidence at exposure levels well below the level of the current standard. In addition, there are many epidemiological studies done in areas that likely would not have met the current standard but which nonetheless report statistically significant associations that generally extend down to ambient O_3 concentrations that were below the level of the current standard. Further, there were a few studies that have examined subsets of data that include only days with ambient O_3 concentrations below the level of the current standard, or below even much lower O_3 concentrations, and continued to report statistically significant associations with respiratory morbidity outcomes and mortality. The Administrator recognizes that in the body of epidemiological evidence, many studies reported positive and statistically significant associations, while others reported positive results that were not statistically significant, and a few did not report any positive O_3-related associations. In addition, the Administrator judged that evidence of a causal relationship between adverse health outcomes and O_3 exposures became increasingly uncertain at lower levels of exposure. This body of evidence provides a strong basis for the Administrator's judgment that the standard needs to be revised to provide more protection, and that a revised standard must be set at a level appreciably below 0.080 ppm, the level at which there is considerable evidence of effects in healthy people. At the same time, for the reasons discussed above the Administrator judges that this body of evidence does not support setting a standard as low as 0.060, as suggested by other commenters.

ii. Exposure and Risk Considerations

With regard to considering how the quantitative exposure and health risk assessments should factor into a decision on the standard level, EPA notes that both groups of commenters generally consider these assessments in their comments on the standard level, but they reach sharply divergent conclusions as to what standard level is supported by these assessments. The general views of both groups on the implications of the exposure and risk assessment are presented above in section II.B.2.b, with one group arguing that it supports a decision to revise the 8-hour standard to 0.060 ppm or below, and the other group arguing that it supports a decision not to revise the current 8-hour standard.

A joint set of comments from ALA and several environmental groups expressed the view that EPA cannot use exposures of concern to justify a standard in the range of 0.070 to 0.075 ppm. These commenters contended that standards in the proposed range would continue to expose too many asthmatic children, as well as other at risk groups such as outdoor workers and preschool children, to ''demonstrably unhealthy levels of ozone pollution'' in only 12 cities which does not represent a national estimate (ALA *et al.*, p. 106). These same commenters asserted that if EPA were to consider exposures of concern, then the benchmark level must be defined as 0.060 ppm based on the considerable evidence of adverse health effects occurring at this level. As discussed in section II.B.2.b above, they also cited various reasons why the exposure estimates were underestimated, including: only 12 cities were included in the assessment, various at risk groups including outdoor workers and preschool children were not included in the assessment, and EPA's exposure assessment underestimated exposures since it

considers average children, not active children who spend more time outdoors and repeated exposures also were underestimated.

In contrast, industry association and business group commenters expressed the view that the concept of exposures of concern should not be considered as a basis for revising the level of the standard because it provided no indication of the probability that individuals would actually experience an adverse health effect. These same commenters also provided various reasons why the exposure estimates were overestimated based on specific methodological choices made by EPA including, for example, O_3 measurements at fixed-site monitors can be higher than other locations where individuals are exposed, the exposure estimates do not account for O_3 avoidance behaviors, and the exposure model overestimates elevated breathing rates. Finally, these commenters also contended that the estimates of exposures of concern associated with just meeting the current standard, using the 0.080 ppm benchmark levels, have not appreciably changed since the prior review and, thus provide no support for revising the current standard.

EPA has responded to the criticisms from both groups of commenters related to concerns that the exposure estimates are either underestimated or overestimated in section II.B.2.b above and in more detail in the Response to Comments document. EPA also has addressed the issues raised by both groups of commenters concerning the appropriateness of considering exposures at and above various benchmark levels as an element in the decision on the adequacy of the current standard in section II.B.2.b.

As discussed in section II.B.2b, the Administrator believes that it is appropriate to consider such exposure estimates in the context of a continuum rather than focusing on any one discrete benchmark level, as was done at the time of proposal, since the Administrator does not believe that the underlying evidence is certain enough to support a focus on any single bright-line benchmark level. Thus, the Administrator believes it is appropriate to consider a range of benchmark levels from 0.080 down to 0.060 ppm, recognizing that exposures at and above these benchmark levels must be considered in the context of a continuum of the potential for health effects of concern, and their severity, with increasing uncertainty associated with the likelihood of such effects at lower O_3 exposure levels.

The Administrator recognizes that the 0.080 ppm benchmark level represents a level at which several health outcomes, including lung inflammation, increased airway responsiveness, and decreased resistance to infection have been shown to occur in healthy adults. The Administrator places great weight on the public health significance of exposures at and above this benchmark level given the greater certainty that these adverse health responses are likely to be observed in a significant fraction of the at-risk population. With respect to his decision on the level of the 8-hour standard, the Administrator notes that upon just meeting a standard within the range of 0.070 to 0.075 ppm based on the 2002 simulation, the number of school age asthmatic children likely to experience exposures at and above the 0.080 ppm benchmark level in aggregate (for the 12 cities in the assessment) is estimated to range from 0.1 to 0.4 percent of asthmatic school age children. Based on the 2004 simulation, the estimates are even lower, with no asthmatic children estimated to experience exposures at and above the 0.080 ppm benchmark level. Similar patterns are observed for all school age children. Recognizing the uncertainties inherent in the exposure assessment, the Administrator concludes that the exposure assessment suggests that exposures at and above the 0.080 ppm level, where several health effects have been shown to occur in healthy individuals, are eliminated or nearly eliminated depending on the modeling year upon just meeting a standard within the range of 0.070 to 0.075 ppm.

The Administrator does not agree with those commenters who would only consider the single benchmark level of 0.080 ppm. While the Administrator places less weight on exposures at and above the 0.070 pm benchmark level, given the increased uncertainty about the fraction of the population and severity of the health responses that might occur associated with exposures above this level, he believes that it is appropriate to consider exposures at this benchmark as well in judging the adequacy of the current standard to protect public health. Consideration of the 0.070 ppm benchmark level recognizes that the effects observed at 0.080 ppm were in healthy adult subjects and sensitive population groups, such as asthmatics, are expected to respond at lower O_3 levels than healthy individuals. The Administrator notes that upon just meeting a standard within the range of 0.070 to 0.075 ppm based on the 2002 simulation, the number of asthmatic school age children likely to experience exposures at and above the 0.070 ppm benchmark level in aggregate (for the 12 cities in the assessment) is estimated to range from about 2 to 5 percent of asthmatic school age children. Based on the 2004 simulation, the estimates are substantially lower, with 0 to 0.6 percent of asthmatic children estimated to experience exposures at and above the 0.070 ppm benchmark level upon just meeting a standard within the range of 0.070 to 0.075 ppm.

Finally, the Administrator has considered but places very little weight on the benchmark level of 0.060 ppm given the very limited scientific evidence supporting a conclusion that O_3 is causally related to various health outcomes at this exposure level. Nevertheless, the Administrator observes that there is a similar pattern of reductions in exposures of concern for all and asthmatic school age children at this benchmark level as well when comparing the 0.070 ppm and 0.075 ppm 8-hour standards.

Given the degree of uncertainty associated with the exposure assessment discussed in the Staff Paper and uncertainty assessment (Langstaff, 2007), the Administrator judges that for each specific benchmark level examined there is not an appreciable difference, from a public health perspective, in the estimates of exposures associated with air quality just meeting an 8-hour standard at 0.075 ppm versus an 8-hour standard set at 0.070 ppm. For example, given the uncertainty in the exposure estimates, the difference between an estimate of 2 percent and 5 percent of asthmatic children for the exposure benchmark of 0.070 is not an appreciable difference from a public health perspective. While directionally there are likely to be fewer exposures at and above this benchmark for a standard of 0.070 than a standard of 0.075 ppm, given the uncertainty in the exposure assessment it is not at all clear that the actual difference is large enough to present a public health concern.

With regard to considering how the quantitative risk assessment should factor into a decision on the standard level, as noted above both groups of commenters generally considered the risk assessment in their comments on the standard level, but they reached sharply divergent conclusions as to what standard level is supported by the risk assessment. More specifically, the environmental, public health, and most medical organizations, and some State and regional air pollution agencies (e.g., California, NESCAUM) contended that EPA's proposed range of 0.070 to 0.075 ppm would result in significant residual

public health risks. As articulated most fully in the joint set of comments from ALA and several environmental organizations, these commenters expressed the view that EPA's risk assessment clearly demonstrates that a more stringent 8-hour O_3 standard of 0.065 ppm, the most stringent standard analyzed by EPA, would significantly decrease O_3-related lung function decrements, respiratory symptoms, hospital admissions, and mortality and that ''EPA must adopt a more stringent ozone standard of 0.060 ppm or below—a level that incorporates a more adequate margin of safety'' (ALA *et al.*, p. 108). These same commenters also cited various reasons for asserting that the risk assessment likely underestimates health risks to a substantial degree, including the limited nature of the assessment with respect to number of cities, populations covered, and health endpoints analyzed. EPA has responded to the comments concerning the scope of the risk assessment and assertion that health risks are likely underestimated both in section II.B.2.b above and in more detail in the Response to Comments document. The Administrator's reasoning and conclusions regarding the weight he places on the health risk assessment in reaching a judgment about the appropriate level for the primary standard are discussed below in section II.C.4.c.

In contrast, industry association and business group commenters who supported not revising the level of the current 8-hour standard generally asserted the following points: (1) That risk estimates have not changed significantly since the prior review in 1997; (2) that uncertainties and limitations underlying the risk assessment make it too speculative to be used in supporting a decision to revise the standard; (3) that EPA should have defined PRB differently and that EPA underestimated PRB levels, which results in health risk reductions associated with more stringent standards being overestimated; and (4) that health risks are overestimated based on specific methodological choices made by EPA including, for example, selection of inappropriate effect estimates from health effect studies, EPA's approach to addressing the shape of exposure-response relationships, and whether or not to incorporate thresholds into its models for the various health effects analyzed. EPA has responded to these comments both in section II.B.2.b above and in more detail in the Response to Comments document.

In summary, the Administrator concludes that the exposure assessment suggests that exposures at and above the 0.080 ppm benchmark level, where several health effects have been shown to occur in healthy individuals, are essentially eliminated for standards in the range of 0.070 to 0.075 ppm. He also concludes that at the 0.070 ppm benchmark level, the exposures are substantially reduced and eliminated for the vast majority of people in at-risk groups, and that the very low estimates of such exposures are not appreciably different, from a public health perspective, between those exposures associated with just meeting a standard set at 0.070 ppm or 0.075 ppm. Further, the Administrator places relatively little weight on the exposures using the 0.060 ppm benchmark level given the very limited scientific evidence supporting a conclusion that O_3 is causally related to health outcomes at this exposure level. Considering the uncertainties associated with the exposure assessment, the Administrator concludes that the exposure estimates associated with each of the benchmark levels are not appreciably different, between a 0.070 or 0.075 ppm standard, and therefore, the exposure assessment does not provide a basis for choosing a level within the proposed range.

While the Administrator places less weight on the results of the risk assessment, he notes that the results indicate that a standard set within the proposed range would likely reduce risks to at-risk groups from the O_3-related health effects considered in the assessment, and by inference across the much broader array of O_3-related health effects that can only be considered qualitatively, relative to the level of protection afforded by the current standard. Moreover, he notes that the results of the assessment suggest a gradual reduction in risks with no clear breakpoint as increasingly lower standard levels are considered. In light of this continuum and the important uncertainties inherent in the assessment discussed above and in the proposal, the Administrator concludes that the risk assessment does not provide a basis for choosing a level within the proposed range.

c. Conclusions on Level

Having carefully considered the public comments on the appropriate level of the O_3 standard, as discussed above, the Administrator believes the fundamental scientific conclusions on the effects of O_3 reached in the Criteria Document and Staff Paper, briefly summarized above in section II.A.2 and discussed more fully in section II.A of the proposal, remain valid. In considering the level at which the primary O_3 standard should be set, the Administrator continues to place primary consideration on the body of scientific evidence available in this review on the health effects associated with O_3 exposure, as summarized above in section II.C.4.a, while viewing the results of exposure and risk assessment, discussed above in section II.C.4.b, as providing information in support of his decision. In considering the available scientific evidence he judges that, as at the proposal, a focus on the proposed range of 0.070 to 0.075 ppm is appropriate in light of the large body of controlled human exposure and epidemiological and other scientific evidence. As discussed above, this body of evidence does not support retaining the current standard, as suggested by some commenters. Nor does it support setting a level just below 0.080 ppm because, based on the entire body of evidence, such a level would not provide a significant increase in protection compared to the current standard. Further, such a level would not be appreciably below the level in controlled human exposure studies at which adverse effects have been demonstrated (i.e., 0.080 ppm). This body of evidence also does not support setting a level of 0.060 ppm or below, as suggested by other commenters. The Administrator has also evaluated the information from the exposure assessment and the risk assessment, and judges that this evidence does not provide a clear enough basis for choosing a specific level within the range of 0.075 to 0.070 ppm. In making a final judgment about the level of the O_3 standard, the Administrator notes that the level of 0.075 ppm is above the range recommended by the CASAC (i.e., 0.070 to 0.060 ppm). Placing great weight on the views of CASAC, the Administrator has carefully considered its stated views and the scientific basis and policy views for the range it recommended. In so doing, the Administrator notes that he fully agrees that the scientific evidence supports the conclusion that the current standard is not adequate and must be revised.

With respect to CASAC's recommended range of standard levels, the Administrator observes that the basis for its recommendation appears to be a mixture of scientific and policy considerations. The Administrator notes that he is in general agreement with CASAC's views concerning the interpretation of the scientific evidence. The Administrator also notes that there is no bright line clearly directing the choice of level, and the choice of what is appropriate is clearly a public health

policy judgment entrusted to the Administrator. This judgment must include consideration of the strengths and limitations of the evidence and the appropriate inferences to be drawn from the evidence and the exposure and risk assessments. In reviewing the basis for the CASAC Panel's recommendations for the range of the O_3 standard, the Administrator observes that he reaches a different policy judgment than the CASAC Panel based on apparently placing different weight in two areas: the role of the evidence from the Adams studies and the relative weight placed on the results from the exposure and risk assessments. While he found the evidence reporting effects at the 0.060 ppm level from the Adams studies to be too limited to support a primary focus at this level, the Administrator observes that the CASAC Panel appears to place greater weight on this evidence, as indicated by its recommendation of a range down to 0.060 ppm. The Administrator also observes that while the CASAC Panel supported a level of 0.060 ppm, they also supported a level above 0.060, indicating that they do not believe that the results of Adams studies mean that the level of the standard has to be set at 0.060 ppm. The Administrator also observes that the CASAC Panel appeared to place greater weight on the results of the risk assessment as a basis for its recommended range. In referring to the results of the risk assessment results for lung function, respiratory symptoms, hospital admissions and mortality, the CASAC Panel concluded that: ''beneficial effects in terms of reduction of adverse health effects were calculated to occur at the lowest concentration considered (i.e., 0.064 ppm)'' (Henderson, 2006c, p. 4). However, the Administrator more heavily weighs the implications of the uncertainties associated with the Agency's quantitative human exposure and health risk assessments, as discussed above in section II.A.3. Given these uncertainties, the Administrator does not agree that these assessment results appropriately serve as a primary basis for concluding that levels at or below 0.070 ppm are required for the 8-hour O_3 standard.

After carefully taking the above comments and considerations into account, and fully considering the scientific and policy views of the CASAC, the Administrator has decided to revise the level of the primary 8-hour O_3 standard to 0.075 ppm. In the Administrator's judgment, based on the currently available evidence, a standard set at this level would be requisite to protect public health with an adequate margin of safety, including the health of sensitive subpopulations, from serious health effects including respiratory morbidity, that is judged to be causally associated with short-term and prolonged exposures to O_3, and premature mortality. A standard set at this level provides a significant increase in protection compared to the current standard, and is appreciably below 0.080 ppm, the level in controlled human exposure studies at which adverse effects have been demonstrated. At a level of 0.075, exposures at and above the benchmark of 0.080 ppm are essentially eliminated, and exposures at and above the benchmark of 0.070 are substantially reduced or eliminated for the vast majority of people in at-risk groups. A standard set at a level lower than 0.075 would only result in significant further public health protection if, in fact, there is a continuum of health risks in areas with 8-hour average O_3 concentrations that are well below the concentrations observed in the key controlled human exposure studies and if the reported associations observed in epidemiological studies are, in fact, causally related to O_3 at those lower levels. Based on the available evidence, the Administrator is not prepared to make these assumptions. Taking into account the uncertainties that remain in interpreting the evidence from available controlled human exposure and epidemiological studies at very low levels, the Adminisitrator notes that the likelihood of obtaining benefits to public health with a standard set below 0.075 ppm O_3 decreases, while the likelihood of requiring reductions in ambient concentrations that go beyond those that are needed to protect public health increases. The Administrator judges that the appropriate balance to be drawn, based on the entire body of evidence and information available in this review, is a standard set at 0.075. The Administrator believes that a standard set at 0.075 ppm would be sufficient to protect public health with an adequate margin of safety, and does not believe that a lower standard is needed to provide this degree of protection. This judgment by the Administrator appropriately considers the requirement for a standard that is neither more nor less stringent than necessary for this purpose and recognizes that the CAA does not require that primary standards be set at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

D. Final Decision on the Primary O_3 Standard

For the reasons discussed above, and taking into account information and assessments presented in the Criteria Document and Staff Paper, the advice and recommendations of the CASAC Panel, and the public comments to date, the Administrator has decided to revise the existing 8-hour primary O_3 standard. Specifically, the Administrator is revising (1) the level of the primary O_3 standard to 0.075 ppm and (2) the degree of precision to which the level of the standard is specified to the thousandth ppm. The revised 8-hour primary standard, with a level of 0.075 ppm, would be met at an ambient air monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.075 ppm. Data handling conventions are specified in the new Appendix P that is adopted, as discussed in section V below.

At this time, EPA is also promulgating revisions to the Air Quality Index for O_3 to be consistent with the revisions to the primary O_3 standard. These revisions are discussed below in section III. Issues related to the monitoring requirements for the revised O_3 primary standard are discussed below in section VI.

III. Communication of Public Health Information

Information on the public health implications of ambient concentrations of criteria pollutants is currently made available primarily through EPA's Air Quality Index (AQI) program (40 CFR 58.50). The current Air Quality Index has been in use since its inception in 1999 (64 FR 42530). It provides accurate, timely, and easily understandable information about daily levels of pollution. The AQI establishes a nationally uniform system of indexing pollution levels for O_3, CO, NO_2, PM and SO_2. The AQI converts pollutant concentrations in a community's air to a number on a scale from 0 to 500. Reported AQI values enable the public to know whether air pollution levels in a particular location are characterized as good (0–50), moderate (51–100), unhealthy for sensitive groups (101–150), unhealthy (151–200), very unhealthy (201–300), or hazardous (301–500). The AQI index value of 100 typically corresponds to the level of the short-term NAAQS for each pollutant. For the 1997 O_3 NAAQS, an 8-hour average concentration of 0.084 ppm corresponds to an AQI value of 100. An AQI value greater than 100 means that a pollutant is in one of the unhealthy

categories (i.e., unhealthy for sensitive groups, unhealthy, very unhealthy, or hazardous) on a given day; an AQI value at or below 100 means that a pollutant concentration is in one of the satisfactory categories (i.e., good or moderate). Decisions about the pollutant concentrations at which to set the various AQI breakpoints, that delineate the various AQI categories, draw directly from the underlying health information that supports the NAAQS review.

The Agency recognized the importance of revising the AQI in a timely manner to be consistent with any revisions to the NAAQS. Therefore, EPA proposed to finalize conforming changes to the AQI, in connection with the Agency's final decision on the O_3 NAAQS if revisions to the primary standard were promulgated. These conforming changes would include setting the 100 level of the AQI at the same level as the revised primary O_3 NAAQS, and also making proportional adjustments to AQI breakpoints at the lower end of the range (i.e., AQI values of 50, 150 and 200). EPA did not propose to change breakpoints at the higher end of the range (from 301 to 500), which would apply to State contingency plans or the Significant Harm Level (40 CFR 51.16), because the information from this review does not inform decisions about breakpoints at those higher levels.

EPA received relatively few comments on the proposed changes to the AQI. Three major issues came up in the comments, including: (1) Whether the AQI should be revised at all, even if the primary standard is revised; (2) whether the AQI should be revised in conjunction with this rulemaking, or in a separate rulemaking; and, (3) whether an AQI value of 100 should be set equal to or lower than the level of the short-term primary O_3 standard, and the other breakpoints adjusted accordingly. UARG asserted that EPA should not revise the AQI at all, even if EPA does revise the primary O_3 standard. In support of this view, UARG noted that there is no requirement for EPA to set an AQI value of 100 equal to the level of the short-term standard, and cited the 1999 decision to set an AQI value of 100 for $PM_{2.5}$ equal to 40 μg/m³, when the level of the short-term standard was then 65 μg/m³. UARG also expressed the view that lowering the ambient concentrations associated with different AQI values would confuse and mislead the public about actual trends in air quality, which UARG asserted are improving. ALA and other environmental groups in a joint set of comments did not support revising the AQI in conjunction with this rulemaking. ALA *et al.* expressed the view that since EPA did not propose specific breakpoints in its proposed revisions to the AQI, EPA should conduct a separate rulemaking, specifying the proposed breakpoints to allow the public an opportunity to comment on them. Several State agencies, including agencies from Pennsylvania, Wisconsin and Oklahoma, and State organizations, including NACAA and NESCAUM, supported revising the AQI at the same time that the standard is revised. NACAA expressed the view that: ''The effectiveness of the AQI as a public health tool will be undermined if EPA undertakes regulatory changes to the ozone NAAQS without simultaneously revising the AQI.'' (NACAA, p. 5) The Wisconsin Department of Natural Resources (WI DNR) further noted that:

> ''* * * when the 24-hour $PM_{2.5}$ standard was revised, EPA missed an opportunity to adopt conforming changes to the AQI. The Administrator signed the **Federal Register** notice promulgating a revised fine-particle standard in September 2006, but EPA still has not changed the AQI to reflect the revised standard. We recommend that the AQI be amended to be consistent with the revised ozone and $PM_{2.5}$ standards.'' [WI DNR, p. 3]

Finally, ALA *et al.* and NESCAUM expressed the view that an AQI value of 100 should be set at an ambient concentration below the range for the proposed primary standard. These commenters cited the health evidence showing adverse health effects below the proposed range of the standard, the recommended range of CASAC, and also cited the 1999 decision to set an AQI value of 100 for $PM_{2.5}$ equal to 40 μg/m³ when the level of the short-term standard was 65 μg/m³, as support for this view. Most other State commenters supported setting an AQI value of 100 equal to the level of the primary O_3 standard.

Recognizing the importance of the AQI as a communication tool that allows the public to take exposure reduction measures when air quality may pose health risks, EPA agrees with State agencies and organizations that favored revising the AQI at the same time as the primary standard. EPA agrees with State agency commenters that its historical approach of setting an AQI value of 100 equal to the level of the revised primary standard is appropriate, both from a public health and a communication perspective.

Both UARG and ALA *et al.* cite the 1999 AQI rulemaking, which set an AQI value of 100 for $PM_{2.5}$ equal to 40 μg/m³, a lower level than the level of the short-term $PM_{2.5}$ standard, as support for their view that an AQI value of 100 does not need to be set at the level of the revised O_3 standard. However, the sub-index for $PM_{2.5}$ was developed using an approach that was conceptually consistent with past practice for selecting the air quality concentrations associated with the AQI breakpoints. The Agency's historical approach to selecting index breakpoints had been to simply set the AQI value of 100 at the level of the short-term standard (e.g., 24 hours) for a pollutant. This method of structuring the index is appropriate in the case where a short-term standard is set to protect against the health effects associated with short-term exposures and/or an annual standard is set to protect against health effects associated with long-term exposures. In such cases, the short-term standard in effect defines a level of health protection provided against short-term risks and thus can be a useful benchmark against which to compare daily air quality concentrations.

In the case of the 1997 $PM_{2.5}$ standards, EPA took a different approach to protecting against the health risks associated with short-term exposures. The intended level of protection against short-term risk was not defined by the 24-hour standard (set at a level of 65 μg/m³) but by the combination of the 24-hour and the annual standards working in concert. In fact, the annual standard (set at a level of 15 μg/m³) was intended to serve as the principal vehicle for protecting against both long-term and short-term $PM_{2.5}$ exposures by lowering the entire day-by-day distribution of $PM_{2.5}$ concentrations in an area throughout the year. See generally 62 FR at 38668–70 (July 18, 1997). Because the 24-hour standard served to provide additional protection against very high short-term concentrations, localized ''hotspots,'' or risks arising from seasonal emissions that would not be well-controlled by a national annual standard, EPA consequently concluded that it would be appropriate to caution members of sensitive groups exposed to concentrations below the level of the 24-hour standard. EPA also concluded that it would be inappropriate to compare daily air quality concentrations directly with the level of the annual standard by setting an AQI value of 100 at that level. EPA wanted to set the AQI value of 100 to reflect the general level of health protection against short-term risks offered by the annual and 24-hour standards combined, consistent with the underlying logic of the historical approach to establishing AQI 100 levels. Therefore EPA set the AQI value of 100

at the midpoint of the range between the annual and the 24-hour $PM_{2.5}$ standards (i.e., 40 μg/m³) in order to reflect the combined role of the 24-hour and the annual $PM_{2.5}$ standards in protecting against short-term risks. Therefore, this approach for defining an AQI value of 100 is conceptually consistent with the proposed decision to set an AQI value of 100 equal to the level of the primary O_3 standard.

Therefore, EPA is revising the AQI for O_3 by setting an AQI value of 100 equal to 0.075 ppm, 8-hour average, the level of the revised primary O_3 standard. EPA is also revising the following breakpoints: An AQI value of 50 is set at 0.059 ppm, an AQI value of 150 is set at 0.095 ppm, and an AQI value of 200 is set at 0.115 ppm. All these levels are averaged over 8 hours. As indicated in the proposal, these levels were developed by making proportional adjustments to the other AQI breakpoints (i.e., AQI values of 50, 150 and 200). The proportional adjustments were modified slightly to allow for each category to span at least a 0.015 ppm range to allow for more accurate forecasting. So, for example, simply making a proportional adjustment to the level of an AQI value of 150 (0.104 ppm) would result in a level of about 0.092 ppm. Since most of these ranges are rounded to the nearest 5 thousandths of a ppm, that rounding would have resulted in a 0.014 ppm range (i.e., 0.076 to 0.090 ppm). So, the number was rounded upward to the nearest 5 thousandths of a ppm, to allow for at least a 0.015 ppm range for forecasting. The same principle applies to the calculation of an AQI value for 200 (0.115 ppm). EPA believes that the finalized breakpoints provide a balance between proportional adjustments to reflect the revised O_3 standard and providing category ranges that are large enough to be forecasted accurately, so that the new AQI for O_3 can be implemented more easily in the public forum for which the AQI ultimately exists.

IV. Rationale for Final Decision on Secondary O_3 Standard

A. Introduction

1. Overview

This section presents the rationale for the Administrator's final decisions regarding the need to revise the current secondary O_3 NAAQS, and the appropriate revisions to the standard. As discussed more fully below, the rationale for the final decisions on appropriate revisions to the secondary O_3 NAAQS is based on a thorough review of the latest scientific information on vegetation effects associated with exposure to ambient levels of O_3, as assessed in the Criteria Document. This rationale also takes into account: (1) Staff assessments of the most policy-relevant information in the Criteria Document regarding the evidence of adverse effects of O_3 to vegetation and ecosystems, information on biologically-relevant exposure metrics, and staff analyses of air quality, vegetation exposure and risks, presented in the Staff Paper and described in greater detail in the associated Technical Report on Ozone Exposure, Risk, and Impact Assessments for Vegetation (Abt, 2007), upon which staff recommendations for revisions to the secondary O_3 standard were based; (2) CASAC Panel advice and recommendations as reflected in discussion of drafts of the Criteria Document and Staff Paper at public meetings, in separate written comments, and in CASAC's letters to the Administrator (Henderson, 2006a, b, c; 2007); (3) public comments received during development of these documents either in conjunction with CASAC meetings or separately and on the proposal notice; (4) consideration of the degree of protection to vegetation potentially afforded by the revised 8-hour primary standard; and (5) the limits of the available evidence.

In developing this rationale, EPA has again focused on direct O_3 effects on vegetation, specifically drawing upon an integrative synthesis of the entire body of evidence, published through early 2006, on the broad array of vegetation effects associated with exposure to ambient levels of O_3 (EPA, 2006a, chapter 9). In addition, because O_3 can also indirectly affect other ecosystem components such as soils, water, and wildlife, and their associated ecosystem goods and services, through its effects on vegetation, a qualitative discussion of these other indirect impacts is also included, though these effects are not quantifiable at this time. As was concluded in the 1997 review, and based on the body of scientific literature assessed in the current Criteria Document, the Administrator believes that it is reasonable to conclude that a secondary standard protecting the public welfare from known or anticipated adverse effects to trees, native vegetation and crops would also afford increased protection from adverse effects to other environmental components relevant to the public welfare, including ecosystem services and function. The peer-reviewed literature includes studies conducted in the U.S., Canada, Europe, and many other countries around the world. In its assessment of the evidence judged to be most relevant to making decisions on the level of the O_3 secondary standard, however, EPA has placed greater weight on U.S. studies, due to the often species-, site- and climate-specific nature of O_3-related vegetation response.

As with virtually any policy-relevant vegetation effects research, there is uncertainty in the characterization of vegetation effects attributable to exposure to ambient O_3. As discussed below, however, research conducted since the last review provides important information coming from field-based exposure studies, including free air, gradient and biomonitoring surveys, in addition to the more traditional controlled open top chamber (OTC) studies. Moreover, the newly available studies evaluated in the Criteria Document have undergone intensive scrutiny through multiple layers of peer review and many opportunities for public review and comment. While important uncertainties remain, the review of the vegetation effects information has been extensive and deliberate. In the judgment of the Administrator, the intensive evaluation of the scientific evidence that has occurred in this review has provided an adequate basis for regulatory decision-making at this time. This review also provides important input to EPA's research plan for improving our future understanding of the effects of ambient O_3 at lower levels.

Information related to vegetation and ecosystem effects, biologically relevant exposure indices, and quantitative vegetation exposure and risk assessments were summarized in sections IV.A through IV.C of the proposal (72 FR at 37883–37895), respectively, and are only briefly outlined below in sections IV.A.2 through IV.A.4. Subsequent sections of this preamble provide a more complete discussion of the Administrator's rationale, in light of key issues raised in public comments, for concluding that the current standard is not requisite to protect public welfare from known or anticipated adverse effects, and it is appropriate to revise the current secondary O_3 standard to provide additional public welfare protection (section IV.B) by making the secondary standard identical to the revised primary standard (section IV.C). A summary of the final decisions on revisions to the secondary O_3 standard is presented in section IV.D.

2. Overview of Vegetation Effects Evidence

This section outlines the information presented in section IV.A of the proposal on known or potential effects on public welfare which may be expected from the presence of O_3 in ambient air. Exposures to O_3 have been associated quantitatively and qualitatively with a wide range of vegetation effects. The decision in the last review to set a more protective secondary standard primarily reflected consideration of the quantitative information on vegetation effects available at that time, particularly growth impairment (e.g., biomass loss) in sensitive forest tree species during the seedling growth stage and yield loss in important commercial crops. This information, derived mainly using the OTC exposure method, found cumulative, seasonal O_3 exposures were most strongly associated with observed vegetation response. The Criteria Document prepared for this review discussed a number of additional studies that support and strengthen key conclusions regarding O_3 effects on vegetation and ecosystems found in the previous Criteria Document (EPA, 1996a, 2006a), including further clarification of the underlying mechanistic and physiological processes at the subcellular, cellular, and whole system levels within the plant. More importantly, however, in the context of this review, new quantitative information is now available across a broader array of vegetation effects (e.g., growth impairment during seedlings, saplings and mature tree growth stages, visible foliar injury, and yield loss in annual crops) and across a more diverse set of exposure methods, including chamber, free air, gradient, model, and field-based observation. These non-chambered, field-based study results begin to address one of the key data gaps cited by the Administrator in the last review.

Section IV.A of the proposal provides a detailed summary of key information contained in the Criteria Document (EPA, 2006, chapter 9) and in the Staff Paper (EPA, 2007, chapter 7) on known or potential effects on public welfare which may be expected from the presence of O_3 in ambient air (72 FR 37883–37890). The information in that section summarized:

(1) New information available on potential mechanisms for vegetation effects associated with exposure to O_3, including information on plant uptake of O_3, cellular to systemic responses, compensation and detoxification responses, changes to plant metabolism, and plant responses to chronic O_3 exposures;

(2) The nature of effects on vegetation that have been associated with exposure to O_3 including effects related to carbohydrate production and allocation, growth effects on trees and yield reductions in crops, visible foliar injury, and reduced plant vigor, as well as consequent potential impacts on ecosystems including potential alteration of ecosystem structure and function and effects on ecosystem services and carbon sequestration; and

(3) Considerations in characterizing what constitutes an adverse welfare impact of O_3, including an approach that expands the consideration of adversity beyond the species level by making explicit the linkages between stress-related effects such as O_3 exposure at the species level and at higher levels within an ecosystem hierarchy.

3. Overview of Biologically Relevant Exposure Indices

This section outlines the information presented in section IV.B of the proposal on biologically relevant exposure indices that relate known or potential effects on vegetation to exposure to O_3 in ambient air. The Criteria Document concluded that O_3 exposure indices that cumulate differentially weighted hourly concentrations are the best candidates for relating exposure to plant growth responses (EPA, 2006a). This conclusion followed from the extensive evaluation of the relevant studies in the 1996 Criteria Document (EPA, 1996a) and the recent evaluation of studies that have been published since that time (EPA, 2006a). The depth and strength of these conclusions are illustrated by the following observations that are drawn from the 1996 Criteria Document (EPA, 1996a, section 5.5):

(1) Specifically, with respect to the importance of taking into account exposure duration, ''when O_3 effects are the primary cause of variation in plant response, plants from replicate studies of varying duration showed greater reductions in yield or growth when exposed for the longer duration'' and ''the mean exposure index of unspecified duration could not account for the year-to-year variation in response'' (EPA, 1996a, pg. 5–96).

(2) ''[B]ecause the mean exposure index treats all concentrations equally and does not specifically include an exposure duration component, the use of a mean exposure index for characterizing plant exposures appears inappropriate for relating exposure with vegetation effects'' (EPA, 1996a, pg. 5–88).

(3) Regarding the relative importance of higher concentrations than lower in determining plant response, ''the ultimate impact of long-term exposures to O_3 on crops and seedling biomass response depends on the integration of repeated peak concentrations during the growth of the plant'' (EPA, 1996a, pg. 5–104).

(4) ''[A]t this time, exposure indices that weight the hourly O_3 concentrations differentially appear to be the best candidates for relating exposure with predicted plant response'' (EPA, 1996a, pgs. 5–136).

At the conclusion of the last review, the biological basis for a cumulative, seasonal form was not in dispute. There was general agreement between the EPA staff, CASAC, and the Administrator, based on their review of the air quality criteria, that a cumulative, seasonal form was more biologically relevant than the previous 1-hour and new 8-hour average forms (61 FR 65716).

The Staff Paper prepared for this review evaluated the most appropriate choice of a cumulative, seasonal form for a secondary standard to protect the public welfare from known and anticipated adverse vegetation effects in light of the new information available in this review. Specifically, the Staff Paper considered: (1) The continued lack of evidence within the vegetation effects literature of a biological threshold for vegetation exposures of concern and (2) new estimates of PRB that are lower than in the last review. The form commonly called W126 was evaluated in the last review and was compared with the form called SUM06, which incorporates a threshold level above which exposures are summed, that was proposed in the last review. The concentration-weighted form commonly called W126 is defined as the sum of sigmoidally weighted hourly O_3 concentrations over a specified period, where the daily sigmoidal weighting function is defined in the Staff Paper (EPA, 2007a, p. 7–16.) as:

$$W126 = \sum_{i=8\ AM}^{i<8\ PM} w_{C_i}\ C_i,\ \text{where } C_i = \text{hourly } O_3 \text{ at hour i, and } w_{C_i} = \frac{1}{1+4403e^{-126C_t}}$$

Regarding the first consideration, the Staff Paper noted that the W126 form, by its incorporation of a continuous sigmoidal weighting scheme, does not create an artificially imposed concentration threshold, yet also gives proportionally more weight to the higher and typically more biologically potent concentrations, as supported by the scientific evidence. Second, the index value is not significantly influenced by O_3 concentrations within the range of estimated PRB, as the weights assigned to concentrations in this range are very small. Thus, the Staff Paper concluded that it would provide a more appropriate target for air quality management programs designed to reduce emissions from anthropogenic sources contributing to O_3 formation. On the basis of these considerations, the Staff Paper and the CASAC Panel concluded that the W126 form is the most biologically-relevant cumulative, seasonal form appropriate to consider in the context of the secondary standard review.

4. Overview of Vegetation Exposure and Risk Assessments

This section outlines the information presented in section IV.C of the proposal on the vegetation exposure and risk assessments conducted for this review, which improved and built upon similar analyses performed in the last review. The vegetation exposure assessment was performed using interpolation and included information from ambient monitoring networks and results from air quality modeling. The vegetation risk assessment included both tree and crop analyses. The tree risk analysis included three distinct lines of evidence: (1) Observations of visible foliar injury in the field linked to recent monitored O_3 air quality for the years 2001–2004; (2) estimates of seedling growth loss under current and alternative O_3 exposure conditions; and (3) simulated mature tree growth reductions using the TREGRO model to simulate the effect of meeting alternative air quality standards on the predicted annual growth of a single western species (ponderosa pine) and two eastern species (red maple and tulip poplar). The crop analysis includes estimates of the risks to crop yields from current and alternative O_3 exposure conditions and the associated change in economic benefits expected to accrue in the agriculture sector upon meeting the levels of various alternative standards. Each element of the assessment is outlined below, together with key observations from this assessment.

a. Exposure Characterization

The exposure analyses examined O_3 air quality patterns in the U.S. relative to the location of O_3 sensitive species that have a known concentration-response in order to predict whether adverse effects are occurring at current levels of air quality, and whether they are likely to occur under alternative standard forms and levels. The most important information about exposure to vegetation comes from the O_3 monitoring data that are available from two national networks: (1) Air Quality System (AQS; *http://www.epa.gov/ttn/airs/airsaqs*) and (2) Clean Air Status and Trends Network (CASTNET; *http://www.epa.gov/castnet/*). In order to characterize exposures to vegetation at the national scale, however, the Staff Paper concluded that it could not rely solely on limited site-specific monitoring data, and that it was necessary to use an interpolation method to characterize O_3 air quality over broad geographic areas. The analyses used the O_3 outputs from the EPA/NOAA Community Multi-scale Air Quality (CMAQ) [22] model system (*http://www.epa.gov/asmdnerl/CMAQ,* Byun and Ching, 1999; Arnold *et al.* 2003, Eder and Yu, 2005) to improve spatial interpolations based solely on existing monitoring networks.

Based on the significant difference in monitor network density between the eastern and western U.S., the Staff Paper concluded that it was appropriate to use separate interpolation techniques in these two regions: AQS and CASTNET monitoring data were solely used for the eastern interpolation, and in the western U.S., where rural monitoring is more sparse, O_3 values generated by the CMAQ model were used to develop scaling factors to augment the interpolation. In order to characterize uncertainty in the interpolation method, monitored O_3 concentrations were systematically compared to interpolated O_3 concentrations in areas where monitors were located. In general, the interpolation method used in the current review performed well in many areas in the U.S., although it under-predicted higher 12-hour W126 exposures in rural areas. Due to the important influence of higher exposures in determining risks to plants, this feature of the interpolated surface could result in an under-estimation of risks to vegetation in some areas. Taking these uncertainties into account, and given the absence of more complete rural monitoring data, this approach was used in developing national vegetation exposure and risk assessments that estimate relative changes in risk for the various alternative standards analyzed.

To evaluate changing vegetation exposures and risks under selected air quality scenarios, the Staff Paper utilized adjusted 2001 base year O_3 air quality distributions with a rollback method (Horst and Duff, 1995; Rizzo, 2005, 2006) to reflect meeting the current and alternative secondary standard options. The following key observations were drawn from comparing predicted changes in interpolated air quality under each alternative standard form and level scenario analyzed:

(1) The results of the exposure assessment indicate that current air quality levels could result in significant impacts to vegetation in some areas. For example, for the base year (2001), a large portion of California had 12-hr W126 O_3 levels above 31 ppm-hour, which has been associated with approximately up to 14 percent biomass loss in 50 percent of tree seedling cases studies. Broader multi-state regions in the east (NC, TN, KY, IN, OH, PA, NJ, NY, DE, MD, VA) and west (CA, NV, AZ, OK, TX) are predicted to have levels of air quality above the W126 level of 21 ppm-hour, which is approximately equal to the secondary standard proposed in 1996 and is associated with approximately up to 10 percent biomass loss in 50 percent of tree seedling cases studied. Much of the east and Arizona and California have 12-hour W126 O_3 levels above 13 ppm-hour which has been associated with approximately up to 10 percent biomass loss in 75 percent of tree seedling cases studied.

(2) When 2001 air quality is rolled back to meet the current 8-hour

[22] The CMAQ model is a multi-pollutant, multiscale air quality model that contains state-of-the-science techniques for simulating all atmospheric and land processes that affect the transport, transformation, and deposition of atmospheric pollutants and/or their precursors on both regional and urban scales. It is designed as a science-based modeling tool for handling many major pollutants (including photochemical oxidants/O_3, particulate matter, and nutrient deposition) holistically. The CMAQ model can generate estimates of hourly O_3 concentrations for the contiguous U.S., making it possible to express model outputs in terms of a variety of exposure indices (e.g., W126, 8-hour average).

secondary standard, the overall 3-month 12-hour W126 O_3 levels were somewhat improved, but not substantially. Under this scenario, there were still many areas in California with 12-hour W126 O_3 levels above 31 ppm-hour. A broad multi-state region in the east (NC, TN, KY, IN, OH, PA, MD) and west (CA, NV, AZ, OK, TX) were still predicted to have O_3 levels above the W126 level of 21 ppm-hour.

(3) Exposures generated for just meeting a 0.070 ppm, 4th-highest maximum 8-hour average alternative standard (the lower end of the proposed range for the primary O_3 standard) showed substantially improved O_3 air quality when compared to just meeting the current 0.08 ppm, 8-hour standard. Most areas were predicted to have O_3 levels below the W126 level of 21 ppm-hr, although some areas in the east (KY, TN, MI, AR, MO, IL) and west (CA, NV, AZ, UT, NM, CO, OK, TX) were still predicted to have O_3 levels above the W126 level of 13 ppm-hour.

(4) While these results suggest that meeting a proposed 0.070 ppm, 8-hour secondary standard would provide substantially improved protection in some areas, the Staff Paper recognized that other areas could continue to have elevated seasonal exposures, including forested park lands and other natural areas, and Class I areas which are federally mandated to preserve certain air quality related values. The proposal notes that this is especially important in the high elevation forests in the Western U.S. where there are few O_3 monitors and where air quality patterns can result in relatively low 8-hour averages while still experiencing relatively high cumulative exposures (72 FR 37892).

To further characterize O_3 air quality in terms of current and alternative secondary standard forms, an analysis was performed in the Staff Paper to evaluate the extent to which county-level O_3 air quality measured in terms of various levels of the current 8-hour average form overlapped with that measured in terms of various levels of the 12-hour W126 cumulative, seasonal form.[23] This analysis was limited by the lack of monitoring in rural areas where important vegetation and ecosystems are located, especially at higher elevation sites. This is because O_3 air quality distributions at high elevation sites often do not reflect the typical urban and near-urban pattern of low morning and evening O_3 concentrations with a high mid-day peak, but instead maintain relatively flat patterns with many concentrations in the mid-range (e.g., 0.05–0.09 ppm) for extended periods. These conditions can lead to relatively low daily maximum 8-hour averages concurrently with high cumulative values so that there is potentially less overlap between an 8-hour average and a cumulative, seasonal form at these sites. The Staff Paper concluded that it is reasonable to anticipate that additional unmonitored rural high elevation areas important for vegetation may not be adequately protected even with a lower level of the 8-hour form.

The Staff Paper indicated that it further remains uncertain as to the extent to which air quality improvements designed to reduce 8-hour O_3 average concentrations would reduce O_3 exposures measured by a seasonal, cumulative W126 index. The Staff Paper indicated this to be an important consideration because: (1) The biological database stresses the importance of cumulative, seasonal exposures in determining plant response; (2) plants have not been specifically tested for the importance of daily maximum 8-hour O_3 concentrations in relation to plant response; and (3) the effects of attainment of a 8-hour standard in upwind urban areas on rural air quality distributions cannot be characterized with confidence due to the lack of monitoring data in rural and remote areas. These factors are important considerations in determining whether the current 8-hour form can appropriately provide requisite protection for vegetation.

b. Assessment of Risk to Vegetation

The Staff Paper presented results from quantitative and qualitative risk assessments of O_3 risks to vegetation. In the last review, crop yield and seedling biomass loss OTC data provided the basis for staff analyses, conclusions, and recommendations (EPA, 1996b). Since then, several additional lines of evidence have progressed sufficiently to provide a basis for a more complete and coherent picture of the scope of O_3-related vegetation risks, especially those currently faced by seedling, sapling and mature tree species growing in field settings, and indirectly, forested ecosystems. Specifically, new research reflects an increased emphasis on field-based exposure methods (e.g., free air exposure and ambient gradient), improved field survey biomonitoring techniques, and mechanistic tree process models. Key observations and insights from the vegetation risk assessment, together with important caveats and limitations, were discussed in section IV.C of the proposal. Highlights from the analyses that addressed visible foliar injury, seedling and mature tree biomass loss, and effects on crops are summarized below:

(1) Visible foliar injury. Recent systematic injury surveys continue to document visible foliar injury symptoms diagnostic of phytotoxic O_3 exposures on sensitive bioindicator plants. These surveys produced more expansive evidence than that available at the time of the last review that visible foliar injury is occurring in many areas of the U.S. under current ambient conditions. The Staff Paper presented an assessment combining recent U.S. Forest Service Forest Inventory and Analysis (FIA) biomonitoring site data with the county level air quality data for those counties containing the FIA biomonitoring sites. This assessment showed that incidence of visible foliar injury ranged from 21 to 39 percent of the counties during the four-year period (2001–2004) across all counties with air quality levels at or below that of the current 0.08 ppm 8-hour standard. Of the counties that met an 8-hour level of 0.07 ppm in those years, 11 to 30 percent of the counties still had incidence of visible foliar injury. The magnitude of these percentages suggests that phytotoxic exposures sufficient to induce visible foliar injury would still occur in many areas after meeting the level of the current secondary standard or alternative 0.07 ppm 8-hour standard. While the data show that visible foliar injury occurrence is geographically widespread and is occurring on a variety of plant species in forested and other natural systems, linking visible foliar injury to other plant effects is still problematic. However, its presence indicates that other O_3-related vegetation effects might also be present.

(2) Seedling and mature tree biomass loss. In the last review, analyses of the effects of O_3 on trees were limited to 11 tree species for which C-R functions for the seedling growth stage had been developed from OTC studies. Important tree species such as quaking aspen, ponderosa pine, black cherry, and tulip poplar were found to be sensitive to cumulative seasonal O_3 exposures. Work done since the last review at the AspenFACE site in Wisconsin on quaking aspen (Karnosky *et al.*, 2005) and a gradient study performed in the New York City area (Gregg *et al.*, 2003) have confirmed the detrimental effects of O_3 exposure on tree growth in field studies without chambers and beyond the seedling stage (King *et al.*, 2005). To update the seedling biomass loss analysis, C-R functions for biomass loss

[23] The Staff Paper presented this analysis using recent (2002–2004) county-level O_3 air quality data (using 3-year average data as well as data from each individual year) from AQS sites and the subset of CASTNET sites having the highest O_3 levels for the counties in which they are located.

for available seedling tree species taken from the Criteria Document and information on tree growing regions derived from the U.S. Department of Agriculture's Atlas of United States Trees were combined with projections of air quality based on 2001 interpolated exposures, to produce estimated biomass loss for each of the seedling tree species individually.[24] In summary, these analyses showed that biomass loss still occurred in many tree species when O_3 air quality was adjusted to meet the current 8-hour standard. For instance, black cherry, ponderosa pine, eastern white pine, and aspen had estimated median seedling biomass losses over portions of their growing range as high as 24, 11, 6, and 6 percent, respectively, when O_3 air quality was rolled back to just meet the current 8-hour standard. The Staff Paper noted that these results are for tree seedlings and that mature trees of the same species may have more or less of a response to O_3 exposure. Due to the potential for compounding effects over multiple years, a consensus workshop on O_3 effects reported that a biomass loss greater than 2 percent annually can be significant (Heck and Cowling, 1997). Decreased seedling root growth and survivability could affect overall stand health and composition in the long term.

Recent work has also enhanced our understanding of risks beyond the seedling stage. In order to better characterize the potential O_3 effects on mature tree growth, a tree growth model (TREGRO) was used to evaluate the effect of changing O_3 air quality scenarios from just meeting alternative O_3 standards on the growth of mature trees.[25] The model integrates interactions between O_3 exposure, precipitation and temperature as they affect vegetation, thus providing an internal consistency for comparing effects in trees under different exposure scenarios and climatic conditions. The TREGRO model was used to assess O_3-related impacts on the growth of Ponderosa pine in the San Bernardino Mountains of California (Crestline) and the growth of yellow poplar and red maple in the Appalachian mountains of Virginia and North Carolina, Shenandoah National Park (Big Meadows) and Linville Gorge Wilderness Area (Cranberry), respectively. Ponderosa pine is one of the most widely distributed pines in western North America, a major source of timber, important as wildlife habitat, and valued for aesthetics (Burns and Honkala, 1990). Red maple is one of the most abundant species in the eastern U.S. and is important for its brilliant fall foliage and highly desirable wildlife browse food (Burns and Honkala, 1990). Yellow poplar is an abundant species in the southern Appalachian forest. It is 10 percent of the cove hardwood stands in southern Appalachians which are widely viewed as some of the country's most treasured forests because the protected, rich, moist set of conditions permit trees to grow the largest in the eastern U.S. The wood has high commercial value because of its versatility and as a substitute for increasingly scarce softwoods in furniture and framing construction. Yellow poplar is also valued as a honey tree, a source of wildlife food, and a shade tree for large areas (Burns and Honkala, 1990).

The Staff Paper analyses found that just meeting the current standard would likely continue to allow O_3-related reductions in annual net biomass gain in these species. This is based on model outputs that estimate that as O_3 levels are reduced below those of the current standard, significant improvements in growth would occur. Though there is uncertainty associated with the above analyses, it is important to note that new evidence from experimental studies that go beyond the seedling growth stage continues to show decreased growth under elevated O_3 (King *et al.*, 2005); some mature trees such as red oak have shown an even greater sensitivity of photosynthesis to O_3 than seedlings of the same species (Hanson *et al.*, 1994); and the potential for cumulative ''carry over'' effects as well as compounding must be considered since the accumulation of such ''carry-over'' effects over time may affect long-term survival and reproduction of individuals and ultimately the abundance of sensitive tree species in forest stands.

(3) Crops. Similar to the tree seedling analysis, an analysis that combined C-R information on crops, crop growing regions, and interpolated exposures during each crop growing season was conducted for commodity crops, fruits and vegetables. NCLAN crop functions developed in the 1980s were used for commodity crops, including 9 commodity crop species (i.e., cotton, field corn, grain sorghum, peanut, soybean, winter wheat, lettuce, kidney bean, potato) that accounted for 69 percent of 2004 principal crop acreage planted in the U.S. in 2004. The C-R functions for six fruit and vegetable species (tomatoes-processing, grapes, onions, rice, cantaloupes, Valencia oranges) were identified from the California fruit and vegetable analysis from the last review (Abt, 1995). The risk assessment estimated that just meeting the current 8-hour standard would still allow O_3-related yield loss to occur in some commodity crop species and fruit and vegetable species currently grown in the U.S. For example, based on median C-R function response, in counties with the highest O_3 levels, potatoes and cotton had estimated yield losses of 9–15 percent and 5–10 percent, respectively, when O_3 air quality just met the level of the current standard. Estimated yield improved in these counties when the alternative W126 standard levels were met. The very important soybean crop had generally small yield losses throughout the country under just meeting the current standard (0–4 percent).

The Staff Paper also presented estimates of monetized benefits for crops associated with the current and alternative standards. The Agriculture Simulation Model (AGSIM) (Taylor, 1994; Taylor, 1993) was used to calculate annual average changes in total undiscounted economic surplus for commodity crops and fruits and vegetables when current and alternative standard levels were met. Meeting the various alternative standards did show some significant benefits beyond the current 8-hour standard. However, the Staff Paper recognized that the modeled economic benefits from AGSIM had many associated uncertainties which limited the usefulness of these estimates.

B. Need for Revision of the Current Secondary O_3 Standard

1. Introduction

The initial issue to be addressed in this review of the O_3 standard is whether, in view of the advances in scientific knowledge reflected in the Criteria Document and Staff Paper, the current standard should be revised. As discussed in section IV.D of the proposal, in evaluating whether it was appropriate to propose to retain or revise the current standard, the Administrator built upon the last review and reflected the broader body of evidence and information now available. In the proposal, EPA presented information, judgments, and conclusions from the last review, which revised the secondary O_3 standard by

[24] Maps of these biomass loss projections were presented in the Staff Paper (chapter 7).

[25] TREGRO is a process-based, individual tree growth simulation model (Weinstein *et al.* 1991) and has been used to evaluate the effects of a variety of O_3 scenarios and linked with concurrent climate data to account for O_3 and climate/meteorology interactions on several species of trees in different regions of the U.S. (Tingey *et al.*, 2001; Weinstein *et al.*, 1991; Retzlaff *et al.*, 2000; Laurence *et al.*, 1993; Laurence *et al.*, 2001; Weinstein *et al.*, 2005).

setting it identical to the revised primary O_3 standard, and from the current review's evaluation of the adequacy of the current secondary standard, including both evidence- and exposure/risk-based considerations in the Staff Paper, as well as from the CASAC Panel's advice and recommendations. The Staff Paper evaluation, the CASAC Panel's views, and the Administrator's proposed conclusions on the adequacy of the current secondary standard are presented below.

a. Staff Paper Evaluation

The Staff Paper considered the evidence presented in the Criteria Document as a basis for evaluating the adequacy of the current O_3 standard, recognizing that important uncertainties remain. The Staff Paper concluded that the new evidence available in this review as described in the Criteria Document continues to support and strengthen key policy-relevant conclusions drawn in the previous review. Based on this new evidence, the current Criteria Document once more concluded that: (1) A plant's response to O_3 depends upon the cumulative nature of ambient exposure as well as the temporal dynamics of those concentrations; (2) current ambient concentrations in many areas of the country are sufficient to impair growth of numerous common and economically valuable plant and tree species; (3) the entrance of O_3 into the leaf through the stomata is the critical step in O_3 effects; (4) effects can occur with only a few hourly concentrations above 0.08 ppm; (5) other environmental biotic and abiotic factors are also influential to the overall impact of O_3 on plants and trees; and (6) a high degree of uncertainty remains in our ability to assess the impact of O_3 on ecosystem services.

In light of the new evidence, as described in the Criteria Document, the Staff Paper evaluated the adequacy of the current standard based on assessments of both the most policy-relevant vegetation effects evidence and exposure and risk-based information, highlighted above in section IV.A and discussed in sections IV.A–C of the proposal. In evaluating the strength of this information, the Staff Paper took into account the uncertainties and limitations in the scientific evidence and analyses as well as the views of CASAC. The Staff Paper concluded that progress has been made since the last review and generally found support in the available effects- and exposure/risk-based information for consideration of an O_3 standard that is more protective than the current standard. The Staff Paper further concluded that there is no support for consideration of an O_3 standard that is less protective than the current standard. This general conclusion is consistent with the advice and recommendations of CASAC.

i. Evidence-Based Considerations

In the last review, crop yield and tree seedling biomass loss data obtained in OTC studies provided the basis for the Administrator's judgment that the then current 1-hour, 0.12 ppm secondary standard was inadequate (EPA, 1996b). Since then, several additional lines of evidence have progressed sufficiently to provide a more complete and coherent picture of the scope of O_3-related vegetation risks, especially those currently faced by sensitive seedling, sapling and mature growth stage tree species growing in field settings, and their associated forested ecosystems. Specifically, new research reflects an increased emphasis on field-based exposure methods (e.g., free air, ambient gradient, and biomonitoring surveys). In reaching conclusions regarding the adequacy of the current standard, the Staff Paper considered the combined information from all these areas together, along with associated uncertainties, in an integrated, weight-of-evidence approach.

Regarding the O_3-induced effect of visible foliar injury, observations for the years 2001 to 2004 at USDA FIA biomonitoring sites showed widespread O_3-induced leaf injury occurring in the field, including in forested ecosystems, under current ambient O_3 conditions. For a few studied species, it has been shown that the presence of visible foliar injury is further linked to the presence of other vegetation effects (e.g., reduced plant growth and impaired below ground root development) (EPA, 2006), though for most species, this linkage has not been specifically studied or where studied, has not been found. Nevertheless, when visible foliar injury is present, the possibility that other O_3-induced vegetation effects could also be present for some species should be considered. Likewise, the absence of visible foliar injury should not be construed to demonstrate the absence of other O_3-induced vegetation effects. The Staff Paper concluded that it is not possible at this time to quantitatively assess the degree of visible foliar injury that should be judged adverse in all settings and across all species, and that other environmental factors can mitigate or exacerbate the degree of O_3-induced visible foliar injury expressed at any given concentration of O_3. However, the Staff Paper also concluded that the presence of visible foliar injury alone can be adverse to the public welfare, especially when it occurs in protected areas such as national parks and wilderness areas. Thus, on the basis of the available information on the widespread distribution of O_3-sensitive species within the U.S. including in areas, such as national parks, which are afforded a higher degree of protection, the Staff Paper concluded that the current standard continues to allow levels of visible foliar injury in some locations that could reasonably be considered to be adverse from a public welfare perspective. Additional monitoring of both O_3 air quality and foliar injury levels are needed in these areas of national significance to more fully characterize the spatial extent of this public welfare impact.

With respect to O_3-induced biomass loss in trees, the Staff Paper concluded that the new body of field-based research on trees strengthens the conclusions drawn on tree seedling biomass loss from earlier OTC work by documenting similar seedling responses in the field. For example, recent empirical studies conducted on quaking aspen at the AspenFACE site in Wisconsin have confirmed the detrimental effects of O_3 exposure on tree growth in a field setting without chambers (Isebrands *et al.*, 2000, 2001). In addition, results from an ambient gradient study (Gregg *et al.*, 2003), which evaluated biomass loss in cottonwood along an urban-to-rural gradient at several locations, found that conditions in the field were sufficient to produce substantial biomass loss in cottonwood, with larger impacts observed in downwind rural areas due to the presence of higher O_3 concentrations. These gradients from low urban to higher rural O_3 concentrations occur when O_3 precursors generated in urban areas are transported to downwind sites and are transformed into O_3. In addition, O_3 concentrations typically fall to near 0 ppm at night in urban areas due to scavenging of O_3 by NO_X and other compounds. In contrast, rural areas, due to a lack of nighttime scavenging, tend to maintain elevated O_3 concentrations for longer periods. On the basis of such key studies, the Staff Paper concluded that the expanded body of field-based evidence, in combination with the substantial corroborating evidence from OTC data, provides stronger evidence than that available in the last review that ambient levels of O_3 are sufficient to produce visible foliar injury symptoms and biomass loss in sensitive vegetative species growing in natural environments. Further, the Staff Paper

judged that the consistency in response in studied species/genotypes to O_3 under a variety of exposure conditions and methodologies demonstrates that these sensitive genotypes and populations of plants are susceptible to adverse impacts from O_3 exposures at levels known to occur in the ambient air. Due to the potential for compounded risks from repeated insults over multiple years in perennial species, the Staff Paper concluded that these sensitive subpopulations are not afforded adequate protection under the current secondary O_3 standard. Despite the fact that only a relatively small portion of U.S. plant species have been studied with respect to O_3 sensitivity, those species/genotypes shown to have O_3 sensitivity span a broad range of vegetation types and public use categories, including direct-use categories like food production for human and domestic animal consumption; fiber, materials, and medicinal production; urban/private landscaping. Many of these species also contribute to the structure and functioning of natural ecosystems (e.g., the EEAs) and thus, to the goods and services those ecosystems provide (Young and Sanzone, 2002), including non-use categories such as relevance to public welfare based on their aesthetic, existence or wildlife habitat value.

The Staff Paper therefore concluded that the current secondary standard is inadequate to protect the public welfare against the occurrence of adverse levels of visible foliar injury and tree seedling biomass loss occurring in tree species (e.g., ponderosa pine, aspen, black cherry, cottonwood) that are sensitive and clearly important to the public welfare.

ii. Exposure- and Risk-Based Considerations

In evaluating the adequacy of the current standard, the Staff Paper also presented the results of exposure and risk assessments, which are highlighted above in section IV.A.3 and discussed in section IV.C of the proposal. Due to multiple sources of uncertainty, both known and unknown, that continue to be associated with these analyses, the Staff Paper put less weight on this information in drawing conclusions on the adequacy of the current standard. However, the Staff Paper also recognized that some progress has been made since the last review in better characterizing some of these associated uncertainties and, therefore concluded that the results of the exposure and risk assessments continue to provide information useful to informing judgments as to the relative changes in risks predicted to occur under exposure scenarios associated with the different standard alternatives considered. Importantly, with respect to two key uncertainties, the uncertainty associated with continued reliance on C–R functions developed from OTC exposure systems to predict plant response in the field and the potential for changes in tree seedling and crop sensitivities in the intervening period since the C–R functions were developed, the Staff Paper concluded that recent research has provided information useful in judging how much weight to put on these concerns. Specifically, new field-based studies, conducted on a limited number of tree seedling and crop species to date, demonstrate plant growth and visible foliar injury responses in the field that are similar in nature and magnitude to those observed previously under OTC exposure conditions, lending qualitative support to the conclusion that OTC conditions do not fundamentally alter the nature of the O_3-plant response. Second, nothing in the recent literature suggests that the O_3 sensitivity of crop or tree species studied in the last review and for which C–R functions were developed has changed significantly in the intervening period. Indeed, in the few recent studies where this is examined, O_3 sensitivities were found to be as great as or greater than those observed in the last review.

The Staff Paper consideration of such exposure and risk analyses is discussed below and in section IV.D.2.b of the proposal, focusing on seedling and mature tree biomass loss, qualitative ecosystem risks, and crop yield loss.

(1) Seedling and mature tree biomass loss. Biomass loss in sensitive tree seedlings is predicted to occur under O_3 exposures that meet the level of the current secondary standard. For instance, black cherry, ponderosa pine, eastern white pine, and aspen had estimated median seedling biomass losses as high as 24, 11, 6, and 6 percent, respectively, over some portions of their growing ranges when air quality was rolled back to meet the current 8-hr standard with the 10 percent downward adjustment for the potential O_3 gradient between monitor height and short plant canopies applied. The Staff Paper noted that these results are for tree seedlings and that mature trees of the same species may have more or less of a response to O_3 exposure. Decreased root growth associated with biomass loss has the potential to indirectly affect the vigor and survivability of tree seedlings. If such effects occur on a sufficient number of seedlings within a stand, overall stand health and composition can be affected in the long term. Thus, the Staff Paper concluded that these levels of estimated tree seedling growth reduction should be considered significant and potentially adverse, given that they are well above the 2 percent level of concern identified by the 1997 consensus workshop (Heck and Cowling, 1997).

Though there is significant uncertainty associated with this analysis, the Staff Paper recommended that this information should be given careful consideration in light of several other pieces of evidence. Specifically, limited evidence from experimental studies that go beyond the seedling growth stage continues to show decreased growth under elevated O_3 levels (King *et al.*, 2005). Some mature trees such as red oak have shown an even greater sensitivity of photosynthesis to O_3 than seedlings of the same species (Hanson *et al.*, 1994). The potential for effects to ''carry over'' to the following year or cumulate over multiple years, including the potential for compounding, must be considered (see 72 FR 37885; Andersen *et al.*, 1997; Hogsett *et al.*, 1989; Sasek *et al.*, 1991; Temple *et al.*, 1993; EPA, 1996). The accumulation of such ''carry-over'' effects over time may affect long-term survival and reproduction of individual trees and ultimately the abundance of sensitive tree species in forest stands.

(2) Qualitative Ecosystem Risks. In addition to the quantifiable risk categories discussed above, the Staff Paper presented qualitative discussions on a number of other public welfare effects categories. In so doing, the Staff Paper concluded that the quantified risks to vegetation estimated to be occurring under current air quality or upon meeting the current secondary standard likely represent only a portion of actual risks that may be occurring for a number of reasons.

First, as mentioned above, out of the over 43,000 plant species catalogued as growing within the U.S. (USDA PLANTS database, USDA, NRCS, 2006), only a small percentage have been studied with respect to O_3 sensitivity. Most of the studied species were selected because of their commercial importance or observed O_3-induced visible foliar injury in the field. Given that O_3 impacts to vegetation also include less obvious but often more significant impacts, such as reduced annual growth rates and below ground root loss, the paucity of information on other species means the number of O_3-sensitive species that exists within the U.S. is likely greater than what is now known. Since no state in the lower 48 states has less than seven known O_3-

sensitive plant species, with the majority of states having between 11 and 30 (see Appendix 7J–2 in Staff Paper), protecting O_3-sensitive vegetation is clearly important to the public welfare at the national scale.

Second, the Staff Paper also took into consideration the possibility that more subtle and hidden risks to ecosystems are potentially occurring in areas where vegetation is being significantly impacted. Given the importance of these qualitative and anticipated risks to important public welfare effects categories such as ecosystem impacts leading to potential losses or shifts in ecosystem goods and services (e.g., carbon sequestration, hydrology, and fire disturbance regimes), the Staff Paper concluded that any secondary standard set to protect against the known and quantifiable adverse effects to vegetation should also consider the anticipated, but currently unquantifiable, potential effects on natural ecosystems.

(3) Crop Yield Loss. Exposure and risk assessments in the Staff Paper estimated that meeting the current 8-hour standard would still allow O_3-related yield loss to occur in several fruit and vegetable and commodity crop species currently grown in the U.S. These estimates of crop yield loss are substantially lower than those estimated in the last review as a result of several factors, including adjusted exposure levels to reflect the presence of a variable O_3 gradient between monitor height and crop canopies, and use of a different econometric agricultural benefits model updated to reflect more recent agricultural policies (EPA, 2006b). Though these sources of uncertainty associated with the crop risk and benefits assessments were better documented in this review, the Staff Paper concluded that the presence of these uncertainties make the risk estimates suitable only as a basis for understanding potential trends in relative yield loss and economic benefits. The Staff Paper further recognized that actual conditions in the field and management practices vary from farm to farm, that agricultural systems are heavily managed, and that adverse impacts from a variety of other factors (e.g., weather, insects, disease) can be orders of magnitude greater than that of yield impacts predicted for a given O_3 exposure. Thus, the relevance of such estimated impacts on crop yields to the public welfare are considered highly uncertain and less useful as a basis for assessing the adequacy of the current standard. The Staff Paper noted, however, that in some experimental cases, exposure to O_3 has made plants more sensitive or vulnerable to some of these other important stressors, including disease, insect pests, and harsh weather (EPA, 2006a). The Staff Paper therefore concluded that this remains an important area of uncertainty and that additional research to better characterize the nature and significance of these interactions between O_3 and other plant stressors would be useful.

iii. Summary of Staff Paper Considerations

In summary, the Staff Paper concluded that the current secondary O_3 standard is inadequate. This conclusion was based on the extensive vegetation effects evidence, in particular the recent empirical field-based evidence on biomass loss in seedlings, saplings and mature trees, and foliar injury incidence that has become available in this review, which demonstrates the occurrence of adverse vegetation effects at ambient levels of recent O_3 air quality, as well as evidence and exposure- and risk-based analyses indicating that adverse effects would be predicted to occur under air quality scenarios that meet the current standard.

b. CASAC Views

In a letter to the Administrator (Henderson, 2006c), the CASAC O_3 Panel, with full endorsement of the chartered CASAC, unanimously concluded that ''despite limited recent research, it has become clear since the last review that adverse effects on a wide range of vegetation including visible foliar injury are to be expected and have been observed in areas that are below the level of the current 8-hour primary and secondary ozone standards.'' Therefore, ''based on the Ozone Panel's review of Chapters 7 and 8 [of the Staff Paper], the CASAC unanimously agrees that it is not appropriate to try to protect vegetation from the substantial, known or anticipated, direct and/or indirect, adverse effects of ambient O_3 by continuing to promulgate identical primary and secondary standards for O_3. Moreover, the members of the Committee and a substantial majority of the Ozone Panel agree with EPA staff conclusions and encourage the Administrator to establish an alternative cumulative secondary standard for O_3 and related photochemical oxidants that is distinctly different in averaging time, form and level from the currently existing or potentially revised 8-hour primary standard'' (Henderson, 2006c).[26]

c. Administrator's Proposed Conclusions

At the time of proposal, in considering whether the current secondary standard should be revised, the Administrator carefully considered the conclusions contained in the Criteria Document, the rationale and recommendations contained in the Staff Paper, the advice and recommendations from CASAC, and public comments to date on this issue. In so doing, the Administrator recognized that the secondary standard is to protect against ''adverse'' O_3 effects, as discussed in section IV.A.3 of the proposal. In considering what constitutes a vegetation effect that is also adverse to the public welfare, the Administrator took into account the Staff Paper conclusions regarding the nature and strength of the vegetation effects evidence, the exposure and risk assessment results, the degree to which the associated uncertainties should be considered in interpreting the results, and the views of CASAC and members of the public. On these bases, the Administrator proposed that the current secondary standard is inadequate to protect the public welfare from known and anticipated adverse O_3-related effects on vegetation and ecosystems. Ozone levels that would be expected to remain after meeting the current secondary standard were judged to be sufficient to cause visible foliar injury, seedling and mature tree biomass loss, and crop yield reductions to degrees that could be considered adverse depending on the intended use of the plant and its significance to the public welfare, and the current secondary standard does not provide adequate protection from such effects. Other O_3-induced effects described in the literature, including an impaired ability of many sensitive species and genotypes within species to adapt to or withstand other environmental stresses, such as freezing temperatures, pest infestations and/or disease, and to compete for available resources, would also be anticipated to occur. In the long run, the result of these impairments (e.g., loss in vigor) could lead to premature plant death in O_3 sensitive species. Though effects on other ecosystem components

[26] One CASAC Panel member reached different conclusions from those of the broader Panel regarding certain aspects of the vegetation effects information and the appropriate degree of emphasis that should be placed on the associated uncertainties. These concerns related to how the results of O_3/vegetation exposure experiments carried out in OTC can be extrapolated to the ambient environment and how C–R functions developed in the 1980s can be used today given that he did not expect that current crop species/cultivars in use in 2002 would have the same O_3 sensitivity as those studied in NCLAN (Henderson, 2007, pg. C–18).

have only been examined in isolated cases, effects such as those described above could have significant implications for plant community and associated species biodiversity and the structure and function of whole ecosystems. These considerations also support the proposed conclusion that the current secondary standard is not adequate and that revision is needed to provide additional public welfare protection.

2. Comments on the Need for Revision

The above section outlines the vegetation and ecosystem effects evidence and assessments used by the Administrator to inform his proposed judgments about the adequacy of the current O_3 secondary standard. General comments received on the proposal that either supported or opposed the proposed decision to revise the current O_3 secondary standard are addressed in this section. Comments related to the vegetation and ecosystem effects evidence and information related to exposure indices are considered in section IV.B.2.a below, and comments on vegetation exposure and risk assessments are considered in section IV.B.2.b. Comments on specific issues, vegetation and ecosystem effects evidence, information on exposure indices, or the vegetation exposure and risk assessments that relate to consideration of the appropriate form, averaging time, or level of the O_3 standard are addressed below in section IV.C. General comments based on implementation-related factors that are not a permissible basis for considering the need to revise the current standard are noted in the Response to Comments document.

a. Evidence of Effects and Exposure Indices

Sections IV.A.2 and IV.A.3 above provide a summary overview of the information on vegetation and ecosystem effects and exposure indices used by the Administrator to inform his proposed judgments about the adequacy of the current O_3 secondary standard. As discussed more fully below, comments received on the proposal regarding the nature and strength of the vegetation and ecosystem effects information, information on exposure indices, and the conclusions that could appropriately be drawn from such information fell generally into two groups.

One group of commenters that included national and local environmental organizations (e.g., Environmental Defense, Appalachian Mountain Club, Rocky Mountain Clean Air Action), NESCAUM, NACAA, individual States, Tribal Associations, and the National Park Service (NPS) argued that the available science clearly showed that O_3-induced vegetation and ecosystem effects are occurring at and below levels that meet the current 8-hour standard, and therefore provides a strong basis and support for the conclusion that the current secondary standard is inadequate. In support of their view, these commenters relied on the entire body of evidence available for consideration in this review, including evidence assessed previously in the last review. These commenters pointed to the information and analyses in the Staff Paper and the conclusions and recommendations of CASAC as providing a clear basis for concluding that the current standard does not adequately protect vegetation from an array of O_3-related effects. For example, the NPS noted that ''[w]idespread foliar injury has been documented in areas meeting the current standard; field and chamber studies indicate that O_3-induced significant growth reductions are also occurring at levels below the current standard'' (NPS, p. 3).

In addition to the body of information already considered by EPA in this review, these same commenters also presented new information for the Administrator's consideration, including a number of ''new'' studies published after completion of the Criteria Document, as well as additional information on air quality and vegetation exposures and effects pertaining to local conditions within their State, Tribal or federal lands, as additional support for their views that the current standard is inadequate. For example, NESCAUM, NY, PA, and NPS all provided air quality information describing typical O_3 concentrations in areas that rarely, if ever, exceeded the level of the current 8-hour standard in areas that still showed O_3-related vegetation effects, particularly visible foliar injury.

Building on EPA's qualitative discussions of the potential linkage between O_3 vegetation effects and effects on ecosystems, a number of these commenters expressed concern that the possible impact of O_3-related reductions in plant productivity could result in a reduced capacity of vegetation to serve as a carbon sink to mitigate the impacts of rising CO_2 in a changing climate, citing to a ''new'' study on that topic (Sitch *et al.*, 2007). Many of these same commenters also cited to ''new'' field-based studies in the Great Smoky Mountain National Park that find a relationship between O_3 exposure, tree stem growth loss, tree water use and stream flow as evidence that current ambient O_3 levels can impact ecosystems and that ecosystems should be afforded protection from such potential effects. For example, some of these commenters note that ''new'' studies in the Great Smoky Mountain National Park (McLaughlin, *et al.*, 2007a, b) have found that (1) ambient O_3 caused substantial growth reductions in mature trees in a mixed deciduous forest, which was due in part to increased O_3-induced water loss and led to seasonal losses in stem growth of 30–50 percent for most species in a high-ozone year; (2) increasing ambient O_3 levels also resulted in depletion of soil moisture in the rooting zone and reduced late-season streamflow in the watershed; and (3) O_3 may amplify the adverse effects of increasing temperature on forest growth and forest hydrology and may exacerbate the effects of drought on forest growth and stream health. Other ''new'' research noted by these commenters as supporting EPA's findings that current O_3 exposures cause significant biomass losses in sensitive seedlings of various tree species include a study that predicted up to 31 percent growth loss in aspen in certain areas of its North American range in 2001–2003 (Percy, *et al.*, 2007). These commenters encouraged the Administrator to consider these ''new'' studies in making his final decision.

This group of commenters strongly supported revising the current standard, not only because in their view the available evidence conclusively demonstrates that the current standard is inadequate to protect sensitive vegetation, but also because the Staff Paper provides abundant evidence that it is appropriate to establish an alternative cumulative, seasonal secondary standard that is distinctly different in form from the current or revised primary standard. For example, NESCAUM states that ''[i]n light of the EPA Staff and CASAC recommendations, and the extensive body of historical and recent monitoring and research data upon which these recommendations were based, the option of equating the ozone secondary NAAQS with the 8-hour primary is inappropriate and clearly not supported by the weight of scientific evidence.''

EPA agrees with these commenters that when evaluated as a whole, the entire body of vegetation and ecosystem effects information available in this review supports the need to revise the current standard to provide increased protection from an array of O_3-related effects on sensitive vegetation and ecosystems. EPA also agrees that the available evidence indicates that a

cumulative, seasonal form better reflects the scientific information on biologically relevant exposures for vegetation. For reasons discussed below in sections IV.C, however, EPA disagrees with aspects of these commenters' views as to whether a standard defined in terms of a cumulative, seasonal form is requisite to protect public welfare based on the available scientific information.

To the extent that these and other commenters whose comments are discussed below included ''new'' scientific studies, studies that were published too late to be considered in the Criteria Document, in support of their arguments for revising or not revising the standards, EPA notes, as discussed in section I above, that as in past NAAQS reviews, it is basing the final decisions in this review on the studies and related information included in the O_3 air quality criteria that have undergone CASAC and public review and will consider newly published studies for purposes of decision making in the next O_3 NAAQS review. In provisionally evaluating commenters' arguments, as discussed in the Response to Comments document, EPA notes that its provisional consideration of ''new'' science found that such studies did not materially change the conclusions in the Criteria Document.

The other main group of commenters, which included Exxon-Mobil, UARG, API, other industry groups, The Annapolis Center for Science Based Public Policy, individual States and other organizations representing local energy, agriculture or business interests, expressed the contrasting view that the limited number of studies published since the last review and addressed in the Criteria Document provided insufficient evidence to support a conclusion different than what was reached in the last review. In particular, they asserted that the types of vegetation effects evaluated in the last review have not changed, and that the Criteria Document, Staff Paper, and CASAC have acknowledged that the information that has become available since the last review does not fundamentally change the conclusions reached in the last review. As a result, they argued that the currently available evidence fails to show that revision to the standard is requisite to provide additional protection from these effects. In particular, Exxon-Mobil stated that ''EPA is incorrect in concluding vegetation impacts [occur] at or below the level of the current standard'' * * * and that the ''newer field-based evidence EPA cites for ozone impacts on seedlings, saplings and mature trees indicates ozone impacts but at exposures that are likely in exceedence of the current secondary standard.'' This commenter concluded that while these studies provide additional support for O_3-related impacts on vegetation, including observing effects in field settings without chambers, they do not provide support for the conclusion that ambient levels in compliance with the current standard would result in significant O_3 impact. In addition, these commenters also generally asserted that the evidence that has become available since the last review does not materially reduce the uncertainties that were present and cited by the Administrator in the last review as important factors in her decision to set the secondary identical to the revised primary. Those aspects of these comments that include uncertainties associated with the exposure, risk and benefits assessments are addressed below in section IV.2.b and in the Response to Comments document.

EPA disagrees with the commenters' assertion that the currently available evidence has not materially reduced key uncertainties present in the last review that factored into the Administrator's decision. For example, there is an expansion of field-based evidence across a broad array of vegetation effects categories, as discussed in the Criteria Document, Staff Paper, and highlighted above in section IV.A.2. Though in some such studies (e.g., the FACE studies) the O_3 exposures are indeed at or above ambient levels, the observed vegetation response is similar to that observed in OTC studies at similar levels of exposure. Though these studies are still limited in scope, it is nevertheless EPA's view that such field-based evidence reduces the uncertainties associated with the C–R functions generated in OTC studies that were noted by the Administrator in the last review. Thus, the current body of evidence increases EPA's confidence in the results from the OTC studies which demonstrate O_3-related effects below the level of the current standard. EPA has also considered this evidence in conjunction with USDA FIA foliar injury survey data and the Gregg *et al.* (2003) tree seedling biomass loss gradient study showing effects on a sensitive tree species occurring in the field across a range of exposure levels including levels of air quality at to well below the level of the current secondary standard. Taken together, EPA concludes that these studies form a coherent body of evidence that significantly strengthens EPA's confidence that such effects are currently occurring in the field and would continue to be anticipated at and below the level of the current secondary standard. A more detailed discussion of these issues can be found in the Response to Comments document.

b. Vegetation Exposure and Risk Assessments

Section IV.A.4 above provides a summary overview of the vegetation exposure and risk assessment information used by the Administrator to help inform judgments about vegetation exposure and risk estimates associated with attainment of the current and alternative standards. As an initial matter, EPA notes that at the time of proposal, the Administrator primarily based his conclusion on whether revision of the secondary standard was needed primarily on evidence-based considerations, while using the more uncertain exposure and risk assessments in a supportive role. As discussed more fully below, comments received on the proposal regarding these assessments and the conclusions that could appropriately be drawn from them fell generally into two groups. One group of commenters generally included those noted above who supported revising the current secondary standard, while the other group of commenters were those noted above who expressed the view that no revision was appropriate.

The first group of commenters primarily focused on evidence-based considerations in their support of a revised standard, while some also referenced EPA's findings from the exposure and risk assessments in supporting their view that the standard needed to be revised to provide increased protection for sensitive vegetation. A few of these commenters also provided additional exposure, risk and benefits information from localized assessments conducted by themselves or others in their behalf in support of their view that the standard needed to be revised. In so doing, these commenters have generally shown support for using such assessments to help inform a final decision on the need to revise.

The other group of commenters expressed a number of concerns with these assessments and generally asserted that these assessments do not support revision of the current standard. These commenters' concerns generally focused on (1) the method used by EPA to estimate PRB, (2) the lack of new information since the last review that would, in their judgment, materially reduce the uncertainties present in the assessments conducted for the last review, and (3) EPA's interpretation and

use of the results in making a judgment about the adequacy of the current standard. These comments are addressed below.

(1) Regarding concerns related to the method used by EPA to estimate PRB, EPA notes that this issue has been raised repeatedly throughout the review in the context of both the primary and secondary standards. Most generally, these commenters asserted that EPA used unrealistically low levels of PRB that resulted in an overestimate of risks and benefits associated with just meeting alternative standards. EPA disagrees with this view, for the reasons discussed above in section II.B.2.b, which addresses this and other comments related to EPA's approach to estimating PRB and its role in exposure and risk assessments related to the primary standard.

(2) Another concern posed by these commenters was the lack of any new information that, in their judgment, would materially reduce the uncertainties present in the exposure, risk and benefits assessments conducted for the last review. For example, the Annapolis Center asserted that ''[s]ome of the most important caveats and uncertainties concerning the exposure and risk assessments for crop yield that were listed in the [1996] proposal included (1) extrapolating from exposure-response functions generated in open-top chambers to ambient conditions; (2) the lack of a performance evaluation of the national air quality extrapolation; (3) the methodology to adjust modeled air quality to reflect attainment of various alternative standard options; and (4) inherent uncertainties in models to estimate economic values associated with attainment of alternative standard. * * * Because of the lack of new data or substantive improvements in the risk assessment, these same issues remain today, contributing a similar degree of uncertainty, as was the case in the prior review.'' EPA recognizes that important uncertainties remain in estimates of vegetation exposure and O_3-related risk to vegetation, especially with regard to O_3-related effects on crop yields. However, EPA disagrees with comments that assert that uncertainties have not been reduced since the last review, as discussed below.

With regard to the uncertainties associated with using the OTC C–R functions, the Annapolis Center further stated that ''ten years have now elapsed, and the same concentration-response functions from the OTC studies of the 1980's are still the only viable data to use to estimate crop loss. * * * The 1996 CASAC Panel agreed that the estimates of crop loss at that time were highly uncertain.'' While EPA agrees that important uncertainties continue to be associated with the use of the C–R functions generated many years ago using OTC studies for crop yield loss, EPA does not agree that the new information available in this review does nothing to reduce such uncertainties identified in the last review. As described above and in the Staff Paper and proposal, results from the new SoyFACE and AspenFACE studies provide qualitative support that the levels of vegetation response that have been observed in the field are of similar magnitude as those predicted at similar exposure levels using the OTC generated C–R functions. Therefore, EPA believes that the uncertainties cited in the last review regarding the appropriateness of using OTC generated C–R functions to predict vegetation response in the field have been reduced. Providing some further support in this regard is the limited information available in this review on some sensitive crop species (e.g., soybean) suggesting that O_3 sensitivity has not changed significantly in the intervening years. Taking all the above into account, EPA's level of confidence in the applicability of the OTC generated C–R functions to represent ambient conditions in the field has increased.

With regard to the lack of a performance evaluation of the national air quality extrapolation, EPA notes that there have been advancements in the tools and methods used for such extrapolations since the last review. With respect to the generation of interpolated O_3 exposure surfaces, EPA employed a different approach than that used in the last review and undertook a quantitative assessment of the uncertainties associated with the use of this method. This uncertainty assessment was accomplished by sequentially dropping out of the interpolation each monitoring site, and then recalculating the exposure surface using the remaining monitoring sites. As discussed in the Staff Paper, this method of evaluation may result in a slight overestimation of error and bias for the exposure surface, since dropping out monitors loses information that the interpolation uses in that local area. As another point of comparison, EPA also examined the subset of rural CASTNET sites to illustrate how the interpolation technique predicted air quality in that rural monitoring network. For this subset, the evaluation indicated that in general, the interpolation technique slightly overestimated W126 exposures at relatively low levels and underestimated W126 exposure at relatively high levels. This aspect of the estimation method potentially resulted in an underestimation of the more important risks associated with higher cumulative exposures in some areas. Based on this evaluation, EPA reiterates the conclusion in the Staff Paper that ''the calculation of error and bias metrics for the interpolation represents a notable improvement over the 1996 assessment which did not have such an evaluation.'' EPA further concludes that in general, the sources and likely direction of uncertainties associated with the exposure and risk assessments have been better accounted for and characterized than in the last review.

With regard to criticisms of the methodology used to adjust modeled air quality to reflect attainment of various alternative standard options, EPA notes that this issue has been raised in the context of both the primary and secondary standards. As noted above in section II.B.2.b, based on information in the Staff Paper (section 4.5.6) and in more detail in a staff memorandum (Rizzo, 2006), EPA concluded that the quadratic air quality adjustment approach used in this assessment generally best represented the pattern of reductions across the O_3 air quality distribution observed over the last decade in areas implementing control programs designed to attain the O_3 NAAQS. While EPA recognizes that future changes in air quality distributions are area-specific, and will be affected by whatever specific control strategies are implemented in the future to attain a revised NAAQS, there is no empirical evidence to suggest that future reductions in ambient O_3 will be significantly different from past reductions with respect to impacting the overall shape of the O_3 distribution.

With regard to comments that asserted that inherent uncertainties in models to estimate economic values of crop loss have not been reduced since the last review, EPA acknowledges that while an updated state of the art model, the AGSIM benefits model, was used in this review, substantial uncertainties remain in these estimates of economic crop loss. Further, EPA notes that these estimates were not relied on as a basis for reaching a decision on the need to revise the current standard.

(3) Some commenters also asserted that the estimated exposures and risks associated with air quality just meeting the current standard have not appreciably changed since the last review. These commenters used this conclusion as the basis for a claim that there is no reason to depart from the Administrator's 1997 decision that the

current secondary standard is requisite to protect public welfare. EPA believes that this claim is fundamentally flawed for three reasons. First, it is inappropriate to compare quantitative vegetation risks estimated in the last review with those estimated in the current review. The 1997 risk estimates, or any comparison of the 1997 risks estimates to the current estimates, are irrelevant for the purpose of judging the adequacy of the current standard, as the 1997 estimates reflect outdated analyses that have been updated in this review to reflect the current science and as there have been significant improvements to the modeling approaches and model inputs. Second, it is important to take into account EPA's increased confidence in some of the model inputs, as discussed above, since in judging the weight to place on quantitative risk estimates it is important to examine not only the magnitude of the estimated risks but also the degree of confidence in those estimates. Third, quantitative vegetation risk estimates were not the main basis for EPA's decision in setting a level for the secondary standard in 1997, and they do not set any quantified ''benchmark'' for the Agency's decision to revise the current standard at this time. The proposal notice made clear that decisions about the need to revise the current standard are mainly based on an integrated evaluation of evidence available across a broad array of vegetation effects, while the more uncertain exposure, risk and benefits estimates were used in a supportive role. Both the Staff Paper and proposal clearly distinguished the roles that these different types of information played in informing the Administrator's proposed decision. The proposal states that ''due to multiple sources of uncertainty, both known and unknown, that continue to be associated with these analyses, the Staff Paper put less weight on this information in drawing conclusions on the adequacy of the current standard. However, the Staff Paper also recognizes that some progress has been made since the last review in better characterizing some of these associated uncertainties and, therefore, concluded that the results of the exposure and risk assessments continue to provide information useful to informing judgments as to the relative changes in risks predicted to occur under exposure scenarios associated with the different standard alternatives considered.'' In determining the requisite level of protection, the Staff Paper recognized that it is appropriate to weigh the importance of the predicted risks of these effects in the overall context of public welfare protection, along with a determination as to the appropriate weight to place on the associated uncertainties and limitations of this information. Thus, while the Administrator is fully mindful of the uncertainties associated with the estimates of exposure, risk and benefits, as discussed above, he judges that these estimates are still useful in providing additional support for his judgment that the current 8-hour secondary standard does not adequately protect sensitive vegetation.

3. Conclusions Regarding the Need for Revision

Having carefully considered the public comments, discussed above, the Administrator believes the fundamental scientific conclusions on the effects of O_3 on vegetation and sensitive ecosystems reached in the Criteria Document and Staff Paper, as discussed above in section IV.A, remain valid. In considering whether the secondary O_3 standard should be revised, the Administrator finds that evidence that has become available in this review demonstrates the occurrence of adverse vegetation effects at ambient levels of recent O_3 air quality, and that evidence and exposure- and risk-based analyses indicate that adverse effects would be predicted to occur under air quality scenarios that meet the current standard, taking into consideration both the level and form of the current standard. Ozone exposures that would be expected to remain after meeting the current secondary standard are sufficient to cause visible foliar injury and seedling and mature tree biomass loss in O_3-sensitive vegetation. The Administrator believes that the degree to which such effects should be considered to be adverse depends on the intended use of the vegetation and its significance to the public welfare. Other O_3-induced effects described in the literature, including an impaired ability of many sensitive species and genotypes within species to adapt to or withstand other environmental stresses, such as freezing temperatures, pest infestations and/or disease, and to compete for available resources, would also be anticipated to occur. In the long run, the result of these impairments (e.g., loss in vigor) could lead to premature plant death in O_3 sensitive species. Though effects on other ecosystem components have only been examined in isolated cases, effects such as those described above could have significant implications for plant community and associated species biodiversity and the structure and function of whole ecosystems.

The Administrator recognizes that the secondary standard is not meant to protect against all known observed or anticipated O_3-related effects, but only those that can reasonably be judged to be adverse to the public welfare. In considering what constitutes a vegetation effect that is adverse from a public welfare perspective, the Administrator believes it is appropriate to continue to rely on the definition of ''adverse,'' discussed in section IV.A.3 of the proposal, that imbeds the concept of ''intended use'' of the ecological receptors and resources that are affected, and applies that concept beyond the species level to the ecosystem level.[27] In so doing, the Administrator has taken note of a number of actions taken by Congress to establish public lands that are set aside for specific uses that are intended to provide benefits to the public welfare, including lands that are to be protected so as to conserve the scenic value and the natural vegetation and wildlife within such areas, and to leave them unimpaired for the enjoyment of future generations. Such public lands that are protected areas of national interest include national parks and forests, wildlife refuges, and wilderness areas. Because O_3-sensitive species are generally found in such areas, and because levels of O_3 allowed by the current secondary standard are sufficient to cause known or anticipated impairment that the Administrator judges to be adverse to sensitive vegetation and ecosystems in such areas, the Administrator concludes that it is appropriate to revise the secondary standard, in part, to provide increased protection against O_3-caused impairment to such protected vegetation and ecosystems.

The Administrator further recognizes that States, Tribes and public interest groups also set aside areas that are intended to provide similar benefits to the public welfare, for residents on State and Tribal lands, as well as for visitors to those areas. Given the clear public interest in and value of maintaining these areas in a condition that does not impair their intended use, and the fact that many of these areas contain O_3-sensitive vegetation, the Administrator further concludes that it is appropriate to revise the secondary standard in part to provide increased protection against O_3-caused impairment to vegetation and ecosystems in such specially designated areas.

[27] The Administrator also recognizes that other aspects of public welfare, as welfare is defined in the CAA, may rely on concepts other than ''intended use.''

The Administrator also recognizes that O_3-related effects on sensitive vegetation occur in areas that have not been afforded such special protections, ranging from vegetation used for residential or commercial ornamental purposes, such as urban/suburban landscaping, to land use categories that are heavily managed for commercial production of commodities such as agricultural crops, timber, and ornamental vegetation. For vegetation used for residential or commercial ornamental purposes, such as urban/suburban landscaping, there are indications that impairment to the intended use of such vegetation can occur from O_3 exposures allowed by the current standard. While the Administrator believes that there is not adequate information at this time to establish a secondary standard based specifically on impairment of urban/suburban landscaping and other uses of ornamental vegetation, he notes that a secondary standard revised to provide protection for sensitive natural vegetation and ecosystems may also provide some degree of protection for such ornamental vegetation.

With respect to commercial production of commodities, however, the Administrator notes that judgments about the extent to which O_3-related effects on commercially managed vegetation are adverse from a public welfare perspective are particularly difficult to reach, given that what is known about the relationship between O_3 exposures and agricultural crop yield response derives largely from data generated almost 20 years ago. The Administrator recognizes that there is substantial uncertainty at this time as to whether these data remain relevant to the majority of species and cultivars of crops being grown in the field today. In addition, the extensive management of such vegetation may to some degree mitigate potential O_3-related effects. The management practices used on these lands are highly variable and are designed to achieve optimal yields, taking into consideration various environmental conditions. Thus, while the Administrator believes that a secondary standard revised to provide protection for sensitive natural vegetation and ecosystems may also provide some degree of additional protection for heavily managed commercial vegetation, the need for such additional protection is uncertain.

Based on these considerations, and taking into consideration the advice and recommendations of CASAC, the Administrator concludes that the protection afforded by the current secondary O_3 standard is not sufficient and that the standard needs to be revised to provide additional protection from known and anticipated adverse effects on sensitive natural vegetation and sensitive ecosystems, and that such a revised standard could also be expected to provide additional protection to sensitive ornamental vegetation. The Administrator also concludes that there is not adequate information to establish a separate secondary standard based on other effects of O_3 on public welfare. It is important to note that these conclusions, and the reasoning on which they are based, do not address the question of what specific revisions to the current secondary standard are appropriate. Addressing that question requires looking specifically at the two proposed options: establishing a new standard defined in terms of a cumulative, seasonal form, or revising the current secondary standard by making it identical to the revised primary standard. These alternative secondary standards are discussed in the following section.

As highlighted below, the discussion of public comments above indicates that deciding the appropriate secondary standard involves making a difficult choice between two possible alternatives, each with their strengths and weaknesses. EPA's decision, and the reasons for it, are described in detail above. In reaching this decision, there has been a robust discussion within the Administration of these same strengths and weaknesses. As part of that process EPA received a Memorandum on March 6, 2008 from Susan Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, indicating various concerns over adopting a cumulative, seasonal secondary standard. Deputy Administrator Marcus Peacock responded with a Memorandum dated March 7, 2008 stating EPA's views supporting adoption of a cumulative, seasonal secondary standard. On March 11, 2008, the President ''concluded that, consistent with Administration policy, added protection should be afforded to public welfare by strengthening the secondary ozone standard and setting it to be identical to the new primary standard, the approach adopted when ozone standards were last promulgated. This policy thus recognizes the Administrator's judgment that the secondary standard needs to be adjusted to provide increased protection to public welfare and avoids setting a standard lower or higher than is necessary.'' EPA's decision therefore also reflects the view of the Administration as to the most appropriate secondary standard. While the Administrator fully considered the President's views, the Administrator's decision, and the reasons for it, are based on and supported by the record in this rulemaking.

C. Conclusions on the Secondary O_3 Standard

As an initial matter, EPA has considered the indicator for a secondary O_3 standard. As discussed above in section II.C.1 on the primary standard, in the last review, EPA focused on a standard for O_3 as the most appropriate surrogate for ambient photochemical oxidants. In this review, while the complex atmospheric chemistry in which O_3 plays a key role has been highlighted, no alternatives to O_3 have been advanced as being a more appropriate surrogate for ambient photochemical oxidants and their effects on vegetation. Thus, as is the case for the primary standard, the Administrator concludes that it is appropriate to continue to use O_3 as the indicator for a standard that is intended to address effects associated with exposure to O_3, alone and in combination with related photochemical oxidants. In so doing, the Administrator recognizes that measures leading to reductions in vegetation exposures to O_3 will also reduce exposures to other photochemical oxidants.

1. Staff Paper Evaluation

The current Criteria Document and Staff Paper concluded that the recent vegetation effects literature evaluated in this review strengthens and reaffirms conclusions made in the last review that the use of a cumulative exposure index that differentially weights ambient concentrations is best able to relate ambient exposures to vegetation response at this time (EPA, 2006a, b). The last review focused in particular on two of these cumulative forms, the SUM06 and W126 (EPA, 1996). Given that the data available at that time were unable to distinguish between these forms, the Administrator, based on the policy consideration of not including O_3 concentrations considered to be within the PRB, estimated to be between 0.03 and 0.05 ppm, concluded that the SUM06 form would be the more appropriate choice for a cumulative, exposure index for a secondary standard, though a cumulative form was not adopted at that time.

In this review, the Staff Paper evaluated the continued appropriateness of the SUM06 form in

light of two key pieces of information: new estimates of PRB that are lower than in the last review, and continued lack of evidence within the vegetation effects literature of a biological threshold for vegetation exposures of concern. On the basis of those policy and science-related considerations, the Staff Paper concluded that the W126 form was more appropriate in the context of this review. Specifically, the W126, by its incorporation of a sigmoidal weighting function, does not create an artificially imposed concentration threshold, gives proportionally more weight to the higher and typically more biologically potent concentrations, and is not significantly influenced by O_3 concentrations within the range of estimated PRB.

The Staff Paper also considered that in the 1997 final rule, the decision was made, on the basis of both science and policy considerations, to make the secondary standard identical to the primary standard (62 FR 38876). On the basis of that history, the current Staff Paper analyzed the degree of overlap expected between alternative 8-hour and cumulative seasonal secondary standards using recent air quality monitoring data. Based on the results, the Staff Paper concluded that the degree to which the current 8-hour standard form and level would overlap with areas of concern for vegetation expressed in terms of the 12-hour W126 standard is inconsistent from year to year and would depend greatly on the level of the 12-hour W126 and 8-hour standards selected and the distribution of hourly O_3 concentrations within the annual and/or 3-year average period.

Thus, though the Staff Paper recognized again that meeting the current or alternative levels of the 8-hour average standard could result in air quality improvements that would potentially benefit vegetation in some areas, it urged caution be used in evaluating the likely vegetation impacts associated with a given level of air quality expressed in terms of the 8-hour average form in the absence of parallel W126 information. This caution is due to the concern that the analysis in the Staff Paper may not be an accurate reflection of the true situation in non-monitored, rural counties due to the lack of more complete monitor coverage in many rural areas. Further, of the counties that did not show overlap between the two standard forms, most were located in rural/remote high elevation areas which have O_3 air quality patterns that are typically different from those associated with urban and near urban sites at lower elevations. Because the majority of such areas are currently not monitored, it is believed there are likely to be additional areas that have similar air quality distributions that would lead to the same disconnect between forms. Thus, the Staff Paper concluded that it remains problematic to determine the appropriate level of protection for vegetation using an 8-hour average form.

2. CASAC Views

The CASAC, based on its assessment of the same vegetation effects science, agreed with the Criteria Document and Staff Paper and unanimously concluded that protection of vegetation from the known or anticipated adverse effects of ambient O_3 ''requires a secondary standard that is substantially different from the primary standard in averaging time, level, and form,'' i.e. not identical to the primary standard for O_3 (Henderson, 2007). Moreover, the members of CASAC and a substantial majority of the CASAC Panel agreed with Staff Paper conclusions and encouraged the Administrator to establish an alternative cumulative secondary standard for O_3 and related photochemical oxidants that is distinctly different in averaging time, form and level from the current or potentially revised 8-hour primary standard (Henderson, 2006c). The CASAC Panel also stated that ''the recommended metric for the secondary ozone standard is the (sigmoidally weighted) W126 index'' (Henderson, 2007).

3. Administrator's Proposed Conclusions

In EPA's proposal, the Administrator agreed with the conclusions drawn in the Criteria Document, Staff Paper and by CASAC that the scientific evidence available in the current review continues to demonstrate the cumulative nature of O_3-induced plant effects and the need to give greater weight to higher concentrations. Thus, the Administrator proposed that a cumulative exposure index that differentially weights O_3 concentrations could represent a reasonable policy choice for a seasonal secondary standard to protect against the effects of O_3 on vegetation. The Administrator further agreed with both the Staff Paper and CASAC that the most appropriate cumulative, concentration-weighted form to consider in this review is the sigmoidally weighted W126 form, due to his recognition that there is no evidence in the literature for an exposure threshold that would be appropriate across all O_3-sensitive vegetation and that this form is unlikely to be significantly influenced by O_3 air quality within the range of PRB levels identified in this review. Thus, the Administrator proposed as one option to replace the current 8-hour average secondary standard form with the cumulative, seasonal W126 form.

The Administrator also proposed to revise the current secondary standard by making it identical to the proposed 8-hour primary standard, which was proposed to be within the range of 0.070 to 0.075 ppm. For this option, EPA also solicited comment on a wider range of 8-hour standard levels, including levels down to 0.060 ppm and up to the current standard (i.e., effectively 0.084 ppm with the current rounding convention). In putting forward such a proposal, the Administrator focused on the decision made in the last review, and the rationale for that decision that made the revised secondary standard identical to the revised primary standard.

4. Comments on the Secondary Standard Options

Comments received following proposal regarding revising the secondary standard either to reflect a new, cumulative form or by remaining equal to a revised primary standard generally fell into two groups. These comments were similar to those raised prior to the proposal during earlier phases of the NAAQS review, as summarized in the proposal notice and highlighted below.

One group of commenters, including the National Park Service, Environmental Defense, NESCAUM, NACAA, individual States, Tribal Associations, and local environmental organizations, asserted that the weight of scientific evidence was unambiguous with regard to the need for a cumulative form, and specifically supported the proposed W126 exposure index. For example, New York State DEC explained that ''scientific research recognizes that exposure-based indices considering seasonal time period, exposure duration, diurnal dynamics, peak hourly ozone concentrations, and cumulative effects are important when assessing vegetation effects of ozone exposure (Musselman *et al.*, 2006). The W126 exposure index has long been recognized as a biologically meaningful and useful way to summarize hourly ozone data as a measure of ozone exposure to vegetation (Lefohn *et al.*, 1989)''. Similarly, Environmental Defense stated ''[f]or reasons amply explained by CASAC and the Staff, neither the existing secondary standard for ozone nor the proposed primary standards are requisite to protect against

adverse welfare effects on vegetation and forested ecosystems. CASAC and Staff further amply justified the need for a separate cumulative seasonal welfare standard to protect against these effects, rather than relying solely on the primary standards to provide such protection.'' The National Park Service (NPS) comment provided additional support to this view and more specifically stated that ''the NPS supports both the conclusion that a seasonal, cumulative metric is needed to protect vegetation, and that the W126 is a more appropriate metric than the SUM06.'' EPA agrees with these comments for the reasons discussed above in sections IV.A.3 and IV.B.2.a).

In addition to expressing strong support for the W126 cumulative seasonal form, commenters in this group also expressed serious concerns with EPA's other proposed option of setting the secondary standard equal to a revised primary standard. For example, NPS agreed with CASAC that ''retaining the current form of the 8-hour standard for the secondary NAAQS is inappropriate and inadequate for characterizing ozone exposures to vegetation.'' NESCAUM stated ''we also strongly encourage EPA to avoid the flawed rationale employed in the previous 1997 ozone NAAQS review, i.e., that many of the benefits of a secondary NAAQS would be achieved if the primary NAAQS were attained. This rationale is flawed in at least two ways: first, ozone damage to vegetation persists in areas that attain the primary NAAQS; and second, the relationship between short-term 8-hour peak concentrations and longer-term seasonal aggregations is not constant, but varies over space and time * * * as EPA notes at 72 FR 37904. * * * EPA should set a secondary NAAQS on its own independent merits based on adverse welfare effects. Real or perceived relationships between primary and secondary nonattainment areas are irrelevant to setting the appropriate form and level of the secondary NAAQS.'' Environmental Defense made the argument that ''[b]ecause there is no rational connection between the proposed primary standards and the level of protection needed to protect vegetation against adverse ozone-induced welfare effects, any EPA finding that the primary standards would be sufficient for secondary standards purposes would be arbitrary.* * * The mere fact that the primary might provide ancillary welfare benefits does not satisfy the statute and does not provide a rational basis for concluding that the primary standards are also requisite to protect to [sic] any adverse welfare effects.''

The other set of commenters, including UARG, API, Exxon-Mobil, The Annapolis Center, ASL and Associates, and AAM, did not support adopting an alternative, cumulative form for the secondary standard. Some of these commenters, while agreeing that ''directionally a cumulative form of the standard may better match the underlying data,'' believe that further work is needed to determine whether a cumulative exposure index for the form of the secondary standard is requisite to protect public welfare. These commenters also restated concerns that have been described above in section IV.B.2 regarding the remaining uncertainties associated with the vegetation effects evidence and/or the exposure, risk and benefits assessments. They point to the uncertainties cited by the Administrator in the 1997 review as part of her rationale for deciding it was not appropriate to move forward with a seasonal secondary, and state that these same uncertainties have not been materially reduced in the current review. These commenters also asserted that EPA's analysis of the impact of the nation's O_3 control program for the 8-hour standard on W126 exposures is not scientifically sound due to the use of low estimates of PRB and an arbitrary rollback method that is uninformed by atmospheric chemistry from photochemical models. They argue that EPA must first realistically evaluate the total O_3 reductions that would occur by using a state-of-the-art photochemical model and perform an analysis of the exposure-response data to determine if effects are observed for exposures which do not exceed the 8-hour standard. These commenters also stated that without producing C–R functions for the 8-hour form of the standard, EPA has failed to show that the current 8-hour standard would provide less than requisite protection. These commenters asserted that substantial uncertainties remain in this review, and that the benefits of changing to a W126 form are too uncertain to warrant revising the form of the standard at this time.

This group of commenters also addressed limitations associated with selection of the W126 cumulative form. Commenters asserted that: (1) The W126 form lacks a biological basis, since it is merely a mathematical expression of exposure that has been fit to specific responses in OTC studies, such that its relevance for real world biological responses is unclear; (2) a flux-based model would be a better choice than a cumulative metric because it is an improvement over the many limitations and simplifications associated with the cumulative form; however, there is insufficient data to apply such a model at present; (3) the European experience with cumulative O_3 metrics has been disappointing and now Europeans are working on their second level approach, which will be flux-based; and (4) the W126 form cannot provide nationally uniform protection, as the same value of an exposure index may relate to different vegetation responses; some commenters support adding a second index that reflects the accumulation of peaks at or above 0.10 ppm (called N100).

5. Administrator's Final Conclusions

In considering the appropriateness of establishing a new standard defined in terms of a cumulative, seasonal form, or revising the current secondary standard by making it identical to the revised primary standard, the Administrator took into account the approach used by the Agency in the last review, the conclusions of the Staff Paper, CASAC advice, and the views of public commenters. In giving careful consideration to the approach taken in the last review, the Administrator first considered the Staff Paper analysis of the projected degree of overlap between counties with air quality expected to meet the revised 8-hour primary standard, set at a level of 0.075 ppm, and alternative levels of a W126 standard based on currently monitored air quality data. This analysis showed significant overlap between the revised 8-hour primary standard and selected levels of the W126 standard form being considered, with the degree of overlap between these alternative standards depending greatly on the W126 level selected and the distribution of hourly O_3 concentrations within the annual and/or 3-year average period.[28] On this basis, as an initial matter, the Administrator recognizes that a secondary standard set identical to the proposed primary standard would provide a significant degree of additional protection for vegetation as compared to that provided by the current secondary standard. In further considering the significant uncertainties that remain in the available body of evidence of O_3-related vegetation effects and in the exposure and risk analyses conducted for this review, and the difficulty in determining at what point various types of vegetation effects become adverse for sensitive vegetation and ecosystems, the Administrator focused his consideration on a level for

[28] EPA has done further analysis of the degree of overlap, and that analysis is in the docket.

an alternative W126 standard at the upper end of the proposed range (i.e., 21 ppm-hours). The Staff Paper analysis shows that at that W126 standard level, there would be essentially no counties with air quality that would be expected both to exceed such an alternative W126 standard and to meet the revised 8-hour primary standard—that is, based on this analysis of currently monitored counties, a W126 standard would be unlikely to provide additional protection in any areas beyond that likely to be provided by the revised primary standard.

The Administrator also recognizes that the general lack of rural monitoring data makes uncertain the degree to which the revised 8-hour standard or an alternative W126 standard would be protective, and that there would be the potential for not providing the appropriate degree of protection for vegetation in areas with air quality distributions that result in a high cumulative, seasonal exposure but do not result in high 8-hour average exposures. While this potential for under-protection is clear, the number and size of areas at issue and the degree of risk is hard to determine. However, such a standard would also tend to avoid the potential for providing more protection than is necessary, a risk that would arise from moving to a new form for the secondary standard despite significant uncertainty in determining the degree of risk for any exposure level and the appropriate level of protection, as well as uncertainty in predicting exposure and risk patterns.

The Administrator also considered the views and recommendations of CASAC, and agrees that a cumulative, seasonal standard is the most biologically relevant way to relate exposure to plant growth response. However, as reflected in the public comments, the Administrator also recognizes that there remain significant uncertainties in determining or quantifying the degree of risk attributable to varying levels of O_3 exposure, the degree of protection that any specific cumulative, seasonal standard would produce, and the associated potential for error in determining the standard that will provide a requisite degree of protection—i.e., sufficient but not more than what is necessary. Given these significant uncertainties, the Administrator concludes that establishing a new secondary standard with a cumulative, seasonal form at this time would result in uncertain benefits beyond those afforded by the revised primary standard and therefore may be more than necessary to provide the requisite degree of protection.

Based on his consideration of the full range of views as described above, the Administrator judges that the appropriate balance to be drawn is to revise the secondary standard to be identical in every way to the revised primary standard. The Administrator believes that such a standard would be sufficient to protect public welfare from known or anticipated adverse effects, and does not believe that an alternative cumulative, seasonal standard is needed to provide this degree of protection. This judgment by the Administrator appropriately considers the requirement for a standard that is neither more nor less stringent than necessary for this purpose.

D. Final Decision on the Secondary O_3 Standard

For the reasons discussed above, and taking into account information and assessments presented in the Criteria Document and Staff Paper, the advice and recommendations of the CASAC Panel, and the public comments to date, the Administrator has decided to revise the existing 8-hour secondary standard. Specifically, the Administrator is revising the current standard by making it identical to the revised primary standard. Data handling conventions for the secondary standard are the same as for the primary standard, and are specified in the new Appendix P that is adopted, as discussed in section V below. Issues related to the monitoring requirements for the revised O_3 secondary standard are discussed below in section VI.

V. Creation of Appendix P—Interpretation of the NAAQS for O_3

This section presents EPA's final decisions regarding the addition of Appendix P to 40 CFR part 50 on interpreting the primary and secondary NAAQS for O_3. EPA did not propose to address revocation of the existing 8-hour standard in this rulemaking. Therefore, EPA is retaining Appendix I to 40 CFR part 50 in its current form. A new Appendix P explains the computations necessary for determining when the new 8-hour primary and secondary standards are met. More specifically, Appendix P addresses data completeness requirements, data reporting and handling conventions, and rounding conventions, and provides example calculations.

In the proposal, two alternative secondary standards were proposed: a 3-month secondary standard expressed as a cumulative peak-weighted index form; or a standard set to be identical to the primary standard. For reasons stated above, the Administrator has decided to set the secondary standard to be identical in all respects to the primary standard. Therefore, the portions of the proposed Appendix P providing data handling procedures for a non-identical secondary standard are not included in the final rule.

Key elements of Appendix P are outlined below.

A. General

As proposed, EPA is adding several new definitions to section 1.0 and using these definitions throughout Appendix P.

B. Data Completeness

EPA proposed data completeness requirements for the new Appendix P for the revised 8-hour primary standard that would be the same as those in Appendix I applicable to the pre-existing standard. To satisfy the data completeness requirement, Appendix P as proposed would require 90% data completeness, on average, for the 3-year period at a monitoring site, with no single year within the period having less than 75% data completeness. This data completeness requirement applies only during the required O_3 monitoring season and must be satisfied in order to determine that the standard has been met at a monitoring site. A site could be found to violate the standard with less than complete data. EPA concluded in adopting these same data completeness requirements in Appendix I in 1997 that these proposed requirements are reasonable based on its earlier analysis of available air quality data that showed that 90% of all monitoring sites that are operated on a continuous basis routinely meet this objective. EPA received no comments on these requirements, and the final Appendix P includes them as proposed.

Appendix I and the proposed Appendix P allow missing days to be counted for the purpose of meeting the data completeness requirements if meteorological conditions on these missing days were not conducive to concentrations above the level of the standard. Such determinations under Appendix I and the proposed Appendix P would be made on a case-by-case basis using available evidence. In the proposal, EPA specifically requested comment on whether meteorological data could provide an objective basis for determining, for a day for which there is missing data, that the meteorological conditions were not conducive to high O_3 concentrations, and therefore, that the day could be assumed to have an O_3 concentration less than the level of the

NAAQS. Further, the proposal requested comments on whether days assumed less than the level of the standard should be counted as non-missing when computing whether the data completeness requirements have been met at the site. The proposal pointed out that this could allow a determination of attainment which would otherwise be precluded by the 75% and/or 90% completeness tests. Most commenters supported the use of meteorological data to establish that missing days could be assumed to have low O_3 levels. However, no commenter suggested any particular objective criteria or formula for making such determinations. Based on these comments, EPA will continue to use the current case-by-case approach as proposed in Appendix P, as is the current approach in Appendix I, to count missing days when computing whether the data completeness requirement has been met for the primary standard.

As noted above, because the Administrator has decided to set the secondary standard identical in all respects to the primary standard, the final Appendix P provides that its data completeness requirements apply to both standards.

C. Data Reporting and Handling and Rounding Conventions

For reasons discussed above, the Administrator has set the level of the revised 8-hour primary and secondary standards at 0.075 ppm. As explained in the proposal, the level of the 8-hour standard is expressed to the third decimal place. Almost all State agencies now report hourly O_3 concentrations to three decimal places, in ppm, or in a format easily convertible to ppm, since the typical incremental sensitivity of currently used O_3 monitors is 0.001 ppm. Consistent with the current approach for computing 8-hour averages, in calculating 8-hour average O_3 concentrations from hourly data, any calculated digits beyond the third decimal place would be truncated, preserving the number of digits in the reported data. In calculating 3-year averages of the fourth highest maximum 8-hour average concentrations, digits to the right of the third decimal place would also be truncated, preserving the number of digits in the reported data. Analyses discussed in the Staff Paper demonstrated that taking into account the precision and bias in 1-hour O_3 measurements, the 8-hour design value has an uncertainty of approximately 0.001 ppm. Truncating both the individual 8-hour averages used to determine the annual fourth maximum as well as the 3-year average of the fourth maxima to the third decimal place is consistent with the approach used in Appendix I for the previous 8-hour O_3 standard. In the proposal, EPA sought comment on the appropriateness of rounding rather than truncating to the third decimal place as well as the scientific validity of truncating the 3-year average and the policy reasons behind either truncating or rounding the 3-year average to the third decimal place. Many of the comments EPA received on the rounding/truncation issue in effect were comments that supported expressing the level of the NAAQS to either the second or third decimal place. These comments are addressed in the Response to Comment document. EPA continues to believe the conclusions from the Staff paper regarding monitor precision and error propagation when calculating 8-hour O_3 averages are appropriate. EPA has decided to continue to truncate, as done in Appendix I, and this approach is included in the final Appendix P.

As discussed above in section II.C.3, EPA is setting an 8-hour standard extending to three decimal places. Given that both the standard and the calculated value of the 3-year average of the fourth highest maximum 8-hour O_3 concentration are expressed to three decimal places, the two values can be compared directly.

As noted above, because the Administrator has decided to set the secondary standard identical in all respects to the primary standard, the same data reporting and handling and rounding conventions will apply to both.

VI. Ambient Monitoring Related to Revised O_3 Standards

As noted in the O_3 NAAQS proposal (see 72 FR 37906), EPA did not propose any specific changes to existing requirements for monitoring of O_3 in the ambient air. However, comment was invited on a number of specific issues which were expected to be of significance in the event that one or more of the O_3 NAAQS was revised. Comments were received from Federal agencies, State monitoring agencies, State organizations, environmental organizations, and industrial trade associations. As noted elsewhere in this rulemaking, EPA is finalizing changes to both the primary and secondary O_3 NAAQS. In light of these revisions, EPA intends to issue a monitoring rule to address the issues identified in the proposal, as well as other issues raised in the comments. EPA intends to issue a proposed monitoring rule in June 2008 and a final rule by March 2009. In recognition of the comments received on the proposed O_3 standards and to provide EPA's initial thinking on O_3 specific monitoring rule amendments, we offer the following observations. The following paragraphs also point out one way in which some State/local monitoring agencies might need to make changes to their O_3 monitoring network as a result of the revision to the primary and secondary O_3 NAAQS, based on the existing minimum monitoring requirements including a factor based on the comparison of design value to the O_3 NAAQS (see 71 FR 61318). The following text explains why an amendment to the monitoring regulations is not required to trigger these increased O_3 monitoring requirements.

Presently, States (including the District of Columbia, Puerto Rico, and the Virgin Islands, and including local agencies when so delegated by the State) are required to operate minimum numbers of EPA-approved O_3 monitors based on the population of each of their Metropolitan Statistical Areas (MSA) and the most recently measured O_3 levels in each area. These requirements are contained in 40 CFR part 58 Appendix D, Network Design Criteria for Ambient Air Quality Monitoring, Table D–2. These requirements were last revised on October 17, 2006 as part of a comprehensive review of ambient monitoring requirements for all criteria pollutants. (See 71 FR 61236).

The minimum number of monitors required in an MSA ranges from zero (for an area with population under 350,000 and no recent history of an O_3 design value greater than 85 percent of the NAAQS) to four (for an area with population greater than 10 million and an O_3 design value greater than 85 percent of the NAAQS). Because these requirements apply at the MSA level, large urban areas consisting of multiple MSAs can require more than four monitors. In total, about 400 monitors are required in MSAs, but about 1100 are actually operating in MSAs because most States operate more than the minimum required number of monitors.

As noted above, the requirements listed in Table D–2 of 40 CFR part 58 Appendix D are based on the percentage of the O_3 NAAQS, with a design value breakpoint at 85 percent of the NAAQS. For an MSA of a given population size, there are a greater number of required monitors when the design value is greater than or equal to 85 percent of the O_3 NAAQS compared with MSAs that have a design value of less than 85 percent of the O_3 NAAQS. At the pre-existing level of 0.084 ppm for the 8-hour primary and secondary standards,

an 8-hour O_3 design value of 0.068 ppm would trigger such increased minimum monitoring requirements for an MSA.[29] With the decision to revise the 8-hour primary and secondary standards to a level of 0.075 ppm, the 8-hour O_3 design value that will trigger increased minimum monitoring requirements for an MSA has decreased from 0.068 ppm to 0.064 ppm. Therefore, MSAs with 8-hour design values between 0.064 ppm and 0.067 ppm are now required to increase the number of monitors operating to meet minimum requirements based on existing monitoring requirements.[30] In practice, however, virtually all of these areas already are operating at least as many monitors as required based on the revised primary standard, so the number of new monitors that are needed (or needed to be moved from a location of excess monitors) is negligible to meet the existing minimum requirements.

About 100 MSAs with populations less than 350,000 presently are without any O_3 monitors, and hence they do not have an O_3 design value for use with Table D–2. These unmonitored MSAs are not required to add monitors. Commenters from State monitoring agencies and State organizations expressed concern that these current requirements ignore the needs that States and localities will have for additional monitors to measure O_3 levels in currently under-monitored areas and, in particular, in unmonitored areas with populations under 350,000. They stated that unless this deficiency is corrected, the health benefits of EPA's O_3 NAAQS revision would likely be limited to those living in Metropolitan Statistical Areas (MSAs) having populations of more than 350,000. Other commenters noted the difficulty in defining the boundaries of new attainment/non-attainment areas without additional monitoring in the MSAs below 350,000.

EPA recognizes that the issues raised by the commenters are important. EPA intends to address these issues as part of its proposed monitoring rule.

In relation to the proposed secondary standard options, EPA invited comment on whether, where, and how monitoring in rural areas specifically focused on the secondary NAAQS should be required. As noted in the O_3 NAAQS proposal and described earlier in this section, existing O_3 monitoring requirements and current State monitoring practices are primarily oriented towards protecting against health effects in people and therefore the primary NAAQS. This accounts for the current focus of the monitoring requirements on urban areas, where large populations reside, in which significant emissions of O_3 -forming precursors are found, and where O_3 concentrations of concern are likely to occur.

There are no EPA requirements for O_3 monitoring in less populated areas outside of MSA boundaries or in rural areas. However, at present there are about 250 O_3 monitors in counties that are not part of MSAs. These monitors are operated by State, local, and tribal monitoring agencies for a variety of objectives including the assessment of O_3 transport and the support of research programs including studies of atmospheric chemistry and ecosystem impacts. Additionally, EPA operates a network of about 56 O_3 monitors as part of its Clean Air Status and Trends Network (CASTNET). The National Park Service (NPS) operates about 27 monitors at other CASTNET sites. On an overall basis, the spatial density of non-urban O_3 monitors is relatively high in the eastern one-third of the U.S. and in California, with significant gaps in coverage elsewhere across the country.

Some commenters expressed concern about the quality assurance practices at CASTNET sites with regard to certain aspects of O_3 monitoring. They recommended that EPA upgrade such practices to meet the 40 CFR part 58 Appendix A quality assurance requirements already followed by the States so that the resulting data could be used in assessing compliance with the revised secondary standard. EPA notes that such upgrades have been completed at some of the CASTNET sites, and that such upgrades will be completed at all CASTNET sites by 2009. EPA notes that the resulting O_3 ambient data from the upgraded sites will meet Appendix A requirements as is presently the case for O_3 data from State operated monitors and NPS monitors. These data will be deemed acceptable for NAAQS-comparison objectives and available in the AQS database beginning in 2008.

Most commenters noted the relative lack of rural O_3 monitors, stating that EPA should consider adding monitoring requirements that support a revised secondary O_3 standard by requiring O_3 monitors in locations that contain O_3-sensitive plants or ecosystems. These commenters also noted that the placement of current O_3 monitors may not be appropriate for evaluating vegetation exposure since many of these monitors were likely located to meet other objectives.

In light of the Administrator's decision to revise the 8-hour secondary standard, EPA believes that it is appropriate to consider whether the existing urban-based monitoring requirements described elsewhere in this section are adequate and appropriate to characterize the exposure in more rural areas where O_3-sensitive plant species and more sensitive ecosystems exist and where resulting vegetation damage would adversely affect land usage. Such areas would likely include public lands that are protected areas of national interest (e.g., national parks, wilderness areas).

In consideration of the spatial gaps that currently exist in the rural ozone monitoring network, and to the extent that the existence of such gaps has contributed to the overall uncertainty that exists in the level of protection that would be provided by the revised secondary standard, EPA believes that there is merit in considering whether additional monitoring requirements in certain rural areas would help support ongoing ecosystem research studies as well as future reviews of the O_3 NAAQS by providing a more robust data set with which to assess the relationship of vegetation damage to O_3 concentrations.

Accordingly, as part of its separate monitoring rulemaking, EPA intends to consider specific requirements for a minimum number of rural monitors per State, with detailed rule language to ensure that States locate such monitors in appropriate areas. For example, these areas could include Federal, State, or Tribal lands characterized by areas of sensitive vegetation species subject to visible foliar injury, seedling and mature tree biomass loss, and other adverse impacts to a degree that could be considered adverse depending on the intended use of the plant and its significance to the public welfare. EPA is also considering recommending that States and Tribes employ other quantitative tools, such as photochemical modeling and/or the spatial interpolation of ambient data from existing O_3 monitors, to determine the adequacy of existing locations of rural monitors and to inform the locations of new or relocated monitors that might be required to meet revised rural minimum monitoring requirements.

Finally, EPA solicited comment on the issue of O_3 monitoring seasons. Unlike the year-round monitoring required for other criteria pollutants, the

[29] Calculated as 85 percent of 0.08 ppm, per the stated level of the pre-existing 8-hour primary and secondary standards.

[30] Approximately 16 MSAs that are subject to minimum monitoring requirements have 8-hour design values between 0.064 ppm and 0.067 ppm based on an analysis of 2004–2006 ambient O_3 data.

required O_3 monitoring seasons [31] vary in length due to the inter-relationship of O_3-forming photochemical activity with ambient temperature, strength of solar insolation, and length of day. For example, in States with colder climates such as Montana and South Dakota, the O_3 season has a length of 4 months. In States with warmer climates such as California, Nevada, and Arizona, the O_3 season has a length of 12 months.

With the decision to revise the 8-hour primary standard to a level of 0.075 ppm, and to set the secondary standard identical in all respects to the primary standard, the issue arises of whether in some areas the required O_3 monitoring season should be made longer. EPA notes that under the existing regulations, the Regional Administrator may approve State-requested deviations from the established O_3 monitoring season, but EPA may not increase the length of the season for an area at EPA's own initiative other than by notice and comment rulemaking.

EPA has done a preliminary analysis of 2004–2006 ambient data to address the issue of whether extensions of currently required O_3 monitoring seasons are appropriate in light of the revised level for the primary and secondary O_3 standards and the revised breakpoints for the AQI. The results of the analysis demonstrated that out-of-season exceedances of the revised level occurred in eight States during the study period. Additionally, the frequency of days with O_3 concentrations that reached the revised Moderate AQI category (based on a breakpoint of 0.060 ppm) was much greater compared with the frequency of days with concentrations that reached the pre-existing Moderate AQI category (based on a breakpoint of 0.065 ppm). This increased frequency of days with Moderate AQI levels was noted to occur during periods before and after the currently required O_3 seasons.

Based on these preliminary analyses, EPA intends to consider changes to the length of the required O_3 season for the coming monitoring rulemaking. Such changes could be based solely on the frequency of exceedances of the revised primary and secondary standards, or could also consider the frequency of concentrations in the Moderate category of the AQI.

VII. Implementation and Related Control Requirements

A. Future Implementation Steps

In today's rule, EPA is replacing the existing (1997) standards with revised primary and secondary O_3 standards. However, the 1997 standards—and the implementation rules for those standards—will remain in place for implementation purposes as EPA undertakes rulemaking to address the transition from the 1997 O_3 standards to the 2008 O_3 standards. States are required to continue to develop and implement their State Implementation Plans (SIPs) for the 1997 standards as they begin the process of recommending designations for the 2008 standards.

1. Designations

After EPA establishes or revises a NAAQS, the CAA requires EPA and States to begin taking steps to ensure that the new or revised standards are met. The first step is to identify areas of the country that do not attain the new or revised standards, or that contribute to violations of the new or revised standards. Section 107(d)(1) provides ''By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 109, the Governor of each State shall * * * submit to the Administrator a list of all areas (or portions thereof) in the State'' that designates those areas as non-attainment, attainment, or unclassifiable. Section 107(d)(1)(B)(i) further provides, ''Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) * * * as expeditiously as practicable, but in no case later than 2 years from the date of promulgation. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.''

The term ''promulgation'' has been interpreted by the courts to be signature and dissemination of a rule.[32] As noted above, the CAA requires EPA to establish a deadline for the States' submission of the designation recommendations, but under the CAA, it can be no later than March 12, 2009, one year after the promulgation of this rule. Therefore, Governors of States should submit their designation recommendations to EPA no later than March 12, 2009. EPA's promulgation of designations must occur no later than March 12, 2010, although that date may be extended by up to one year under the CAA (no later than March 12, 2011) if EPA has insufficient information to promulgate the designations.

EPA intends to provide additional guidance to the States concerning the technical considerations for establishing boundaries for designated areas. For the revised primary and secondary standards, we anticipate relying on past O_3 designation guidance issued by EPA prior to the designations for the 1997 O_3 standards.[33] We anticipate working closely with State air agencies and Tribes on establishing new guidance on designations, if needed.

2. State Implementation Plans

CAA section 110 provides the general requirements for SIPs. Within 3 years after the promulgation of new or revised NAAQS (or such shorter period as the Administrator may prescribe) each State must adopt and submit ''infrastructure'' SIPs to EPA to address the requirements of section 110(a)(1). Thus, States should submit these SIPs no later than March 12, 2011. These ''infrastructure SIPs'' provide assurances of State resources and authorities, and establish the basic State programs, to implement, maintain, and enforce new or revised standards.

In addition to the infrastructure SIPs, which apply to all States, CAA title I, part D outlines the State requirements for achieving clean air in designated nonattainment areas. These requirements include timelines for when designated nonattainment areas must attain the standards, deadlines for developing SIPs that demonstrate how the State will ensure attainment of the standards, and specific emissions control requirements. EPA plans to address how these requirements, such as attainment demonstrations and attainment dates, reasonable further progress, new source review, conformity, and other implementation requirements, apply to the revised O_3 NAAQS in a proposed rulemaking in Fall 2008. Also in that rulemaking EPA will establish deadlines for submission of nonattainment area SIPs but anticipates that the deadlines will be no later than 3 years after final designation. Depending on the classification of an area, the SIP must provide for attainment within 3 years (for areas classified marginal) to 20 years (for areas classified extreme) after final designations.

3. Trans-boundary Emissions

Cross border O_3 contributions from within North America (Canada and Mexico) entering the U.S. are generally thought to be small. Section 179B of the

[31] See 40 CFR Part 58 Appendix D, section 2.5 for a table of required O_3 seasons.

[32] *American Petroleum Institute* v. *Costle*, 609 F.2d 20 (D.C. Cir. 1979).

[33] Memorandum of March 28, 2000 from John Seitz, ''Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS or Standard).''

Clean Air Act allows designated nonattainment areas to petition EPA to consider whether such a locality might have met a clean air standard ''but for'' cross border contributions. To date, few areas have petitioned EPA under this authority. The impact of foreign emissions on domestic air quality in the United States is a challenging and complex problem to assess. EPA is engaged in a number of activities to improve our understanding of international transport. As work progresses on these activities, EPA will be able to better address the uncertainties associated with trans-boundary flows of air pollution and their impacts.

4. Monitoring Requirements

As discussed more fully in section VI, EPA intends, in light of the revisions of the O_3 standards, to issue a monitoring rule to address a variety of monitoring-related issues identified in the preamble to the proposed rule or in comments received by the Agency on the proposal. EPA intends to issue a proposed monitoring rule in June 2008 and a final rule by March 2009.

B. Related Control Requirements

The man-made oxides of nitrogen (NO_X) and volatile organic carbon (VOC) emissions that contribute to O_3 formation in the United States come from a variety of source categories, including mobile sources, industrial processes, area-wide sources (which include consumer and commercial products), and the electric power industry.[34] Emissions from natural sources, such as trees and wildfires can also constitute a significant portion of total VOC emissions in certain regions of the country, especially during the O_3 season. Natural sources such as wildfires, lightning, and soils also emit NO_X. Emissions of VOCs and NO_X from these sources are considered natural background emissions.[35]

EPA has developed new emissions standards for many types of stationary sources and for nearly every class of mobile sources in the last decade to reduce O_3 by decreasing emissions of NO_X and VOC. These programs complement State and local efforts to improve air quality and to meet the national O_3 standards. Under the Federal Motor Vehicle Control Program (FMVCP, see title II of the CAA, 42 U.S.C. 7521–7574), EPA has established new emissions standards for nearly every type of automobile, truck, bus, motorcycle, earth mover, and aircraft engine, and for the fuels used to power these engines. Also, EPA established new standards for the smaller engines used in small watercraft, lawn and garden equipment. Recently, EPA proposed new standards for locomotive and marine diesel engines. Vehicles and engines are replaced over time with newer, cleaner models. In time, these programs will yield substantial emissions reductions. Emissions reductions associated with fuel programs generally begin as soon as a new fuel is available.

The reduction of VOC emissions from industrial processes and consumer and commercial product categories has been achieved either directly or indirectly through implementation of control technology standards, including reasonably available control technology, best available control technology, and maximum achievable control technology standards; or is anticipated due to proposed or upcoming proposals based on generally available control technology or best available controls under provisions related to consumer and commercial products. These standards have resulted in VOC emissions reductions of almost a million tons per year accumulated starting in 1997 from a variety of sources including combustion sources, coating categories, and chemical manufacturing. In 2006 and 2007, EPA issued national rules and control techniques guidelines for control of VOC emissions from 10 categories of consumer and commercial products. EPA is currently working to finalize new Federal rules, or amendments to existing rules, intended to establish new nationwide VOC content limits for several categories of consumer and commercial products, including aerosol coatings, architectural and industrial maintenance coatings, and household and institutional commercial products. EPA anticipates that final rules addressing emissions from these sources will take effect in 2009.

Fuel combustion is one of the largest anthropogenic sources of emissions of NO_X in the United States. Power industry emission sources include large electric generating units and some large industrial boilers and turbines. The EPA's landmark Clean Air Interstate Rule (CAIR), issued on March 10, 2005, permanently caps power industry emissions of NO_X in the eastern United States. The first phase of the cap begins in 2009, and a lower second phase cap begins in 2015. By 2015, EPA projects that the CAIR and other programs in the Eastern U.S. will reduce power industry annual NO_X emissions in that region by about 60 percent from 2003 levels.

With respect to agricultural sources, the U.S. Department of Agriculture (USDA) has recommended conservation systems and activities that can reduce agricultural emissions of NO_X and VOC. Current practices that may reduce emissions of NO_X and VOC include engine replacement programs, management of pesticide applications, and manure management techniques. The EPA recognizes that USDA has been working with the agricultural community to plan conservation systems and activities to manage emissions of O_3 precursors.

These conservation systems and activities can be voluntarily adopted in areas where mitigation of O_3 precursors have been identified as an air quality concern through the use of incentives provided to the agricultural producer. In cases where the States need these measures to attain the O_3 standards, agricultural producers could choose to adopt these measures. The EPA will continue to work with USDA on planning the implementation of these conservation systems and activities in order to identify and/or improve mitigation efficiencies, prioritize their adoption, and ensure that appropriate criteria are used for identifying the most effective application of conservation systems and activities.

The EPA will work together with USDA and with States to identify appropriate measures to meet the primary and secondary standards, including site-specific conservation systems and activities. Based on prior experience identifying conservation measures and practices to meet the PM NAAQS requirements, the EPA will use a similar process to identify measures that could meet the O_3 requirements. The EPA anticipates that certain USDA-approved conservation systems and activities that reduce agricultural emissions of NO_X and VOC may be able to satisfy the requirements for

[34] National Emission Inventory posted at the following Web site: *http://www.epa.gov/ttn/chief/trends/index.html*.

[35] In some cases natural emissions may cause or significantly contribute to violations of the ozone standard. EPA has issued rules that address how these ''exceptional events'' can be discounted in regulatory determinations. The Exceptional Events Rule (72 FR 13560 (March 22, 2007) implements CAA section 319(b)(3)(B) and section 107(d)(3) authority to exclude air quality monitoring data from regulatory determinations related to exceedances or violations of the National Ambient Air Quality Standards (NAAQS). If an event is determined by EPA to be a qualifying exceptional event, the affected area may avoid being designated as nonattainment, being redesignated as nonattainment, or being reclassifed to a higher classification. The requirements for demonstrating that elevated ozone levels are the result of a qualifying exceptional event are provided in the Exceptional Events Rule.

applicable sources to implement reasonably available control measures for purposes of attaining the primary and secondary O_3 NAAQS.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the *Final Ozone NAAQS Regulatory Impact Analysis, March 2008* (henceforth, ''RIA''). A copy of the analysis is available in the RIA docket (EPA–HQ–OAR–2007–0225) and the analysis is briefly summarized here. The RIA estimates the costs and monetized human health and welfare benefits of attaining three alternative O_3 NAAQS nationwide. Specifically, the RIA examines the alternatives of 0.079 ppm, 0.075 ppm, 0.070 ppm, and 0.065 ppm. The RIA contains illustrative analyses that consider a limited number of emissions control scenarios that States and Regional Planning Organizations might implement to achieve these alternative O_3 NAAQS. However, the CAA and judicial decisions make clear that the economic and technical feasibility of attaining ambient standards are not to be considered in setting or revising NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, although a RIA has been prepared, the results of the RIA have not been considered in issuing this final rule.

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.* There are no information collection requirements directly associated with the establishment of a NAAQS under section 109 of the CAA.

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

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity 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 this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule establishes national standards for allowable concentrations of O_3 in ambient air as required by section 109 of the CAA. *American Trucking Ass'ns* v. *EPA*, 175 F. 3d 1027, 1044–45 (D.C. cir. 1999) (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare 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 to 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.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no new expenditure or enforceable duty on any State, local or Tribal governments or the private sector, and EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Furthermore, as indicated previously, in setting a NAAQS EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards, although such factors may be considered to a degree in the development of State

plans to implement the standards. *See also American Trucking Ass'ns* v. *EPA*, 175 F. 3d at 1043 (noting that because EPA is precluded from considering costs of implementation in establishing NAAQS, preparation of a Regulatory Impact Analysis pursuant to the Unfunded Mandates Reform Act would not furnish any information which the court could consider in reviewing the NAAQS). Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule does not alter the relationship between the Federal government and the States regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, CAA section 116 preserves the rights of States to establish more stringent requirements if deemed necessary by a State. Furthermore, this rule does not impact CAA section 107 which establishes that the States have primary responsibility for implementation of the NAAQS. Finally, as noted in section E (above) on UMRA, this rule does not impose significant costs on State, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have Tribal implications, as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since Tribes are not obligated to adopt or implement any NAAQS. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA contacted Tribal environmental professionals during the development of this rule. EPA staff participated in the regularly scheduled Tribal Air call sponsored by the National Tribal Air Association during the spring of 2007 as the proposal was under development. EPA specifically solicited additional comment on the proposed rule from Tribal officials. Comments from Tribal officials on the proposed rule are summarized in the Response to Comments document.

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

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

This final rule is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866, and we believe that the environmental health risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of exposure to O_3 pollution among children. These effects and the size of the population affected are summarized in section 8.7 of the Criteria Document and section 3.6 of the Staff Paper, and the results of our evaluation of the effects of O_3 pollution on children are discussed in sections II.A–C of this preamble.

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

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' The U.S. Office of Management and Budget has designated this rulemaking as a significant energy action. Accordingly, EPA has prepared a Statement of Energy Effects for this action which appears in Chapter 9 of the RIA conducted for this rulemaking. A copy of the RIA is available in the RIA docket (EPA–HQ–OAR–2007–0225) and the energy analysis is briefly summarized here. The analysis estimates potential impacts of an illustrative control strategy for the 0.070 ppm primary standard alternative on the production of coal, crude oil, natural gas, and electricity; on energy prices; on control technologies adopted by the electricity generating sector; and on the mix of electricity generation. EPA believes that the energy impacts estimated for this illustrative control strategy for the 0.070 ppm primary standard alternative are higher than those that would be estimated for an illustrative control strategy for the primary standard level of 0.075 ppm which was selected by the Administrator. However, due to modeling limitations, EPA did not generate separate estimates of the energy impacts associated specifically with an

illustrative control strategy designed for a primary standard of 0.075 ppm. It is important to note that the CAA make clear that the economic impacts associated with attaining ambient standards are not to be considered in setting or revising the NAAQS. Accordingly, although the Statement of Energy Effects has been prepared, the results of EPA's energy analysis have not been considered in issuing this final rule.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule will establish uniform national standards for O_3 air pollution.

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 submitted 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 a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 27, 2008.

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List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 58

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 12, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the code of Federal regulations is to be amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Section 50.15 is added to read as follows:

§ 50.15 National primary and secondary ambient air quality standards for ozone.

(a) The level of the national 8-hour primary and secondary ambient air quality standards for ozone (O_3) is 0.075 parts per million (ppm), daily maximum 8-hour average, measured by a reference method based on Appendix D to this part and designated in accordance with part 53 of this chapter or an equivalent method designated in accordance with part 53 of this chapter.

(b) The 8-hour primary and secondary O_3 ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.075 ppm, as determined in accordance with Appendix P to this part.

■ 3. Appendix P is added to read as follows:

Appendix P to Part 50—Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone

1. General

(a) This appendix explains the data handling conventions and computations necessary for determining whether the national 8-hour primary and secondary ambient air quality standards for ozone (O_3) specified in § 50.15 are met at an ambient O_3 air quality monitoring site. Ozone is measured in the ambient air by a reference method based on Appendix D of this part, as applicable, and designated in accordance with part 53 of this chapter, or by an equivalent method designated in accordance with part 53 of this chapter. Data reporting, data handling, and computation procedures to be used in making comparisons between reported O_3 concentrations and the levels of the O_3 standards are specified in the following sections. Whether to exclude, retain, or make adjustments to the data affected by exceptional events, including stratospheric O_3 intrusion and other natural events, is determined by the requirements under §§ 50.1, 50.14 and 51.930.

(b) The terms used in this appendix are defined as follows:

8-hour average is the rolling average of eight hourly O_3 concentrations as explained in section 2 of this appendix.

Annual fourth-highest daily maximum refers to the fourth highest value measured at a monitoring site during a particular year.

Daily maximum 8-hour average concentration refers to the maximum calculated 8-hour average for a particular day as explained in section 2 of this appendix.

Design values are the metrics (i.e., statistics) that are compared to the NAAQS levels to determine compliance, calculated as shown in section 3 of this appendix.

O_3 *monitoring season* refers to the span of time within a calendar year when individual States are required to measure ambient O_3 concentrations as listed in part 58 Appendix D to this chapter.

Year refers to calendar year.

2. Primary and Secondary Ambient Air Quality Standards for Ozone

2.1 Data Reporting and Handling Conventions

Computing 8-hour averages. Hourly average concentrations shall be reported in parts per million (ppm) to the third decimal place, with additional digits to the right of the third decimal place truncated. Running 8-hour averages shall be computed from the hourly O_3 concentration data for each hour of the year and shall be stored in the first, or start, hour of the 8-hour period. An 8-hour average shall be considered valid if at least 75% of the hourly averages for the 8-hour period are available. In the event that only 6 or 7 hourly averages are available, the 8-hour average shall be computed on the basis of the hours available using 6 or 7 as the divisor. 8-hour periods with three or more missing hours shall be considered valid also, if, after substituting one-half the minimum detectable limit for the missing hourly concentrations, the 8-hour average concentration is greater

than the level of the standard. The computed 8-hour average O_3 concentrations shall be reported to three decimal places (the digits to the right of the third decimal place are truncated, consistent with the data handling procedures for the reported data).

Daily maximum 8-hour average concentrations. (a) There are 24 possible running 8-hour average O_3 concentrations for each calendar day during the O_3 monitoring season. The daily maximum 8-hour concentration for a given calendar day is the highest of the 24 possible 8-hour average concentrations computed for that day. This process is repeated, yielding a daily maximum 8-hour average O_3 concentration for each calendar day with ambient O_3 monitoring data. Because the 8-hour averages are recorded in the start hour, the daily maximum 8-hour concentrations from two consecutive days may have some hourly concentrations in common. Generally, overlapping daily maximum 8-hour averages are not likely, except in those non-urban monitoring locations with less pronounced diurnal variation in hourly concentrations.

(b) An O_3 monitoring day shall be counted as a valid day if valid 8-hour averages are available for at least 75% of possible hours in the day (i.e., at least 18 of the 24 averages). In the event that less than 75% of the 8-hour averages are available, a day shall also be counted as a valid day if the daily maximum 8-hour average concentration for that day is greater than the level of the standard.

2.2 Primary and Secondary Standard-related Summary Statistic

The standard-related summary statistic is the annual fourth-highest daily maximum 8-hour O_3 concentration, expressed in parts per million, averaged over three years. The 3-year average shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix. The computed 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations shall be reported to three decimal places (the digits to the right of the third decimal place are truncated, consistent with the data handling procedures for the reported data).

2.3 Comparisons with the Primary and Secondary Ozone Standards

(a) The primary and secondary O_3 ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.075 ppm.

(b) This comparison shall be based on three consecutive, complete calendar years of air quality monitoring data. This requirement is met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations are available for at least 90% of the days within the O_3 monitoring season, on average, for the 3-year period, with a minimum data completeness requirement in any one year of at least 75% of the days within the O_3 monitoring season. When computing whether the minimum data completeness requirements have been met, meteorological or ambient data may be sufficient to demonstrate that meteorological conditions on missing days were not conducive to concentrations above the level of the standard. Missing days assumed less then the level of the standard are counted for the purpose of meeting the data completeness requirement, subject to the approval of the appropriate Regional Administrator.

(c) Years with concentrations greater than the level of the standard shall be included even if they have less than complete data. Thus, in computing the 3-year average fourth maximum concentration, calendar years with less than 75% data completeness shall be included in the computation if the 3-year average fourth-highest 8-hour concentration is greater than the level of the standard.

(d) Comparisons with the primary and secondary O_3 standards are demonstrated by examples 1 and 2 in paragraphs (d)(1) and (d)(2) respectively as follows:

EXAMPLE 1.—AMBIENT MONITORING SITE ATTAINING THE PRIMARY AND SECONDARY O_3 STANDARDS

Year	Percent valid days (within the required monitoring season)	1st Highest daily max 8-hour Conc. (ppm)	2nd Highest daily max 8-hour Conc. (ppm)	3rd Highest daily max 8-hour Conc. (ppm)	4th Highest daily max 8-hour Conc. (ppm)	5th Highest daily max 8-hour Conc. (ppm)
2004	100	0.092	0.090	0.085	0.079	0.078
2005	96	0.084	0.083	0.075	0.072	0.070
2006	98	0.080	0.079	0.077	0.076	0.060
Average	98				0.075	

(1) As shown in Example 1, this monitoring site meets the primary and secondary O_3 standards because the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations (i.e., 0.075666 * * * ppm, truncated to 0.075 ppm) is less than or equal to 0.075 ppm. The data completeness requirement is also met because the average percent of days within the required monitoring season with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. In Example 1, the individual 8-hour averages used to determine the annual fourth maximum have also been truncated to the third decimal place.

EXAMPLE 2.—AMBIENT MONITORING SITE FAILING TO MEET THE PRIMARY AND SECONDARY O_3 STANDARDS

Year	Percent valid days (within the required monitoring season)	1st Highest daily max 8-hour Conc. (ppm)	2nd Highest daily max 8-hour Conc. (ppm)	3rd Highest daily max 8-hour Conc. (ppm)	4th Highest daily max 8-hour Conc. (ppm)	5th Highest daily max 8-hour Conc. (ppm)
2004	96	0.105	0.103	0.103	0.103	0.102
2005	74	0.104	0.103	0.092	0.091	0.088
2006	98	0.103	0.101	0.101	0.095	0.094
Average	89				0.096	

As shown in Example 2, the primary and secondary O_3 standards are not met for this monitoring site because the 3-year average of the fourth-highest daily maximum 8-hour average O_3 concentrations (i.e., 0.096333 * * * ppm, truncated to 0.096 ppm) is greater than 0.075 ppm, even though the data capture is less than 75% and the average data capture for the 3 years is less than 90% within the required monitoring season. In Example 2, the individual 8-hour averages used to determine the annual fourth maximum have also been truncated to the third decimal place.

3. Design Values for Primary and Secondary Ambient Air Quality Standards for Ozone

The air quality design value at a monitoring site is defined as that concentration that when reduced to the level of the standard ensures that the site meets the standard. For a concentration-based standard, the air quality design value is simply the standard-related test statistic. Thus, for the primary and secondary standards, the 3-year average annual fourth-highest daily maximum 8-hour average O_3 concentration is also the air quality design value for the site.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

■ 4. The authority citation of part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

■ 5. Appendix G to Part 58 is amended as follows:

■ a. By revising section 9.

■ b. By revising section 10.

■ c. By revising section 12.

■ d. By revising section 13.

Appendix G to Part 58—Uniform Air Quality Index (AQI) and Daily Reporting

* * * * *

9. How Does the AQI Relate to Air Pollution Levels?

For each pollutant, the AQI transforms ambient concentrations to a scale from 0 to 500. The AQI is keyed as appropriate to the national ambient air quality standards (NAAQS) for each pollutant. In most cases, the index value of 100 is associated with the numerical level of the short-term standard (i.e., averaging time of 24-hours or less) for each pollutant. A different approach is taken for NO_2, for which no short-term standard has been established. The index value of 50 is associated with the numerical level of the annual standard for a pollutant, if there is one, at one-half the level of the short-term standard for the pollutant, or at the level at which it is appropriate to begin to provide guidance on cautionary language. Higher categories of the index are based on increasingly serious health effects and increasing proportions of the population that are likely to be affected. The index is related to other air pollution concentrations through linear interpolation based on these levels. The AQI is equal to the highest of the numbers corresponding to each pollutant. For the purposes of reporting the AQI, the sub-indexes for PM_{10} and $PM_{2.5}$ are to be considered separately. The pollutant responsible for the highest index value (the reported AQI) is called the ''critical'' pollutant.

10. What Monitors Should I Use To Get the Pollutant Concentrations for Calculating the AQI?

You must use concentration data from population-oriented State/Local Air Monitoring Station (SLAMS) or parts of the SLAMS required by 40 CFR 58.10 for each pollutant except PM. For PM, calculate and report the AQI on days for which you have measured air quality data (e.g., from continuous $PM_{2.5}$ monitors required in Appendix D to this part). You may use PM measurements from monitors that are not reference or equivalent methods (for example, continuous PM_{10} or $PM_{2.5}$ monitors). Detailed guidance for relating non-approved measurements to approved methods by statistical linear regression is referenced in section 13 below.

* * * * *

12. How Do I Calculate the AQI?

i. The AQI is the highest value calculated for each pollutant as follows:

a. Identify the highest concentration among all of the monitors within each reporting area and truncate the pollutant concentration to one more than the significant digits used to express the level of the NAAQS for that pollutant. This is equivalent to the rounding conventions used in the NAAQS.

b. Using Table 2, find the two breakpoints that contain the concentration.

c. Using Equation 1, calculate the index.

d. Round the index to the nearest integer.

TABLE 2.—BREAKPOINTS FOR THE AQI

These breakpoints							Equal these AQI's	
O_3 (ppm) 8-hour	O_3 (ppm) 1-hour [1]	$PM_{2.5}$ (µg/m³)	PM_{10} (µg/m³)	CO (ppm)	SO_2 (ppm)	NO_2 (ppm)	AQI	Category
0.000–0.059	.....	0.0–15.4	0–54	0.0–4.4	0.000–0.034	([3])	0–50	Good.
0.060–0.075	.....	15.5–40.4	55–154	4.5–9.4	0.035–0.144	([3])	51–100	Moderate.
0.076–0.095	0.125–0.164	40.5–65.4	155–254	9.5–12.4	0.145–0.224	([3])	101–150	Unhealthy for Sensitive Groups.
0.096–0.115	0.165–0.204	[4] 65.5–150.4	255–354	12.5–15.4	0.225–0.304	([3])	151–200	Unhealthy.
0.116–0.374	0.205–0.404	[4] 150.5–250.4	355–424	15.5–30.4	0.305–0.604	0.65–1.24	201–300	Very Unhealthy.
([2])	0.405–0.504	[4] 250.5–350.4	425–504	30.5–40.4	0.605–0.804	1.25–1.64	301–400	
([2])	0.505–0.604	[4] 350.5–500.4	505–604	40.5–50.4	0.805–1.004	1.65–2.04	401–500	Hazardous.

[1] Areas are generally required to report the AQI based on 8-hour ozone values. However, there are a small number of areas where an AQI based on 1-hour ozone values would be more precautionary. In these cases, in addition to calculating the 8-hour ozone index value, the 1-hour ozone index value may be calculated, and the maximum of the two values reported.

[2] 8-hour O_3 values do not define higher AQI values (≥ 301). AQI values of 301 or greater are calculated with 1-hour O_3 concentrations.

[3] NO_2 has no short-term NAAQS, and can generate an AQI only above the value of 200.

[4] If a different SHL for $PM_{2.5}$ is promulgated, these numbers will change accordingly.

ii. If the concentration is equal to a breakpoint, then the index is equal to the corresponding index value in Table 2. However, Equation 1 can still be used. The results will be equal. If the concentration is between two breakpoints, then calculate the index of that pollutant with Equation 1. You must also note that in some areas, the AQI based on 1-hour O_3 will be more precautionary than using 8-hour values (see footnote 1 to Table 2). In these cases, you may use 1-hour values as well as 8-hour values to calculate index values and then use the maximum index value as the AQI for O_3.

$$I_p = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} \left(C_p - BP_{Lo}\right) + I_{Lo} \qquad \text{(Equation 1)}$$

Where:

I_p = the index value for pollutant$_p$

C_p = the truncated concentration of pollutant$_p$

BP_{Hi} = the breakpoint that is greater than or equal to C_p

BP_{Lo} = the breakpoint that is less than or equal to C_p

I_{Hi} = the AQI value corresponding to BP_{Hi}

I_{lo} = the AQI value corresponding to BP_{Lo}.

iii. If the concentration is larger than the highest breakpoint in Table 2 then you may use the last two breakpoints in Table 2 when you apply Equation 1.

Example

iv. Using Table 2 and Equation 1, calculate the index value for each of the pollutants measured and select the one that produces the highest index value for the AQI. For example, if you observe a PM_{10} value of 210 μg/m³, a 1-hour O_3 value of 0.156 ppm, and an 8-hour O_3 value of 0.130 ppm, then do this:

a. Find the breakpoints for PM_{10} at 210 μg/m³ as 155 μg/m³ and 254 μg/m³, corresponding to index values 101 and 150;

b. Find the breakpoints for 1-hour O_3 at 0.156 ppm as 0.125 ppm and 0.164 ppm, corresponding to index values 101 and 150;

c. Find the breakpoints for 8-hour O_3 at 0.130 ppm as 0.116 ppm and 0.374 ppm, corresponding to index values 201 and 300;

d. Apply Equation 1 for 210 μg/m³, PM_{10}:

$$\frac{150 - 101}{254 - 155}(210 - 155) + 101 = 128$$

e. Apply Equation 1 for 0.156 ppm, 1-hour O_3:

$$\frac{150 - 101}{0.164 - 0.125}(0.156 - 0.125) + 101 = 140$$

f. Apply Equation 1 for 0.130 ppm, 8-hour O_3:

$$\frac{300 - 201}{0.374 - 0.116}(0.130 - 0.116) + 201 = 206$$

g. Find the maximum, 206. This is the AQI. The minimal AQI report would read:

v. Today, the AQI for my city is 206 which is Very Unhealthy, due to ozone. Children and people with asthma are the groups most at risk.

13. What Additional Information Should I Know?

The EPA has developed a computer program to calculate the AQI for you. The program prompts for inputs, and it displays all the pertinent information for the AQI (the index value, color, category, sensitive group, health effects, and cautionary language). The EPA has also prepared a brochure on the AQI that explains the index in detail (The Air Quality Index), Reporting Guidance (Guideline for Public Reporting of Daily Air Quality) that provides associated health effects and cautionary statements, and Forecasting Guidance (Guideline for Developing an Ozone Forecasting Program) that explains the steps necessary to start an air pollution forecasting program. You can download the program and the guidance documents at *www.airnow.gov*. Reference for relating non-approved PM measurements to approved methods (Eberly, S., T. Fitz-Simons, T. Hanley, L. Weinstock., T. Tamanini, G. Denniston, B. Lambeth, E. Michel, S. Bortnick. Data Quality Objectives (DQOs) For Relating Federal Reference Method (FRM) and Continuous $PM_{2.5}$ Measurements to Report an Air Quality Index (AQI). U.S. Environmental Protection Agency, research Triangle Park, NC. EPA–454/B–02–002, November 2002) can be found on the Ambient Monitoring Technology Information Center (AMTIC) Web site, *http://www.epa.gov/ttnamti1/*.

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Animal and Plant Health Inspection Service

Addition of Armenia to the List of Regions Where African Swine Fever Exists; published 3-27-08

Brucellosis in Cattle; Research Facilities; published 2-26-08

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JUSTICE DEPARTMENT

Inflation Adjustment for Civil Monetary Penalties Under the Immigration and Nationality Act; published 2-26-08

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Airworthiness Directives:

Saab Model SAAB SF340A and SAAB 340B (Including Variant 340B (WT)) Series Airplanes; published 3-12-08

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Animal and Plant Health Inspection Service

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 3-31-08; published 1-29-08 [FR E8-01529]

Brucellosis in Cattle; State and Area Classifications; Texas; comments due by 4-1-08; published 2-1-08 [FR E8-01853]

Change in Disease Status of Surrey County, England, Because of Foot - and - Mouth Disease; comments due by 3-31-08; published 1-30-08 [FR E8-01653]

Importation of Cattle from Mexico:

Addition of Port at San Luis, AZ; comments due by 3-31-08; published 1-29-08 [FR E8-01533]

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United States Standards for Whole Dry Peas, Split Peas, and Lentils; comments due by 4-1-08; published 2-1-08 [FR E8-01820]

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Fisheries of the Exclusive Economic Zone Off Alaska:

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Magnuson-Stevens Act Provisions; Experimental Permitting Process, Exempted Fishing Permits, and Scientific Research Activity; comments due by 4-4-08; published 3-18-08 [FR E8-05425]

Marine Mammals: Advanced Notice of Proposed Rulemaking; comments due by 3-31-08; published 1-31-08 [FR E8-01666]

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LABOR DEPARTMENT

Employment Standards Administration

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LABOR DEPARTMENT

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S. 2733/P.L. 110–198

Higher Education Extension Act of 2008 (Mar. 24, 2008; 122 Stat. 656)

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