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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8365 of April 24, 2009

National Crime Victims' Rights Week, 2009

By the President of the United States of America

A Proclamation

From violence in our neighborhoods to credit card fraud on the Internet, Americans fall victim to countless crimes every day. Our Nation has no higher responsibility than protecting the safety of our families. During National Crime Victims' Rights Week, we honor crime victims by pledging to fight crime wherever it exists.

This commitment begins by supporting the men and women working every day to reduce crime and assist crime victims. Often placing themselves in harm's way and sacrificing personal interests, these individuals are the backbone of the extensive efforts to protect Americans from crime. They have demonstrated a commitment to serve others, and their dedication is vital to implementing a successful strategy for crime reduction and victim assistance.

Crime victims have benefited from the Victims of Crime Act of 1984 (Public Law 98–473), one of the most significant achievements in crime victim assistance. This law created an innovative method for using fines and penalties from Federal criminals to fund services for victims. This Crime Victims Fund has already helped millions of victims across the country access basic assistance and financial compensation. This year marks the 25th anniversary of the bill's bipartisan passage.

An effective approach to fighting crime must include programs that make sense and work. To that end, my Administration is building on past achievements to address the range of crimes that Americans may encounter. The American Recovery and Reinvestment Act, which I signed in February, helps State and local law enforcement personnel perform critical work by providing $2 billion through the Edward Byrne Justice Assistance Grant Program.

A smart crime reduction strategy must also incorporate outreach to those who have paid their debt to society and have become responsible and contributing members of their communities. Prisoner reentry programs have been tested and proven effective. Through a number of supportive services, including substance abuse and mental health counseling, prison-to-work incentives, job training, and transitional assistance, reentry programs help reduce crime recidivism and keep families safer. By utilizing common-sense and proven methods, we can both reduce crime and serve crime victims.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 26 through May 2, 2009, as National Crime Victims' Rights Week. I call upon all Americans to observe this week by participating in events that raise awareness of victims' rights and services and by volunteering to serve victims in their time of need.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–9987
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This final rule revises certain delegations of authority by the Secretary of Agriculture published at 7 CFR part 2. The Secretary delegates to the Assistant Secretary for Administration authority to serve as the USDA Chief Freedom of Information Act Officer; delegates to the Department of Agriculture Chief Information Officer the authority to appoint the USDA Privacy Act Officer; and, removes those delegations from the Department of Agriculture Director of the Office of Communications.

DATES: *Effective Date:* April 29, 2009.

FOR FURTHER INFORMATION CONTACT: Rita Morgan, USDA FOIA Service Center, 202–720–8164.

SUPPLEMENTARY INFORMATION: On December 31, 2007, the Openness Promotes Effectiveness in our National Government Act of 2007 became effective. It directs the head of each agency to appoint a senior official to serve as the Chief Freedom of Information Act Officer.

Therefore, this document amends 7 CFR part 2 section 2.24 of the delegations of authority by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Administration to serve as Department of Agriculture Chief Freedom of Information Act Officer; amends 7 CFR part 2 section 2.37 of the delegations of authority by the Secretary of Agriculture to the Chief Information Officer to appoint a Department of Agriculture Privacy Act Officer; and further amends 7 CFR Part 2 section 2.36 to remove those delegations by the Secretary of Agriculture to the Director of the Office of Communications.

The Chief Freedom of Information Act Officer is responsible to oversee efficient and appropriate compliance with the provisions of the Freedom of Information Act (5 U.S.C. 552); to monitor implementation of 5 U.S.C. 552 throughout the agency and to keep the Secretary, the General Counsel, and the Attorney General informed regarding agency performance of that implementation; to recommend to the Secretary any necessary adjustments to agency practices, policies, personnel, and funding to improve the implementation of 5 U.S.C. 552; to review agency implementation and report to the Attorney General, through the Secretary, as the Attorney General may direct; and, to facilitate public understanding of the purposes of the statutory exemptions contained in 5 U.S.C. 552.

The delegation of authority to the Chief Information Officer related to the Privacy Act reflects the practice that is already in place.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553(a)(2), notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, because this rule relates to internal agency management, it is exempt from the provisions of Executive Orders Nos. 12291 and 12866. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and is, therefore, exempt from the provisions of the Act. Accordingly, as authorized by 5 U.S.C. 808, this rule may be made effective upon publication.

List of Subjects in 7 CFR Part 2

Authority delegations (government agencies).

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR parts 1949–1953 Comp. p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

■ 2. Section 2.24 is amended by adding paragraph (a)(3) to read as follows:§ 2.24 Assistant Secretary for Administration.

(a) * * *

(3) Related to the Freedom of Information Act. (i) Serve as the Chief Freedom of Information Act Officer for the Department.

(ii) Oversee general officers and agency heads in efficient and appropriate compliance with the provisions of the Freedom of Information Act (5 U.S.C. 552); monitor implementation of 5 U.S.C. 552 throughout the agency and keep the Secretary, the General Counsel, and the Attorney General informed regarding agency performance in its implementation; recommend to the Secretary necessary adjustments to agency practices, policies, personnel, and funding to improve implementation of 5 U.S.C. 552; review and report to the Attorney General, through the Secretary, as the Attorney General may direct; and, facilitate public understanding of the purposes of the statutory exemptions contained in 5 U.S.C. 552.

* * * * *

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

■ 3. Section 2.36 is amended by removing and reserving paragraph (a)(2)(viii) to read as follows:

§ 2.36 Director, Office of Communications.

(a) * * *

(2) * * *

(viii) [Reserved]

* * * * *

■ 4. Section 2.37 is amended by adding paragraph (b) to read as follows:

§ 2.37 Chief Information Officer.

* * * * *

(b) *Related to the Privacy Act.* (i) Appoint a Department Privacy Act Officer.

(ii) Oversee general officers and agency heads in the development and implementation of policies issued pursuant to the provisions of the

Privacy Act, 5 U.S.C. 552a, and provide consultation and guidance regarding those policies.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. E9–9726 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS–2006–0143]

RIN 0579–AC54

Pale Cyst Nematode; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the regulations by quarantining parts of Bingham and Bonneville Counties, ID, due to the discovery of the potato cyst nematode there and establishing restrictions on the interstate movement of regulated articles from the quarantined area. As amended by this document, the rule refers to the nematode of concern, *Globodera pallida,* by the common name ''pale cyst nematode'' rather than by the name ''potato cyst nematode;'' allows the movement of *Phaseolus* spp. (beans) and *Pisum* spp. (peas) under the same conditions that apply to the movement of other crops to which soil is often attached; and requires that a protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine, rather than a 3-year biosurvey protocol, be completed in order to remove an infested field from quarantine. We are also making minor, nonsubstantive changes. These actions will prevent the spread of the pale cyst nematode via potatoes, soil, and other host material to noninfested areas of the United States.

DATES: *Effective Date:* April 29, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Y. Smith, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5235.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] published in the **Federal Register** on September 12, 2007, and effective on November 1, 2007 (72 FR 51975–51988, Docket No. APHIS–2006–0143), we quarantined parts of Bingham and Bonneville Counties, ID, due to the discovery of the potato cyst nematode (*Globodera pallida*) and established restrictions on the interstate movement of regulated articles from the quarantined area. This action was necessary to prevent the spread of this pest to noninfested areas of the United States.

We solicited comments concerning our interim rule for 60 days ending November 13, 2007. We received three comments by that date. They were from a State department of agriculture and two private citizens. We have carefully considered the comments we received. They are discussed below.

The regulations established by the interim rule referred to *G. pallida* as the potato cyst nematode. One commenter stated that our use of the term ''potato cyst nematode'' to refer to *G. pallida* was confusing, as the term ''potato cyst nematode'' is used generically to refer to many cyst nematodes that infest potatoes. The commenter suggested that we amend the regulations to instead refer to the ''pale potato cyst nematode.''

We agree that the use of the term ''potato cyst nematode'' may make the species to which we refer unclear. For example, in our regulations for the importation of nursery stock in § 319.37–5(a), we refer to *G. rostochiensis* (the golden nematode) and *G. pallida* collectively as ''potato cyst nematodes.'' To avoid confusion, this final rule amends the regulations established by the interim rule to refer instead to the ''pale cyst nematode,'' or PCN.

Section 301.86–2 of the interim rule lists certain articles that present a risk of spreading PCN if they are moved from quarantined areas without restriction. These articles are referred to as regulated articles and include garden and dry beans (*Phaseolus* spp.) and peas (*Pisum* spp.).

One commenter asked why *Phaseolus* spp. and *Pisum* spp. were listed as regulated articles, since these articles are not hosts of PCN. The commenter also noted that we had not included provisions for their movement under certificate in the regulations and asked us to explain why.

[1] To view the interim rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2006–0143.*

Phaseolus spp. and *Pisum* spp. are listed as regulated articles because these articles are often moved with soil attached; it is the soil that poses a risk of spreading PCN, rather than the commodity itself. (*Phaseolus* spp. and *Pisum* spp. are produced both for consumption and as seed; in both cases, the risk arises from the potential movement of soil with the articles.) The risk posed by these articles is thus similar to the risk posed by potatoes and root crops intended for consumption, which are also often moved with soil attached.

The regulations established by the interim rule provide conditions under which potatoes and root crops intended for consumption can be moved interstate with a certificate. Paragraph (a)(3) of § 301.86–5 states that an inspector may issue a certificate for the interstate movement of potatoes or root crops intended for consumption from the quarantined area only if the field in which the potatoes or root crops have been grown meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years and prior to the planting of the potatoes or root crops;
- PCN has not been found in the field; and
- No more than one PCN host crop has been grown in the field the last 3 years.

We should have allowed *Phaseolus* spp. and *Pisum* spp. to move interstate under the same conditions, as the risk posed by these articles is the same as the risk posed by potatoes and root crops for consumption, and the conditions under which potatoes and root crops are allowed to be moved will also be effective for *Phaseolus* spp. and *Pisum* spp. Therefore, we are amending the regulations established by the interim rule to allow *Phaseolus* spp. and *Pisum* spp. to move under the same conditions as potatoes and root crops that are moved for consumption. (We are also making minor editorial changes to § 301.86–5(a)(3) to make it consistent with the other provisions in § 301.86–5.)

Paragraph § 301.86–3(a) of the regulations provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will publish the description of the quarantined area on the Plant Protection and Quarantine (PPQ) Web site, *http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml.* The description of the quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area.

One commenter expressed concerns about using a Web site to display the map of the quarantined area. This commenter stated that the map on the PPQ Web site was hard to read. The commenter also noted that the Web address could change, and asked how we would ensure that the address does not change for the life of the regulations. Finally, the commenter stated that the Department of Justice in the commenter's State had advised that referring to a mutable document, such as a map of a quarantined area on a Web site, in a quarantine regulation could be more easily subjected to challenge in court than a description of the quarantined area in the regulations themselves.

On November 1, 2007, the effective date of the interim rule, we updated the map of the quarantined area and made it easier to read.[2] We published a notice in the **Federal Register** informing the public of the changes to the map since the publication of the interim rule on June 6, 2008 (73 FR 32284–32285, Docket No. APHIS–2008–0014), and we have published several notices since then informing the public of additional changes to the quarantined area. As with other regulations that refer to Web addresses, we will ensure that, if our Web site is revised and the address changes, our Web site will redirect users who enter the Web address given in the regulations to the proper Web address. Finally, the regulations set out specific conditions for adding infested and associated fields to the quarantined area and indicate that we will update the quarantined area whenever these conditions are met, meaning that the quarantined area reflects our application of standards in the regulations. We have determined that publishing the quarantined area on the Web and updating it based on standards in the regulations is an adequate means to communicate the quarantined area to the regulated public.

As noted earlier, § 301.86–5(a)(3) of the regulations sets out conditions under which potatoes and root crops intended for consumption may be moved under a certificate. One commenter suggested that we require potatoes and root crops intended for consumption and moved under a certificate to be grown only in fields that are planted with certified potato seed, if the fields are planted with potatoes.

The State of Idaho's seed certification process does not require potato seed to be examined for potato cyst nematodes. Therefore, such a requirement would not decrease the risk posed by the movement of potatoes, root crops for consumption, beans, or peas, and we are not including such a requirement in the final rule. A potato seed certification standard is being developed that would incorporate examination for pale cyst nematode; if it is adopted, we may revisit this issue.

It should be noted that the State of Idaho already requires that all potato seed planted in the State be certified potato seed, meaning that only certified potato seed is being planted in the current quarantined area.

Paragraph § 301.86–5(b) of the regulations provides for the issuance of limited permits for the interstate movement of regulated articles from the quarantined area. Paragraph (b)(2) sets out specific conditions for the movement of potatoes for consumption from the quarantined area for processing or packing. Under this paragraph, an inspector may issue a limited permit to allow the interstate movement of potatoes from the quarantined area for processing or packing only if:

- The potatoes are transported in a manner that prevents the potatoes and soil attached to the potatoes from coming into contact with agricultural premises outside the quarantined area; and
- The potatoes are processed or packed at facilities that handle potatoes, waste, and waste water in a manner approved by APHIS to prevent the spread of PCN.

One commenter asked us to require that receiving States be notified of any movement of potatoes from the quarantined area under a limited permit. The commenter recommended that the receiving State be involved in reviewing the practices of the processing and packing facility that would receive such potatoes in order to ensure that those processes are adequate to prevent the spread of PCN. The commenter stated that receiving States should have the option of testing soil from potatoes moved under a limited permit. The commenter also asked specifically that no movement of potatoes under a limited permit be allowed to the commenter's State, Oregon.

To ensure that potatoes moved from the quarantined area under a limited permit are handled, processed, or utilized in a manner that destroys PCN, we require the receiving facility to have a compliance agreement. This compliance agreement is signed by APHIS and the owner or operator of the facility; during the approval process for a compliance agreement, the State in which the facility is located is offered the opportunity to provide input and raise any applicable concerns. APHIS will not approve any compliance agreement unless we determine that the facility will follow the regulations, which provide adequate restrictions to prevent the interstate spread of PCN. Therefore, it is not necessary to provide advance notification to States of shipments of potatoes moved under a limited permit.

It should be noted that, thus far in the PCN program, all movement of potatoes under a limited permit has occurred within the State of Idaho, and we do not anticipate any movement of potatoes under a limited permit from Idaho to other States.

One commenter stated that the interim rule had a significant economic impact on his business, citing expenses associated with washing trucks and tarping trucks that move between fields. The commenter stated that the designation of fields owned by the commenter as part of the quarantined area meant that the commenter no longer has any control over what crops can be planted there and that investments in planting potato crops in the quarantined fields had thus been lost.

The commenter also stated that there had been an agreement to sell one of his farms to another farmer, but since the designation of that field as part of the quarantined area, the sale of the farm may be lost. The commenter asked that compensation be provided to affected producers and suggested that APHIS rent the fields in the quarantined area for a period of time until PCN could be eradicated.

Another commenter asked that APHIS allow equipment to move from quarantined fields through nonquarantined fields and to other quarantined fields without washing.

The regulations and the PCN eradication program do not require tarping of trucks. However, as mentioned earlier, potatoes moved under limited permit must be transported in a manner that prevents the potatoes and soil attached to the potatoes from coming into contact with agricultural premises outside the quarantined area. Potatoes transported in trucks normally have soil attached. Accordingly, an inspector may require steps to be taken to prevent that soil from coming into contact with agricultural premises outside the quarantined area. A common and simple means to accomplish this goal is tarping trucks. The requirement to prevent soil attached to the potatoes from coming into contact with

[2] This update to the quarantined area added fields in both Bingham and Bonneville Counties, ID, and also added fields in Jefferson County, ID.

agricultural premises outside the quarantined area is necessary to prevent the spread of PCN.

Similarly, washing trucks that have been used in the quarantined area is often necessary to prevent soil on the truck from coming into contact with agricultural premises outside the quarantined area; without washing, such movement could pose a risk of spreading PCN to the nonquarantined fields. We provide the services of an inspector free of charge to monitor washing of trucks, if necessary. We are working with affected producers to ensure that we can accommodate their business processes to the extent that our resources allow.

The regulations restrict the interstate movement of regulated articles from the quarantined area; they do not prescribe management practices. The commenter refers to management practices that are part of the eradication program; if producers participate in the eradication program, infested fields will eventually be able to be removed from quarantine.

Under the regulations in § 301.86–3(d), producers have had the option of maintaining their fields under quarantine or participating in a biosurvey protocol sufficient to declare the field free of PCN. Options for ensuring that an infested field is free of PCN include participating in the APHIS eradication program for PCN or not planting any host crops in a quarantined field for enough time that any PCN that are present can no longer survive. The latter option requires not planting host crops for 30 years, meaning that affected producers may judge it to be in their best interest to participate in the eradication program.

Federal action is necessary to prevent the spread of PCN into noninfested areas and thus prevent economic impacts on a much greater number of producers than are currently affected by the PCN quarantine. We have determined that it is not appropriate to pay compensation to affected producers; however, APHIS has assumed the cost of implementing the eradication program and will continue to do so, subject to the availability of funds.

One commenter stated that we had not given advance notice of the addition of a field owned by the commenter to the quarantined area and that such notice should have been given.

We provided notice of the changes in the quarantined area on November 1, 2007, consistent with § 301.86–3 of the regulations.

We are making one additional change to the regulations established by the interim rule. Paragraph § 301.86–3(d)(1) of the interim rule stated that an infested field will be removed from quarantine when a 3-year biosurvey protocol approved by APHIS has been completed and the field has been found to be free of PCN. At the time of publication of the interim rule, we believed that a 3-year biosurvey protocol would be sufficient to support removal of an infested field from quarantine, although we had not yet worked out the specific requirements for such a procedure. However, with input from stakeholders and from an independent international science panel, we have refined and continue to refine the protocol that will be sufficient to support removal of an infested field from quarantine. We will continue to solicit input from affected producers, State departments of agriculture, researchers, and the general public as we develop the protocol, and we will update affected producers and other interested parties on our progress. To ensure that the regulations recognize whatever bioassay protocol we ultimately determine to be sufficient, we are changing the regulations for removal of infested fields from quarantine to refer more generically to a protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine.

Paragraph § 301.86–3(d)(2) of the interim rule stated that an associated field will be removed from quarantine when the field has been found to be free of PCN according to a survey protocol approved by the Administrator as sufficient to support removal from quarantine. To avoid confusion with the requirement for removing infested fields from quarantine, we are changing paragraph (d)(2) to refer to a protocol approved by the Administrator as sufficient to support removal of associated fields from quarantine.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule became effective on November 1, 2007. This rule amends the testing requirements and provisions for interstate movement established by the interim rule. Immediate action is necessary to make these changes in order to prevent the artificial spread of PCN to noninfested areas of the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Regulatory Flexibility Act

This final rule follows an interim rule that amended the regulations by quarantining part of Bingham and Bonneville Counties, ID, because of the presence there of PCN and restricting the interstate movement of regulated articles from the quarantined area. On November 1, 2007, the quarantined area was updated to add fields in both Bingham and Bonneville Counties, ID, and to add fields in Jefferson County, ID. These are the first detections of PCN in the United States. This analysis considers the economic effects of the regulations on the current quarantined area and the benefits of imposing the quarantine.

Expected benefits and costs are examined, including expected economic impacts for small entities as required by the Regulatory Flexibility Act.

U.S. Production and Exports [3]

Potatoes, excluding sweet potatoes, are a staple crop grown in a majority of U.S. States. They are also the lead vegetable crop in the United States. The Russet variety, which is planted in the spring and harvested in the fall, accounts for approximately 75 percent of the total U.S. acreage planted to potatoes. Ninety percent of all potatoes are harvested in the fall, with the remaining 10 percent harvested in the other three seasons. This 10 percent of production accounts for specialty varieties that typically command higher prices, such as round white, red, yellow, and purple potatoes.

From 2001 to 2006, acreage planted to fall potatoes fell by 9 percent while production of this variety decreased by 4 percent throughout the United States. The decline in Idaho's acreage and production was sharper, falling by 21 percent and 18 percent, respectively. Yields over the same period increased in both the United States and Idaho. Fall potatoes are marketed year round from

[3] Most information in this section is derived from the Economic Research Service's Potato Briefing Room, available online at *http://www.ers.usda.gov/Briefing/Potatoes/*.

July (early harvest areas) through June. Potatoes can be stored for long periods of time. This storage capability allows flexibility in marketing; sellers can hold their crop until more favorable prices prevail on the market. Fresh potatoes are mainly sold on the open market, not under contract. Processing potatoes, on the other hand, are typically contracted.

TABLE 1—PRODUCTION AND FARM PRICES OF FALL POTATOES IN THE UNITED STATES; IDAHO; AND BINGHAM, BONNEVILLE, AND JEFFERSON COUNTIES, ID, 2001–2006

	United States			Idaho				Bingham county [b]	Bonneville county [b]	Jefferson county [b]
	Production	Farm price		Production	Farm price			Production		
		Table stock	Processing		Table stock	Processing	All uses			
	1,000 Cwt.	$ per Cwt.		1,000 Cwt.	$ per Cwt.			1,000 Cwt.	1,000 Cwt.	1,000 Cwt.
2001	393,631	10.79	5.05	120,200	([a])	([a])	6.15	18,330	8,136	10,047
2002	413,581	9.59	5.16	133,385	([a])	([a])	5.00	20,000	9,204	13,029
2003	410,588	7.32	5.10	123,180	3.85	4.30	4.40	19,598	8,537	10,645
2004	410,253	6.76	5.06	131,970	3.40	4.50	4.25	20,740	9,070	9,200
2005	382,743	10.36	5.39	118,288	6.90	4.90	5.70	18,080	8,250	9,360
2006	398,921	10.27	5.90	128,915	6.55	5.40	5.90	20,200	9,930	9,100

[a] Prices by use not available for these years.
[b] No data available for prices at the county level.
Source: U.S. Department of Agriculture, National Agricultural Statistics Service, *Potatoes: 2006 Summary,* September 2007 and USDA, NASS, Idaho Office, *County Estimates: Potatoes 2006,* September 2007.

The United States ranks fourth in the world in potato production, trailing China, Russia, and India. Historically, the United States has been a net exporter of potatoes in value terms, with exports of processed potatoes accounting for a large portion of this surplus. In 2003 and 2004, an increase in imports of processed potato products from Canada tipped this balance so that the United States ran a trade deficit in those years. However, imports of Canadian potato products returned to historical levels in 2005, and the United States regained its status as a net exporter. Exports of potatoes are on the rise and now account for approximately one-third of the value of farm sales. Over half of these exports are processed products, primarily frozen french fries. Japan is the United States' largest importer of frozen fries, followed by Mexico and Canada. Canada is the largest supplier of U.S. potato imports.

Although, historically, Japan has been the largest importer of U.S. frozen potato products, this country banned imports of fresh potatoes from the United States starting in the 1950s. However, in February of 2006, Japan opened its market to the importation of fresh potatoes from approved facilities in 14 States: Arizona, California, Colorado, Florida, Idaho, Maine, Michigan, Minnesota, New Mexico, North Dakota, Texas, Oregon, Washington, and Wisconsin (OC 2006).[4] The outbreak of PCN in Idaho has led to the reimplementation of Japan's ban on fresh potatoes from the United States.

Idaho Production and Exports

Idaho specializes in production of fall potatoes. According to NASS data, there were no spring, summer, or winter potatoes produced in Idaho from 2001 to 2006. Over 65 percent of fall potatoes are grown in the Western States. Idaho and Washington account for 50 percent of the U.S. total, where planted acreage in Idaho is more than double that in Washington. Idaho's importance to the domestic potato industry also makes this State influential in the world market for potatoes. Idaho exports a substantial amount of potatoes on a yearly basis. However, the majority of these exports is processed rather than fresh. This analysis only focuses on the fresh market, since this is the portion that will be affected by the final rule. From 2001 to 2006, the annual value of Idaho's table potato exports averaged $3.6 million. Sixty-seven percent of Idaho's fresh exports during this period were to Canada. Mexico also imported potatoes from Idaho, accounting for 23 percent of Idaho exports. Japan is a substantial importer of U.S. processed potato products, but its imports of fresh potatoes have been negligible or nonexistent.

Together, Canada and Mexico accounted for approximately 90 percent of Idaho exports between 2001 and 2006, although Idaho's fresh potato sales worldwide and the combined share exported to Canada and Mexico have fluctuated substantially (table 2). Mexico has been an expanding market, with sales increasing 90-fold over this 6-year period, while exports to Canada have declined by more than half. In 2005, Idaho's potato exports to Mexico exceeded its potato exports to Canada for the first time.

TABLE 2—IDAHO EXPORTS OF FRESH POTATOES BY COUNTRY, 2001–2006

	World	Canada		Mexico		Japan	
	Exports ($1,000)	Exports ($1,000)	Percentage of total	Exports ($1,000)	Percentage of total	Exports ($1,000)	Percentage of total
2001	3,622	3,209	88.6	34	0.9	43	1.2
2002	3,472	3,200	92.2	12	0.3	0	0.0
2003	1,988	1,988	100.0	0	0.0	0	0.0
2004	1,485	1,096	73.8	338	22.8	0	0.0
2005	6,643	1,485	22.4	2,967	44.7	0	0.0

[4] Office of Communications of USDA. Release number 0050.06, February 2006. Online news release: *http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB/.cmd/ad/.ar/sa.retrievecontent/.c/6_2_1UH/.ce/7_2_5JM/.p/5_2_4TQ/_th/J_2_9D/_s.7_0_A/7_0_1OB?PC_7_2_5JM_contentid=2006%2F02%2F0050.xml&PC_7_2_5JM_parentnav=LATEST_RELEASES&PC_7_2_5JM_navid=NEWS_RELEASE.* Accessed September 2006.

TABLE 2—IDAHO EXPORTS OF FRESH POTATOES BY COUNTRY, 2001–2006—Continued

	World	Canada		Mexico		Japan	
	Exports ($1,000)	Exports ($1,000)	Percentage of total	Exports ($1,000)	Percentage of total	Exports ($1,000)	Percentage of total
2006	4,518	1,190	26.3	3,086	68.3	0	0.0

Source: Global Trade Information Services, World Trade Atlas: U.S. State Export Edition, April 2007.

Based upon available data and expected effects, we believe that the benefits of the rule, in terms of curtailing the spread of the pest, will outweigh the costs borne by producers in the quarantined area. Major importers of fresh potatoes from Idaho, including Canada and Mexico, have lifted their import prohibitions imposed following the PCN discoveries and now allow imports of fresh potatoes from Idaho subject to certain restrictions, including that the potatoes do not originate from the quarantined area. Since the United States exports many more potatoes in the processed form, either as frozen french fries or potato chips, any loss of foreign markets for fresh potatoes is not likely to have significant economic impacts on the U.S. potato industry. Additionally, the domestic market will be able to absorb any excess supply of fresh potatoes resulting from import bans imposed by other countries.

In the following analysis, we first consider potential costs of the rule for producers in the quarantined area. Possible benefits of the rule, in terms of preventing the spread of PCN to other States, are then examined. Lastly, we address expected impacts for small entities.

Expected Costs of the Rule

Costs for Producers in the Quarantined Area

As of December 1, 2008, approximately 17,376 of the 335,000 acres planted to potatoes in Idaho were included in the current quarantined area. However, of these acres, only 1,079 were infested with PCN. The rest were regulated as associated fields. The potential economic impacts of regulating this area are presented in the following paragraphs.

Given a quarantined area of approximately 17,376 acres, an upper-bound annual potato production quantity of about 563.7 million pounds could be affected by the rule.[5] This amount represents approximately 3 percent of total potato production in Idaho and slightly more than 1 percent of total potato production in the United States. However, even these small percentages overstate the probable impact because the 563.7 million pound upper-bound quantity assumes all regulated acres would be planted to potatoes at any given time, whereas potatoes are commonly grown in a 2- to 3-year rotation with grain. Moreover, interstate movement of table potatoes and other regulated articles from quarantined areas will be allowed when accompanied by a certificate or limited permit, when field surveys are completed and cropping restrictions have been met, and when PCN has not been found. We note that State officials expect a significant decline in the acreage planted to potatoes in Idaho this year, due to the high price of grain and possible water shortages.

Despite the minimal impacts on domestic production, some export markets initially did close due to the PCN outbreak. However, the majority of Idaho potato exports are in the form of processed products, not fresh potatoes. Idaho's exports of fresh potatoes averaged 2 percent of total exports of potato and potato products from 2001 to 2006. As noted, since the Federal Order quarantining certain areas of Idaho was implemented on August 28, 2006, major foreign markets for fresh potatoes from Idaho have reopened, including Canada and Mexico. Since these two countries account for approximately 90 percent of Idaho fresh exports, the impact of the rule on fresh potato exports is likely to be very small.

Producers whose fields are infested and who wish to remove those fields from quarantine may choose either not to plant any host crop, including potatoes, tomatoes, eggplants, peppers, or tomatillos, for 30 years or to engage in the APHIS eradication program. Producers may plant non-host crops on the quarantined acreage. According to APHIS field personnel, prior to the implementation of the Federal Order, producers in the three affected counties historically planted potatoes in a 2-year rotation with grain. If, because of the rule, a producer chooses to plant alternative crops entirely, it would likely be a continuous grain rotation or a rotation of grain and hay. In Bingham County, the harvested acreage of potatoes trails that of wheat and alfalfa hay. Producers in this county also grow barley. Data for Bonneville County show significant wheat and barley acreage, as well as acreage devoted to hay production. Jefferson County harvests a significant acreage of hay, with approximately equivalent acreage devoted to barley, wheat, and potatoes, combined. Based on historical production in the three counties (tables 3, 4, and 5) and farmers' options, it is likely that farmers subject to the quarantine will choose to plant non-host crops rather than forgo revenue that could be generated from the land under quarantine. The planting decision will be a function of market prices, input costs, and possibly Government payments for commodities classified as program crops. Farmers may choose to plant one commodity or multiple commodities depending on these factors. Given alternative production opportunities, the extent to which producers in the quarantined area will be negatively affected by the rule cannot be clearly defined. However, given that the crops mentioned above are viable substitutes in production for the ineligible host crops, producers will likely not face substantial impacts due to the quarantine regulations.

[5] This estimate is based on historical yields from Bingham, Bonneville, and Jefferson Counties, ID, and the estimated number of acres quarantined under the rule. An average of the yields from 2001 to 2006 excluding the high and low yields from the period is multiplied by the number of acres quarantined to estimate the level of production in each county for the quarantine area. The production numbers for the three counties are then summed to obtain the upper-bound estimate reported above.

TABLE 3—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN BINGHAM COUNTY, ID, 2001–2006

	Wheat	Barley	Hay	Potatoes
	Harvested Acres			
2001	117,500	21,300	54,300	55,200
2002	116,500	22,500	67,000	59,700
2003	109,000	28,700	66,900	60,300
2004	117,500	26,900	64,500	56,000
2005	122,200	24,300	61,600	52,200
2006	114,500	19,100	72,000	55,800
	Production (1,000 Pounds)			
2001	660,000	95,184	472,800	1,833,000
2002	682,200	100,224	568,400	2,000,000
2003	680,400	123,360	512,000	1,959,800
2004	795,600	133,440	514,000	2,074,000
2005	807,960	121,152	583,800	1,808,000
2006	736,500	84,960	705,600	2,020,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops,* January 2008.

TABLE 4—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN BONNEVILLE COUNTY, ID, 2001–2006

	Wheat	Barley	Hay	Potatoes
	Harvested Acres			
2001	57,400	60,100	34,500	28,700
2002	52,600	68,400	34,700	31,200
2003	46,300	71,300	38,800	29,800
2004	51,000	66,500	37,400	29,900
2005	46,500	69,000	35,600	26,600
2006	52,700	59,200	39,000	29,200
	Production (1,000 Pounds)			
2001	192,000	235,680	242,000	813,600
2002	178,800	280,320	256,800	920,400
2003	145,200	210,240	248,000	853,700
2004	214,800	315,456	254,800	907,000
2005	183,900	331,392	263,200	825,000
2006	203,100	264,000	311,000	993,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops,* January 2008.

TABLE 5—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN JEFFERSON COUNTY, ID, 2001–2006

	Wheat	Barley	Hay	Potatoes
	Harvested Acres			
2001	30,900	41,600	91,500	29,600
2002	27,200	42,700	97,500	36,700
2003	22,700	51,900	101,700	32,000
2004	33,300	56,300	98,000	24,200
2005	31,300	56,700	95,300	24,300
2006	32,800	44,600	98,600	23,400
	Production (1,000 Pounds)			
2001	152,100	187,776	835,600	1,004,700
2002	143,160	198,960	913,200	1,302,900
2003	123,900	234,576	926,400	1,064,500
2004	195,600	288,672	911,400	920,000
2005	188,880	276,192	910,000	936,000
2006	197,880	207,840	997,000	910,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops,* January 2008.

Expected Benefits of the Rule

Impacts of the rule on the domestic market are likely to be small, and the benefits of the quarantine in preventing the spread of PCN are expected to outweigh the costs. Widespread dissemination of the pest would likely translate into significant economic losses for producers and processors. Left

unchecked, PCN attacks the roots of the potato plant, leaching nutrients from the plant itself, which in turn reduces yields, leading to significant declines in production. Additionally, import bans implemented by U.S. trading partners would likely be more widespread and take longer to remove. Furthermore, producers have the option to plant non-host crops and keep land in production rather than allowing it to remain fallow.

Cost-Benefit Summary

Benefits of the regulation in terms of preventing the spread of PCN are expected to outweigh direct costs to affected producers. The rule states that an infested field will be removed from quarantine when a protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine has been completed and the field has been found to be free of PCN. One means to ensure that a field is free of PCN is to avoid planting host crops in it for at least 30 years; PCN can survive for up to 30 years in a dormant state without any host crops on which to feed. PPQ is also developing a protocol for eradicating PCN in infested fields. As noted earlier, PPQ will solicit input from affected producers, State departments of agriculture, researchers, and the general public to develop the protocol and provide updates on its progress. When the protocol is finalized, APHIS will make it available to the public and will pay for its implementation, subject to the availability of funds. Regardless of the eradication means used to ensure that a field is free from PCN, however, APHIS will require the protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine to confirm that freedom. Until eradication of PCN in a field is achieved, producers can minimize their losses resulting from the regulation by planting alternative non-host crops. A number of non-host crops have been identified as viable substitutes for potatoes in the quarantined area.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Section 604 of the Act requires agencies to prepare and make available to the public a final regulatory flexibility analysis (FRFA) describing any changes made to the rule as a result of comments received and the steps the agency has taken to minimize any significant economic impacts on small entities. Section 604(a) of the Act specifies the content of a FRFA. In this section, we address these FRFA requirements.

Objectives and Need for the Rule

The objective of the interim rule and this final rule is to prevent the spread of PCN by quarantining infested or associated fields. A widespread outbreak of PCN in Idaho could have devastating consequences for the U.S. potato industry. APHIS believes the implementation of the quarantine and movement restrictions will prevent the pest from spreading to other areas in Idaho and the rest of the United States. This will benefit a majority of potato producers by safeguarding their fields from infestation.

Summary of Significant Issues Raised During Comment Period

One producer affected by the quarantine commented that following the protocols established in this rule would be logistically difficult and would impose an economic burden on his operation. In addition, the producer felt the rule limited his ability to make planting decisions and interfered with the potential sale of land.

The issues raised in this comment appear to be an isolated incident where the rule may have a significant impact on one operation. However, the benefits of the rule, in terms of preventing the spread of PCN to other areas, outweigh the costs described by this producer. APHIS has not made any changes in this final rule based on this comment.

Description and Estimated Number of Small Entities Regulated

The final rule will have potential implications for domestic producers of potatoes, as well as potato processing firms. Additionally, producers of other host crops and non-host crops also regulated under the rule may be impacted. It is likely that the entities affected will be small according to Small Business Administration (SBA) guidelines. A discussion of these impacts follows.

Affected U.S. potato producers are expected to be small entities, based on 2002 Census of Agriculture data and SBA guidelines for entities in the farm category Potato Farming, Field, and Seed Potato Production (NAICS 111211). The SBA classifies producers in this farm category with total annual sales of not more than $750,000 as small entities. APHIS does not have information on the size distribution of the relevant producers, but according to 2002 Agriculture Census data, there were a total of 25,017 farms in Idaho in 2002.[6] Of this number, approximately 95 percent had annual sales in 2002 of less than $500,000, which is well below the SBA's small entity threshold of $750,000 for commodity farms.[7] This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 121 potato farms located in Bingham County, the 47 potato farms located in Bonneville County, and the 32 potato farms located in Jefferson County that may be affected by this rule also qualify as small. Potato packing firms classified as NAICS 115114 (Postharvest Crop Activities (except Cotton Ginning)) are considered small if they have not more than $6.5 million in total annual sales. According to the County Business Patterns report for Idaho published by the Census Bureau, there were 22 post-harvest establishments in Idaho in 2005, the latest date for which numbers were published. Of these, one was located in Bingham County and one was located in Bonneville County; there were no establishments reported for Jefferson County. This document does not report the value of total annual sales or the distribution of annual sales for firms in this category. Thus, it is not known what percentage of potato packing firms are small.

In addition to potato farms, producers engaged in growing other host crops, including tomatoes, eggplants, peppers, and tomatillos, and non-host crops that may be moved with soil attached, including garden and dry beans and peas, are subject to regulation and expected to be small entities according to SBA standards. The crops listed above are all classified within NAICS 111219 (Other Vegetable (except Potato) and Melon Farming). Firms with total annual sales of less than $750,000 are considered small entities. As discussed earlier, APHIS does not have data at a sufficiently detailed level to determine which farms in these categories are considered small. However, it is reasonable to assume that if 95 percent of total Idaho farms are small by SBA guidelines, a majority of the farms classified under NAICS 111219 can also be considered small. Although it is assumed that most if not all vegetable (except potato) farms in Bingham, Bonneville, and Jefferson Counties are small, NASS does not report any of these types of farms in the affected counties, nor is there any production data for these crops in any of the affected counties. Therefore, there is likely to be at most a very small impact

[6] This number represents the total number of farms in Idaho, including farms producing potatoes.

[7] Source: SBA and *2002 Census of Agriculture.*

as a result of regulations concerning other host crops and non-host crops moved with soil attached.

In the case of potato processors, establishments classified within NAICS 311411 (Frozen Fruit, Juice, and Vegetable Manufacturing), NAICS 311423 (Dried and Dehydrated Food Manufacturing), NAICS 311919 (Other Snack Food Manufacturing), and NAICS 311991 (Perishable Prepared Food Manufacturing) with not more than 500 employees are considered small entities by SBA standards. Data from the Economic Census show that in 2002, there were a total of 235 frozen fruit, juice, and vegetable manufacturing establishments, including firms manufacturing frozen french fries, in the United States. Of these firms, 215, or 92 percent, employed fewer than 500 employees and were, therefore, considered small entities by SBA standards. There were 181 dried and dehydrated food manufacturing establishments in 2002. Included in this category are manufacturers of dehydrated potato products. There were 176 firms with less than 500 employees in this category, accounting for 97 percent of all firms. For other snack food manufacturing establishments, which includes firms manufacturing potato chips, there were 338 establishments in the United States in 2002. Of these establishments, 322 (over 95 percent) had fewer than 500 employees. Firms manufacturing peeled or cut potatoes, included in the perishable prepared food manufacturing category, numbered 610 in 2002. Of these, 603 (99 percent) had no more than 500 employees.[8] Based on this information, it is reasonable to conclude that domestic producers and potato processors that may be affected by the rule are predominantly small entities.

Based on the data available to APHIS, benefits to producers outside the regulated area of curtailing the spread of the pest will likely outweigh the costs borne by affected producers. Major importers of fresh potatoes from Idaho, including Canada and Mexico, have lifted import prohibitions they imposed following the PCN discoveries and now allow imports of fresh potatoes from Idaho subject to certain restrictions, including that the potatoes do not originate from the quarantined area. Since the United States exports many more potatoes in the processed form, either as frozen french fries or potato chips, any loss of fresh markets is not likely to have significant economic impacts on the U.S. potato industry. Additionally, the domestic market would likely be able to absorb any excess supply of fresh potatoes resulting from the import bans imposed by other countries.

Description and Estimate of Compliance Requirements

Inspection services required to comply with regulations are provided to producers at no cost. Certificates and limited permits required to move regulated articles out of a quarantined area may be obtained without cost from an inspector or person operating under a compliance agreement.

Description of Steps Taken To Minimize Significant Economic Impacts on Small Entities

APHIS has concluded that there are no alternatives to the rule that would satisfactorily accomplish the stated objectives and minimize any significant impacts on small entities. The rule will protect potato producers outside the regulated area from the crop damage and losses that would be incurred if the pale cyst nematode were allowed to spread.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, the interim rule amending 7 CFR parts 301 and 305 that was published at 72 FR 51975–51988 on September 12, 2007, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Subpart—Pale Cyst Nematode

■ 2. The heading of the subpart consisting of §§ 301.86 through 301.86–9 is revised to read as set forth above.

■ 3. Section 301.86–1 is amended as follows:

■ a. By removing the definition for ''potato cyst nematode''.

■ b. By adding, in alphabetical order, a definition of ''pale cyst nematode'' to read as set forth below.

■ c. In the definitions of ''associated field'', ''certificate'', ''infestation (infested)'', and ''infested field'', by removing the word ''potato'' and adding the word ''pale'' in its place each time it occurs.

§ 301.86–1 Definitions.

Pale cyst nematode. The pale cyst nematode (*Globodera pallida*), in any stage of development.

■ 4. Section 301.86–2 is amended as follows:

■ a. By revising paragraph (a), including footnote 2, to read as set forth below.

■ b. In paragraphs (b) and (i), by removing the word ''potato'' and adding the word ''pale'' in its place each time it occurs.

§ 301.86–2 Regulated articles.

(a) Pale cyst nematodes.[2]

§ 301.86–3 [Amended]

■ 5. Section 301.86–3 is amended as follows:

■ a. In paragraphs (a), (b)(2), (c), and (d)(2), by removing the words ''potato cyst'' and adding the words ''pale cyst'' in their place each time they occur.

■ b. In paragraph (d)(1), by removing the words ''3-year biosurvey protocol approved by APHIS'' and adding the words ''protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine'' in their place; and by removing the word ''PCN'' and adding the words ''pale cyst nematode'' in its place.

■ c. In paragraph (d)(2), by removing the word ''survey'' and by adding the words ''of associated fields'' after the word ''removal''.

■ 6. Section 301.86–5 is amended as follows:

■ a. In paragraphs (a)(1), (a)(2), (a)(4), (a)(5), and (b), by removing the word ''potato'' and adding the word ''pale'' in its place each time it occurs.

■ b. By revising paragraph (a)(3) to read as set forth below.

§ 301.86–5 Issuance and cancellation of certificates and limited permits.

(a) * * *

(3) *Certification requirements for potatoes for consumption, root crops for consumption, garden or dry beans, and peas.* An inspector may issue a certificate for the movement of potatoes intended for consumption, root crops intended for consumption, garden or dry beans, or peas from the quarantined area only if the field in which the potatoes, root crops, garden or dry beans, or peas were grown meets the following requirements:

(i) The field has been surveyed by an inspector for pale cyst nematode at least

[8] Source: SBA and *2002 Economic Census.*

[2] Permit and other requirements for the interstate movement of pale cyst nematodes are contained in part 330 of this chapter.

once in the last 3 years and prior to the planting of the potatoes or root crops;

(ii) Pale cyst nematode has not been found in the field; and

(iii) No more than one pale cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the field in the last 3 years.

Done in Washington, DC, this 23rd day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–9724 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 090415662–9687–01]

RIN 0694–AE61

Additions and Revisions to the List of Approved End-Users and Respective Eligible Items for the People's Republic of China (PRC) Under Authorization Validated End-User (VEU)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to add a name to the list of end-users for the People's Republic of China (PRC) approved to receive exports, reexports and transfers of certain items under Authorization Validated End-User (VEU). This rule also amends the EAR to add and revise eligible items and destinations for existing VEU authorizations. Specifically, this rule amends the EAR to authorize one additional VEU and identify its respective eligible items for export and reexport to the PRC. This rule also amends the authorizations of two pre-existing VEUs in the PRC. Finally, this rule makes a modification to the listed name of an existing VEU in the PRC. In a final rule published in the **Federal Register** on June 19, 2007, BIS revised and clarified U.S. export control policy for the PRC, establishing Authorization VEU and identifying the PRC as the initial eligible destination. In a final rule published in the **Federal Register** on October 19, 2007, BIS published the names of the first five validated end-users in the PRC that were approved to receive certain specified items under Authorization VEU.

DATES: This rule is effective April 29, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE61 (VEUPRCADE), by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include ''RIN 0694–AE61 (VEUPRCADE)'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE61 (VEUPRCADE).

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov* or by fax to (202) 395–7285. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.,* RIN 0694–AE61 (VEUPRCADE))—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chairman, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230; by telephone (202) 482–3811, or by e-mail to *kniesv@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User (VEU): Additions and Modifications to the List of Approved End-Users, Eligible Items and Destinations

Consistent with U.S. Government policy to facilitate trade for civilian end-users in the PRC, BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646) by creating a new authorization for ''validated end-users'' (VEUs) located in eligible destinations to which eligible items (commodities, software and technology, except those controlled for missile technology or crime control reasons) may be exported, reexported or transferred under a general authorization instead of a license, in conformance with Section 748.15 of the EAR.

Authorization VEU is a mechanism to facilitate increased high-technology exports to companies in the PRC and India that have a record of using such items responsibly. VEUs may obtain eligible items that are on the Commerce Control List without having to wait for their suppliers to obtain export licenses from BIS. A wide range of items are eligible for shipment under Authorization VEU. In addition to U.S. exporters, Authorization VEU may be used by foreign reexporters, and does not have an expiration date.

Additional VEUs in the PRC and Their Respective ''Eligible Items (By ECCN)'' and ''Eligible Destinations''

This final rule amends Supplement No. 7 to Part 748 of the EAR to identify an additional company with eligible facilities in the PRC as a VEU and to identify the items that may be exported, reexported or transferred to it under Authorization VEU. This new entry is for Aviza Technology China. It lists Export Control Classification Numbers (ECCNs) 2B230, 3B001.c.1.a and 3B001.e under ''Eligible Items (By ECCN),'' and includes the following facility names and addresses under ''Eligible Destination:''

Aviza Technology China, Room B–1501, No. 188, Tomson Center, Zhang Yang Road, Shanghai, China 200122.

Aviza Technology China, Room 612, International Business Center, No. 18, Hong Da North Road, Beijing Economics and Technology Development Area, Beijing, China.

Beijing Bonded: CIES, Electronics Building, A23, Fuxing Road, Beijing, China 100036.

Shanghai Bonded: SLC, Shanghai Industrial-Wailianfa International Logistics Co., Ltd., Address: 13F Waigaoqiao Building, 889 Yang Gao Road(N), Pudong, Shanghai, China.

HMG Logistics (Chengdu) Co., Ltd., Floor 1, No. 5 Standard Warehouse, EPZ (West Area), Chengdu, China 611731.

Modifications to Existing VEU Authorizations

This final rule also amends Supplement No. 7 to Part 748 of the EAR to implement requests received from existing VEUs for modifications in their authorizations to include additional eligible items and additional destinations, and to list a change of name for an existing VEU. Specifically, this rule makes the following amendments to Supplement No. 7 to Part 748:

(1) The authorization for Applied Materials China, Ltd. now also includes ECCN 2B006.b.1.a under ''Eligible Items (By ECCN)'' and the following facility name and address under ''Eligible Destination:'' Applied Materials (Xi'an Ltd.), No. 28 Xin Xi Ave., Xi'an High Tech Park, Export Processing Zone, Xi'an Shanxi, China 710075.

(2) Based upon notification from existing VEU BHA Aerocomposite Parts Co., Ltd. that the company's name has legally been changed, the name ''BHA Aerocomposite Parts Co., Ltd.'' shown in Supplement No. 7 to Part 748 of the EAR prior to this rule has been changed to ''Boeing Tianjin Composites Co. Ltd.,'' under both the ''Validated End-User'' and ''Eligible Destination'' columns. Further, the authorization for Boeing Tianjin Composites Co. Ltd., formerly BHA Aerocomposite Parts Co., Ltd., now also includes ECCN 2B001.b.2 (limited to machine tools with accuracies no better than (*i.e.,* less than) 13 microns), and replaces ECCN 2B001.e.1.a. with 2B001.e. under ''Eligible Items (By ECCN).'' ECCN 2B001.e. encompasses all parameters of its subparagraphs.

With the publication of this final rule, the total number of VEUs in the PRC is six and the total number of eligible facilities is twenty. The VEUs listed in Supplement No. 7 to Part 748 were reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to Part 748 of the EAR.

Approving this new end-user as a VEU is expected to further facilitate exports to civil end-users in the PRC. Approval of this company also represents a significant savings of time for suppliers and end-users. Authorization VEU will eliminate the burden on exporters and reexporters of preparing license applications and on BIS for processing such applications, as exports and reexports will be made under general authorization instead of under license. This savings will enable exporters and reexporters to supply VEUs much more quickly, thus enhancing the competitiveness of the exporters, reexporters, and end-users in the PRC.

To ensure appropriate facilitation of exports and reexports, on-site reviews of the VEUs may be warranted pursuant to paragraph 748.15(a)(2) and Section 7(iv) of Supplement No. 8 to Part 748 of the EAR. If such reviews are warranted, BIS will inform the PRC Ministry of Commerce.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of July 23, 2008 (73 FR 43603, July 25, 2008), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

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

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves collections previously approved by the OMB under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization Validated End-User, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act and Office of Management and Budget control number 00694–0088 are not expected to increase significantly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 748 of the Export Administrative Regulations (15 CFR Parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 2. Supplement No. 7 to Part 748 is amended by:

■ a. Revising the entry for ''Applied Materials China, Ltd.'';

■ b. Adding, in alphabetical order, an entry for ''Aviza Technology China''; and

■ c. Revising the entry for ''BHA Aerocomposite Parts Co., Ltd.''.

The revisions and addition read as follows:

SUPPLEMENT NO. 7 T PART 748—AUTHORIZATION VALIDATED END-USER (VEU); LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER AND ELIGIBLE DESTINATIONS

Validated end-user	Eligible items (by ECCN)	Eligible destination
Applied Materials China, Ltd.	2B006.b.1.a; 2B230; 2B350.g.3; 3B001.b.1; 3B001.c.2; 3B001.e; 3B001.f.3; 3C001; 3C002.	Applied Materials China, Ltd.—Shanghai Depot c/o Shanghai Applied Materials Technical Service Center, 368 Zhang Jiang Road, Pudong Zhangjiang Hi-Tech Park, Shanghai, China 201203. Applied Materials China, Ltd.—Beijing Depot c/o Beijing Applied Materials Technical Service Center Bldg. 9, Area A, No. 1 North Di Sheng Street, BDA Beijing, China 100176. Applied Materials China, Ltd.—Wuxi Depot c/o Sinotrans Jiangsu Group Fuchang Co. J5 A–B Wuxi Export Processing Zone, 287 Gaolang Road, Wuxi New District, Wuxi Jiangsu China 214028. Applied Materials (Xi'an Ltd.) No. 28 Xin Xi Ave., Xi'an High Tech Park Export Processing Zone, Xi'an Shanxi, China 710075.
Aviza Technology China	2B230; 3B001.c.1.a; 3B001.e	Aviza Technology China, Room B–1501, No. 188, Tomson Center, Zhang Yang Road, Shanghai, China 200122. Aviza Technology China, Room 612, International Business Center, No. 18, Hong Da North Road, Beijing Economics and Technology Development Area, Beijing, China. Beijing Bonded: CIES, Electronics Building, A23, Fuxing Road, Beijing, China 100036. Shanghai Bonded: SLC, Shanghai Industrial—Wailianfa International Logistics Co., Ltd., Address: 13F Waigaoqiao Building 889 Yang Gao Road (N), Pudong, Shanghai, China. HMG Logistics (Chengdu) Co., Ltd., Floor 1, No. 5 Standard Warehouse, EPZ (West Area), Chengdu, China 611731.
Boeing Tianjin Composites Co. Ltd.	1A002.a; 1B001.f; 1C010.b; 1C010.e; 1D001 (limited to ''software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 1B001.f) 1E001 (limited to ''technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by 1A002.a, 1B001.f, 1C010.b & .e, and 2B001.a); 2B001.b.2 (limited to machine tools with accuracies no better than (i.e., less than) 13 microns); 2B001.e; 2D001 (limited to ''software,'' other than that controlled by 2D002, specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 2B001.b.2 and 2B001.e); 2D002 (limited to ''software'' for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a ''numerical control'' unit, capable of coordinating simultaneously more than 4 axes for ''contouring control'' controlled by 2B001.b.2 and 2B001.e).	Boeing Tianjin Composites Co. Ltd., No. 4–388 Heibei Road, Tanggu Tianjin, China.
* * * * *		* *

Dated: April 24, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–9817 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. FDA–1977–N–0013] (formerly Docket No. 1977N–0094L)

RIN 0910–AF36

Organ-Specific Warnings; Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to require important new organ-specific warnings and related labeling for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic (IAAA) drug products. The new labeling informs consumers about the risk of liver injury when using acetaminophen and the risk of stomach bleeding when using nonsteroidal anti-inflammatory drugs (NSAIDS). The new labeling is required for all OTC IAAA drug products whether marketed under an OTC drug monograph or an approved new drug application (NDA).

DATES: *Effective Date*: This final rule is effective April 29, 2010.

Compliance Date: The compliance date for all products subject to this final rule, including products with annual sales less than $25,000, is April 29, 2010.

FOR FURTHER INFORMATION CONTACT: Arlene Solbeck, Center for Drug Evaluation and Research , Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, MS 5411, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

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Glossary

(The definitions of terms used throughout this document are included in this glossary because these terms are likely to be unfamiliar to many readers.)

AERS: FDA's Adverse Event Reporting System; a database of adverse events reported to FDA for drugs and medical devices

Acute Liver Failure: Severe liver injury without a history of chronic liver disease that is associated with coagulopathy and encephalopathy

ALT: Alanine aminotransferase; a liver enzyme that is often tested to evaluate individuals for liver disease

AST: Aspartate aminotransferase; a liver enzyme that is often tested to evaluate individuals for liver disease

CFR: The Code of Federal Regulations; list of regulations created by the executive departments and agencies of the Federal Government

GRAS/E: Generally recognized as safe and effective

GSH: Glutathione; tripeptide (protein fragment) necessary for acetaminophen metabolism to avoid accumulation of the toxic metabolite N-acetyl-p-benzo-quinone imine (NAPQI)

HIV: Human immunodeficiency virus; a retrovirus that can lead to acquired immunodeficiency syndrome (AIDS)

IAAA: Internal analgesic, antipyretic, and antirheumatic drug products

INR: International normalized ratio; measurement that evaluates the ability of blood to clot

IU/L: International units per liter

NAQPI: N-acetyl-p-benzo-quinone imine; a harmful by-product of acetaminophen metabolism that can cause severe liver injury

NDA: New Drug Application; application needed for approval of a new drug by the FDA prior U.S. marketing

NSAIDs: Nonsteroidal anti-inflammatory drugs (such as aspirin and ibuprofen)

PDP: Principal display panel; part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

I. Overview of This Document

This document addresses comments and data in the 19 submissions that we received in response to the December 26, 2006 (proposed rule) (71 FR 77314), which is described in section II of this document. The submissions comment on the labeling that we proposed for 21 CFR parts 201 and 343 as well as other issues where specific comments were sought in the 2006 proposed rule. The proposed rule asked for comments on issues related to the following:

- The safe and effective daily dose of acetaminophen
- Daily dose recommendation for alcohol abusers
- Combination products of acetaminophen combined with methionine or acetylcysteine
- Package size and configuration limitations with acetaminophen products
- Label warnings for individuals with Human Immunodeficiency Virus (HIV)
- Drug interactions between acetaminophen and warfarin

This document states our final conclusions on the labeling requirements in 21 CFR part 201 and requires that manufacturers include this labeling on their OTC IAAA drug products by the effective date identified in this document (see **DATES**). We are currently evaluating data and information regarding the remaining issues discussed in the proposed rule, some of which include the following:

- Safe daily dose for acetaminophen (healthy users)
- Safe daily dose for acetaminophen users with chronic liver disease
- Safe daily dose for acetaminophen with alcohol use
- Appropriate dosage for acetaminophen efficacy
- Package size restrictions for OTC IAAA drug products
- Pediatric dosing for OTC IAAA drug products
- Various warnings for OTC IAAA drug products that were proposed in 21 CFR part 343 but not part 21 CFR part 201
- Acetaminophen-narcotic combinations
- Combinations of acetaminophen and N-acetylcysteine (NAC) or methionine
- Prescription labeling for OTC IAAA drug products

• Education on safe use of OTC IAAA drug products

We believe these are very important issues and will address them in separate **Federal Register** notices that address the OTC IAAA drug monograph (21 CFR part 343). We are not addressing them in this document because we believe there is a major public health benefit to having the labeling in 21 CFR part 201 appear on products as soon as possible. This new labeling in 21 CFR part 201 will advise consumers about serious risks associated with using these products. By not addressing other issues in this document that we are still evaluating, we are able to more quickly implement the labeling in 21 CFR part 201.

In this document, we are requiring the labeling changes proposed in the 2006 proposed rule (see Table 1). In response to the submissions, we are also requiring the following labeling that was not specifically proposed in the 2006 proposed rule but was suggested by the submissions received:

• Liver warning and stomach bleeding warnings required on immediate container labels in addition to the carton or outer container for all OTC IAAA drug products (21 CFR 201.326(a)(1)(iii)(A) and 21 CFR 201.326(a)(2)(iii))

• Revised acetaminophen concomitant use warning (21 CFR 201.326(a)(1)(iii)(B))

• New warning about taking warfarin and acetaminophen at the same time (21 CFR 201.326(a)(1)(iii)(D))

• Revised directions statement for all OTC IAAA drug products labeling for children under 12 years of age (21 CFR 201.326(a)(1)(iv)(B))

• Revised introductory sentence for stomach bleeding warning (21 CFR 201.326(a)(2)).

In addition, we are allowing voluntary highlighting of information under the ''Active Ingredient'' and ''Purpose'' headings in Drug Facts for all OTC IAAA drug products.

It should be noted that the 2006 proposed rule discussed added labeling requirements in 21 CFR 201.325. However, in December 2007, we added required labeling for OTC vaginal contraceptives in 21 CFR 201.325 (72 FR 71769). Therefore, in this document, required labeling for OTC IAAA drug products is be added to 21 CFR 201.326.

II. Rulemaking History for OTC IAAA Drug Products

The rulemaking history in this document focuses on rulemakings that discuss labeling related to liver injury caused by acetaminophen and/or related to stomach bleeding caused by NSAIDs.

A. Rulemakings Published Before the 2006 Proposed Rule

In 1977, we published the report from the Advisory Review Panel on OTC IAAA Drug Products (the Panel) (42 FR 35346). In its report, the Panel recommended the following warnings related to stomach bleeding and liver injury, respectively:

• *For products containing aspirin*:

Caution: Do not take this product if you have stomach distress, ulcers or bleeding problems, except under the advice and supervision of a physician (42 FR 35346 at 35493)

• *For products containing acetaminophen*:

Do not exceed the recommended dosage because severe liver damage may occur (42 FR 35346 at 35494)

Based on the Panel's report, we published a 1988 proposed rule, referred to as a tentative final monograph (53 FR 46204). In the 1988 proposed rule, we tentatively adopted the Panel's recommended aspirin warning with a slight modification. We decided not to adopt the liver warning for acetaminophen as recommended by the Panel because we concluded that warnings need not include information on the specific injury to organs of the body caused by an acute overdose of a drug (53 FR 46204 at 46214). However, we proposed a modified warning because we believed consumers should know that prompt medical attention is essential if an acetaminophen overdose occurs (53 FR 46204 at 46215). In the proposed rule, we included the following warnings related to stomach bleeding and liver injury, respectively (53 FR 46204 at 46256):

• *For products containing aspirin*:

Do not take this product if you have stomach problems (such as heartburn, upset stomach, or stomach pain) that persist or recur, or if you have ulcers or bleeding problems, unless directed by a doctor (proposed 21 CFR 343 (c)(1)(v)(B)).

• *For products containing acetaminophen*:

Keep out of reach of children. In case of overdose, get medical help or contact a Poison Control Center right away. Prompt medical attention is critical for adults as well as for children even if you do not notice any signs or symptoms (proposed 21 CFR 343.50(c)(1)(iii)).

This warning for products containing acetaminophen includes the general overdose warnings in 330.1(g), as required in proposed 21 CFR 343.50(c)(1)(iii).

In 1998, we published two final rules that (1) provide labeling information to health professionals (i.e., labeling that is not available on OTC IAAA drug products) that includes cardiovascular and rheumatologic indications for aspirin (63 FR 56802), and (2) require an alcohol warning for all IAAA drug products in 21 CFR 201.322 (63 FR 56789) as follows:

• *For products containing acetaminophen*:

Alcohol Warning: If you consume 3 or more alcoholic drinks every day, ask a doctor whether you should take acetaminophen or other pain relievers/fever reducers. Acetaminophen may cause liver damage.

• *For products containing NSAIDs*:

Alcohol Warning: If you consume 3 or more alcoholic drinks every day, ask your doctor whether you should take (name of active ingredient) or other pain relievers/fever reducers. (Name of active ingredient) may cause stomach bleeding.

In 2002, we issued a proposed rule to include ibuprofen as a GRASE active ingredient in the monograph for OTC IAAA drug products (67 FR 54139). The proposed rule includes additional warnings relating to stomach problems, ulcers, bleeding problems, high blood pressure, heart or kidney disease, and use of diuretics. The warnings also include information specific to consumers over 65 years of age.

B. 2006 Proposed Rule

On December 26, 2006, we published a proposed rule regarding IAAA drug products (71 FR 77314). In the proposed rule, we proposed new organ-specific warnings and related labeling for all OTC IAAA drug products. The proposed labeling was designed to provide consumers with information concerning liver injury caused by acetaminophen and stomach bleeding caused by NSAIDs. We stated in the proposed rule that, when labeled appropriately and used as directed, OTC IAAA drug products are safe and effective drug products that benefit tens of millions of consumers every year and that these products should continue to be available to consumers in the OTC setting (71 FR 77314 at 77315). However, we also stated that new labeling is necessary to ensure consumers know these products can cause liver injury and stomach bleeding (71 FR 77314 at 77331).

1. Scientific Basis for 2006 Proposed Rule

As explained in the proposed rule, after reviewing a variety of data demonstrating a risk for these two adverse drug effects, we are concerned about liver injury and stomach bleeding associated with IAAA drug products. For acetaminophen, we analyzed data from national databases including emergency departments, hospital discharges, mortality data, poison control centers, and spontaneous post-marketing drug adverse event reports

reported to us through our AERS database from 1990–2001. In addition, we considered results of acute liver failure studies in the United States that were published by the U.S. Acute Liver Failure Study Group as well as case series from the University of Pennsylvania Hospital. We concluded from this data that unintentional overuse of acetaminophen is associated with a large number of emergency department and hospital admissions and is related to an estimated 100 deaths each year. For NSAIDs, we primarily considered post-marketing case reports of stomach bleeding and kidney injury collected by AERS between 1998 and 2001. We concluded from this data that serious stomach bleeding events can occur when NSAIDs are used according to the warnings and directions on the OTC label.

2. 2006 Proposed Rule Labeling

The proposed labeling was supported by our interpretation of the data and was consistent with recommendations that we received from an FDA Advisory Committee that met in 2002 to discuss OTC IAAA drug products. The committee unanimously agreed that the evidence of risk associated with unintentional overuse warrants a liver injury warning for OTC drug products containing acetaminophen (71 FR 77314 at 77323 to 77324) and that for OTC NSAIDs data support a stomach bleeding warning (71 FR 77314 at 77327). The committee recommended that the terms ''acetaminophen'' (71 FR 77314 at 77323) and ''NSAIDs'' (71 FR 77314 at 77328) appear prominently on the front panel or principal display panel (PDP) of product labeling (so consumers are aware that acetaminophen or NSAIDs are present in the products they are using to prevent unintentional overdose). The committee also recommended an alcohol warning separate from the liver injury and stomach bleeding warnings, but we choose to combine the warnings (71 FR 77314 at 77331). We discuss this decision further in section IV.A.5. of this document. The 2006 proposed rule also included additional warnings for these products (see Table 1).

TABLE 1—OVERVIEW OF PROPOSED LABELING CHANGES FOR OTC IAAA DRUG PRODUCTS IN 2006 PROPOSED RULE

Type of Product	Proposed Labeling Requirements
Acetaminophen products	• Warning to include information on severe liver injury • Ingredient name (i.e., ''Acetaminophen'') highlighted or in bold type and in a prominent print size on the PDP • Statement ''See new warnings information'' highlighted or in bold type and in a prominent print size on the PDP for 12 months following publication of this rule • Alcohol warning as part of liver warning (instead of separate alcohol warning previously required in 21 CFR 201.322)
NSAID products	• Warning to include information on severe stomach bleeding • Ingredient name (e.g., ''Aspirin'') highlighted or in bold type on the PDP • Term ''(NSAID)'' highlighted or in bold type and in a prominent print size on the PDP as part of the established name of the drug or after the general pharmacological (principal intended) action of the NSAID ingredient • Statement ''See new warnings information'' highlighted or in bold type and in a prominent print size on the PDP for 12 months following publication of this rule • Alcohol warning as part of stomach bleeding warning (instead of separate alcohol warning previously required in 21 CFR 201.322)
Combination products containing acetaminophen or an NSAID plus a non-analgesic ingredient	• All ingredient names (e.g., ''Acetaminophen'' or ''Aspirin'') highlighted or in bold type and in a prominent print size and the names of the other active ingredients on the PDP • Term ''(NSAID)'' highlighted or in bold type and in a prominent print size on the PDP as part of the established name of the drug or after the general pharmacological (principal intended) action of the NSAID ingredient if the product contains an NSAID ingredient

III. Discussion of Submissions Regarding Proposed Labeling for All OTC Internal Analgesics

A. PDP

1. General Issues

Some of the submissions concern labeling that appears on the PDP of all OTC IAAA drug products (i.e., acetaminophen and NSAIDs). A manufacturer of OTC acetaminophen products (Ref. 1) agrees that the proposed PDP labeling is beneficial to consumers. The manufacturer states that, prior to the 2006 proposed rule, it had voluntarily implemented labeling similar to the proposed labeling. Another submission (Ref. 2) argues that the proposed labeling may cause crowding on the PDP, making it difficult for consumers to read the label. The submission contends that to accommodate the proposed labeling, manufacturers may be forced to increase the size of their packages, which could have significant economic consequences for industry. A third submission (Ref. 3) questions the readability of the warnings on OTC NSAID products, arguing that the print size is too small. The submission suggests placing the warnings on the PDP in bold print to increase the readability of important warnings.

We are not revising the proposed PDP labeling in this document. We believe the proposed labeling, including highlighting the terms acetaminophen or NSAIDs on the PDP, is important to help ensure the safe and effective use of OTC IAAA drug products. We disagree that the required labeling will cause crowding on the PDP. If a PDP is crowded, manufacturers can reduce the font size of the trade name and promotional material to allow room for the labeling required in this document. Reducing the prominence of the trade name and promotional material will not decrease the safety or efficacy of OTC IAAA drug products. It is important that consumers be able to identify products that contain acetaminophen and NSAIDS. We believe that manufacturers should be able to include the name of the ingredient on the PDP as specified in the proposed rule without having to increase the package sizes. Because all manufacturers will be equally affected by these requirements, there is no marketing disadvantage to certain manufacturers, as argued by some submissions.

We disagree that the print size of the warnings on OTC IAAA drug products

is too small and that the warnings should appear on the PDP in bold print. OTC drug regulations (21 CFR 201.66(d)(2)) require that warnings on all OTC drug products appear in a standard Drug Facts format and specify minimum type sizes. We developed these regulations based, in part, on data concerning readability of different font sizes.

We believe the statement ''see new warnings'' that is required on the PDP (21 CFR 201.326(b)) and that refers consumers to the warnings in Drug Facts is adequate without including the actual warnings on the PDP. Including the warnings themselves would require a large amount of the available PDP space and would make the information on the PDP difficult to read because of crowding or could require larger package sizes.

2. Statement of Identity

Three submissions address the statement of identity required on the PDP. The first submission (Ref. 4) supports the proposed prominence of the statement of identity. The second submission (Ref. 2) proposes revising the statement of identity on OTC acetaminophen products from ''acetaminophen'' to ''contains acetaminophen.'' Likewise, the second submission proposes revising the statement of identity on OTC NSAID products from ''(name of the NSAID), NSAID'' to ''contains (name of NSAID), a pain medication.'' The second submission argues that consumers may be confused without this revision because the term ''acetaminophen'' identifies an active ingredient while the term ''NSAID'' describes a class of drugs.

The third submission (Ref. 5) argues that requiring the statement of identity in a type size at least one-quarter as large as the most prominent print is unnecessary and arbitrary. The submission contends that we do not have data to support this requirement. The submission suggests that the statement of identity should be as large as the ''Drug Facts'' title on the outside container, giving it adequate prominence without crowding the PDP or inhibiting brand competition. The submission argues that consumers should primarily refer to the Drug Facts box, rather than the PDP, for information concerning the safe and effective use of OTC drug products. The submission also requests that we require only the term ''NSAID'' to be highlighted on the PDP, rather than highlighting both ''NSAID'' and the active ingredient as proposed. The submission argues that this change would be consistent with a June 2005 letter that we sent to NDA holders for OTC NSAID products (Ref. 6).

We disagree with the two submissions arguing that the statement of identity requirements in the 2006 proposed rule should be revised. We do not believe it is necessary to require the statement of identity on the PDP to include ''contains'' before the active ingredient, as argued by one of the two submissions. The statement of identity without ''contains'' is consistent with the statement of identity required on all OTC drug products (21 CFR 201.61). We believe the name of the active ingredient followed by the pharmacological category is clear without adding the word ''contains.'' For example, the statement of identity for an OTC ibuprofen product—''ibuprofen (NSAID), pain reliever/fever reducer''—allows consumers to recognize the active ingredient and pharmacological action of the active ingredient. For this same reason, we do not believe addition of ''pain medication'' is necessary in the NSAID statement of identity.

The other submission discusses statement of identity requirements that are general requirements for all OTC drug products and are not specific to OTC IAAA products. We do not believe it is appropriate to address these requirements for all OTC drug products in this document, which is specific to OTC internal analgesics. If any parties would like us to revise the statement of identity requirements because of crowding or other concerns, we suggest they submit a citizen petition in accordance with 21 CFR 10.30. Such a petition could address the requirements for all OTC drug products.

We agree with the submission requesting that we require only the term ''NSAID'' to be highlighted on the PDP, rather than both the ingredient name and ''NSAID.'' This would be consistent with the June 2005 letter that we sent to NDA holders and would avoid the need for manufacturers to re-label products that otherwise comply with this rule. The purpose of highlighting ''NSAID'' is to prevent consumers from using multiple NSAID products at the same time. Highlighting only ''NSAID'' should achieve this intent. Therefore, we are revising the NSAID statement of identity in this document (21 CFR 201.326(a)(2)(i)) to require only highlighting of ''NSAID.''

3. Warning Flag

We received a submission (Ref. 5) concerning the proposed warning flag: ''See new warnings information'' (proposed 21 CFR 201.325(vi)(b)). The submission argues that the proposed type size (i.e., one-quarter as large as the most prominent print) is unnecessary and arbitrary. The submission contends that we have no data to support this requirement. The submission also suggests that we should not require the warning flag in type parallel to the package base because it is unnecessarily restrictive, arguing that 45 degrees is just as effective. The submission requests that we only require the warning flag for 6 or 9 months after the final rule publishes rather than for one year, as proposed. Alternatively, the submission requests that we allow exemptions after publication of the final rule if a product has already contained a ''new'' flag (i.e., a flag that states ''new'' and refers to a new formulation, new flavor, etc.). Finally, the submission suggests that we allow flexibility so that a product does not have to concurrently include a ''new'' flag and the proposed warning flag.

We disagree with the submission. We continue to believe that requiring the flag to be displayed in a standard format, parallel to the drug product package base and in a minimum size (at least one-quarter as large as the most prominent type size) on the PDP will make this information more easily seen by consumers. We do not believe the size is unnecessary and arbitrary. We believe the flag must be prominent and proposed the minimum size to be one of the following, whichever is larger:

- At least one-quarter as large as the most prominent type size or
- At least as large as the size of the ''Drug Facts'' title (21 CFR 201.326(b)).

We believe this proposal ensures that consumers will see the flag while allowing manufacturers labeling flexibility. Furthermore, we believe that it is more important to make consumers aware of new warning information than it is of other promotional material such as ''new'' taste.

We are not revising the labeling requirements in the 2006 proposed rule to accommodate other ''new'' flags that manufacturers choose to place on the PDP (i.e., a flag that states ''new'' and refers to a new formulation, new flavor, etc.). These ''new'' flags are generally promotional in nature and are not related to the safe and effective use of OTC IAAA drug products. Therefore, manufacturers need to determine whether and how to display any promotional material on their products without interfering with the ''See New Warnings'' flag. We will require that the ''See New Warnings'' flag appear on the PDP for one year after the final rule is published, rather than for the 6 or 9 months suggested by the submission. Because of the nature of the new

warnings, we continue to believe that educating consumers about the risks associated with OTC IAAA drug products is very important and more likely to be successful if the flag remains on products for 1 year.

B. Drug Facts

We received four submissions concerning the proposed Drug Facts labeling. The first submission (Ref. 5) seeks clarification about whether we will allow voluntary highlighting of the active ingredient and purpose (i.e., ''pain reliever/fever reducer'') section in Drug Facts to draw attention to the presence of acetaminophen. The submission points out that many marketed OTC internal analgesic products are already labeled as such. The second and third submissions concern the ''Warnings'' section of Drug Facts. The second submission (Ref. 7) opposes additional warnings on OTC internal analgesics for the following reasons:

- Because these medicines have been used for a long time, consumers will not change their usage patterns even if additional warnings appear in the labeling.
- The proposed warnings would reduce the impact of similar warnings on other dangerous drugs.

The submission proposes to inform the public about new safety concerns through press releases rather than by requiring more warnings on the label. The third submission (Ref. 2) is concerned that the proposed warnings may cause consumers to avoid OTC internal analgesic products because of the emphasis on risks.

The first and fourth submissions concern the ''Directions'' section of Drug Facts. Both submissions agree with the proposed required statement in ''Directions'' on products labeled only for use by children: ''This product does not contain directions or warnings for adult use.'' The fourth submission (Ref. 1) requests that we allow flexibility to place this statement under the ''Do not use'' subheading of the ''Warnings'' section instead of in the ''Directions'' section. The argument is that the ''Directions'' section of pediatric OTC drug products is often lengthy and crowded with information. The first submission (Ref. 5) points out that we asked companies to submit supplements with the phrase ''directions or complete warnings'' in the July 2005 letter to NDA holders of OTC NSAID products (Ref. 6). The submission requests that we allow the use of the word ''complete'' so that OTC NSAID products that otherwise comply with this rule do not have to be relabeled.

We agree with the first submission and are revising the statement in the ''Directions'' section of pediatric internal analgesic products to read, ''This product does not contain directions or complete warnings for adult use.'' We believe consumers will better understand the meaning of this revised statement compared to the proposed statement. This revision also makes the statement consistent with the June 2005 letter to holders of NDAs for NSAID products. This revision prevents products that already include this statement and otherwise comply with this rule from having to be relabeled. Similarly, we will allow voluntary highlighting of the ''active ingredient and its purpose'' section in Drug Facts to increase the prominence of the active ingredient and to be consistent with the labeling of many currently marketed OTC IAAA drug products, avoiding the need for re-labeling of products that otherwise comply with this rule. We are allowing this voluntary highlighting because of the seriousness of liver injury that may result from use of multiple acetaminophen-containing products at the same time.

We disagree with most of the comments in the second submission (Ref. 8). The submission does not include any information or data supporting its belief that the warnings in the 2006 proposed rule will not change consumer behavior when using OTC IAAA drug products. We do agree with this submission that press releases can help educate consumers about the potential risks associated with OTC IAAA drug products. However, product labeling is the most important means to ensure that consumers have access to important warning information each time the drug product is purchased and used. We disagree with the third submission that additional warnings may cause consumers to avoid using OTC IAAA drug products because of the emphasis on risks. We are not aware of data supporting the submission's argument. The warnings identify risks that we believe consumers need to know in order to use these products safely.

We disagree with the fourth submission (Ref. 1) requesting that we allow flexibility to place the Directions statement under the ''Do not use'' subheading of the ''Warnings'' section. Although we agree that the ''Directions'' section of pediatric OTC drug products is often crowded with other information, we believe that because pediatric drug products are dispensed by adults, it is important that the placement of this statement be consistent with OTC IAAA drug products intended for adults.

C. Immediate Container

We received a submission (Ref. 9) that believes there is a ''dire need'' for the proposed labeling and suggests that, in addition to the outer container, we should also require the proposed labeling on the immediate container. We agree with the submission. Consumers may discard the carton or outer container, which contains the Drug Facts box, after purchasing an OTC drug product. Therefore, important warnings, directions, and other Drug Facts information may not be available to consumers every time they use a product. While we believe that OTC IAAA drug products can be safe and effective when used as directed, it is important to alert consumers that acetaminophen can potentially cause liver injury and NSAIDs can potentially cause stomach bleeding. Because of the serious consequences associated with these adverse events, we believe that the associated warnings should be available every time an OTC IAAA drug product is used. Therefore, we are requiring that the liver warning appear on the immediate container of all OTC internal analgesic drug products containing acetaminophen (21 CFR 201.326(a)(1)(iii)(A)). Likewise, we are requiring that the stomach bleeding warning appear on the immediate container of all OTC internal analgesic drug products containing an NSAID (21 CFR 201.326(a)(2)(iii)(A)).

If the immediate container of an OTC IAAA drug product is a blister pack, the labeling space may need to be expanded to accommodate these warnings along with other required labeling. We believe the need for these warnings justifies any expansion of labeling space that may be necessary. Ideally, the blister pack should be designed so that the warnings can be read after removal of individual doses from the blister pack.

IV. Labeling Required for OTC Acetaminophen

A. Liver Warning

In this document, we are requiring a liver warning that is identical to the warning in the 2006 proposed rule except the first bulleted statement is modified slightly. We proposed three similar versions of this warning in the 2006 proposed rule (71 FR 77314 at 77349 to 77350): (1) one for products labeled for adults only, (2) one for products labeled for children under 12 years of age only[1], and (3) one for

[1] The wording of the warning for children under 12 years of age only reads: ''*Liver warning*: This product contains acetaminophen. Severe liver damage may occur if the child takes [bullet] more

Continued

products labeled for adults and children under 12 years of age[2]. The proposed warning for adults reads as follows:

Liver warning: This product contains acetaminophen. Severe liver damage may occur if you take

- more than [insert maximum number of daily dosage units] in 24 hours
- with other drugs containing acetaminophen
- 3 or more alcoholic drinks every day while using this product.

In the 2006 proposed rule, we explain that the liver warning is necessary to advise consumers about the occurrence of unintentional liver injury associated with ingesting too much acetaminophen (i.e., more than the maximum daily dose of 4 grams). In that document, we present data and evidence supporting the need for the liver warning. The proposed liver warning also includes a version of the alcohol warning already required for all OTC drug products labeled for adult use that contain acetaminophen or NSAIDs (21 CFR 201.322). We proposed incorporating the alcohol warning into the liver warning because the alcohol warning for acetaminophen relates to liver injury. In addition, we believe that one warning may be more likely to be read and understood by consumers.

We received many submissions expressing support for the proposed liver warning. Two of these submissions state that, although acetaminophen is generally a safe drug, it can cause severe and even fatal liver injury in certain cases, such as simultaneously using multiple drugs containing acetaminophen (Refs. 10 and 11). One of these submissions states that it is important for consumers to be aware that acetaminophen must be used in appropriate doses and in the right circumstances to avoid liver injury (Ref. 10). Another submission states that our liver warning is appropriate because the risk of liver injury with acetaminophen use is well documented (Ref. 12). The submission also argues that the proposed liver warning will provide information to consumers regarding the risk of liver injury and predisposing conditions as well as actions they may take to minimize the risk of liver injury. Only one submission argues that a liver warning is not needed (Ref. 1). The submission also argues that, if we do require the warning, we should modify the liver warning language. Another submission also recommends that we modify the wording of the proposed liver warning (Ref. 11).

All of the submissions related to the liver warning are discussed in the next five sections of this document. The first section (IV.A.1.) discusses scientific support for the liver warning. The second section (IV.A.2.) discusses the introductory sentences of the warning. The third, fourth, and fifth sections (IV.A.3. through IV.A.5.) discuss the three bulleted statements of the liver warning, respectively.

1. Scientific Support for the Liver Warning

One submission states that it is inappropriate for us to rely on the case series and databases cited in the 2006 proposed rule to support the need for a liver warning (Ref. 1). The submission argues that these data sources have serious limitations, and those limitations prevent the data from demonstrating that therapeutic doses of acetaminophen (i.e., no more than 4 grams daily for not longer than 10 days) cause liver injury, according to the submission. The submission provides a reanalysis of the same databases and case series described in the 2006 proposed rule plus data from more recent years. The submission also includes the annual number of patients receiving liver transplants associated with drug-related acute liver failure from the United Network for Organ Sharing (UNOS) database. Based on these data, the submission argues that acetaminophen overdoses, acetaminophen-associated liver injury, and acetaminophen-associated deaths, whether intentional or unintentional, are not increasing. The submission also states that hospital rates for acute liver failure in the United States from 1999 through 2006 have been fairly stable.

Despite the information in this submission, we still believe that overuse of acetaminophen, whether intentional or unintentional, is associated with severe liver injury and death and it is important to have appropriate labeling to inform users of the risk of injury. While the submitted data may not demonstrate increasing numbers of liver injury or deaths associated with acetaminophen use annually, the number of cases of liver injury or deaths reported each year with acetaminophen use is not acceptable. The analyses included in the submission have the same limitations as the databases discussed in the proposed rule. Furthermore, our AERS database continues to include many reports of liver injury associated with acetaminophen use each year.

Other information supports our determination. Since the publication of the 2006 proposed rule, a study (Ref. 13) was published with data that raises concern about the number of cases of acetaminophen-related liver injury. This study was a prospective population-based surveillance program in eight counties in metropolitan Atlanta over a period of five years (2000–2004) and is the first population based study of acute liver failure conducted in the United States. In this study, 94 patients were hospitalized with acute liver failure, but only 65 of the patients were included in the study. The remaining subjects refused to participate or could not be contacted following hospital discharge. Of the 65 patients, 49 were adults and 16 were children. Of the 49 adults in this study, 29 (41 percent) were identified as having acetaminophen-related acute liver failure, suggesting that acetaminophen is the most common cause of acute liver failure in adults. Of these 29 adults, 45 percent were intentional overdoses, and 55 percent were unintentional. The data were used to calculate an annual acute liver failure rate of 5.5 cases per million individuals in metropolitan Atlanta. By extrapolating this incidence rate to the entire U.S. population, the study authors estimate that approximately 1,600 cases (1200 adult cases, 400 child cases) of acute liver failure occur each year. This could result in approximately 640 cases of acute liver failure (350 unintentional) associated with acetaminophen use in the United States each year. We believe this study further justifies the need for the proposed liver warning.

Another recent study raises concerns about the ability of acetaminophen to cause liver function test abnormalities. The study was a prospective, blinded, randomized, parallel group study involving 145 subjects (Ref. 14). The subjects were divided into the following five groups, which were roughly equal in size:

(1) Placebo
(2) Acetaminophen
(3) Acetaminophen + oxycodone
(4) Acetaminophen + hydromorphone
(5) Acetaminophen + morphine

Each acetaminophen group took 4 grams acetaminophen daily for 14 days. Thirty-one to forty-four percent of the subjects in each of the acetaminophen groups had a maximum increase in ALT values of three times the upper limit of normal. Enzyme levels returned to normal when acetaminophen was stopped. The subjects in the placebo

than 5 doses in 24 hours [bullet] with other drugs containing acetaminophen.''

[2] The wording of the warning for adults and children under 12 years of age reads: ''*Liver warning*: This product contains acetaminophen. Severe liver damage may occur if [bullet] adult takes more than [insert maximum number of daily dosage units] in 24 hours [bullet] taken with other drugs containing acetaminophen [bullet] adult has 3 or more alcoholic drinks every day while using this product.''

group did not have elevated ALT values. This study demonstrates that healthy individuals using the maximum dosage amount of OTC acetaminophen can experience abnormalities of liver function tests. The clinical significance of the abnormalities is not known at this time.

All of the data available concerning acetaminophen use and liver injury suggest that there are some consumers at risk for liver injury. Based on this data, we believe it is important to warn consumers about the potential for liver injury. We will consider revising the warning if we become aware of data better defining the risk factors for acetaminophen-induced liver injury.

2. Introductory Sentence of Liver Warning

One submission (Ref. 1) disagrees with our proposal to use the term ''severe'' to qualify liver damage in the introductory sentences of the liver warning: ''This product contains acetaminophen. Severe liver damage may occur if you take. . .'' The submission argues that use of modifiers such as ''severe'' must be consistently applied to all OTC drug products. The submission points out that such a modifier is not used in the language of the proposed stomach bleeding warning on OTC NSAID products, where the submission argues it would be more appropriate. This submission also requests that we modify the introductory sentences of the liver warning to be clearer that liver injury results from using more than the recommended dose of acetaminophen (overdose), and to state situations to avoid that may result in using too much acetaminophen.

The submission recommends three versions of the liver warning that are similar to the warning in the 2006 proposed rule: one for adults, one modified for children under 12 years of age[3], and one for adults and children under 12 years of age[4]. The modified liver warning language proposed in the submission for adults reads as follows:

''*Liver warning*: This product contains acetaminophen. Liver damage may occur if you take more than the recommended dose (overdose).

Do not:

take more than 8 caplets in 24 hours

use with other drugs containing acetaminophen''

We disagree with the comment in the submission regarding the word ''severe'' and believe it is appropriate in the liver warning. The data and information described in the 2006 proposed rule to support the need for this warning indicate that acetaminophen-induced liver injury can often be serious, even fatal. As we state in the 2006 proposed rule (71 FR 77314 at 77316), acetaminophen-related liver injury led to approximately

- 56,000 emergency department visits (1993–1999),
- 26,000 hospitalizations (1990–1999), and
- 458 deaths (1996–1998).

Of these cases, unintentional acetaminophen overdose was associated with

- 13,000 emergency department visits (1993–1999),
- 2189 hospitalizations (1990–1999), and
- 100 deaths (1996–1998) (71 FR 77314 at 77318).

In addition, as discussed in section IV.A.1. of this document, we have recent data suggesting that acetaminophen may be the most common cause of acute liver failure in the United States (Ref. 13). Therefore, we believe that the word ''severe'' is appropriate in the liver warning. In addition, we agree with the submission that the word ''severe'' is also appropriate in the stomach bleeding warning on OTC NSAID products. Therefore, we are requiring that the introductory sentences of the stomach bleeding warning be revised to include the word ''severe'' (see section V.A. of this document).

We are not going to include the word ''overdose'' in the introductory sentences of the liver warning as the submission suggests because we are not sure whether consumers will understand the term ''overdose'' in this case. We believe that consumers typically relate ''overdose'' to deliberate overdose (i.e., suicide) or unintentional overdose of illegal drugs used for recreational purposes. We do not think that consumers will understand ''overdose'' in the liver warning to mean ''exceeded the recommended dose.'' However, we are going to modify the liver warning as the submission requests to be clear that consumers should not use more than the recommended dose of acetaminophen. We are making this modification in the first bulleted statement instead of the introductory text (see section IV.A.3. of this document).

3. First Bulleted Statement: Maximum Safe Daily Dose of Acetaminophen

One submission requests that we consider stating in the liver warning that using the maximum daily dose of 4 grams for five or more consecutive days could cause severe liver injury (Ref. 11). Another submission requests that we modify the liver warning language to more clearly state that liver injury from acetaminophen results from using more than the recommended dose (Ref. 1).

We are not modifying the wording of the first bulleted statement in the liver warning to advise that liver injury can occur from using 4 grams acetaminophen daily for five or more consecutive days. The submission does not include any data to support this recommendation. A study discussed previously (Ref. 15) demonstrated asymptomatic elevations of liver function tests in healthy subjects after receiving 4 grams of acetaminophen for several days. As we noted, the clinical significance of these test abnormalities are unclear at this time and additional study is needed. We are interested in any data that may allow us to better assess how the risk of liver injury increases with increasing number of days of acetaminophen use. If we become aware of such data, we will consider revising the liver warning at that time.

We are modifying the first bullet of the liver warning to more clearly advise consumers that liver injury may occur from using more than the recommended dose of acetaminophen. In this document, we are revising the first bulleted statement of the liver warning for adults[5,6] to read:

- more than [insert maximum number of daily dosage units] in 24 hours, which is the maximum daily amount

Although this revised bulleted statement is longer than the statement in the 2006 proposed rule, we believe consumers will be more likely to understand that the risk of liver injury increases if they exceed the maximum daily dose.

[3] For products labeled for children under 12 years of age only, the first bullet of the modified warning reads, ''give the child more than 5 doses in 24 hours.''

[4] For products labeled for adults and children under 12 years of age, the first bullet of the modified warning reads, ''give the child more than 5 doses in 24 hours'', the second bullet reads ''take more than 8 caplets in 24 hours.'' The third bullet reads ''with other drugs containing acetaminophen.''

[5] For products labeled for children under 12 years of age only, the first bulleted statement of the liver warning reads, ''[bullet] child takes more than [insert maximum number of daily dosage units] in 24 hours, which is the maximum daily amount.''

[6] Products labeled for adults and children under 12 years of age contain two bulleted statements regarding the recommended daily dose. The first bulleted statement of the liver warning reads, ''[bullet] adult takes more than [insert maximum number of daily dosage units] in 24 hours, which is the maximum daily amount [bullet] child takes more than [insert maximum number of daily dosage units] in 24 hours, which is the maximum daily amount.''

4. Second Bulleted Statement: Concomitant Use

In this document, we are requiring two concomitant use warnings: (1) the second bullet of the liver warning and (2) the ''Do not use'' warning (see section IV.B. of this document). Both were included in the 2006 proposed rule. As discussed in the 2006 proposed rule, we believe that simultaneous use of multiple acetaminophen-containing drug products is a strong risk factor for liver injury caused by exceeding the recommended daily dose of acetaminophen. The second bulleted statement of the proposed liver warning cautions consumers about using more than one product containing acetaminophen at a time (see section IV.A. of this document). We are including the same language for this warning as included in the 2006 proposed rule. This language is supported by four submissions stating the importance of this warning without suggesting any modification (Refs. 1, 2, 10, and 11). We did not receive any submission suggesting any modifications.

5. Third Bulleted Statement: Alcohol Warning

In this document, we are requiring the alcohol warning included in the 2006 proposed rule. We are including it as the third bulleted statement of the liver warning as proposed. It advises consumers that severe liver injury may occur if they take 3 or more alcoholic drinks while using acetaminophen drug products. We have considered the data discussed in the proposed rule and new data submitted to us, including recent clinical studies. We do not believe the new data demonstrate that alcohol users have the same risk for liver injury as non-users of alcohol. Therefore, we are requiring the alcohol warning as part of the liver warning because they are interrelated and are more likely to be understood as a single warning than as separate warnings.

In the 2006 proposed rule (71 FR 77314 at 77329), we discuss a prospective clinical study in which 275 individuals were identified as developing acute liver failure due to acetaminophen use during a 6-year span at 22 centers (Ref. 15). Of these individuals, those who abused alcohol had median acetaminophen blood levels that were half as much as those who did not abuse alcohol ($p = 0.003$). The investigators found that the subjects with acute liver failure who reported taking 4 grams or less of acetaminophen daily were often alcohol abusers (65 percent). The investigators also found that patients with acute liver failure who were taking more than 4 grams acetaminophen daily consumed less alcohol than those who took less than 4 grams acetaminophen daily. The patients who used alcohol reported using less acetaminophen daily than the patients who did not use alcohol. The investigators commented that alcohol may be an important risk factor for acute liver failure in the subjects taking 4 grams or less of acetaminophen daily.

In the proposed rule, we also discussed retrospective data from our AERS database that suggest the same conclusion (71 FR 77314 at 77320 to 77321). Of the 132 individuals identified in this database as developing liver disease after using acetaminophen, alcohol users had used less acetaminophen than those who did not use alcohol (5.6 grams for users vs. 6.9 grams for non-users). Of the 65 individuals identified as developing severe liver disease after using acetaminophen, where dosing information was available, alcohol users had used less acetaminophen than those who did not use alcohol (6.0 grams for users vs. 8.6 grams for non-users). These data suggest that lesser amounts of acetaminophen may cause liver damage in people who use alcohol compared to those who do not.

After publication of the 2006 proposed rule, we received five submissions concerning the alcohol warning (Refs. 1, 4, 10, 11, and 12). Four of the five submissions support the proposed alcohol warning, and one does not. Two of these four submissions (Refs. 11 and 12) argue that the prospective clinical study discussed in the 2006 proposed rule (Ref. 15) supports the occurrence of liver injury in consumers who use OTC acetaminophen and consume alcohol. One of these submissions (Ref. 12) cites three clinical case series suggesting an association between alcohol use and unintentional acetaminophen-related liver injury (Refs. 16, 17, and 18). In these case series, between 14 and 40 percent of the cases involved individuals consuming OTC acetaminophen doses (i.e., no more than 4 grams daily). The submission also cites mechanistic studies suggesting that regular alcohol use may significantly alter the metabolism of acetaminophen, leading to liver injury.

The submission that objects to the warning states that an alcohol warning for OTC acetaminophen drug products is not necessary because individuals with a history of alcohol use can safely use the maximum daily dose of acetaminophen (Ref. 1). The submission argues that current scientific data suggest that the risk of acetaminophen-related liver injury is associated with using more than the maximum OTC daily dose of acetaminophen, irrespective of alcohol use. While we had previously reviewed much of the submitted data in preparing the 2006 proposed rule, there are some studies that were submitted that we had not previously reviewed. As described in section IV.C. of this document, we believe the most clinically meaningful of these studies are the prospective clinical studies. Therefore, our review in this section focuses on these studies.

There are six prospective, double-blinded, randomized, placebo-controlled studies designed to evaluate whether maximum therapeutic doses of acetaminophen (4 grams daily) cause liver injury in alcoholic patients (Ref. 1). Four studies were coordinated by the Rocky Mountain Poison and Drug Center (RMPDC) and are similar in design to each other. These studies involved acetaminophen use (4 grams daily) for 2, 2, 3, and 5 days, respectively. The fifth study, a 4-day study, was of similar design but is available only as an abstract. Therefore, we did not consider this study in our evaluation. The sixth study enrolled subjects who used 4 grams of acetaminophen daily for 10 days.

We discussed both 2-day studies in the 2006 proposed rule. Although neither revealed liver injury, we stated that they did not ''provide reliable evidence that people with chronic alcohol use can safely take 4[grams]/day of acetaminophen, particularly for up to 10 days in accordance with OTC drug product labeling'' because of study design limitations (71 FR at 77314 at 77336). The major limitations were that the duration of acetaminophen use was not long enough (i.e., not 10 days) and the liver function exclusion criteria did not allow subjects with AST and ALT values above certain levels. Therefore, we could not draw conclusions about alcohol and acetaminophen use from these studies.

The 3- and 5-day studies were designed to address the limitations of the two-day studies. They enrolled chronic heavy alcohol users entering alcohol detoxification facilities. A total of 372 subjects completed the 3-day study, and 130 subjects completed the 5-day study. The submission argues that these patients represent the alcohol users at greatest risk for liver injury when using acetaminophen. The study subjects had AST and ALT ≤200 IU/L and INR ≤1.5 which expanded the population and included more alcoholic subjects than the two-day studies. The primary endpoint was liver function

tests. There were not any statistically significant differences in liver function tests after acetaminophen use. Therefore, the studies did not reveal signs of liver injury when using OTC acetaminophen for 3 or 5 days.

The other prospective study enrolled 150 subjects who consumed one to three alcohol drinks daily and took 4 grams acetaminophen or placebo daily for 10 days (Ref. 19). The primary endpoint was liver function testing (ALT, AST, total bilirubin, alkaline phosphatase, and total protein) at days 0, 4, and 11. There were no changes in liver function in the placebo group on days 4 or 11 compared to day 0. There were no changes in liver function in the acetaminophen group on day 4 compared to day 0. However, there was a statistically significant increase in ALT in the acetaminophen group on day 11 compared to day 0. Of the 100 subjects in the acetaminophen group that had elevated ALT values, the ALT was 1 to 3 times the upper limit of normal for 19 subjects, 3 to 5 times the upper limit of normal for 1 subject. There was also a rechallenge in 10 subjects (one placebo and nine acetaminophen) showing similar results, except ALT increases on day 11 were slightly smaller. These changes in ALT blood levels are similar to those observed in healthy subjects (Ref. 15) when given 4 grams of acetaminophen daily. The clinical significance of these findings is not apparent at this time.

We do not believe the new studies justify removal of the alcohol warning. We cannot draw conclusions from these new studies for numerous reasons. First, only one of the studies involves the maximal OTC acetaminophen use (i.e., 4 grams daily for 10 days). Second, the number of subjects enrolled in the studies is small. The largest number of subjects using 4 grams acetaminophen daily was 258 subjects in the 3-day study. The one study involving the maximal OTC acetaminophen use (i.e., 4 grams daily for 10 days) only enrolled 150 subjects. With these sample sizes, it is possible that significant changes in liver function would not be detected. It is difficult to use these studies as evidence to demonstrate that a specific population is not at increased risk for liver injury. Third, there are a significant percentage of alcohol users in the various liver injury databases. This may only represent a small percentage of the overall population of users and, as such, will make it difficult to understand all of the factors that may have contributed to their developing liver injury. Many of them are reported to have developed liver injury with doses close to the current daily recommended dose. Until we have a better understanding of the mechanism in these individuals, studies such as those submitted to us and discussed in this document will not be adequate to establish the safe dose of acetaminophen in all alcoholics. Fourth, the studies were not open for enrollment to a representative population of all people who use alcohol. The population of alcohol users is not homogenous and all are not represented in these studies. Alcohol users will have variable degrees of underlying alcohol related liver injury and variable ability to metabolize acetaminophen. As a consequence, it is difficult to generalize the results of these studies to all people who use alcohol. Additional research needs to be conducted to better understand why people who use alcohol make up a disproportionate percentage of subjects in the liver injury databases and determine what dose adjustment may be considered for this population.

Because these new studies do not adequately demonstrate that alcohol use is not a risk factor for acetaminophen-induced liver injury, we believe an alcohol warning continues to be necessary. An alcohol warning has been required on acetaminophen products since 1999. There has been a concern for a long time of the increased risk to regular users of alcohol. We describe numerous data in the 2006 proposed rule (summarized earlier in this section of the document) that suggest alcohol use may increase the risk of acetaminophen-induced liver injury. The studies provided in the submission are not adequately designed to dismiss the previously available data. Very large safety studies are needed to better establish the risk for liver injury, the safe dose of acetaminophen in this population and identify subpopulations within alcohol users who may be at the greatest risk for liver injury.

The submission that argues against requiring the alcohol warning also suggests a modified warning (Ref. 1). The submission states that, if we continue to believe that an alcohol warning is necessary, then the warning should be separated from the liver warning and read as follows:

Alcohol Warning: If you consume 3 or more alcoholic drinks every day, ask your doctor whether you should take acetaminophen or other pain relievers/fever reducers. Taking more than the recommended dose (overdose) of acetaminophen may cause liver damage.

The submission argues that we do not provide evidence to support our rationale for incorporating the alcohol warning as part of the liver warning. The submission argues that combining the two warnings will mislead and confuse consumers. The submission also argues that its suggested alcohol warning language better reflects the available scientific evidence, which demonstrates that the risk of acetaminophen-induced liver injury is not affected by alcohol use.

We disagree with the submission. We are requiring the proposed alcohol warning as the third bullet of the liver warning. We continue to believe that the two warnings are interrelated and combining the two warnings will be less confusing to consumers than separating the two warnings. The warning proposed by the submission suggests that liver injury in alcohol users occurs only with doses greater than 4 grams per day. We have clinical reports of liver injury in people who use alcohol at doses very close to 4 grams per day. As a consequence, we are not in a position now to state that liver injury only occurs with doses greater than 4 grams per day.

B. Concomitant Use Warning

We are requiring a separate concomitant use warning under the ''Do not use'' subheading in addition to the concomitant use warning included as part of the liver warning (see section IV.A.4. of this document). Both warnings advise consumers to avoid using multiple acetaminophen-containing drug products at the same time. The ''Do not use'' warning also advises consumers to consult a doctor or pharmacist if consumers do not know whether a drug product contains acetaminophen.

We are revising the proposed warning included in the 2006 proposed rule, which reads, ''*Do not use* with any other drug containing acetaminophen (prescription or nonprescription). Ask a doctor or pharmacist before using with other drugs if you are not sure'' (proposed 21 CFR 201.325(a)(1)(iii)(B)). In this document, the first sentence is the same, but the second sentence reads, ''If you are not sure whether a drug contains acetaminophen, ask a doctor or pharmacist.'' We received one submission proposing this modified wording (Ref. 1). The submission states that the meaning of our proposed second sentence is unclear. We agree with the submission. We believe the revised sentence is clearer than the proposed sentence without making the sentence significantly longer. Therefore, the revised warning appears in 21 CFR 201.326(a)(1)(iii)(B) of this document.

C. Liver Disease Warning

In this document, we are requiring the liver disease warning included in the 2006 proposed rule. This warning

advises consumers with liver disease against using acetaminophen unless directed by a doctor. As discussed in the 2006 proposed rule, we proposed the liver disease warning primarily because we identified cases from our AERS database and the Multiple Cause of Death Files suggesting that chronic liver disease may be a risk factor for developing or increasing the severity of liver injury when using acetaminophen (71 FR 77314 at 77328 to 77329). We also cite acetaminophen metabolism studies suggesting that consumers with liver disease may be at higher risk of producing the toxic metabolite NAPQI than consumers without liver disease.

Since publication of the 2006 proposed rule, we received and reviewed additional data and information concerning OTC acetaminophen use by consumers with liver disease (Refs. 1, 11, and 12). After reviewing these data, we still have concerns that some people with underlying liver disease are at higher risk for liver injury with acetaminophen. Therefore, we are requiring the proposed liver disease warning because we believe it is necessary to alert consumers with liver disease that they should ask a doctor before using acetaminophen. The required warning for products labeled only for adults reads: ''Ask a doctor before use if you have liver disease.'' We are requiring similar warnings for products labeled for children under 12 years of age[7] and for products labeled for adults and children[8].

In response to the 2006 proposed rule, we received three submissions containing data and information concerning the liver disease warning, including over 200 studies (Refs. 1, 11, and 12). Two of the three submissions support the need for the liver disease warning (Refs. 11 and 12). Both argue that the proposed liver disease warning is based on sound scientific data. The submissions reference data presented in the 2006 proposed rule as well as acetaminophen metabolism studies suggesting that consumers with liver disease metabolize acetaminophen differently. One of the submissions, from the American Association for the Study of Liver Disease (AASLD), cites its ''Practice Guideline on Treatment of Chronic Hepatitis C'' as supporting the proposed warning. According to the guideline, patients with chronic hepatitis C (a form of liver disease) should be treated with a maximum daily dose of 2 grams rather than the OTC labeled maximum daily dose of 4 grams.

The third submission (Ref. 1), from a manufacturer of acetaminophen, argues that data demonstrate the proposed liver disease warning is not needed. The submission contends that liver disease is not a risk factor for developing liver injury with OTC doses of acetaminophen and that the data cited in the 2006 proposed rule do not support the need for the liver disease warning. The submission proposes the following hierarchy of data, going from the highest to lowest level of evidence:

1. Data revealing clinical outcomes following acetaminophen use
2. Human acetaminophen metabolism studies
3. Human acetaminophen metabolism studies using probe molecules (e.g., chlorzoxazone)
4. In vivo animal studies
5. In vitro cellular studies
6. Studies using surrogate markers for acetaminophen metabolism (e.g., plasma glutathione levels)

It should be noted that clinical outcome refers to liver function testing, acute liver failure, liver transplant, death, etc. Although the submission includes studies from all levels of this hierarchy, it emphasizes the importance of the studies with clinical outcomes over all other studies. According to the submission, these studies do not reveal any evidence of an adverse outcome when consumers with liver disease use acetaminophen, meaning none of the study subjects developed liver failure, and liver function tests did not suggest liver injury.

We focused our review on the data with clinical outcomes. We received five clinical studies:

- Benson 1983 (Ref. 20)
- Andreasen 1979 (Ref. 21)
- McNeil 2007 (Ref. 1)
- Green 2005 (Ref. 22)
- Dargere 2000 (Ref. 23)

Throughout the remainder of this section, we discuss the three of the five clinical studies. We do not discuss the Green 2005 and Dargere 2000 studies because, although these two studies do not reveal different clinical outcomes for consumers with or without liver disease who use OTC acetaminophen, we do not have complete study reports for these studies. Therefore, we cannot draw any conclusions based on abstracts for these two studies.

Before describing the studies with clinical outcomes, we should note that we also considered the second level of evidence (human acetaminophen metabolism studies) in the proposed hierarchy. We believe these studies may be meaningful in determining whether liver disease is a risk factor for liver injury when using OTC acetaminophen. We received 26 acetaminophen metabolism studies (Ref. 1), but could not draw conclusions from them because of a number of limitations. Only 13 of the 26 studies examined the levels of acetaminophen and its metabolites (e.g., glutathione, sulfate, and thiol metabolites) in the blood after subjects take acetaminophen. We agree that knowing the level of acetaminophen in a person's blood alone does not necessarily improve our understanding of acetaminophen metabolism in consumers with liver disease as it relates to an increased risk for acetaminophen-induced liver injury. Of those 13 studies that include acetaminophen metabolites, only one study involved multiple doses of acetaminophen. The multiple-dose study included consumers with liver disease who used 4 grams acetaminophen daily for 4 days. None of the metabolism studies included study subjects who used acetaminophen for the maximum OTC labeled dose (i.e., 4 grams daily for 10 days). We cannot draw conclusions about the risk for liver injury due to acetaminophen from the human acetaminophen metabolism studies.

The submission from the acetaminophen manufacturer provides additional data for the Benson 1983 study that we cite in the 2006 proposed rule (71 FR 77314 at 77328 to 77329). We stated that the study shows no difference in liver function test results for consumers with liver disease who used 4 grams acetaminophen daily for 13 days as compared to consumers with liver disease who used a placebo for 13 days. We stated that the small sample size of 20 subjects with liver disease and cross-over study design prevent us from drawing conclusions from the study. The submission argues that the cross-over study design is adequate and not a limitation. We now agree that the crossover design may not be a major study limitation. The number of subjects, however, is small and do not allow for broad conclusions in the entire population of people with underlying liver disease. Therefore, this study does not provide sufficient data from which to conclude that four grams per day is a safe dose for all patients with underlying liver disease.

The submission also included the Andreasen 1979 study that we cite in the 2006 proposed rule (71 FR 77314 at 77328 to 77329). We cited this study as evidence of altered acetaminophen metabolism in consumers with liver disease. The study enrolled 4 subjects

[7] The warning for products labeled for children under 12 years of age reads: ''Ask a doctor before use if the child has liver disease''.

[8] The warning for products labeled for adults and children reads: ''Ask a doctor before use if the user has liver disease.''

with liver disease (cirrhosis) and 9 control subjects receiving multiple doses of acetaminophen or placebo. Study subjects were given 3 grams acetaminophen or placebo daily for 5 days. Liver function tests were conducted on the study subjects. These tests did not suggest any difference in liver function between the control subjects and those with liver disease, although the study did show prolonged clearance of acetaminophen in patients with liver disease. It is difficult to draw any conclusions from this small study.

An unpublished 2007 study included in the submission that was conducted by a manufacturer of acetaminophen enrolled 12 subjects with liver disease (cirrhosis) who used 4 grams acetaminophen daily for 4 days (one dose on day 5). The liver function test results after using acetaminophen did not differ from those before using acetaminophen. This study does not provide sufficient information to make any conclusions regarding the safe dose of acetaminophen or the risk of liver injury in users with chronic liver disease.

Limitations of the studies prevent us from drawing any conclusions about the safety of acetaminophen use in patients with liver disease using 4 grams acetaminophen over 10 days. The two most significant limitations are the small number of study subjects and the duration of acetaminophen use. The three clinical studies only enrolled a total of 36 subjects with liver disease. Two of the studies only involved acetaminophen use for 4 or 5 days. The lack of liver injury or signs of liver injury in these studies does not mean that the same results would be seen in studies enrolling larger numbers of subject using acetaminophen for longer periods of time.

Although these prospective clinical studies are inconclusive, the retrospective data cited in the 2006 proposed rule suggest that consumers with liver disease may be at increased risk for liver injury when using OTC acetaminophen. As discussed in the 2006 proposed rule, we identified a total of 282 adult cases of liver injury associated with acetaminophen in our AERS database between January 1998 and July 2001. A history of prior liver disease, or possible underlying liver disease, was reported in 70 cases (25 percent). Among the 70 cases with liver disease, 49 percent developed severe liver injury.

We also reviewed the Multiple Cause of Death Files between 1996 and 1998. These death certificates showed that unintentional acetaminophen overdose was associated with an annual average of 100 deaths. In these deaths, the presence of chronic liver disease was reported in 61 percent of the unintentional acetaminophen overdose cases. The high prevalence rate of liver disease from these two databases (25 and 61 percent) suggests that liver disease increases the risk of liver injury when using acetaminophen because only 2 to 3 percent of U.S. adults have chronic liver disease (Ref. 24). The fact that people with underlying liver disease make up a disproportionate percent of the cases of severe liver injury relative to its prevalence in the general population suggests that there is a higher risk for persons with liver diseases. It is difficult to refute this type of data without conducting larger studies with repeated exposures over an extended period time.

Based on this data, we believe that it is appropriate to advise consumers with liver disease to ask a doctor before using acetaminophen because they may be at risk for developing more serious liver injury. We also agree with the second submission (Ref. 11) that the warning is appropriate because it will advise liver disease patients about a potential risk of further liver injury without advising them to avoid using acetaminophen or limiting use to a pre-determined dose. The submission states that such an open-ended warning will permit healthcare providers to advise their liver disease patients on a case-by-case basis. We plan to continue to require the warning unless and until we become aware of adequate studies demonstrating that consumers with liver disease are not at risk for liver injury when using OTC acetaminophen or we obtain additional information that may be more informative in providing dosing recommendations.

D. Drug Interaction Warning

In this document, we are requiring a warning on OTC acetaminophen drug products about a potential drug-drug interaction between acetaminophen and warfarin. We did not specifically propose this type of warning in the December 2006 proposed rule because we thought that the data available at the time did not demonstrate the need for such a consumer warning. The proposed rule did, however, request comments and data concerning the need for a drug-drug interaction warning on OTC acetaminophen drug products. Since the publication of the December 2006 proposed rule, we have determined that a consumer drug-drug interaction warning is needed based on the current data and information available to us.

As stated in the proposed rule (71 FR 77314 at 77338), labeling for warfarin-containing prescription drug products lists acetaminophen as a drug that can increase warfarin's anticoagulant effect. The proposed rule also discussed data concerning the potential drug-drug interaction between acetaminophen and warfarin:

- 20 bleeding adverse events (3 probable and 17 possible) reported by consumers using warfarin and acetaminophen concurrently in our AERS databases
- Numerous clinical studies examining the ability of acetaminophen to interact with warfarin by measuring tests of blood clotting
- Two studies examining the mechanism of a drug interaction between acetaminophen and warfarin.

We stated that we believe that the actual numbers of bleeding events may be much higher than reported in our AERS database because adverse events are significantly underreported. We stated that the results of studies measuring coagulation tests were conflicting with regard to the effect of acetaminophen on warfarin anticoagulation. At that time, we thought we could not draw firm conclusions from these studies on which to base a consumer warning because they did not control for other factors that may affect warfarin anticoagulation in consumers using warfarin (e.g., vitamin K use). We also stated that the mechanism of the potential drug-drug interaction is unknown. Because we thought that the currently available data did not demonstrate sufficient evidence to warrant a consumer warning, we requested comment and data from the public on this issue to gather more information.

In response to our request, we received two submissions (Refs. 11 and 12). Both submissions state that we should require a warning to ask a doctor before using OTC acetaminophen if using warfarin. They provide the following data to support their request:

- A prospective study examining the effect of acetaminophen in consumers on warfarin therapy
- Retrospective data on the use of acetaminophen by consumers on warfarin therapy
- Articles examining the mechanism of an interaction between acetaminophen and warfarin.

In addition, one of the submissions (Ref. 11) argues that drug-drug interaction warnings are also needed on OTC acetaminophen for phenobarbital and isoniazid, but does not include any data to support this request. We found one reference source that noted the risk for liver injury may be increased in people taking isoniazid or phenobarbitol if they

take more than the recommended dose of acetaminophen (Ref. 25). However, since we are already warning people not to use more than the recommended amount of acetaminophen, we are not requiring a warning about the potential drug-drug interaction between phenobarbital or isoniazid.

After reviewing the data, we believe it demonstrates that consumers using acetaminophen with warfarin may increase their International Normalized Ratio (INR), which may serve as a sign of increased risk for bleeding. This conclusion is based primarily on the submitted prospective study (Ref. 26) and another prospective study (Ref. 27) that we identified from the published literature.

The retrospective data include a case report of a 74-year old man on warfarin therapy who experienced an abrupt increase in INR after using acetaminophen (Ref. 28). INR returned to normal after stopping the acetaminophen. There is another case report of 81-year old woman whose INR reached 16, leading to bleeding, after using acetaminophen (Ref. 29). The other retrospective data consists of medical records from 1,093 patients on warfarin therapy over a 5 year period (Ref. 30). The records show that 316 (29 percent) of these patients experienced increased INR when using acetaminophen and warfarin at the same time. These data suggest that OTC acetaminophen may increase the anticoagulation effect of warfarin, although other factors that may affect coagulation (e.g., vitamin K use) were not controlled for and the acetaminophen dosing was unknown. Similarly, the studies examining the mechanism of this potential drug-drug interaction speculate on possible mechanisms of interaction between acetaminophen and warfarin, although they do not clearly demonstrate the mechanism (Refs. 31, 32, and 33).

The submitted prospective study was a randomized, double-blinded, placebo-controlled, cross-over study (Ref. 26). In the study, 18 consumers on chronic warfarin therapy were given 4 grams of acetaminophen or placebo for 14 days. The two 14-day treatment periods were separated by a 2-week wash-out period. The mean INR at the beginning of the treatment periods for placebo and acetaminophen were similar (2.31 ± 0.31 and 2.25 ± 0.33, respectively). Only a modest increase in the maximum INR compared to baseline was observed when the subjects took placebo (mean maximum INR = 2.66 ± 0.73). A significant increase in the maximum INR over baseline was observed when the subjects took acetaminophen (mean maximum INR = 3.45 ± 0.78). Therefore, this study suggests that acetaminophen (4 grams daily for 2 weeks) increases the anticoagulation action of warfarin.

The second prospective study was a randomized, double-blinded, placebo-controlled study (Ref. 27). In this study, 36 subjects on chronic warfarin therapy were randomly assigned to three groups: (1) 2 grams acetaminophen daily, (2) 4 grams acetaminophen daily, or (3) placebo. The subjects took acetaminophen or placebo for four weeks. The primary end point of this study was difference in the mean INR at weekly intervals, and the secondary end point was mean serum liver enzymes at weekly intervals. The baseline mean INR in all groups was similar (2.4 ± 0.3, 2.5 ± 0.2, and 2.5 ± 0.3). The mean INR of the placebo group did not change during the 4 weeks of the study. The 2 gram acetaminophen group reached the highest mean INR at week 2 (3.1 ± 0.5). The 4 gram acetaminophen group reached the highest mean INR at week 3 (3.4 ± 0.7). Both of these increases in INR were statistically significant compared to placebo ($p < 0.05$). There were no statistically significant differences in liver enzyme levels in the acetaminophen groups at any time during the 4 weeks. Therefore, this study suggests that acetaminophen (2 or 4 grams daily for 4 weeks) modestly increases the anticoagulation action of warfarin.

Both studies demonstrate increases in INR when using acetaminophen and warfarin at the same time. In addition, the case report of bleeding in the 81-year old woman with an INR of 16 supports the need for the warning on the prescription labeling. We believe these data also support the need for a consumer labeling statement for OTC acetaminophen about the potential for interaction between warfarin and acetaminophen, and we are including a warning statement in this final rule. We are primarily concerned with the chronic use of acetaminophen in patients using warfarin. These are patients who use acetaminophen regularly for chronic pain from conditions, such as osteoarthritis or fibromyalgia.

Typically, patients receiving warfarin undergo monthly testing of their INR. As noted in one of the interaction studies, the peak effect is noted after 2 or 3 weeks depending on the dose of acetaminophen. Thus, an increase in INR is likely to be detected during the monthly check of the INR. Therefore, a drug-drug interaction warning for coadministration of acetaminophen with warfarin is important to educate healthcare providers and consumers about the possible interaction between these two drugs and to consider this as a possible cause of an increase in INR for patients on warfarin. The warning reads as follows: ''Ask a doctor or pharmacist before use if you are taking the blood thinning drug warfarin'' (21 CFR 201.326(a)(1)(iii)(D)). This warning is required on all OTC acetaminophen products except those also containing NSAID(s). Combination products containing acetaminophen and NSAID(s) are required to include a warning about blood thinning drugs under the stomach bleeding warning for NSAIDs. It would be unnecessarily redundant to include the same warning under the ''Ask a doctor or pharmacist before use'' heading. We believe the warning will encourage patients on chronic warfarin therapy to ask their doctor about the use of acetaminophen with the warfarin and remind healthcare providers to consider this interaction when evaluating elevated INRs in their patients.

E. Warnings for Certain Sub-Populations

1. Warning for Consumers Infected With Human Immunodeficiency Virus (HIV)

In this document, we are not adding any warning that HIV-infected consumers are at increased risk of liver injury when using acetaminophen. We reached this conclusion after reviewing the available data on the use of acetaminophen by HIV-infected individuals. We find the currently available data do not adequately demonstrate that acetaminophen, when used according to the OTC label (i.e., maximum daily dose of 4 grams for no longer than 10 days), poses risk for HIV-infected individuals.

In the 2006 proposed rule, we requested comments and data on whether the maximum daily dose (4 grams) of acetaminophen is unsafe for HIV-infected consumers (71 FR 77314 at 77337 to 77338). As discussed in the proposed rule, this safety concern stems from a citizen petition that makes the following arguments to support the need for an HIV warning:

- Glutathione (GSH) deficiency is frequent in HIV infected individuals.
- Acetaminophen depletes GSH (essential for the detoxification of acetaminophen's toxic metabolite) and is potentially more toxic to GSH deficient individuals.
- GSH deficiency is associated with impaired survival in people with HIV disease, and acetaminophen may further reduce survival by depleting GSH.

After submission of the petition, we received a submission from a manufacturer of OTC acetaminophen

products arguing that an HIV warning is unnecessary (Ref. 1). The submission included numerous in vitro and in vivo studies both supporting and refuting that HIV-infected patients are at increased risk of liver injury when using acetaminophen.

In the proposed rule, we did not propose an HIV warning because there was not adequate data demonstrating that use of acetaminophen decreased the survival rate of HIV-infected consumers. In vitro and in vivo studies did demonstrate low levels of GSH and its precursors in HIV-infected consumers, suggesting the toxic acetaminophen metabolites may accumulate in these individuals. However, we were not aware of any data demonstrating that these low levels of GSH are clinically meaningful (i.e., impact survival or increase acetaminophen liver injury). In vitro studies also demonstrated that N-acetylcysteine, which is used to treat acetaminophen overdoses, improved the performance of T cells from healthy and HIV-infected individuals. However, these studies did not demonstrate that the increased GSH levels in HIV-infected individuals after N-acetylcysteine treatment lead to improved survival.

Although many of the studies did not demonstrate clinically meaningful effects of low GSH levels in HIV-infected individuals, as stated in the proposed rule, we did review clinical studies demonstrating the relationship between GSH levels and survival. We could not conclude that decreased GSH levels in HIV-infected individuals lead to decreased survival rates because of the following deficiencies:

- No clear description of the study design
- Survival data were not collected for 17 percent of the study population
- No baseline characteristics provided for individuals participating in the clinical trial
- No documentation of antiviral treatment or concomitant use of other medications
- N-acetylcysteine administration was not randomized

We also could not find any hepatic adverse events in the AERS database associated with HIV infection and acetaminophen use.

In response to the request for data and comment in the proposed rule, we received three submissions regarding an HIV warning. Two submissions argue that currently available data do not support the need for an HIV warning (Refs. 1 and 11). The third submission argues that we should require an HIV warning (Ref. 12). All three submissions cite in vitro and in vivo data to support their arguments. However, the only data that demonstrate a clinically meaningful adverse effect of acetaminophen use by HIV-infected individuals are two case reports. The remaining studies examine the relationship of GSH and acetaminophen metabolites levels in HIV infection. Some of the studies demonstrate a correlation between GSH and acetaminophen metabolites levels and HIV infection, while others do not. Regardless of the study results, these studies do not provide us with evidence that the HIV-infected patients experience liver injury when using acetaminophen.

There are case reports of two HIV-infected individuals experiencing liver injury after consumption of therapeutic doses of acetaminophen (i.e., less than or equal to 4 grams daily). We cannot conclude that HIV-infected individuals are at higher risk of acetaminophen-induced liver injury than uninfected individuals based on these reports. In the first report, a 45 year old HIV-infected male developed signs of severe liver injury after using 4 grams acetaminophen daily for 5 days (Ref. 35). The signs of liver injury went away after treatment with N-acetylcysteine. It is difficult to determine whether the HIV infection placed this patient at greater risk for acetaminophen liver injury because there were many other potential risk factors: chronic alcohol use, tobacco use, opiate use, malnutrition, and hepatitis B and C infection. In the second report, a 31 year old HIV-infected male was hospitalized with liver injury after using 2 grams acetaminophen on the previous day (Ref. 36). Again, there were many other potential risk factors for liver injury: alcohol abuse, malnutrition, and concomitant chronic use of zidovudine (in combination with ribavirin).

We are not requiring an HIV warning in this document because we are not aware of data demonstrating that HIV-infected patients (in the absence of other risk factors) are at greater risk of acetaminophen-induced liver injury. We will reconsider our position if new data become available.

2. Warning for Malnourished Consumers

In this document, we are not requiring any warning that malnourished consumers are at increased risk of liver injury when using acetaminophen as directed (i.e., no more than 4 grams daily for up to 10 days). By malnourished, we mean consumers who fast, have eating disorders, or whose diets do not provide a healthy minimum caloric intake for other reasons. We arrived at this conclusion after reviewing the currently available data on the use of acetaminophen by these consumers. These data do not sufficiently demonstrate that acetaminophen when used according to labeling poses an increased risk of liver injury in these individuals relative to other individuals.

We are considering this issue because, in the 2006 proposed rule, we requested comments and data on whether the maximum daily dose of acetaminophen is unsafe for individuals who have reduced glutathione levels. A small amount of acetaminophen is metabolized through a pathway that generates a potentially toxic intermediate, NAQPI. Glutathione conjugates with NAQPI and the conjugate is then excreted in the urine. Malnourished individuals have been shown to have reduced glutathione levels (Refs. 37, 38, and 39). Therefore, it is possible that low glutathione levels may increase the risk for liver injury because there would be less available to bind to NAQPI. Low glutathione levels may a surrogate for identifying a population at increased risk of liver injury with acetaminophen, but it was unclear how much of the deficiency is necessary.

In response to our request, we received three submissions regarding malnourished consumers (Refs. 1, 11, and 12). One submission (Ref. 12) argues that we should require such a warning because malnourished consumers may be at greater risk for acetaminophen-induced liver injury than other consumers. In addition, the submission recommends additional studies to further evaluate the liver injury risk for malnourished consumers. The second submission (Ref. 11) also states the need for such studies but does not discuss the need for a warning. The third submission (Ref. 1) argues that data do not demonstrate the need for a warning. The three submissions cite the following types of data to support their arguments:

- A prospective study examining the effect of fasting on acetaminophen metabolism
- Retrospective data (case reports and case report series) concerning the use of acetaminophen and liver injury in malnourished individuals
- Human studies examining the effect of fasting on glutathione levels
- Review articles on glutathione and analgesics.

After reviewing this information, we cannot make a conclusion about the risk of liver injury due to acetaminophen in malnourished individuals. In the prospective study (Ref. 40), six obese individuals were given 500 calorie diets

for 5 days (group 1), and three obese individuals were given 1000 calorie diets for 13 days (group 2). The study subjects did not have a history of alcohol abuse and had normal liver and kidney function prior to study enrollment. The subjects in group one took 2 grams acetaminophen on days 1 and 5. The urine of study subjects was collected every 2 hours for 12 hours after the acetaminophen dose. The subjects in group two took 2 grams acetaminophen on days 1, 7, and 13. The urine of study subjects was collected every 2 hours for 10 hours after the acetaminophen dose. Liver tests were performed at 12, 24, 36, and 120 hours after the acetaminophen dose. The clearance of acetaminophen on day 1 in both groups was nearly identical to the clearance on subsequent days. The same is true for acetaminophen metabolites (i.e., glucouronide, sulfate, and thiols). Liver function tests remained unchanged throughout the study. This study suggests that acetaminophen metabolism is not altered in malnourished consumers. It is difficult to make any conclusions about the risk of liver injury with acetaminophen based on this data. The small sample size of this study and the intermittent dosing at less than the maximum daily dose prevents us from drawing any conclusions. Additionally, if differences in metabolism were detected, it would be difficult to assess what amount of difference was clinically meaningful.

Two submissions (Refs. 1 and 12) provide retrospective data concerning acetaminophen-induced liver injury in malnourished consumers. The first retrospective data is a case series report describing liver injury caused by acetaminophen overdose in association with alcohol and fasting (Ref. 41). This report identifies 21 patients who developed severe liver injury when using acetaminophen. All of the patients took more than 4 grams acetaminophen daily and nearly all were recently fasting. The study authors concluded that fasting is a risk factor for acetaminophen-induced liver injury. However, we do not believe the study supports this conclusion for OTC use of acetaminophen. All of the patients exceeded the maximum OTC acetaminophen dose of 4 grams daily, with 11 patients using more than 10 grams daily. Because the patients ingested more than the recommended amount of acetaminophen and also ingested alcohol, it is difficult to identify the contribution of fasting to the development of liver injury.

The other retrospective data consist of case reports. One submission describes relevant reports from our AERS database (Ref. 1). The database includes 20 reports of liver injury in individuals using acetaminophen who appear to be malnourished. In 17 out of 20 reports, the acetaminophen dose was not known or exceeded the maximum OTC daily dose. Only three reports concerned malnourished consumers using acetaminophen at therapeutic doses (i.e., no more than 4 grams daily). This submission also refers to a literature search that revealed 60 reports of liver injury when malnourished individuals took acetaminophen. In 44 cases, the acetaminophen dose exceeds the maximum OTC dose, and, in 11 cases, the acetaminophen dose was not reported. There were five cases of liver injury when using recommended OTC doses of acetaminophen.

There were also two published case reports submitted. The first case report (Ref. 36) describes a malnourished HIV-infected individual, who was hospitalized after using 2 grams of acetaminophen. In this case, the patient was a chronic alcohol user taking zidovudine (AZT) for HIV. The second report (Ref. 42) describes a 53 year old women who developed liver injury after using acetaminophen (4 grams) daily following a period of fasting.

Of all these cases, there are nine cases of liver injury resulting from acetaminophen use at or below 4 grams daily. Nine case reports represent a small fraction of the overall number of case reports. Therefore, the case reports by themselves do not demonstrate that malnourished individuals are at higher risk of liver injury when using OTC acetaminophen than non-malnourished individuals.

The submitted data are not sufficient to conclude that acetaminophen used at maximum daily OTC dose (4 grams daily for 10 days) by malnourished individuals poses additional risk of liver injury in these individuals. Therefore, we are not requiring any warning for these individuals at this time. If new data become available, we will reconsider our position on this issue.

3. Warning for Consumers with Gilbert's Syndrome

In this document, we are not requiring any warning for consumers with Gilbert's syndrome. Available data do not demonstrate that acetaminophen used according to the OTC label (i.e., a maximum of 4 grams daily for 10 days) presents any additional risk for these consumers compared to consumers without this condition. We considered the need for such a warning because we received a submission (Ref. 1) recognizing the potential risk of liver injury for consumers with Gilbert's syndrome who use acetaminophen. The submission argues that a warning regarding Gilbert's syndrome should not be required based on the available studies. We received this submission in response to our request in the 2006 proposed rule for comments and data on specific subsets of the population that may be at increased risk of liver injury when using the maximum daily dose of acetaminophen (71 FR 77314 at 77346).

Gilbert's syndrome is clinically characterized by serum bilirubin levels higher than normal and, in the cases where signs are apparent, causes yellow eyes and skin (jaundice). Gilbert's syndrome is harmless and requires no treatment (Ref. 43). Doctors diagnose patients as having the condition when examinations and tests do not reveal the existence of any other condition causing the high bilirubin levels. The main cause of high levels of unconjugated bilirubin in these individuals is believed to be due to the reduced activity of the enzyme bilirubin-uridine diphosphate glucuronosyltransferase (UDP–GT), which is essential for the bilary excretion of bilirubin (Ref. 44). Acetaminophen is primarily eliminated by UDP–GT enzymes through a process called glucuronidation (Ref. 45). If the UDP–GT enzymes that metabolize acetaminophen do not function properly, then acetaminophen is metabolized through a metabolic pathway that produces the toxic metabolite NAPQI. Therefore, it has been suggested that individuals with Gilbert's syndrome may be at increased risk for acetaminophen-induced injury.

- We are not requiring a warning for consumers with Gilbert's syndrome because the available data do not demonstrate that consumers with Gilbert's syndrome are more likely to produce excess formation of NAPQI when using acetaminophen.

The submission that we received provided numerous articles and studies concerning Gilbert's syndrome (Ref. 1). Of these studies, the most meaningful in determining the risk of acetaminophen-induced liver injury are the three acetaminophen metabolism studies in individuals with Gilbert's syndrome (Refs. 46, 47, and 48). The studies compare the amount of the most abundant acetaminophen metabolites (conjugation products- glucorounides and sulphates) and/or the least abundant acetaminophen metabolites (oxidation products- cysteines and mercaptures) between the groups. The oxidation metabolites are formed through a process that generates NAPQI. Therefore, the metabolites are used as surrogates for NAPQI production.

The first study (Ref. 47) enrolled 32 control subjects and 18 Gilbert's syndrome subjects. The Gilbert's syndrome subjects were divided into two groups: (1) those who produced more conjugation acetaminophen metabolites than oxidation metabolites and (2) those who produced more oxidation acetaminophen metabolites than conjugation metabolites. The second Gilbert's syndrome group represents subjects with abnormal acetaminophen metabolism because more conjugation acetaminophen metabolites than oxidation metabolites should be produced. One dose of acetaminophen (1.5 grams) was used, and urine was collected for 24 hours. Neither the control group nor the first Gilbert's syndrome group showed any statistically significant differences in the level of acetaminophen or any of its metabolites. The second Gilbert's syndrome group showed a statistically significant increase in oxidation metabolites and decrease in conjugation metabolites.

The second study was performed on six individuals with Gilbert's syndrome, and six control individuals (Ref. 46). Acetaminophen, 1.2 grams to 1.8 grams, was given. The conjugation metabolites were measured in plasma 2 hours after acetaminophen dosing, whereas the oxidation metabolites were measured in urine 24 hours after dosing. The conjugation metabolite levels were 31 percent lower in Gilbert's syndrome individuals compared to control individuals. The oxidation metabolites were 70 percent higher in Gilbert's syndrome individuals than controls. This study demonstrates statistically significant differences in both groups, and suggests lower glucuronidation and enhanced excretion of the oxidation metabolites in 24 hour urine samples of Gilbert's syndrome individuals. It is important to note that none of the Gilbert's syndrome individuals showed any elevation in liver function tests or any other sign of liver injury.

In the third study, 11 individuals with Gilbert's syndrome and 10 control subjects received 1 gram of acetaminophen orally (Ref. 48). Eight hours later urinary acetaminophen and its metabolites were measured by high performance liquid chromatography. The conjugation metabolites were 37.5 ± 4.7 percent versus 32.4 ± 2.4 percent in individuals with Gilbert's syndrome and control group, respectively. The oxidation metabolites levels were 5.2 ± 1.8 percent versus 4.6 ± 1.2 percent in individuals with Gilbert's syndrome and control group, respectively. These results demonstrate that the relative amount of each metabolite was not significantly different between groups. Therefore, this study suggests that metabolism of acetaminophen is not altered in individuals with Gilbert's syndrome.

Results of the three metabolism studies are conflicting. The first two studies suggest decreased conjugation and increased oxidation of acetaminophen in individuals with Gilbert's syndrome. This finding suggests that greater amounts of the toxic metabolite may be produced by individuals with Gilbert's Syndrome. It is not clear, however, that this translates into an increased risk for developing acetaminophen-induced liver injury. However, the third study shows no difference in the conjugation and oxidation metabolite levels between individuals with or without Gilbert's syndrome. This finding suggests that these individuals may not produce different amounts of metabolites. We do not believe these three studies adequately demonstrate that individuals with Gilbert's syndrome are at higher risk of liver injury than individuals without Gilbert's syndrome when using up to 4 grams acetaminophen daily.

V. Labeling Required for OTC NSAIDs

A. Warnings

In response to the 2006 proposed rule, we received five submissions regarding warnings for OTC NSAIDs (Refs. 1, 2, 4, 5, and 49). While three submissions (Refs. 2, 4, and 49) agree with the proposed warnings, two submissions (Refs. 1 and 5) request the following revisions to the proposed warnings:

1. Revise the ''Ask a doctor or pharmacist before use if you are'' subheading in proposed 21 CFR 201.325(a)(2)(iii)(B) to read ''Ask a doctor or pharmacist before use if you are taking.''

2. Include ''liver disease'' in the kidney damage warning (proposed 201.325(a)(2)(iii)(b)).

The first request was made because the proposed bulleted statements under the subheading all begin with ''taking;'' therefore, ''taking'' should be moved from the bulleted statements to the subheading. This revision would decrease the overall number of words for the warning. The second request concerns the warning that deals primarily with risk factors for kidney damage when using OTC NSAIDs. The submission (Ref. 1) includes data regarding the occurrence of kidney damage in patients with severe liver disease with ascites when using OTC NSAIDs.

We are not revising the proposed NSAID warnings in this document as suggested by the two submissions. Regarding the first request (Ref. 5), we cannot revise the warning subheading statement in proposed 21 CFR 201.325(a)(2)(iii)(B) because there are other proposed bulleted statements under this heading from the 2002 IAAA proposed rule (67 FR 54139 at 54150; 21 CFR 343.50(c)). One of the other proposed bulleted statements reads, ''under a doctor's care for any serious condition.'' This bulleted statement would not make sense if ''taking'' is included in the warning subheading.

Regarding the second request, we are adding ''liver cirrhosis'' to the ''Ask a doctor before use if you have'' warning. The submission making this request submitted many different types of studies (Ref. 1). We believe the most clinically meaningful of the submitted studies are the seven prospective studies examining kidney function in patients with liver disease using NSAIDs. These studies enrolled a total of 112 patients with liver disease who took an NSAID. All of the patients had cirrhosis with ascites, a severe form of liver disease in which fluid collects in the abdomen. Fourteen of these patients also had functional kidney failure. The study end points examined kidney function by typical laboratory parameters, such as glomerular filtration rate, renal plasma flow, and serum creatinine levels.

Taken together, the study results suggest that kidney function decreases in these patients when they use an NSAID. For example, one study (Ref. 50) found that the decreases in three of the parameters were statistically significant ($p < 0.05$): glomerular filtration rate, renal plasma flow, and serum creatinine levels.

Patients with cirrhosis and ascites constitute a subset of the patients who have liver disease and represents a severe stage of liver disease. We are not aware of data demonstrating the patients with less severe forms of liver disease are at higher risk than consumers without liver disease. One of the submitted studies found only one of the seven kidney function parameters decreased significantly when comparing patients who had liver disease without ascites to patients who did not have liver disease (Ref. 51). In contrast, five of the seven kidney function parameters decreased significantly when comparing patients who had liver disease with ascites to patients who did not have liver disease. This result is consistent with what one would expect to see in patients with ascites, which causes loss of intravascular fluid due to accumulation of fluid in the abdominal cavity. The renin angiotensin system is

activated, which results in renal vasoconstriction. The kidney produces vasodilating prostaglandins which help maintain renal function. In patients with cirrhosis and ascites, NSAIDs reduce the production of vasodilating prostaglandins, which could lead to a decline in renal function and development of renal failure (Refs. 52, 53, and 54).

In conclusion, we are including ''liver cirrhosis'' in the ''ask a doctor'' warnings instead of ''liver disease'' as requested by the submission because the results of the studies are consistent with an intravascular volume depleted condition caused by liver cirrhosis and ascites. It is important to note that these patients are typically under a high level of care by doctors because of the severity of the disease state. This is demonstrated by the submitted studies, in which 85 of the 112 patients were hospitalized when they were enrolled in the studies. The medications that these patients receive are scrutinized by their health providers. Furthermore, we are not aware of data demonstrating that the majority of patients with less severe liver disease are at higher risk to develop a decrease in kidney function. Therefore, ''liver disease'' would be too vague, because it would also apply to patients with less severe forms of liver disease.

In addition to adding ''liver cirrhosis'' to the warnings, we are making other revisions to the warnings that we believe will improve the safe use of these products. We are revising the introductory sentences of the stomach bleeding warning to include ''severe'' before ''stomach bleeding.'' We are making this modification because a submission (Ref, 1) argues that the term ''severe'' to qualify liver damage should be consistently applied to all OTC analgesics but was only proposed as part of the liver warning and was not proposed in the stomach bleeding warning (see Section IV.A.2. of this document). The same submission also argues that the term ''severe'' should not be used in either the liver warning or the stomach bleeding warning. However, we believe that the term is accurate and appropriate in both warnings because the drug-induced liver damage and bleeding can both potentially lead to death.

We are revising the introductory sentences of the stomach bleeding warning to remove the words ''nonsteroidal anti-inflammatory drug'' immediately before ''(NSAID).'' The term ''NSAID'' is defined under the ''Active ingredient/Purpose'' heading (21 CFR 201.326(a)(2)(ii)). It does not need to be defined a second time in the stomach bleeding warning. The introductory sentences of the stomach bleeding warning required in this document reads: ''Stomach bleeding warning: This product contains an NSAID, which may cause severe stomach bleeding. The chance is higher if you.'' These sentences are followed by the bulleted statements identifying risk factors.

We are also removing warnings that are not part of the stomach bleeding warning but are related. There are five bulleted statements under the ''Ask a doctor before use if you have'' and ''Ask a doctor or pharmacist before use if you have'' headings that are redundant with bulleted statements under the stomach bleeding warning (proposed 21 CFR 201.325(a)(2)(iii)(B) and (C)):

- ulcers
- bleeding problems
- reached age 60 or older
- taking any other drug containing an NSAID (prescription or nonprescription)
- taking a blood thinning (anticoagulant) or steroid drug.

The stomach bleeding warning informs consumers of risk factors for stomach bleeding. These five bulleted statements instruct consumers to ask a doctor or pharmacist before using an NSAID if they have any of the stomach bleeding risk factors. Therefore, all of these proposed warnings are necessary. However, we believe the five bulleted statements can be simplified into one warning: ''Ask a doctor before use if the stomach bleeding warning applies to you.'' This revised warning will provide consumers with the same information while taking much less labeling space. We should also note that this revision changes the heading so that we are also making minor revisions to the other bulleted statements under the ''Ask a doctor before use if'' heading.

All five bulleted statements are identical to the bulleted statements in the stomach bleeding warning except the statement about NSAID use. This statement specifies ''prescription or nonprescription,'' which is not specified in the stomach bleeding warning. We believe this is important information that consumers should continue to be aware of. Therefore, we are revising the fourth bulleted statement in the stomach bleeding warning to include this information: ''take other drugs containing prescription or nonprescription NSAIDs (aspirin, ibuprofen, naproxen, or others).''

There are also two warnings related to stomach bleeding under the ''Stop use and ask a doctor if'' heading (proposed 21 CFR 201.325(a)(2)(iii)(D)):

- you feel faint, vomit blood, or have bloody or black stools. These are signs of stomach bleeding
- stomach pain or upset gets worse

We continue to believe these warnings are important to the safe use of OTC NSAIDs. The stomach bleeding warning and the new warning ''Ask a doctor before use if the stomach bleeding warning applies to you'' provide information that consumers need to know before using an OTC NSAID. The warnings under the ''Stop use and ask a doctor if'' heading provide information that consumers need to know after they begin using an OTC NSAID. In this document, we are revising the warnings to make it clearer that both warnings relate to signs of stomach bleeding:

Stop use and ask a doctor if

- you experience any of the following signs of stomach bleeding:
  - feel faint
  - vomit blood
  - have bloody or black stools
  - have stomach pain that does not get better.

We believe this revision will allow consumers to more easily identify symptoms of stomach bleeding.

In addition to the revisions related to stomach bleeding, we are revising the warning related to stomach pain and discomfort that can be caused by NSAID use (proposed 21 CFR 201.325(a)(2)(iii)(B)): ''Ask a doctor before use if you have stomach problems that last or come back, such as heartburn, upset stomach, or stomach pain.'' We continue to believe that OTC NSAIDs are more likely to lead to stomach pain and discomfort in consumers who have a history of stomach problem than those who do not (53 FR 46204 at 46220). Therefore, we are continuing to require this warning. But, we are revising it to make it more concise and easier to understand: ''Ask a doctor before use if you have a history of stomach problems, such as heartburn.'' We believe all of the revisions that we are making to the OTC NSAID warnings in this document will better ensure safe use of these products.

B. Labeling Specific to Aspirin

In response to the 2006 proposed rule, we received one submission from a manufacturer of OTC aspirin products (Ref. 55). The submission requests the following for OTC aspirin products:

(1) Do not require the word ''NSAID'' on the PDP;

(2) Allow the indication statement ''as directed by a doctor for prevention of heart attack and stroke''; and

(3) Do not require the cardiovascular risk warning proposed for all OTC NSAIDs.

In support of these requests, the submission cites the safe marketing history of aspirin and the unique pharmacological properties of aspirin that distinguish it from the other NSAIDs. The submission does not include any data to support these requests.

In this document, we are requiring the labeling proposed for aspirin in the 2006 proposed rule. The carton labeling covered by this final rule will include aspirin products. Regarding the submission's first request, we believe it is important to identify OTC aspirin products as being an ''NSAID.'' In the 2006 proposed rule, we proposed that the name of the NSAID ingredient (e.g., ''aspirin'') should be followed by the term ''(NSAID)'' as highlighted text on the PDP on all OTC NSAID products (71 FR 77314 at 77350). We proposed this labeling be required to help consumers identify NSAID-containing products and avoid adverse drug effects (e.g., stomach bleeding) caused by accidentally using multiple NSAID products at the same time. We believe that these adverse drug effects may occur regardless of whether an NSAID product contains aspirin or another NSAID. We are not aware of any data demonstrating that aspirin is significantly less likely to cause these adverse drug effects. For example, our AERS database reveals 279 cases of stomach bleeding associated with aspirin and other NSAIDs between 1998 and 2001, and the majority of reports involve aspirin (71 FR 77314 at 77325). Therefore, we continue to believe that the term ''NSAID'' prominently displayed on all OTC NSAID products, including aspirin, is important for the safe use of these products.

Regarding the submission's second request, we are not allowing OTC aspirin products to include the indication statement ''as directed by a doctor for prevention of heart attack and stroke'' in the ''Uses'' section of the ''Drug Facts'' label. OTC use of aspirin for cardiovascular uses is allowed under professional labeling for OTC aspirin products, although the indication statement is different than that included in the submission (21 CFR 343.80). In a 1993 proposed rule, we proposed the following warning be included on OTC aspirin labeling (58 FR 54224 at 54225): ''IMPORTANT: See your doctor before taking this product for your heart or for other new uses of aspirin, because serious side effects could occur with self treatment.'' The intent of the recommended indication statement and proposed warning is to encourage consumers to seek a doctor's advice when using aspirin to prevent heart attack or stroke. We will consider these and other labeling options in a future **Federal Register** publication. In this document, we are not addressing the submission's third request to exclude OTC aspirin products from including the cardiovascular risk warning (i.e., ''long term continuous use may increase the risk of heart attack or stroke''). This warning was included on all OTC NSAID products except aspirin marketed under an NDA, as specified in the July 2005 letter sent to all OTC NSAID NDA holders (Ref. 6). We have not required that this warning be included on any aspirin containing products. We have not proposed this warning for OTC NSAIDs marketed under the monograph. We will address this warning for OTC NSAIDs marketed under the monograph in a separate **Federal Register** notice because it was not included in the 2006 proposed rule (i.e., is not in proposed 21 CFR part 201).

VI. Analysis of Impacts

We have examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is about $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product.

We conclude that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. This final rule is not a significant regulatory action as defined by the Executive Order and, therefore, is not subject to review under the Executive order. As discussed in this section, we have determined that this final rule will not have a significant economic impact on a substantial number of small entities. Because the rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in expenditure in any one year of $100 million or more, we are not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act.

We estimate that manufacturers and marketers of OTC acetaminophen and NSAID drug products would incur one-time compliance costs of $32 million in the first year to revise labeling to conform to this rule. The benefits of this final rule are based on estimated annual reductions from 1 to 3 percent in serious illnesses and related hospital and emergency room costs and in deaths related to unintentional overdosing. If 1 to 3 percent of these adverse events are avoided, the monetized benefits would be $6 million to $17 million per year, respectively. The present value of the monetized benefits over a 10-year period is $41 million to $126 million assuming a 7 percent discount rate,[9] and $49 million to $147 million at a 3 percent discount rate. If we assume only a 1 percent reduction in the illnesses and deaths analyzed, the benefits of this rule outweigh the costs.

We note that we lack the data needed to confidently predict a percent reduction in serious cases related to unintentional overdosing. Because of the uncertainty in these estimates, we estimated an annual average number of adverse events that would need to be avoided over a 10-year period to reach a breakeven point. Social benefits would equal the costs of compliance if the rule prevents about 1 death each year (0.9 and 0.7 deaths over 10 years at a 7 percent and a 3 percent discount rate, respectively). Alternatively, if no deaths are avoided, the rule would need to prevent about 475 hospitalizations per year over the 10-year period at a 7 percent discount rate. At a 3 percent discount rate, an average reduction of 410 hospitalizations per year is needed.

A. Need for the Rule

In 2002, an FDA Advisory Committee recommended changes to the labeling of OTC acetaminophen and NSAID drug products to better inform consumers about the active ingredients and possible side effects caused by improper use. Although we consider

[9] Per the Office of Management and Budget (OMB) Circular A4, revised in 2003.

acetaminophen to be safe and effective when labeled and used correctly, using too much can lead to liver injury and death. Similarly, the use of NSAIDs can lead to stomach bleeding and kidney damage. The number of cases of injury reported is a very low percentage of the total use of OTC acetaminophen and NSAID drug products. For many people, the risks are quite low because they use these products only occasionally. The risks may be greater for people who use these products more frequently and/or do not follow the labeling information on the package. The risk of injury may be increased for certain populations and under certain conditions of use.

There are multiple reasons for unintentional acetaminophen overdoses. First, acetaminophen is an active ingredient in a wide variety of both OTC and prescription drug products. For prescription products, the immediate prescription container may not state that the product contains acetaminophen or state the maximum daily dose limit. Consumers may often fail to recognize the presence and amount of acetaminophen ingredients in OTC and prescription drug products. This lack of knowledge can result in a person using two different products containing acetaminophen simultaneously. Moreover, many consumers are unaware that exceeding the recommended dosage for acetaminophen can lead to unintentional overdosing and cause potential harm. Based on the evidence discussed in this document, we find that there is sufficient incidence of liver injury associated with acetaminophen to warrant new labeling, and that without the new labeling, acetaminophen products would no longer be considered generally recognized as safe and effective and not misbranded for OTC use.

Results of several large-scale clinical studies performed in the United States and in other countries have established that the use of NSAIDs is an important risk factor for serious stomach adverse events, especially bleeding. The risk is higher for certain populations. Based on the evidence discussed in this document, we further find that NSAIDs increase the risk for stomach adverse events and that, without a new stomach bleeding warning in the labeling for NSAIDs, the products would no longer be considered generally recognized as safe and effective and not misbranded for OTC use.

The purpose of this final rule is to amend our OTC drug labeling regulations to include new warnings and other labeling requirements to advise consumers of potential risks and when to consult a doctor (see Table 1 in section I.B.2. of this document). We are also removing the alcohol warning in § 201.322 and incorporating new alcohol-related warnings and other labeling for all OTC acetaminophen and NSAID drug products. We are requiring certain warning information targeted to age-specific populations. In addition, we are requiring that the presence of acetaminophen or any NSAID would appear prominently on a product's principal display panel (PDP).

B. Impact of the Rule

We contracted Eastern Research Group, Inc. (ERG) to assess the costs and benefits of the 2006 proposed rule on which this final rule is based. The results of ERG's analysis apply to this final rule because there are only minor differences between the proposed rule and this final rule. We do not believe any of these differences will significantly changes the costs and benefits determined by ERG. The following is a summary of ERG's analysis; the full report, including details on assumptions, cost calculations, and findings, is on file in the Division of Dockets Management (Ref. 56).

Manufacturers and marketers of OTC acetaminophen and NSAID drug products would incur one-time costs to revise affected product labeling to comply with this rule. We assumed an implementation period of 12 months for one-time costs for a major labeling revision. We estimated one-time costs for a major labeling revision using a pharmaceutical labeling revision cost model. This labeling model is described in detail in Appendix A of the ERG report.

To develop the original model, we and ERG interviewed pharmaceutical representatives from regulatory, legal, manufacturing controls, and labeling departments to collect information on labeling change cost components, type of personnel affected, and costs. The model incorporates data on average industry costs by company size, including, where applicable, modifications to packaging configurations. Industry consultants also provided information on model inputs related to the OTC acetaminophen and NSAID drug product industry, the labeling revision process, the costs of modifying labeling, and the frequency of packaging reconfiguration changes.

The baseline for this action is in full compliance with the format and content requirements for OTC drug product labeling in 21 CFR 201.66. In the final rule that established these requirements on March 17, 1999 (64 FR 13254), we accounted for the total incremental costs to comply with requirements, including 6 point font size and related costs for increased package size and longer labeling where applicable. We note that, although some forms of packaging (for small quantities) have been granted extensions on compliance dates, many packaging alternatives now exist to assure compliance.

Manufacturers routinely change labels at varying intervals and have standardized procedures in place for complying with our requirements. The analysis assumes that one-half of the manufacturers of OTC acetaminophen and NSAID drug products typically redesign their label every 2 years, the remainder every 3 years, based on consultant input. For this analysis, ERG assumed that manufacturers whose label redesign cycle is less than the implementation period will not incur any regulatory costs. For example, if a company routinely revises its product labeling annually and is given at least that long to incorporate the required changes, ERG judged that the regulatory revision can be made at essentially no cost.

The costs of labeling change depend on the type of labeling (e.g., carton and container label) and whether there is sufficient labeling space to accommodate the proposed changes. There are an estimated 22,500 OTC acetaminophen and NSAID drug product stock keeping units (SKUs), split evenly among branded and private labels, according to an industry consultant.[10] We assume branded SKUs are distributed as follows by firm size: 50 percent small, 17 percent medium, and 33 percent large. Based on consultant input, we assumed the distribution of SKUs among OTC acetaminophen and NSAID drug products as follows: Acetaminophen, 45 percent; NSAIDs (except ibuprofen), 38 percent; ibuprofen, 15 percent; and combinations of acetaminophen and NSAIDs, 2 percent. The ERG report presents model assumptions and methods for calculating costs.

ERG visited five stores—two major chain drug stores and three convenience stores—to collect information on the distribution of types of OTC acetaminophen and NSAID drug product packaging. Roughly 80 percent of OTC acetaminophen and NSAID drug products were packaged in cartons and 20 percent in containers. To assess the

[10] Estimates of affected SKUs are 18,000 by FDA and 20,000 to 25,000 by industry consultant. This number of SKUs includes products marketed by manufacturers, repackers, relabelers, and distributors.

increase in label space requirements, ERG purchased 45 affected products, with an emphasis on smaller packages.

1. Label Area Changes

ERG collected and recorded descriptive packaging information on the sampled products and measured existing font size, labeling area and labeling text on packages, and the area needed for replacement text. ERG then calculated the percentage increase in square millimeters needed to accommodate the proposed labeling changes. In all cases, ERG determined that the requirement to add active ingredient names on the PDP, while requiring major redesign in some cases, did not impose a change in the size of the PDP or the addition of non-standard labeling (such as adding a fifth carton panel or peel back label). ERG estimates that the increase in existing label area needed to accommodate the additional proposed label warnings and text ranges from 8 percent (acetaminophen) to 32 percent (ibuprofen).

2. Package Size or Type Changes

ERG measured the available panels and white space on the 45 packages sampled. If the available white space was greater than the estimated increase in space necessary to accommodate the new label warnings, ERG determined the product would not require an increase in carton or container size. Based on this review, ERG assumed that all current packaging can accommodate the required changes in this proposal without altering label sizes, package sizes, or adding non-standard labels. Therefore, ERG did not assign costs for adjustments to packaging. Although finding only a few small foil packs that did not comply with the OTC Drug Facts labeling requirements, ERG noted that alternative types of packaging are now available to replace the older packages.

Table 2 presents the estimated total and annualized costs of compliance with the OTC acetaminophen and NSAID drug product final rule. The total estimated one-time costs to revise labeling are $32.6 million. The estimated annualized cost over the relevant relabeling period is $15.2 million at a 7 percent discount rate. The estimated average annualized cost per SKU is $677 (i.e., $15.2 million for 22,500 SKUs).

TABLE 2—ESTIMATED TOTAL AND ANNUALIZED COSTS (AT 7 PERCENT DISCOUNT RATE) OF COMPLIANCE WITH THIS RULE

	Dollars (in millions)				
	Company Type	Acetaminophen	NSAIDs except Ibuprofen	Ibuprofen	Combinations of Acetaminophen and NSAIDs
Total Costs					
Small Brand	2.2	1.8	0.7	0.1	4.9
Medium Brand	2.1	1.8	0.7	0.09	4.7
Large Brand	6.0	5.1	2.0	0.3	13.3
Private Label	4.4	3.7	1.5	0.2	9.7
Total	14.7	12.4	4.9	0.7	32.6
Total Annualized Costs					
Small Brand	1	0.9	0.3	0.05	2.7
Medium Brand	1.0	0.8	0.3	0.04	2.2
Large Brand	2.8	2.4	0.9	0.1	6.2
Private Label	2.0	1.7	0.7	0.09	4.5
Total	6.9	5.8	2.3	0.3	15.2

C. Impact on Affected Sectors

Manufacturers of OTC drug products are classified in North American Industry Classification System (NAICS) 325412, pharmaceutical preparation manufacturing. This classification code includes all manufacturers of prescription and OTC pharmaceutical preparations, but does not include relabelers, repackers, and distributors. The Small Business Administration (SBA) defines a small business in this industry classification code as one with fewer than 750 employees. In NAICS 325412, over 90 percent are considered small entities. The affected industry is a subset of the OTC pharmaceutical industry. This final rule affects an estimated 258 manufacturers of OTC acetaminophen and NSAID drug products (200 of which are small businesses).

Manufacturers often package private label products, although some chains package their own brands. SBA considers the following to be small: (1) Any pharmacy or drug store with annual sales under $6 million, and (2) supermarkets and other grocery stores and warehouses and superstores with sales under $23 million. Generally, only the largest supermarket and drug store chains (263 firms) or superstores (9 firms) would have their own private label. ERG included only those largest retail chains with annual sales of $100 million or more as having their own private labels. Thus, we believe that there are no small entities in these retail sectors that are affected. Marketers of private label OTC drug products are classified as follows:

- NAICS 446110: Pharmacies and drug stores
- NAICS 445110: Supermarkets and other grocery stores
- NAICS 452910: Warehouse clubs and superstores.

Packaging and labeling services that contract with pharmaceutical manufacturing firms may also be

affected, but we assume manufacturers bear the costs of any labeling changes. Both the manufacturing and marketing sectors will most likely share costs, but the extent is not known. Therefore, this impact analysis first assumes that manufacturers absorb all of the labeling costs. We then assume that all private labeling costs are absorbed by chain stores and calculate impacts.

To assess the impact on entities in the pharmaceutical-manufacturing sector (NAICS 325412), ERG adjusted SBA data on firm size and revenues to estimate average receipts per firm for the affected sector. ERG applied modeling assumptions to estimate the number of large and small affected firms. ERG further assumed the distribution of all 22,500 affected SKUs is one-third for large firms (producing either branded or private label products) and two-thirds for small firms. To estimate the share of total compliance costs for each size category, ERG distributed the SKUs attributed to small businesses in the same proportion as employment. The distribution of SKUs determines the distribution of compliance costs by employment size category. Table 3 summarizes the estimated impacts for pharmaceutical manufacturers, the total cost per firm based on $677 per SKU, and the compliance costs as a percent of revenues.

TABLE 3—ESTIMATED IMPACTS ON PHARMACEUTICAL PREPARATION MANUFACTURING FIRMS BY SIZE (NAICS 325412)

Firm Size (Number of Employees)	Average Receipts per Firm (Dollars in Millions)	Assumed Number of SKUs	SKUs per Firm	Total Firm Cost (Dollars in Thousands)[1]	Compliance Cost (% of Receipts)
<20	1.7	841	9	6.0	0.34%
20–99	12.2	2,591	65	43.8	0.361%
100–499	61.9	5,506	148	100.2	0.162%
500–749	366.8	6,062	225	151.9	0.041%
Total small	29.1	15,000	75	50.8	0.175%
>750	947.8	7,500	130	88.1	0.009%
Total	109.6	22,500	87	59.1	0.054%

[1] Number of SKUs x $677 per SKU.
Source: SBA, 1999 and ERG estimates.

Total estimated compliance costs per firm ranged from $6,000 for firms with fewer than 20 employees to $152,000 for firms with 500 to 749 employees. The compliance cost as a percent of receipts is less than 1 percent for all firms; 0.18 percent for all small firms and 0.01 for large firms. This estimate of impacts is somewhat understated because the census data used to calculate estimates includes both OTC and prescription drug manufacturers. However, no alternative revenue and employment size information for affected product lines is available. We conclude that this estimate of the impacts of this rule does not constitute a significant economic impact on a substantial number of small entities.

In a similar analysis, we assume chain stores absorb costs for all 11,250 private label SKUs. Compliance costs as a percent of receipts are less than 0.001 percent for all of the affected sectors: Pharmacies, drug stores, superstores, supermarkets, and other grocery stores. No small entities are affected.

Manufacturers routinely change labels at varying intervals and have standardized procedures in place for complying with our requirements. This rule does not require any new reporting and record keeping activities, and no additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with this final rule; we are requiring removal of the existing alcohol warning in § 201.322.

D. Alternatives

We do not believe that there are any alternatives to the final rule that would adequately provide for the safe and effective use of OTC acetaminophen and NSAID drug products. Nonetheless, we considered but rejected the following alternatives: (1) Not adding the new information to OTC acetaminophen and NSAID drug product labeling, and (2) a longer implementation period. We do not consider either of these approaches acceptable because they do not assure that consumers will have the most current labeling information needed for the safe and effective use of these products. We consider this final rule the least burdensome alternative that meets the public health objectives of this rule.

E. Benefits

Our final rule requirements are intended to enhance consumer awareness and knowledge of the active ingredient in OTC acetaminophen and NSAID drug products. These new warnings include:

- New label warnings
- Age-specific information
- Advising consumers of potential risks and when to consult a doctor
- Prominent display of active ingredients on the PDP

The revised alcohol statements are intended to provide clearer warnings to high-risk individuals about product use. The overall intent of these requirements is to reduce the liver injury and stomach bleeding episodes that occur due to unintentional overdosing with these drugs. The requirements are also intended to reduce the incidence of adverse health outcomes among high-risk subpopulations consuming proper doses of OTC acetaminophen and NSAID drug products (e.g., people with liver disease or prone to stomach bleeding).

To estimate the benefits of this final rule, we developed baseline information on the frequency of hospitalizations, emergency room visits, and deaths related to unintentional overdosing with OTC acetaminophen and NSAID drug products. We used a value of $5 million to represent the premature loss of a statistical life in previous analyses (66 FR 6137). We quantified the related hospital and emergency room costs, estimated related morbidity costs, applied a value of $5 million to the premature loss of a statistical life, and

estimated annual savings if 1 to 3 percent of these adverse events and deaths are avoided (71 FR 77314 at 77341).

We lack evidence to predict with certainty a specific level of reduction in adverse events. Nonetheless, we believe that presenting consumers with improved label warnings and more prominently displaying the active ingredients on the PDP will promote safer use of OTC acetaminophen and NSAID drug products. Specifically, prominent display of the active ingredients on the PDP would alert consumers to the presence of the active ingredients in OTC acetaminophen and NSAID drug products and help minimize the risks of unintentional overdosing. The revised warnings are intended to assist consumers, including higher risk individuals, to use OTC acetaminophen and NSAID drug products more safely and lead to at least a modest reduction in unintentional overdosing.

Table 4 summarizes the baseline and estimates of the number of avoidable hospitalizations and emergency room visits, the average cost per case, and potential savings from events avoided. These data do not include reported cases of intentional overdosing. Based on the total monetized costs per adverse health outcome and the number of cases estimated to be avoided each year (from 1 to 3 percent), the total monetized benefits of illness avoided range from $0.6 million to $1.8 million per year ($592,600 to $1,777,900).

TABLE 4—SUMMARY OF ANNUAL MONETIZED BENEFITS OF ILLNESSES AVOIDED ASSOCIATED WITH THIS RULE (IN 2001 DOLLARS)

Adverse Health Event	Hospital Costs	Willing to Pay to Avoid Illness	Total Monetized Value of Illness Avoided	Potentially Preventable Baseline Cases per Year[1]	Annual Number of Cases Avoided Due to This Rule[2]	Total Annual Monetized Benefits of Illness Avoided (Dollars in Thousands)
Minor drug toxicity or emergency room visits	$209	$301	$510	3,380	34–101	$17.2–$51.7
Acetaminophen poisoning episode with hospitalization	$8,579	$2,000	$,10,579	3,424	34–103	$362.2–$1,086.8
NSAID poisoning episode with hospitalization	$8,579	$357	$8,936	2,269	23–68	$202.8–$608.3
Acute kidney failure with hospitalization	$22,251	Not Estimated	$22,251	5	0.05–0.15	$1.1–$3.3
Acute kidney failure with dialysis	$22,251	Not Estimated	$22,251	0.7	0.007–0.021	$0.2–$0.5
Stomach bleeding	$14,653	$357	$15,010	61	0.6–1.8	
Total monetized benefit of illness avoided	NA	NA	NA	NA	NA	$592.6–$1,777.9

[1] The number of potentially preventable baseline cases per year is derived from data on emergency department and hospital cases of overdosing, poisoning, or other serious adverse outcomes associated with acetaminophen and NSAID use, adjusted to estimate only unintentional cases.

[2] Assumes this final rule would reduce annual adverse event cases by 1 to 3 percent (71 FR 77314 at 77344).

[2] Assumes this final rule would reduce annual adverse event cases by 1 to 3 percent (71 FR 77314 at 77344).

In addition to estimating the value of preventing adverse drug events that result in emergency department or hospitalization, we considered the annual number of deaths related to unintentional acetaminophen overdoses. We estimate that from 1996 to 1998, an annual average of 100 adult deaths were related to unintentional acetaminophen overdoses (71 FR 77314 at 77344). We assume this rule would reduce deaths by 1 to 3 percent annually. Applying a value of $5 million for each death prevented, we estimate the total benefits associated with preventing 1 to 3 deaths to be $5 to $15 million annually (in 2001 dollars).

If the required improved labeling and warnings reduced serious adverse events by 1 to 3 percent each year, the total monetized value of preventing illness and death would be $5.6 million to $16.8 million per year, respectively. These benefits are presented in 2001 dollars.

Benefit Cost Comparison.

Industry would incur the one-time costs of the final rule of $32.6 million in the first year. In 2001, the costs were $32.0 million. However, the estimated savings from reduced hospital costs and deaths avoided, from $5.6 to $16.8 million, would accrue each year. Over a 10-year period, the $5.6 to $16.8 million per year in benefits has a present value of $41.2 to $126.1 million at a discount rate of 7 percent, and a present value of $49.1 to $147.4 million at a discount rate of 3 percent. Thus, the benefits of this final rule, assuming a 1 percent reduction in current levels of adverse health outcomes associated with the use of OTC acetaminophen and NSAID drug products, will more than offset the costs of this rule. Table 5 summarizes the estimated benefits and costs of this final rule.

TABLE 5—SUMMARY OF IMPACTS

Benefits/Costs	Dollars (in Millions)
Benefits:	
• Monetized 1 and 3 percent reduction in illnesses and deaths per year	$6–$17
• Present value over 10 years at 7 percent	$41–$126
• Present value over 10 years at 3 percent	$49–$147
Costs:	

TABLE 5—SUMMARY OF IMPACTS—Continued

Benefits/Costs	Dollars (in Millions)
• One-time label revision, first year	$33

Break-Even Analysis.

We note that we lack the data needed to confidently predict a percent reduction in serious cases related to unintentional overdosing. Because of the uncertainty in these estimates, we estimated an annual average number of adverse events that would need to be avoided over a 10-year period to reach a break-even point (i.e., the cost of compliance/present value of avoiding one death each year for 10 years). This final rule would need to prevent about 1 death each year over 10 years [0.9 deaths ($32/$37.6 million at a 7 percent discount rate) and 0.7 deaths ($32/$43.9 million at a 3 percent discount rate)]. Alternatively, if no deaths are avoided, the final rule would need to prevent about 476 hospitalizations ($32 million/$67,000) each year over the 10-year period. This estimate uses the present value of the lowest benefit category of poisoning episode with hospitalizations, $8,936 per episode over 10 years at a 7 percent discount rate. At a 3 percent discount rate, an average of 407 hospitalizations ($32 million/$79,000) would need to be avoided annually over the period.

Although we lack evidence to predict with certainty a specific level of reduction in adverse events, if we assume only a 1-percent reduction in the illnesses and deaths analyzed, the benefits of this final rule outweigh the costs. We find that this final rule will enhance public health and promote the safer use of OTC acetaminophen and NSAID drug products.

This economic analysis, together with other relevant sections of this document, serves as our final regulatory flexibility analysis, as required under the Regulatory Flexibility Act. We did not receive any submissions regarding the economic analysis in the 2006 PR.

VII. Paperwork Reduction Act of 1995

We conclude that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VIII. Environmental Impact

We have determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We provided the States with an opportunity for appropriate participation in this rulemaking when we sought input from all stakeholders through publication of the proposed rule in the **Federal Register** of December 26, 2006 (71 FR 77314).

On December 27, 2006, FDA's Division of Federal and State Relations provided notice via email transmission of a letter to elected officials of State governments and their representatives. The letter advised the States of the publication of the proposed rule and stated that when published as a final rule, this regulation would preempt State law in accordance with section 751 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379r(a)). The letter encouraged State and local governments to review the proposed rule and to provide any comments to the docket (Docket No. 1977N–0094L) by May 25, 2007, or to contact certain named individuals. FDA did not receive any comments in response to this notice, or any comments from the States in response to the publication of the proposed rule.

In conclusion, we believe that we have complied with all of the applicable requirements under the Executive order and have determined that the preemptive effects of this rule are consistent with Executive Order 13132.

X. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) under Docket No. 1977N–0094L and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. C7.
2. Comment No. C3.
3. Comment No. EMC1.
4. Comment No. EREG4.
5. Comment No. C6.
6. Letter from Charles Ganley, FDA, to NSAID NDA Holders, July 2005.
7. Comment No. EC1.
8. Comment No. EC2.
9. Comment No. EREG1.
10. Comment No. C5.
11. Comment No. EC4.
12. Comment No. C8.
13. Bower, W. A. et al., ''Population-Based Surveillance for Acute Liver Failure,'' 8th Ed., 102:2459–63, 2007.
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15. Larson, A. M. et al., ''Acetaminophen-Induced Acute Liver Failure: Results of a United States Multicenter, Prospective Study,'' *Hepatology*, 42:1364–1372, 2005.
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17. Schiodt, F. V. et al., ''Acetaminophen Toxicity in an Urban County Hospital,'' *New England Journal of Medicine*, 337:1112–7, 1997.
18. Zimmerman, H. J. and W. C. Maddrey, ''Acetaminophen (Paracetamol) Hepatotoxicity with Regular Intake of Alcohol,'' *Hepatology*, 22:767–7773, 1995.
19. Heard, K. et al., ''A Randomized Trial to Determine the Change in Alanine Aminotransferase During 10 Days of Paracetamol (Acetaminophen) Administration in Subjects Who Consume Moderate Amounts of Alcohol,'' *Alimentary Pharmacology & Therapeutics*, 26:283–90, 2007.
20. Benson, G. D., ''Acetaminophen in Chronic Liver Disease,'' *Clinical Pharmacology and Therapeutics*, 33:95–101, 1983.
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List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.66 is amended by revising paragraph (c)(5)(ii)(E) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(E) Liver warning set forth in § 201.326(a)(1)(iii) and/or stomach bleeding warning set forth in § 201.326(a)(2)(iii). The liver warning shall follow the subheading ''Liver warning:'' and the stomach bleeding warning shall follow the subheading ''Stomach bleeding warning:''

* * * * *

§ 201.322 [Removed]

■ 3. Remove § 201.322.

■ 4. Section 201.326 is added to subpart G to read as follows:

§ 201.326 Over-the-counter drug products containing internal analgesic/antipyretic active ingredients; required warnings and other labeling.

(a) *Labeling*. The labeling for all over-the-counter (OTC) drug products containing any internal analgesic/antipyretic active ingredients (including, but not limited to, acetaminophen, aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate) alone or in combination must bear the following labeling in accordance with §§ 201.60, 201.61, and 201.66.

(1) *Acetaminophen*.

(i) *Statement of identity*. The statement of identity appears in accord with §§ 201.61 and 299.4 of this chapter. The ingredient name ''acetaminophen'' must appear highlighted (e.g., fluorescent or color contrast) or in bold type, be in lines generally parallel to the base on which the package rests as it is designed to be displayed, and be in one of the following sizes, whichever is greater:

(A) At least one-quarter as large as the size of the most prominent printed matter on the principal display panel (PDP), or

(B) At least as large as the size of the ''Drug Facts'' title, as required in § 201.66(d)(2). The presence of acetaminophen must appear as part of the established name of the drug, as defined in § 299.4 of this chapter. Combination products containing acetaminophen and a nonanalgesic ingredient(s) (e.g., cough-cold) must include the name ''acetaminophen'' and the name(s) of the other active ingredient(s) in the product on the PDP in accord with this paragraph. Only the name ''acetaminophen'' must appear highlighted or in bold type, and in a prominent print size, as described in this paragraph.

(ii) *Active Ingredient and Purpose Headings*. The information required under § 201.66(c)(2) and (c)(3) of this chapter must be included under these

headings. The information under these headings, but not the headings, may appear highlighted.

(iii) *For products labeled for adults only*. The labeling of the product states the following warnings under the heading ''Warnings'':

(A) ''Liver warning [heading in bold type]: This product contains acetaminophen. Severe liver damage may occur if you take [bullet] more than [insert maximum number of daily dosage units] in 24 hours, which is the maximum daily amount [bullet] with other drugs containing acetaminophen [bullet] 3 or more alcoholic drinks every day while using this product''. This ''Liver warning'' must be the first warning under the ''Warnings'' heading. For products that contain both acetaminophen and aspirin, this ''Liver warning'' must appear after the ''Reye's syndrome'' and ''Allergy alert'' warnings in § 201.66(c)(5)(ii)(A) and (c)(5)(ii)(B) and before the ''Stomach bleeding warning'' in paragraph (a)(2)(iii)(A) of this section. If there is an outer and immediate container of a retail package, this warning must appear on both the outer and immediate containers.

(B) ''Do not use with any other drug containing acetaminophen (prescription or nonprescription). If you are not sure whether a drug contains acetaminophen, ask a doctor or pharmacist.''

(C) ''Ask a doctor before use if you have liver disease''.

(D) ''Ask a doctor or pharmacist before use if you are taking the blood thinning drug warfarin'' except on the labeling of combination products that contain acetaminophen and NSAID(s).

(iv) *For products labeled only for children under 12 years of age*.

(A) *Warnings*. The labeling of the product states the following warnings under the heading ''Warnings'':

(*1*) ''Liver warning [heading in bold type]: This product contains acetaminophen. Severe liver damage may occur if your child takes [bullet] more than 5 doses in 24 hours, which is the maximum daily amount [bullet] with other drugs containing acetaminophen''. This ''Liver warning'' must be the first warning under the ''Warnings'' heading. If there is an outer and immediate container of a retail package, this warning must appear on both the outer and immediate containers.

(*2*) ''Do not use with any other drug containing acetaminophen (prescription or nonprescription). If you are not sure whether a drug contains acetaminophen, ask a doctor or pharmacist.''

(*3*) ''Ask a doctor before use if your child has liver disease''.

(*4*) ''Ask a doctor or pharmacist before use if your child is taking the blood thinning drug warfarin'' except on the labeling of combination products that contain acetaminophen and NSAID(s).

(B) *Directions*. The labeling of the product contains the following information under the heading ''Directions'': ''this product does not contain directions or complete warnings for adult use'' [in bold type].

(v) *For products labeled for adults and children under 12 years of age*. The labeling of the product states all of the warnings in paragraphs (a)(1)(iii)(A), (a)(1)(iii)(B), and (a)(1)(iii)(C) of this section with the following modifications:

(A) The liver warning states ''Liver warning [heading in bold type]: This product contains acetaminophen. Severe liver damage may occur if [bullet] adult takes more than [insert maximum number of daily dosage units] in 24 hours, which is the maximum daily amount [bullet] child takes more than 5 doses in 24 hours [bullet] taken with other drugs containing acetaminophen [bullet] adult has 3 or more alcoholic drinks everyday while using this product.'' If there is an outer and immediate container of a retail package, this warning must appear on both the outer and immediate containers.

(B) ''Ask a doctor before use if the user has liver disease.''

(C) ''Do not use with any other drug containing acetaminophen (prescription or nonprescription). If you are not sure whether a drug contains acetaminophen, ask a doctor or pharmacist.''

(D) ''Ask a doctor or pharmacist before use if the user is taking the blood thinning drug warfarin'' except on the labeling of combination products that contain acetaminophen and NSAID(s).

(2) *Nonsteroidal anti-inflammatory analgesic/antipyretic active ingredients—including, but not limited to, aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate*.

(i) *Statement of identity*. The statement of identity appears in accord with §§ 201.61 and 299.4 of this chapter. The word ''(NSAID)'' must appear highlighted (e.g., fluorescent or color contrast) or in bold type, be in lines generally parallel to the base on which the package rests as it is designed to be displayed, and be in one of the following sizes, whichever is greater:

(A) At least one-quarter as large as the size of the most prominent printed matter on the PDP, or

(B) At least as large as the size of the ''Drug Facts'' title, as required in § 201.66(d)(2). The word ''(NSAID)'' must appear as part of the established name of the drug, as defined in § 299.4 of this chapter, or after the general pharmacological (principal intended) action of the NSAID ingredient. Combination products containing an NSAID and a nonanalgesic ingredient(s) (e.g., cough-cold) must include the name of the NSAID ingredient and the word ''(NSAID)'' in accordance with this paragraph, and the name(s) of the other active ingredient(s) in the product on the PDP. Only the word ''(NSAID)'' needs to appear highlighted or in bold type, and in a prominent print size, as described in this paragraph.

(ii) *Active Ingredient and Purpose Headings*. The information required under § 201.66(c)(2) and (c)(3) of this chapter must be included under these headings. The active ingredient(s) section of the product's labeling, as defined in § 201.66(c)(2), contains the term ''(NSAID*)'' after the NSAID active ingredient with an asterisk statement at the end of the active ingredient(s) section that defines the term ''NSAID'' and states ''* nonsteroidal anti-inflammatory drug.'' The information under these headings may appear highlighted. However, the headings ''Active Ingredient'' and ''Purpose'' may not appear highlighted.

(iii) *For products labeled for adults only*. The labeling of the product states the following warnings under the heading ''Warnings'':

(A) ''Stomach bleeding warning [heading in bold type]: This product contains a nonsteroidal anti-inflammatory drug (NSAID), which may cause severe stomach bleeding. The chance is higher if you [bullet] are age 60 or older [bullet] have had stomach ulcers or bleeding problems [bullet] take a blood thinning (anticoagulant) or steroid drug [bullet] take other drugs containing prescription or nonprescription NSAIDs (aspirin, ibuprofen, naproxen, or others) [bullet] have 3 or more alcoholic drinks every day while using this product [bullet] take more or for a longer time than directed''. This ''Stomach bleeding warning'' must appear after the ''Reye's syndrome'' and ''Allergy alert'' warnings in § 201.66(c)(5)(ii)(A) and (c)(5)(ii)(B). For products that contain both acetaminophen and aspirin, the acetaminophen ''Liver warning'' in paragraph (a)(1)(iii) of this section must appear before the ''Stomach bleeding warning'' in this paragraph. If there is

an outer and immediate container of a retail package, this warning must appear on both the outer and immediate containers.

(B) ''Ask a doctor before use if [bullet] stomach bleeding warning applies to you [bullet] you have a history of stomach problems, such as heartburn [bullet] you have high blood pressure, heart disease, liver cirrhosis, or kidney disease [bullet] you are taking a diuretic''.

(C) ''Stop use and ask a doctor if [bullet] you experience any of the following signs of stomach bleeding:'' [add the following as second level of statements: ''[bullet] feel faint [bullet] vomit blood [bullet] have bloody or black stools [bullet] have stomach pain that does not get better'']. .

(iv) *For products labeled only for children under 12 years of age.*

(A) *Warnings.* The labeling of the product states the following warnings under the heading ''Warnings'':

(*1*) ''Stomach bleeding warning [heading in bold type]: This product contains a nonsteroidal anti-inflammatory drug (NSAID), which may cause severe stomach bleeding. The chance is higher if your child [bullet] has had stomach ulcers or bleeding problems [bullet] takes a blood thinning (anticoagulant) or steroid drug [bullet] takes other drugs containing prescription or nonprescription NSAIDs (aspirin, ibuprofen, naproxen, or others) [bullet] takes more or for a longer time than directed''. The ''Stomach bleeding warning'' must appear after the ''Reye's syndrome'' and ''Allergy alert'' warnings in § 201.66(c)(5)(ii)(A) and (c)(5)(ii)(B). If there is an outer and immediate container of a retail package, this warning must appear on both the outer and immediate containers.

(*2*) ''Ask a doctor before use if [bullet] stomach bleeding warning applies to your child [bullet] child has a history of stomach problems, such as heartburn [bullet] child has not been drinking fluids [bullet] child has lost a lot of fluid due to vomiting or diarrhea [bullet] child has high blood pressure, heart disease, liver cirrhosis, or kidney disease [bullet] child is taking a diuretic''.

(*3*) ''Stop use and ask a doctor if [bullet] child experiences any of the following signs of stomach bleeding:'' [add the following as second level of statements: [bullet] feels faint [bullet] vomits blood [bullet] has bloody or black stools [bullet] has stomach pain that does not get better'']. .

(B) *Directions.* The labeling of the product contains the following information under the heading ''Directions'': ''this product does not contain directions or complete warnings for adult use'' [in bold type].

(v) *For products labeled for adults and children under 12 years of age.* The labeling of the product states all of the warnings in paragraphs (a)(2)(iii)(A) through (a)(2)(iii)(C) of this section with the following modifications:

(A) The Stomach bleeding warning states ''Stomach bleeding warning [heading in bold type]: This product contains a nonsteroidal anti-inflammatory drug (NSAID), which may cause severe stomach bleeding. The chance is higher if the user [bullet] has had stomach ulcers or bleeding problems [bullet] takes a blood thinning (anticoagulant) or steroid drug [bullet] takes other drugs containing prescription or nonprescription NSAIDs (aspirin, ibuprofen, naproxen, or others) [bullet] takes more or for a longer time than directed [bullet] is age 60 or older [bullet] has 3 or more alcoholic drinks everyday while using this product''. The ''Stomach bleeding warning'' must appear after the ''Reye's syndrome'' and ''Allergy alert'' warnings in § 201.66(c)(5)(ii)(A) and (c)(5)(ii)(B). If there is an outer and immediate container of a retail package, this warning must appear on both the outer and immediate containers.

(B) The labeling states ''Ask a doctor before use if [bullet] stomach bleeding warning applies to user [bullet] user has history of stomach problems, such as heartburn [bullet] user has high blood pressure, heart disease, liver cirrhosis, or kidney disease [bullet] user takes a diuretic [bullet] user has not been drinking fluids [bullet] user has lost a lot of fluid due to vomiting or diarrhea''.

(C) The labeling states ''Stop use and ask a doctor if [bullet] user experiences any of the following signs of stomach bleeding:'' [add the following as second level of statements: [bullet] feels faint [bullet] vomits blood [bullet] has bloody or black stools [bullet] has stomach pain that does not get better'']. .

(b) *New warnings information statement.* The labeling of any drug product subject to this section that is initially introduced or initially delivered for introduction into interstate commerce before the effective date and within 12 months after the effective date of the final rule must bear on its PDP, as defined in § 201.60, the statement ''See new warnings information.'' This statement must appear highlighted (e.g., fluorescent or color contrast) or in bold type, be in lines generally parallel to the base on which the package rests as it is designed to be displayed, and be in one of the following sizes, whichever is greater: (1) At least one-quarter as large as the size of the most prominent printed matter on the PDP, or (2) At least as large as the size of the ''Drug Facts'' title, as required in § 201.66(d)(2).

(c) *Requirements to supplement approved application.* Holders of approved applications for OTC drug products that contain internal analgesic/antipyretic active ingredients that are subject to the requirements of paragraph (a) of this section must submit supplements under § 314.70(c) of this chapter to include the required information in the product's labeling. Such labeling may be put into use without advance approval of FDA provided it includes at least the exact information included in paragraph (a) of this section.

Dated: April 8, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[TTB Docket No. 2008–0006; T.D. TTB–76; Re: Notice No. 87]

RIN 1513–AB42

Establishment of the Lake Chelan Viticultural Area (2007R–103P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 24,040-acre ''Lake Chelan'' American viticultural area in Chelan County, Washington. It lies within the larger Columbia Valley viticultural area in north-central Washington. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Christopher Thiemann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200E, Washington, DC 20220; phone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Lake Chelan Petition

Alan J. Busacca, PhD, a geologist licensed in Washington State and a nationally certified professional soil scientist with Vinitas Vineyard Consultants, submitted a petition on behalf of the Lake Chelan Wine Growers Association to establish the 24,040-acre Lake Chelan American viticultural area in north-central Washington. Some of the petition evidence and documentation provided relies on the previous research and writings of Dr. Busacca. Additional petition resources include Government-published climatic, topographic, and soils data, as well as maps, municipal resources, commercial publications, personal correspondence, and anecdotal information.

The Lake Chelan Valley lies about 112 miles east-northeast of Seattle, according to USGS and commercial maps. The petitioner explained that the proposed Lake Chelan viticultural area lies entirely within the large, established Columbia Valley viticultural area (27 CFR 9.74). TTB notes that the Lake Chelan region lies to the east of the Puget Sound viticultural area (27 CFR 9.151) and to the north of other Washington State viticultural areas. The proposed Lake Chelan viticultural area neither borders nor includes any portion of any other Washington State viticultural area except the Columbia Valley viticultural area.

The petitioner explained that the proposed Lake Chelan viticultural area includes the southern and eastern portions of the large body of water known as Lake Chelan and its surrounding lands suitable for viticulture. According to the petitioner, at the time of the 2006 petition filing with TTB, the proposed viticultural area included 13 bonded wineries, 140 acres of vineyards, and another 50 acres to be planted to grape vines.

According to the petitioner, distinguishing features of the proposed Lake Chelan viticultural area include its geology, geography, soils, and climate as directly influenced by past alpine glacial activity of the Cascade region. Lake Chelan Valley is the only valley in the Cascade Range in Oregon or Washington that holds a natural lake of its size. The climate of the agricultural and viticultural lands surrounding the lower (eastern) end of the lake is strongly moderated by the thermal effect of the lake on the air temperatures. The glacier that formed during the last ice age and traveled from the Cascade crest to the eastern end of the modern lake left a defining imprint on the landforms of the Lake Chelan Valley. In addition, the petitioner claimed that pumice and ash from eruptions of volcanoes in the Cascade Range, principally Glacier Peak to the west of the proposed viticultural area, formed soils that are ashier and more pumiceous than those in any other established viticultural area in Washington State.

We summarize below the supporting evidence submitted with the petition.

Name Evidence

The ''Chelan'' geographic name derives from the name that Alexander Ross, an American fur trader, in about 1824 used to describe the ''Tsill-anes,'' a native people living along the south shore of Lake Chelan, according to ''Chelan County—Thumbnail History,'' an article from the Washington State Department of Archeology and Historic Preservation, The Online Encyclopedia of Washington State History at *http://www.historylink.org*.

The ''Lake Chelan'' name appears on the USGS Chelan, Manson, and Winesap quadrangle maps. The USGS Chelan map, sections 11 and 12, T27N and R23N, identifies an area to the north-northwest of the small town of Chelan as the ''Lake Chelan Golf and Country Club.'' The DeLorme Washington Atlas and Gazetteer identifies ''Lake Chelan'' on page 83, sections A7, B7, and B8. The American Automobile Association map, Oregon Washington State Series, identifies ''Lake Chelan'' as a long slender lake extending northwest from the North Cascades National Park southeast to the Chelan Dam, approximately 2 miles northwest of the Columbia River.

An article entitled ''Chelan and Stehekin, WA,'' dated August 12, 2006, on *http://www.nwsource.com*, a northwest travel and outdoors Web site, states that Lake Chelan is one of Washington's favorite summer recreation areas.

Boundary Evidence

According to the petitioner and the written boundary description, the proposed Lake Chelan viticultural area encompasses the southernmost and easternmost 12 miles of the 55-mile-long lake and surrounding lands. A bedrock

ridge, with a pinnacle at a 1,526-foot elevation, divides the approximately 1,200-foot elevation of the south Lake Chelan region from the 707-foot elevation of the Columbia River, according to USGS maps of the area and the petitioner. Lands to the east and southeast of the proposed viticultural area are within the Columbia River airshed and watershed, and have different climates, geology, and soils.

The upper 43 miles of Lake Chelan and its shoreline lie outside of the proposed viticultural area, according to the written boundary description provided in the petition. According to the petitioner, in the northern lake region the surrounding Cascade Range provides significant downward cold air drainage from peaks to valley floor and blocks the sun from the adjacent valley lands. The cold air and shade combine with a steep shoreline terrain to create a region unsuitable for grape growing. Additionally, the North Cascades National Park surrounds the north end of Lake Chelan, and commercial agricultural development is prohibited within its borders.

Lands with viticultural potential in the Lake Chelan Valley area, the petitioner states, are generally at or below 2,000 feet in elevation. High mountains ridges, beyond the boundary of the proposed Lake Chelan viticultural area, rise over 5,000 feet in elevation to the north and west and to 3,800 feet to the south, cradling the Lake Chelan Valley region on three sides, according to the petitioner and USGS maps. The petition explains that these high mountains, which have cold climates and forested terrain, are unsuited to viticulture.

History of Viticulture

According to the Chelan Valley Mirror dated May 1, 1947, Urban DeGrassi, a Jesuit priest, spent several years in the Lake Chelan region teaching Native Americans about agriculture. Based on Father DeGrassi's teachings, in 1881, John and Peter Wapato, Native Americans of Chelan Valley, started planting fruit eventually including grapes and cherries.

According to an article in the August 6, 1891, edition of the Chelan Falls Leader, Louis Conti, an Italian immigrant, owned a 60-acre vineyard in the Lake Chelan area. The article stated that a colony of Italian immigrants, living on the sunnier south side of the lake, planted grape vines on their claimed lands.

Two 1905 photographs from the Chelan County Historical Society show grapes growing in the Lake Chelan area. A photo of grapes on the vine is labeled ''Black Hamburg Grapes—Lake Chelan.'' The petitioner explains that the common name for those grapes is Black Muscat. The other photo, which shows a little boy sitting on the ground beside grapes hanging heavily from a vine, is labeled ''Lake Chelan Grapes.''

The Faletto family continued growing grapes into the early 1900's, according to an e-mail dated November 22, 2005, from family member Rich Faletto. Mr. Faletto stated of his grandfather, ''Old John was the vintner and winery operator in the valley, producing great wine from [grapevines] brought to the area by a group of Italians.''

The Chelan and Manson areas, within the proposed viticultural area, comprised 154 acres of producing vineyards, according to a November 17, 1949, newspaper article written by Harry R. McMullen. According to the article, that year grape growers received 2 cents a pound, or $40 a ton, from the Welch Company.

Modern Viticulture

The petitioner states that in 1998, Steve Kludt and Bob Christopher replanted apple orchards to grapes within the proposed Lake Chelan viticultural area. Also, in 2000 the Kludt family opened the first bonded winery in the area and in 2001 started selling wine. Vineyard production in the Lake Chelan region increased from over 90 acres in 2004 to 140 acres by 2006. According to the petitioner, 13 bonded wineries operated in the Lake Chelan area as of the 2006 petition submission date.

Proposed Boundary Line

The petitioner explains that the proposed boundary line uses a 2,000-foot elevation line and USGS map section lines in conjunction with roads, mountain peaks, and other map markings in providing a clear, simple perimeter. The proposed Lake Chelan viticultural area boundary line includes lands adjacent to the southernmost 12 miles of the lake, according to the petition.

In determining the proposed boundary line, the petitioner included in the proposed viticultural area only the valley areas with a significant ''lake effect'' climate. The lake affects surrounding lands, the petitioner explains, by favorably moderating the climate, increasing the length of the growing season, and reducing the frequency of damaging or killing vine freezes. The petitioner states that the proposed boundary line excludes from the proposed viticultural area the surrounding mountainous areas and the northern 43 miles of the lake and adjacent lands, all unsuitable for viticulture.

TTB notes that the northeast portion of the boundary of the proposed Lake Chelan viticultural area coincides with 17 miles of the 2,000-foot boundary line of the Columbia Valley viticultural area. When the petition was first submitted to TTB, the proposed northeast boundary line incorporated a series of map section lines and 90-degree turns. After discussions with TTB, the petitioner modified the northeast portion of the boundary line to coincide with the boundary line of the Columbia Valley viticultural area.

The petitioner provides an aerial photo of agriculture within and immediately outside of the proposed Lake Chelan viticultural area. The planted orchards and vineyards are clustered on the low, flat elevations adjoining the northern and southern shorelines of the lake. The petitioner explains that viticulture fails to thrive outside the proposed boundary line because of high elevations, steep terrain, cold temperatures, and the absence of a moderating lake-effect climate.

Other boundary line considerations include properties of the soil, the influences of the watershed and airshed, the elevations of the surrounding mountains, and the steepness of the terrain.

Distinguishing Features

Cascade Range Geographic Province

The proposed Lake Chelan viticultural area, a part of the Cascade Range geographic province, the petitioner explains, includes distinctive geology, geography, soils, and climate that contrast to those of the surrounding areas. The geology, the petitioner notes, includes the advance of Cascade alpine glaciers that occurred 14,000 to 18,000 years ago.

The Cascade Mountain Range runs north-south through Washington and Oregon and divides western and eastern Washington, the petitioner explains. The range creates, to the east, a rain shadow that limits precipitation in the Lake Chelan Valley and on the Columbia Plateau in eastern Washington. The range protects areas to its east from Arctic and Pacific winter storms and further moderates climate.

Lake Chelan Valley is the only valley that the Cascade glacier created in Washington and Oregon and that holds a large natural lake of Lake Chelan's size. The lake is the third deepest lake in the U.S., the petitioner emphasizes. The soils in the valley formed in glacial sediments layered below the more recent windblown deposition of

volcanic pumice and ash. Also, the large glacial lake acts as a heat reservoir to produce a unique climate of consistently moderated temperatures.

Columbia Plateau Geographic Province

Most Washington vineyards, the petitioner states, lie on the Columbia Plateau geographic province, the features of which contrast significantly in several important ways from the Lake Chelan Valley in the Cascade Range geographic province. The distinguishing features of the Columbia Plateau include the bedrock of Tertiary-age basaltic lavas, sediments derived from cataclysmic outburst floods of Lake Missoula, and bench-and-riser landforms that the recurrent Missoula Floods created through erosion of the lavas. The topography varies from near moonscapes to megasized gravel bars and slackwater terraces.

The petitioner states that another distinguishing feature of the Columbia Plateau is the predominant east-west trending valley-and-ridge system that affects the elevation, slope, aspect, heat accumulation, winds, and air drainage of the plateau. Also, plateau elevations vary from 460 feet at the Wahluke Slope viticultural area (27 CFR 9.192) to 970 feet at the Walla Walla Valley viticultural area (27 CFR 9.91), a topography with a significantly lower elevation than that of the Lake Chelan area of the Cascade Range.

The separate climates of the Columbia Plateau viticultural areas share low winter temperatures with complete vine dormancy and significant fall daytime and nighttime temperature variations. The viticultural areas of the Columbia Plateau lie within the rain shadow of the Cascade Range, and have a drier climate as compared to western Washington. The combination of distinguishing features in the viticultural areas on the Columbia Plateau, the petitioner concludes, creates a unique annual growing season that contrasts with the Lake Chelan Valley region in the Cascade Range geographic province.

Geology

The petitioner explains that the most recent ice-age events of the Earth, 14,000 to 18,000 years ago, played significant roles in creating the differing geological records within the Cascade Range and the Columbia Plateau.

The region encompassing the proposed Lake Chelan viticultural area, according to the petitioner, includes camel-backed bedrock landforms that the Cascade Range alpine glaciers eroded into the dominantly granitic bedrock of the Lake Chelan area, lake sediments that the alpine glaciers deposited, and bedrock that consists of Cretaceous-age igneous and older metamorphic rocks. The glaciers crushed bedrock in the Lake Chelan region, creating glacial till and outwash sediments that have coarse sandy textures and that are rich in biotite mica. The glacial lake sediments, silty to clayey in texture, include substantive amounts of quartz and mica. As a result, the soil's deep rooting zone for grape vines has distinguishable textures, mineralogy, and nutrients.

The petitioner provides a geologic map of the proposed Lake Chelan viticultural area from the USGS Miscellaneous Investigations Series Map I–1661, Geologic Map of the Chelan, 30-Minute by 60-Minute Quadrangle, Washington, accessed online on June 26, 2006. The map identifies the Cretaceous-age bedrock and the Quaternary-age surface sediments in the Lake Chelan Valley area. The Cretaceous-age units consist of dark, intrusive igneous tonalites, the petitioner explains. TTB notes that tonalite is an igneous plutonic (intrusive) rock having greater than 20 percent quartz and quartz diorite with 5 to 20 percent quartz. Also, the Quaternary-age units consist of glacial moraines, terraces, lake deposits, and postglacial landslides and alluvial sediments.

According to the petitioner, the Columbia Plateau geologic history, in contrast, stems from the force of a lobe of the western Canadian ice sheet that blocked the Clark Fork River in Idaho and created the huge glacial Lake Missoula in Montana. When the glacial ice dams repeatedly failed, the largest floods of water ever documented on Earth occurred. The floods overwhelmed the Columbia River and flowed across eastern Washington, eroding channels in the basalt bedrock and depositing gravel bars in the main basins and fine sandy and silty sediments in the river valleys.

Geography

Elevations vary from approximately 1,100 feet at lake level to 3,276 feet at an unnamed peak in the northwest portion of the proposed Lake Chelan viticultural area, 1.8 miles northwest of Lake Chelan State Park on the USGS Manson quadrangle map. The lower elevations, which have gently rising slopes, are along the southern and eastern shoreline of Lake Chelan, as shown on the USGS maps of the region. The petitioner explains that the lower lakeside elevations are known for successful fruit growing. The higher elevations enveloping the Lake Chelan Valley region generally correlate with steep terrain, as shown on the USGS maps of the proposed viticultural area.

According to the petitioner, when the Cascade alpine glaciers descended from the mountain crests to lower elevations, they created the distinctive U-shaped Lake Chelan Valley topography, including the lake depression. The term ''camel-backed'' describes the landforms of the Lake Chelan Valley at low elevations and adjacent surrounding mountains. The Cascade alpine glaciers created other valleys in the region with similar landscapes, including camel-backed topography, and layers of glacial sediment, but not lake basins. Thus, only Lake Chelan Valley, in contrast to the other regional glacial valleys, has a climate-moderating lake effect.

Climate

According to local growers and temperature statistics, a lake effect moderates air temperature extremes in both summer and winter in the proposed Lake Chelan viticultural area. The combination of moderating summer high and winter low temperatures creates a suitable environment for both viticulture and tree fruit agriculture. According to the petitioner, the strong lake effect moderates the air temperatures of planted areas adjacent north and south of the eastern part of the lake. In those areas, the waters of Lake Chelan create a heat reservoir that absorbs warming solar energy in summer and then reradiates heat energy into cold air in winter. The table below compares the climate in the areas along Lake Chelan to that in similar areas nearby but without lakes.

CLIMATIC INDICES FOR WINE GRAPES FOR THREE SITES IN WASHINGTON STATE, 1994–2003

Area *	Distance from Lake Chelan (miles)	Cool climate viticulture suitability index ** (days)	Number of days a year <32 °F	Number of days a year >95 °F
Lake Chelan	0	244	89.6	7.1

CLIMATIC INDICES FOR WINE GRAPES FOR THREE SITES IN WASHINGTON STATE, 1994–2003—Continued

Area *	Distance from Lake Chelan (miles)	Cool climate viticulture suitability index ** (days)	Number of days a year <32 °F	Number of days a year >95 °F
Methow Valley	30, north	176	147.9	13.6
Wenatchee Valley	30, south	230	102.3	14.1

* Based on data from the National Climate Data Center.
** Number of days between <29 °F in spring and the first temperature <29 °F in fall.

The petitioner uses a cool-climate viticultural suitability index (CCVSI) formulated at Cornell University as an analytical tool for the Lake Chelan Valley climate. The CCVSI emphasizes the impact of temperature moderation on viticulture. The petitioner explains that the CCVSI compiles the sum of the days from the last occurrence of 29 degrees Fahrenheit or lower in spring until the first occurrence of 29 degrees Fahrenheit or lower in fall. The larger total numbers, in days, generally correlate to the better viticultural regions.

For the Lake Chelan Valley region, the CCVSI 10-year average of 244 days is significantly higher than the glacially formed Methow Valley in the Cascade Range to the north and higher than the Wanatchee Valley to the south.

In another measure of the lake effect on the proposed Lake Chelan viticultural area, the petitioner uses the annual average number of days with temperatures of 32 degrees Fahrenheit or lower in winter and 95 degrees Fahrenheit or higher in summer. The petitioner compares the climates in Lake Chelan Valley, Methow Valley, and Wenatchee Valley using this method. All three valleys are located within 60 miles of each other, were created partially or wholly by Cascade alpine glaciers, and have other similar geographic features. Lake Chelan Valley averages 7 days a year above 95 degrees Fahrenheit, and Methow Valley and Wenatchee Valley average 14 days a year, according to data from the National Climate Data Center included with the petition. Fewer hot days in the Lake Chelan Valley correlate with better fruit quality, because temperatures above 95 degrees shut down most photosynthesis in grapes, according to the petitioner. The Lake Chelan Valley averages only 90 days a year colder than 32 degrees Fahrenheit in winter, while the Methow Valley averages 148 days and the Wenatchee Valley averages 102 days.

Northwest of the proposed viticultural area, temperatures are too low for viticulture because of cold air drainage from the high Cascades and severe shading from steep mountainsides close to the lake. To the east and northeast of the proposed viticultural area, a ridge holds the lake-affected air masses in the lake basin. That ridge is used as the proposed eastern boundary.

To further demonstrate the moderating lake effect, the petitioner provides evidence concerning vine-killing freezes which, according to the petitioner, occur less frequently in the proposed Lake Chelan viticultural area than in other viticultural areas in eastern Washington State. Winemaker Charles Ray Sandidge III, in an October 2, 2006, e-mail to the petitioner, states that he conducted a study of weather data in the period 1934–84 in the regions of Wahluke Slope, Walla Walla, Chelan, East Wenatchee, and Roosevelt. Results, based on cold temperature readings, indicated that the Lake Chelan area averaged a killing freeze once in 17 years, while the other Washington viticultural areas studied averaged 6 to 8 years between vine-killing freezes.

Mr. Sandidge states that Lake Chelan averages a heavy crop loss and a light vine loss every 17 years. Also, fall temperatures cool more rapidly and rains arrive about a week earlier than in areas to the south. Mr. Sandidge theorizes that while the Lake Chelan area experiences milder winter temperatures, the later spring bud break relates to the close proximity of the proposed viticultural area to the surrounding mountains.

Soils

According to the petitioner, the soils of the Lake Chelan Valley include layers of glacial debris, sediment from normal stream erosion and deposition after the glacial age, and airborne volcanic and nonvolcanic sediments. The lower parts of the deeper soils, 20 to 60 inches below the surface, predominantly formed in glacial sediments. The upper part of the soils formed in a mixture of large amounts of airborne volcanic pumice and ash from Glacier Peak and very small amounts of loess (wind-transported material) overlying the glacial sediments. Thus, the soils downwind from Glacier Peak and the north Cascades, including the soils in the proposed Lake Chelan viticultural area, are rich, about 3 to 40 percent by volume, in volcanic pumice and ash from a massive eruption of the Glacier Peak volcano about 12,000 years ago.

The petitioner explains that bedrock in the proposed Lake Chelan viticultural area consists of Cretaceous-age granitic rocks and older metamorphic rocks, including amphibolite, schist, and biotite gneiss. Glaciers shattered and crushed the Cascade crystalline bedrock, creating glacial till and glacial outwash sediments that include biotite mica-rich cobbly, bouldery, gravelly, and coarse sandy materials.

The soils in Lake Chelan Valley that are close to the surface, according to the petitioner, include sand- and fine gravel-sized pumice from the volcanic eruption of Glacier Peak to the northwest. Soils that have significant amounts of volcanic ash and pumice or clays weathered from glass have an unusually high available water capacity. The petitioner believes that the high content of volcanic material in the soils is a significant contributory factor to the successful regional viticulture and pomology over the past 100 years.

The United States Department of Agriculture, National Cooperative Soil Survey, has identified 11 soil series within the proposed Lake Chelan viticultural area. Eight of these series consist of soils derived from volcanic glass, including ashy, cindery, pumiceous, glassy, vitrandic, medial, and amorphic soils, the petitioner explains. Only the Margerum and Dragoon series are silt loam, which is common on the Columbia Plateau. The information in the soil table below is from the Official Soil Series Descriptions accessed on October 18, 2006, at the U.S. Department of Agriculture Web site, at: *http://soils.usda.gov/technical/classification/osd/index.html.*

Soil series	Soil order	Excerpt from official description
Margerum	Mollisols	Considerable pumice.
Chelan	Mollisols	Volcanic ash and pumice.
Springdale	Inceptisols	Volcanic ash in the upper part.
Kartar	Inceptisols	Volcanic ash in the surface.
Entiat	Mollisols	Volcanic ash.
Dinkelman	Mollisols	A component of volcanic ash.
Tyee	Mollisols	Volcanic ash.
Swakane	Mollisols	Volcanic ash in the upper part.
Psuga	Spodosols	Volcanic ash.
Mansonia	Mollisols	Volcanic ash and pumice.
Dragoon	Mollisols	Volcanic ash.

The petitioner explains that many agricultural soils on the Columbia Plateau are silt loam throughout the soil profile, and are unlike those with a high content of volcanic pumice and ash in the Lake Chelan area and Cascade Range. Also, the mineralogy of the Columbia Plateau basalt sediments, deposited as alluvium derived from basaltic lavas, includes neither quartz nor mica, which are commonly found in the sediments in the Lake Chelan Valley area.

A sampling of soils taken by the petitioner across the Columbia Plateau shows that the dominant parent materials are loess and dunes and have an average content of only 12 percent volcanic glass. This is substantially different from the high glass content of soils in the proposed viticultural area. The Pasco and Umatilla Basins, to the south of the proposed viticultural area, were the origins of most of the loess throughout the Columbia Plateau. Over the millennia the Lake Chelan Valley, outside the path of most of the wind transporting the loess, has received only minor deposits of loess. The petitioner asserts that the differences in soil between the Lake Chelan Valley and the Columbia Plateau impact infiltration and runoff of water, aeration of the soils, root penetration, and available water capacity.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 87 regarding the proposed Lake Chelan viticultural area in the **Federal Register** (73 FR 46836) on August 12, 2008. In that notice, TTB invited comments by October 14, 2008, from all interested persons. We solicited comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. We also solicited comments on the proposal to identify ''Lake Chelan'' and ''Chelan'' as terms of viticultural significance. We expressed particular interest in receiving comments on whether the proposed area name, Lake Chelan, would result in a conflict with currently used brand names. We received four comments from individuals in response to that notice. All four comments supported the establishment of the Lake Chelan viticultural area as proposed. Further, TTB is not aware of any conflict with existing brand labels that would occur if the viticultural area is established as proposed.

TTB Determination

When the Columbia Valley viticultural area was established in 1984, it was recognized as having the following distinguishing geographical features: (1) A growing season of over 150 days per year, with a high of 204 days per year; (2) a total degree day average of over 2,000; (3) annual rainfall of 15 inches or less; and (4) a topography described as a broadly undulating or rolling surface, cut by rivers and broken by long sloping basaltic uplifts extending generally east-west. Although the proposed Lake Chelan viticultural area shares some of these characteristics, due to lake effect temperature moderation its growing season is significantly longer at an average of 244 days annually and its lakeside topography is significantly different. TTB believes these differences justify recognition of Lake Chelan as a distinct viticultural area within the Columbia Valley viticultural area.

Accordingly, after careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Lake Chelan'' viticultural area in Chelan County, Washington, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Lake Chelan,'' is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point.

In addition, based on the evidence submitted, we believe that ''Chelan'' standing alone is locally and/or nationally known as referring to the region in Washington State encompassed by the proposed ''Lake Chelan'' viticultural area, and we therefore believe that consumers and vintners could reasonably attribute the quality, reputation, or other characteristic of wine made from grapes grown in the proposed ''Lake Chelan'' viticultural area to the name ''Chelan'' itself. Therefore, the part 9 regulatory text set forth in this document specifies both ''Lake Chelan'' and ''Chelan'' as terms of viticultural significance for purposes of part 4 of the TTB regulations.

Once this final rule becomes effective, wine bottlers using ''Lake Chelan'' or ''Chelan'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's full name as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by

that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name ''Lake Chelan'' or ''Chelan'' for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation, upon the effective date of the establishment of the Lake Chelan viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Christopher Thiemann of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter I, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.215 to read as follows:

§ 9.215 Lake Chelan.

(a) *Name.* The name of the viticultural area described in this section is ''Lake Chelan''. For purposes of part 4 of this chapter, ''Lake Chelan'' and ''Chelan'' are terms of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Lake Chelan viticultural area are titled:

(1) Manson Quadrangle, Washington—Chelan Co., 1968, photorevised 1987;

(2) Cooper Ridge Quadrangle—Washington, 1968, photorevised 1987;

(3) Chelan Quadrangle—Washington, 1968, photorevised 1987;

(4) Chelan Falls Quadrangle—Washington, 1968, photorevised 1981; and

(5) Winesap Quadrangle—Washington, 1968, photorevised 1987.

(c) *Boundary.* The Lake Chelan viticultural area is located in Chelan County, Washington. The boundary of the Lake Chelan viticultural area is as described below:

(1) The beginning point is on the Manson map at the intersection of the east shore of Lake Chelan and the north boundary line of section 15, T28N/R21E, north of Greens Landing. From the beginning point, proceed straight east 1.6 miles along the northern boundary line of sections 15 and 4 to its intersection with the 2,000-foot elevation line, T28N/R21E; then

(2) Follow the meandering 2,000-foot elevation line generally southeast onto the Cooper Ridge map, crossing Purtterman Gulch; continue southeast onto the Chelan map and follow the meandering 2,000-foot elevation line onto the Chelan Falls map, over the Cagle Gulch, and then return to the Chelan map; continue generally southeast onto the Chelan Falls map and follow the 2,000-foot elevation line to section 8, T27N/R23E, to a point 0.3 mile due north of BM 1404 at the intersection of U.S. Route 97 and State Route 151, T27N/R23E; then

(3) Proceed in a straight south-southeast line 1.35 miles to its intersection with the section 20 north boundary line and the 1,000-foot elevation line, T27N/R23E; then

(4) Proceed south-southwest along the 1,000-foot contour line to its intersection with the section 20 south boundary line, south of Chelan Station and immediately west of State Route 151, T27N/R23E; then

(5) Proceed straight west along the south boundary line of sections 20 and 19 for 0.75 mile to its intersection with the light-duty Gorge Road, as identified on the adjoining Chelan map, T27N/R23E; then

(6) Proceed northwest along Gorge Road, crossing onto the Chelan map, to the southeast corner of section 13, T27N/R22E; then

(7) Proceed straight west along the south boundary line of sections 13, 14, 15, 16, 17, and 18, and crossing onto the Winesap map in section 18, to its intersection with the R21E/R22E line, T27N; then

(8) Proceed straight north along the R21E/R22E line to its intersection with the south boundary line of section 13 and the 2,440-foot contour line, T27N/R21E; then

(9) Proceed straight west to the southwest corner of section 13, T27N/R21E; then

(10) Proceed straight north along the section 14 east boundary line to the northeast corner of section 14, T27N/R21E; then

(11) Proceed straight west along the section 14 north boundary line to the northwest corner of section 14, T27N/R21E; then

(12) Proceed straight north along the east boundary line of section 10 for 0.3 mile to its intersection with the 2,520-foot contour line and a 90-degree turn in the Wenatchee National Forest (WNF) boundary line, T27N/R21E; then

(13) Proceed straight west along the WNF boundary line 0.3 mile to its intersection with the 2,600-foot contour line and a 90-degree turn in the WNF boundary line, T27N/R21E; then

(14) Proceed straight south along the WNF boundary line 0.3 mile to its intersection with the south boundary line of section 10, T27N/R21E; then

(15) Proceed straight west along the south boundary lines of sections 10 and 9 to the southeast corner of section 8, T27N/R21E; then

(16) Proceed straight north along the east boundary line of section 8 to the northeast corner of section 8, T27N/R21E; then

(17) Proceed straight west along the north boundary line of section 8 to the northwest corner of section 8, T27N/R21E; then

(18) Proceed generally north along the east boundary line of section 6, crossing onto the Manson map, and continue along the east boundary lines of sections 31 and 30, to the northeast corner of section 30, T28N/R21E; then

(19) Proceed straight east along the north boundary lines of sections 29 and 28 to the intersection with the east shoreline of Lake Chelan; and

(20) Proceed generally northwest and northeast along the east shoreline of Lake Chelan to the point of beginning.

Signed: February 24, 2009.

John J. Manfreda,

Administrator.

Approved: March 26, 2009.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. E9–9847 Filed 4–28–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 363

Regulations Governing Securities Held in TreasuryDirect

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: TreasuryDirect is an account-based, book-entry, online system for purchasing, holding, and conducting transactions in Treasury securities. To date, TreasuryDirect has only been available for individual account owners. This final rule will permit certain specified entities to open accounts in TreasuryDirect.

DATES: *Effective date:* April 24, 2009.

ADDRESSES: You can download this final rule at the following Internet addresses: *http://www.publicdebt.treas.gov* or *http://www.gpoaccess.gov/ecfr.*

FOR FURTHER INFORMATION CONTACT: Elisha Whipkey, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Sharp, Attorney-Adviser, Elizabeth Spears, Senior Attorney, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.sharp@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: TreasuryDirect is an online account-based system for individuals to purchase, hold, and conduct transactions in eligible Treasury securities. To date, only individuals have been permitted to open a TreasuryDirect account. This final rule will permit certain specified entities to open accounts in TreasuryDirect and conduct transactions in eligible Treasury securities. A sole proprietorship, partnership, corporation, limited liability company or professional limited liability company, trust, decedent's estate, estate of an incompetent individual, and estate of a minor will be able to open a TreasuryDirect account. Treasury believes that these forms of registrations will serve most organizations and fiduciaries wishing to open a TreasuryDirect account. If, in the future, there is a demonstrated need for other forms of entity registrations, Treasury will consider adding additional registrations.

The account must be opened and managed by an individual known as an entity account manager who is authorized to act alone on behalf of the entity with regard to this account. Only an individual is permitted to act as an entity account manager. Initially, the entity account manager will be the individual who opens the TreasuryDirect account. If the entity subsequently wishes to change the individual who acts as its entity account manager, the entity account manager may be changed using procedures available on the TreasuryDirect Web site. Only one individual may act as entity account manager at any one time. The identity of the entity account manager will be verified using an online verification service; the identity of the entity may be verified using appropriate evidence. The entity account manager must certify online that he or she has the authority to act alone on behalf of the entity.

An entity will not be permitted to open a minor linked account. An entity cannot purchase gift savings bonds, and a gift bond cannot be delivered to an entity. However, an entity may transfer an existing bond, which is already registered in the entity's name, to another account (primary or linked) owned by either an individual or an entity. An entity may convert a definitive savings bond to book-entry form if the bond is registered in the name of the entity.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Because this final rule relates to matters of public contract and procedures for United States securities, notice and public procedure and delayed effective date requirements are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN TREASURYDIRECT

■ 1. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.;* 31 U.S.C. 3121, *et seq.*

■ 2. Amend § 363.5 by revising paragraph (c) to read as follows:

§ 363.5 How do I contact Public Debt?

* * * * *

(c) Letters should be addressed to the address provided on our web site at *http://www.treasurydirect.gov/write.htm.*

■ 3. Amend § 363.6 by:

■ a. Adding the definitions of ''Entity,'' ''Entity account manager,'' and ''Incompetent individual or Incompentent person'' in alphabetical order;

■ b. Revising the definitions of ''Individual,'' ''Owner,'' ''Person,'' and ''Verification'' to read as follows:

§ 363.6 What special terms do I need to know to understand this part?

* * * * *

Entity means any owner of a TreasuryDirect account that is not an individual. Entity is a sole proprietorship, partnership, corporation, limited liability company or professional limited liability company, trust, the estate of a decedent, or the estate of a living person such as an incompetent or a minor.

Entity account manager is the individual who initially opens the TreasuryDirect account for an entity, or his or her replacement; who is authorized by the entity to act alone on its behalf to open, access, and conduct transactions with respect to the account; and who certifies that he or she is so authorized.

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Incompetent individual or *incompetent person* means an individual who has been declared by a court to be legally incompetent, incapacitated, or otherwise unable to manage his or her financial affairs.

Individual means a natural person.

* * * * *

Owner, when referring to an individual, is either the single individual named in the registration of a security held in the single owner form of registration, the first individual named on a security held in the owner with beneficiary form of registration, the first individual named on a security held in the primary owner with secondary owner form of registration, or either individual named on a converted savings bond held in the coowner form of registration; when referring to an entity, the owner is the entity.

Person means an individual or an entity.

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Verification means confirming the identity of an online applicant for a TreasuryDirect account at account establishment using an online verification service or offline verification.

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■ 4. Amend § 363.10 by:

■ a. Revising paragraph (a),

■ b. Revising the fifth and sixth sentences of and adding a seventh sentence to paragraph (b)(1), and

■ c. Revising the first sentence of and adding a new second sentence to paragraph (b)(2), to read as follows:

§ 363.10 What is a TreasuryDirect® account?

* * * * *

(a) *Primary Account.* The primary account is the account that you establish when initially opening your TreasuryDirect account. The primary account may contain the following Treasury securities:

(1) *Individual.* A primary account for an individual may contain Treasury securities purchased initially as book-entry securities that are your personal holdings registered in single owner, owner with beneficiary, and primary owner with secondary owner forms of registration; gifts of savings bonds that have not yet been delivered; and converted savings bonds that were transferred from the conversion linked account.

(2) *Entities.* A primary account for an entity may contain Treasury securities purchased initially as book-entry securities registered in the name of the entity and converted savings bonds in the name of the entity that were transferred from the conversion linked account.

(b) * * *

(1) * * * You, as an individual owner, may use your custom account to buy, redeem, and transfer securities that you own in single owner, owner with beneficiary, and primary owner with secondary owner forms of registration. An individual owner may also buy and deliver gift savings bonds from the custom account. An entity account manager, acting on behalf of an entity, may use the entity's custom account to buy, redeem, and transfer securities registered in the entity form of registration.

(2) *Minor account.* A minor account is an account established by an individual custodian for an individual who has not yet reached the age of 18 years. We do not permit an entity to open a minor account. * * *

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■ 5. Revise § 363.11 to read as follows:

§ 363.11 Who is eligible to open a TreasuryDirect® account?

Only an individual or an entity is eligible to open a TreasuryDirect account. In order to open a TreasuryDirect account, an individual or entity account manager must have a valid social security number (SSN), be 18 years of age or over, and be legally competent. An entity must have a valid SSN or employer identification number. The account owner must have a United States address of record and have an account at a United States depository financial institution that will accept debits and credits using the Automated Clearing House method of payment.

■ 6. Amend § 363.12 by revising paragraph (c) to read as follows:

§ 363.12 Who may purchase and hold book-entry securities in TreasuryDirect®?

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(c) We do not permit a voluntary representative to purchase securities on behalf of the estate of a decedent.

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■ 7. Revise § 363.13 to read as follows:

§ 363.13 How can I open a TreasuryDirect® account?

(a) *General.* You must establish a TreasuryDirect account online before you purchase a Treasury security to be held in your account. Instructions for online account establishment may be found at the official Public Debt website at *http://www.treasurydirect.gov,* or such other Internet address as Public Debt may from time to time announce by publication in the **Federal Register**. When you have completed the application, you will create a password to access your account. We will verify your identity and send your account number to you by e-mail when your account application is approved. In addition to your password, we may require you to use any other form(s) of authentication that we consider necessary for the protection of your account.

(b) *Entities.* An individual, referred to as an entity account manager, must establish an account on behalf of an entity. We will verify the identity of the entity account manager. We may verify the identity of the entity using any evidence we deem appropriate. The entity account manager must certify that he or she is authorized to open and access an account for the entity and has the authority to act alone on behalf of the entity with regard to the account.

■ 8. Revise § 363.14 to read as follows:

§ 363.14 How will you verify my identity?

(a) *Individual.* When you establish an account, we may use a verification service to verify your identity using information you provide about yourself on the online application. At our option, we may require offline verification.

(b) *Entity.* When an entity account manager establishes an online account on behalf of an entity, we may use a verification service to verify the identity of the entity account manager using information that the entity account manager provides about himself or herself on the online application. At our option, we may require offline verification of the entity account manager. At our option, we may require any evidence we deem appropriate to verify the identity of the entity.

■ 9. Revise § 363.15 to read as follows:

§ 363.15 What is the procedure for offline verification?

In the event we require offline verification, we will provide a printable verification form for the individual account owner or entity account manager to sign. The signature on the form must be certified or guaranteed as provided at § 363.43, and the form must be mailed to us at the address provided in § 363.5. We may require documentary verification of an entity as we deem appropriate.

■ 10. Amend § 363.20 by:

■ a. Revising paragraphs (b) and (c) to read as follows; and

■ b. Removing paragraphs (d) and (e):

§ 363.20 What do I need to know about the forms of registration that are available for purchases of securities through my TreasuryDirect® account?

* * * * *

(b) *Forms of registration for individuals.* The forms of registration available for individuals for purchases of securities made through your TreasuryDirect account are single owner, owner with beneficiary, and primary owner with secondary owner,

unless the forms of registration available for a security are specifically limited by the subpart governing that security.

(1) *Single owner.* (i) A single owner is the individual named in the registration of a book-entry security or a converted savings bond without a beneficiary, secondary owner, or coowner.

(ii) A single owner may add a beneficiary or secondary owner.

(iii) A single owner may conduct permitted online transactions on securities held in his or her account.

(iv) Upon the death of the single owner, his or her estate is entitled to the security. In determining entitlement, the law of the decedent's domicile will be followed.

(v) Registration example: ''John Doe, SSN 123–45–6789.''

(2) *Owner with beneficiary.* (i) The purchaser must be named as the owner with another individual as beneficiary.

(ii) The owner may remove or change the beneficiary without the consent of the beneficiary.

(iii) The owner may conduct permitted online transactions on securities held in his or her account without the consent of the beneficiary.

(iv) The beneficiary has no ownership rights to the security during the owner's lifetime. Upon the death of the owner, the security becomes the property of the surviving beneficiary, despite any attempted testamentary disposition or any applicable local law to the contrary.

(v) If the beneficiary does not survive the owner, the security belongs to the estate of the owner.

(vi) If both the owner and the beneficiary die under conditions where it cannot be established, either by presumption of law or otherwise, who died first, the security is the property of the estate of the owner.

(vii) In order for the beneficiary to obtain the security or the redemption proceeds after the death of the owner, the beneficiary must provide proof of death of the owner. If the beneficiary has a TreasuryDirect account, the security will be transferred to that account. If the beneficiary does not have an account, he or she may establish an account. Alternatively, a beneficiary named on a savings bond may request redemption. If the beneficiary requests redemption, he or she must provide ACH instructions for the payment.

(viii) Registration example: ''John Doe, SSN 123–45–6789 POD (payable on death to) Jane Doe, SSN 987–65–4321.''

(3) *Primary owner with secondary owner.* (i) The purchaser must be named in the registration as the primary owner with another individual as secondary owner.

(ii) The primary owner holds the securities in his or her account and may view or conduct permitted online transactions in the securities.

(iii) The primary owner may remove the secondary owner without the consent of the secondary owner.

(iv) The secondary owner has no rights to view or conduct transactions in any security unless the primary owner gives the secondary owner these rights.

(v) The primary owner may give the secondary owner the right to view any security or rights to view and conduct transactions in any security online from the account of the secondary owner.

(vi) Once the right to conduct transactions in a security has been given to the secondary owner, the primary owner may view and conduct transactions in the security from the primary owner's account, and the secondary owner may view and conduct transactions in the security using the secondary owner's own account.

(vii) The primary owner may revoke any rights previously given to the secondary owner at any time.

(viii) Upon the death of either the primary or secondary owner, the security becomes the property of the survivor, despite any attempted testamentary disposition or any applicable local law to the contrary.

(ix) If both the primary and the secondary owner die under conditions where it cannot be established, either by presumption of law or otherwise, who died first, the security is the property of the estate of the primary owner.

(x) In order for the secondary owner to obtain the security or the security proceeds after the death of the primary owner, the secondary owner must provide proof of death of the primary owner. If the secondary owner has a TreasuryDirect account, the security will be transferred to that account. If the secondary owner does not have an account, he or she may establish an account. Alternatively, a secondary owner named on a savings bond may request redemption. If the secondary owner requests redemption, he or she must provide ACH instructions.

(xi) Registration example: ''John Doe, SSN 123–45–6789 with Joseph Doe, SSN 987–65–4321.''

(c) *Forms of registration for entities.* The forms of registration available for entities are sole proprietorship; partnership; corporation; limited liability company or professional limited liability company (LLC or PLLC); trust; decedent's estate; and estate of a living person such as an incompetent or a minor.

(1) *Sole proprietorship.* A sole proprietorship form of registration is available for an individual who is doing business as a sole proprietor. The entity account manager must be the owner of the business. Registration example: ''John Doe DBA Doe Plumbing Supplies, EIN 12–3456789, [or SSN 123–45–6789].''

(2) *Partnership.* A partnership form of registration is available for two or more individuals who are doing business as a partnership, including a limited liability partnership. Unless the name of a partnership includes the word ''partnership,'' the registration must include descriptive words indicating partnership status. The entity account manager must be a general partner, and must certify that he or she has the authority to act alone on behalf of the partnership with regard to this account. Registration example: ''Smith and Jones Construction Company, a partnership, EIN 98–7654321, or SSN 987–65–4321.''

(3) *Corporation.* A corporate form of registration is available for an entity that has been incorporated pursuant to state law. The registration must contain a reference to the corporate status. The entity account manager must be a corporate officer or designated employee and must certify that he or she has the authority to act alone on behalf of the corporation with regard to this account. Registration example: ''ABC Corporation, EIN 23–4567891.''

(4) *Limited Liability Company (LLC) or Professional Limited Liability Company (PLLC).* A LLC or PLLC form of registration is available for an entity that has registered articles of organization pursuant to state law. The registration must contain a reference to the company's status. The entity account manager must be a company official or designated employee and must certify that he or she has the authority to act alone on behalf of the company with regard to this account. Registration example: ''Paine Dental Associates, PLLC, EIN 34–5678912'' or ''Summit Consulting Service, LLC, EIN 12–3456789.''

(5) *Trust.* A trust form of registration is available. The trust form of registration is not available for trusts in which the trustee is acting on behalf of a federal, state, or local government. The registration must identify the trust with specificity; at a minimum, it must include the authority or document creating the trust, the date the document was executed (except in the case of a probated will when the date is not necessary), the name of a trustee of the trust who is authorized to act alone on behalf of the trust with regard to the account, and any information that is necessary to distinguish the trust from any other trust. The registration may

also include the names of additional trustees and the full name of the trust. If one or more of the trustees are individuals, and the entity account manager is an individual trustee, the entity account manager must be named in the registration. If an organization serving as a trustee of the trust will administer this account, the entity account manager must be a duly authorized employee of that organization who has the authority to act alone on behalf of the organization in its role as trustee of the trust with regard to the account, and the organization must be named in the registration. In either case, the entity account manager must certify that he or she has the authority to act alone on behalf of the trust with regard to the account. Registration examples: ''John Doe, Trustee under Declaration of Trust dated January 1, 2001, SSN 123–45–6789;'' ''First National Bank, Trustee under Declaration of Trust dated January 1, 2001, EIN 12–3456789;'' ''John Doe or Sarah Jones, Trustees under Agreement with Jane Doe dated January 1, 2001, SSN 123–45–6789;'' ''Sarah Jones, Trustee under the Will of Matthew Smith, deceased, SSN 123–45–6789;'' ''Jane Doe, Trustee of the Doe Family Trust dated January 1, 2001, EIN 12–3456789.''

(6) *The estate of a decedent.* The decedent's estate form of registration is available for an individual or organization that has been appointed by a court according to state law to act on behalf of the estate of a decedent. This form of registration is not available where the legal representative is acting on behalf of a federal, state, or local government. The entity account manager must be a court-appointed individual legal representative who has the authority to act alone with regard to the account, or an employee of the court-appointed organizational legal representative who has the authority to act alone with regard to the account on behalf of the organization in its role as legal representative of the estate. Registration example: ''John Doe, Legal Representative of the Estate of William Jones, a decedent, EIN 12–3456789, or SSN 123–45–6789.''

(7) *The estate of a living person such as an incompetent or a minor.* A form of registration is available for an individual or organization that has been appointed according to state law to act on behalf of the estate of an incompetent person, a minor, or other living person. This form of registration is not available where the legal guardian is acting on behalf of a federal, state, or local government. The entity account manager must be a court-appointed legal guardian who has the authority to act alone with regard to the account, or an employee of the court-appointed organizational legal guardian who has the authority to act alone with regard to the account on behalf of the organization in its role as legal guardian. Registration example: ''John Doe, Legal Guardian of the estate of William Jones.'' The SSN of the incompetent person or the minor will be used.

■ 11. Revise § 363.21 to read as follows:

§ 363.21 When may you require offline authentication and documentary evidence?

We may require offline authentication and documentary evidence at our option.

■ 12. Amend § 363.22 by:

■ a. Redesignating paragraph (a) as paragraph (a)(1) and revising it;

■ b. Redesignating paragraph (b) as paragraph (a)(2) and paragraphs (c)(1) and (2) as paragraphs (a)(3)(i) and (ii);

■ c. Redesignating paragraph (d) as paragraph (b); and

■ d. Adding a new paragraph (c).

The revision and addition read as follows:

§ 363.22 Who has the right to conduct online transactions in book-entry securities?

(a) *Individual.* (1) *Single owner form of registration.* A single owner can conduct transactions in securities held in his or her TreasuryDirect® account.

* * * * *

(c) *Entity.* The entity account manager can conduct transactions in the securities held within the entity's account. Initially, the entity account manager is the individual who opens the account. The entity account manager may be changed to a different individual using procedures available on our Web site. The entity account manager must certify that he or she is authorized to act alone on behalf of the entity in accessing and conducting transactions on behalf of the entity with regard to the entity's account.

■ 13. Amend § 363.27 by revising the first sentence of paragraph (b)(1) to read as follows:

§ 363.27 What do I need to know about accounts for minors who have not had a legal guardian appointed by a court?

* * * * *

(b) *Opening an account in the name of a minor.* (1) A parent or an individual who provides the chief financial support of a minor may open an account for a minor. * * *

* * * * *

■ 14. Amend § 363.44 by revising paragraph (a) to read as follows:

§ 363.44 What happens when a TreasuryDirect® account owner dies and the estate is entitled to securities held in the account?

(a) *Estate is being administered.* For an estate that is being administered, the legal representative of the estate must open a TreasuryDirect account in the name of the estate in order to conduct transactions. The legal representative of the estate may then conduct any transactions that are available to an individual account owner. We will require appropriate proof of appointment for the legal representative of the estate. Letters of appointment must be dated not more than one year prior to the date of submission of the letters of appointment.

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■ 15. Amend § 363.50 by revising paragraph (b)(1) to read as follows:

§ 363.50 What Treasury securities does this subpart govern?

* * * * *

(b) * * *

(1) The single owner or entity form of registration of any series,

* * * * *

■ 16. Amend § 363.55 by:

■ a. Revising the first sentence of paragraph (a) and

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

§ 363.55 May I transfer my book-entry savings bonds to another person?

(a) You may transfer a savings bond or a portion of a savings bond to the TreasuryDirect® account of another person in a minimum amount of $25. * * *

* * * * *

(c) If the bond is being transferred to an individual, the bond will be transferred in the single owner form of registration. If the bond is being transferred to an entity, the bond will be transferred in the entity form of registration.

* * * * *

■ 17. Amend § 363.95 by revising the heading and paragraphs (a) and (b) to read as follows:

§ 363.95 How may I give, and who can receive, a book-entry savings bond as a gift?

* * * * *

(a) An individual may purchase a book-entry savings bond online as a gift and give it to an individual; or

(b) A person who owns a bond may transfer that bond to another person as a gift with immediate delivery.

■ 18. Amend § 363.96 by:

■ a. Redesignating paragraphs (a) through (d) as paragraphs (b) through (e), and

■ b. Adding a new paragraph (a) to read as follows:

§ 363.96 What do I need to know if I initially purchase a savings bond as a gift?

(a) An entity may not purchase a gift savings bond.

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■ 19. Amend § 363.97 by revising paragraphs (b) and (d) to read as follows:

§ 363.97 What do I need to know if I transfer a book-entry savings bond to another person as a gift?

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(b) You must provide the SSN or EIN of the recipient.

* * * * *

(d) The bond will be transferred in the single owner form of registration for individual account owners, and in the entity form of registration for account owners that are entities.

■ 20. Revise § 363.137 to read as follows:

§ 363.137 What do I need to know about the registration of a certificate of indebtedness?

A certificate of indebtedness is automatically registered in the name of the TreasuryDirect® account owner.

■ 21. Amend § 363.160 by revising paragraph (b)(1) to read as follows:

§ 363.160 What subparts govern the conversion of definitive savings bonds?

(b) * * *

(1) Converted savings bonds of any series registered in the single owner or entity form of registration;

* * * * *

■ 22. Revise § 363.161 to read as follows:

§ 363.161 What definitive savings bonds are eligible to be converted to book-entry bonds?

Series E, Series EE, and Series I savings bonds issued in denominations of $25 or greater are eligible for conversion to book-entry bonds in TreasuryDirect®.

■ 23. Revise § 363.162 to read as follows:

§ 363.162 Who may convert a definitive savings bond?

The owner of a TreasuryDirect® primary account may convert a definitive savings bond.

(a) *Bond that is registered to the account owner.* The following persons may convert a definitive savings bond of an eligible series to a book-entry bond to be held in the person's TreasuryDirect account:

(1) The owner of a definitive savings bond registered in the single owner or entity form of registration;

(2) Either co-owner of a bond registered in the coowner form of registration; and

(3) The owner of a bond registered in the owner with beneficiary form of registration.

(b) *Bond that is registered to someone other than the account owner.* We will convert an eligible definitive savings bond submitted by an individual account owner who is not the registered owner of the savings bond. See the special rules in section 363.166.

■ 24. Revise § 363.165 to read as follows:

§ 363.165 What happens when I convert a savings bond that is registered in my name as a single owner, either coowner, an owner with a beneficiary, or an entity?

(a) *Unmatured savings bond.* When the conversion is approved, an unmatured savings bond that is registered in the name of the TreasuryDirect® account owner as a single owner, either coowner, an owner with beneficiary, or an entity, will be released to the account owner's conversion linked account.

(b) *Matured savings bond.* A savings bond that has reached final maturity and is registered in the name of the TreasuryDirect account owner as a single owner, either coowner, an owner with beneficiary, or an entity, will be converted to a book-entry savings bond and automatically redeemed. The redemption proceeds will be used to purchase a certificate of indebtedness in the account owner's name in the primary account.

■ 25. Amend § 363.166 by revising the introductory paragraph to read as follows:

§ 363.166 What happens when I convert a savings bond that is not registered in my name as a single owner, either coowner, or an owner with beneficiary (including a bond registered in the name of a minor)?

We will presume that a savings bond registered in the name of someone other than the TreasuryDirect® account owner (including a bond registered in the name of a minor) was purchased by the account owner as a gift for the registered owner. We will not permit an entity to convert a savings bond that is not registered in the name of the entity.

* * * * *

■ 26. Amend § 363.168 by revising paragraph (a) to read as follows:

§ 363.168 What rules regarding registration apply to a converted savings bond?

(a) *Savings bond of any series registered in the single owner or entity form of registration.* By converting a definitive bond of any eligible series registered in the single owner or entity form of registration to book-entry in TreasuryDirect®, the owner has consented to the bond being governed by the rules regarding registration contained in subpart C of this part.

* * * * *

■ 27. Amend § 363.169 by:

■ a. Revising the heading;

■ b. Revising paragraph (a); and

■ c. Revising the first sentence of paragraph (b), to read as follows:

§ 363.169 What transactions can I conduct in a converted savings bond on which I am registered as the single owner, either coowner, the owner with a beneficiary, or an entity?

(a) *Savings bond of any series registered in the single owner or entity form of registration.* By converting a definitive savings bond of any series registered in the single owner or entity form of registration to a book-entry bond, you have consented to the bond being treated as if it were originally issued as a book-entry bond in TreasuryDirect®. The bond will be subject to the provisions of subpart C of this part. Any transaction available for a book-entry bond originally issued in the TreasuryDirect system is available for a converted bond registered in single owner or entity form of registration.

(b) *Savings bond of Series EE and Series I registered in the owner with beneficiary form of registration.* By converting a definitive savings bond registered in the owner with beneficiary form of registration to a book-entry bond, you have consented to the bond being treated as if it were originally issued as a book-entry bond in TreasuryDirect. * * *

* * * * *

■ 28. Amend § 363.171 by:

■ a. Revising paragraph (a)(1) and the first sentence of paragraph (a)(2); and

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

§ 363.171 How do I redeem a converted savings bond?

(a) *Before final maturity—(1) Savings bond of any series registered in the single owner, owner with beneficiary, or entity form of registration.* You may redeem your converted savings bond of any series registered either in the single owner, owner with beneficiary, or entity form of registration any time prior to final maturity after the minimum

holding period through your TreasuryDirect® account.

(2) *Savings bond of any series registered in the coowner form of registration.* The converting coowner may redeem the converted savings bond of any series registered in the coowner form of registration at any time prior to final maturity after the minimum holding period through his or her TreasuryDirect account. * * *

(b) *Upon final maturity—(1) Savings bond of any series registered in the single owner, owner with beneficiary, coowner, or entity forms of registration.* If you have not previously redeemed or transferred your converted savings bond of any series registered in the single owner, owner with beneficiary, coowner, or entity forms of registration, it will be automatically redeemed for you at final maturity.

* * * * *

■ 29. Amend § 363.206 by revising paragraph (c) to read as follows:

§ 363.206 How can I transfer my marketable Treasury security into my TreasuryDirect® account from another book-entry system?

* * * * *

(c)(1) *Individuals.* When a security is transferred into the TreasuryDirect account of an individual, it will be transferred in the name of the individual account owner in the single owner form of registration, regardless of the form of registration prior to the transfer. After the transfer is completed, you can change the registration to any form of registration permitted by these regulations.

(2) *Entities.* When a security is transferred into the TreasuryDirect account of an entity, the security will be transferred in the name of the entity, regardless of the form of registration prior to the transfer.

* * * * *

Dated: April 22, 2009.

Kenneth E. Carfine,

Fiscal Assistant Secretary.

[FR Doc. E9–9630 Filed 4–24–09; 11:15 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0210]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Witt Penn Bridge across the Hackensack River at mile 3.1, and the Lower Hack Bridge at mile 3.4, across the Hackensack River, at Jersey City, New Jersey. Under this temporary deviation the Lower Hack Bridge will be allowed to provide a maximum opening of only 110 feet at mean high water for a period of 30-days and both bridges will be allowed to remain in the closed position for a period of 45-days to facilitate major bridge maintenance. Vessels that can pass under the draws without a bridge opening may do so at all times.

DATES: This deviation is effective from May 9, 2009 through July 22, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0210 and are available online at *www.regulations.gov*, selecting the Advanced Docket Search Option on the right side of the screen, inserting USCG–2009–0210 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Zachary Strauss, Project Officer, First Coast Guard District, telephone 212–668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Witt Penn Bridge, across the Hackensack River at mile 3.1 has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water.

The Lower Hack Bridge at mile 3.4 has a vertical clearance in the closed position of 40 feet above mean high water and 45 feet above low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723.

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

The owner of the bridges, New Jersey Department of Transportation, (Witt Penn Bridge) and New Jersey Transit (Lower Hack Bridge) requested a temporary deviation to facilitate the replacement of sheaves and wire ropes at both the Witt Penn and Lower Hack bridges and asbestos removal at the Lower Hack Bridge only.

The asbestos removal at the Lower Hack Bridge will prevent the bridge from fully opening during the removal process.

The asbestos removal is scheduled to commence 30-days before the bridge closures to replace the sheaves and wire ropes at the bridges.

The Lower Hack Bridge will only be able to open to 110 feet above mean high water and 115 feet at mean low water from May 9, 2009 through June 7, 2009, during the asbestos removal.

Therefore, under this temporary deviation the Lower Hack Bridge may open to only 110 feet above mean high water instead of the normal 135 feet above mean high water from May 9, 2009 through June 7, 2009. From June 8, 2009 through July 22, 2009, the Witt Penn Bridge, mile 3.1, and the Lower Hack Bridge, mile 3.4, across the Hackensack River may remain in the closed position for bridge maintenance. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 13, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–9717 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1220]

RIN 1625–AA00

Safety Zone; Blue Water Resort and Casino APBA National Tour Rounds 1 & 2; Colorado River, Parker, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the Lake Moolvalya region of the navigable waters of the Colorado River in Parker, Arizona for the Blue Water Resort and Casino APBA National Tour Rounds 1 & 2. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting though, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 6 a.m. on May 1, 2009 through 6 p.m. on May 3, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1220 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–1220 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 26, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Blue Water Resort and Casino APBA National Tour Rounds 1 & 2 in the **Federal Register** (74 FR 8761). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The RPM Racing Enterprises is sponsoring the Blue Water Resort and Casino APBA National Tour Rounds 1 & 2, which is held on the Lake Moolvalya region on the Colorado River in Parker, Arizona. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users and vessels of the waterway. This event involves powerboats racing along a circular course. The size of the boats varies from ten to 16 feet in length. Approximately 90 to 130 boats will be participating in this event. The sponsor will provide two patrol and rescue boats and two river closure boats.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the lower Colorado River from 6 a.m. to 6 p.m. on May 1, 2009 through May 3, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 3 days. Although the safety zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction from further environmental documentation.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary zone § 165.T11–138 to read as follows:

§ 165.T11–138 Safety Zone; Blue Water Resort and Casino APBA National Tour Rounds 1 & 2; Colorado River, Parker, AZ.

(a) *Location.* The limits of this temporary safety zone are the portion of the Colorado River from Headgate Dam to 0.5 miles north of the Bluewater Marine in Parker, Arizona.

(b) *Enforcement Period.* This section will be enforced from 6 a.m. to 6 p.m. on May 1, 2009 through May 3, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 83.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: April 14, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. E9–9718 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0263]

RIN 1625–AA00

Safety Zone; Mill Creek, Fort Monroe, VA, USNORTHCOM Civic Leader Tour and Aviation Demonstration

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on Mill Creek in the vicinity of the Fort Monroe Military Reservation, VA during the USNORTHCOM Civic Leader Tour Event and Aviation Demonstration. This action is intended to restrict vessel traffic movement in the vicinity of Mill Creek to protect mariners and the public from the hazards associated with aviation events.

DATES: This rule is effective from 9 a.m. until 11:30 a.m. and from 1:30 p.m. to 4 p.m. on April 28, 2009, and from 2:30 p.m. to 4:30 p.m. on April 29, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0263 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0263 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Tiffany Duffy, Chief, Waterways Management, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the public and mariners during the aviation demonstration.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the public and mariners during the aviation demonstration.

Background and Purpose

Coast Guard Sector Hampton Roads has been notified that the Fort Monroe Military Reservation will host an aviation event in the vicinity of Fort Monroe Military Reservation immediately adjacent to Mill Creek, VA. The event is scheduled to occur on April 29, 2009, with a rehearsal day on April 28, 2009. In recent years, there have been unfortunate instances of crashes during aviation demonstrations. Accompanying a plane crash, there is typically a wide area of scattered debris that may also damage property and cause significant injury or death to those observing the demonstration. Due to the need to protect the public and mariners transiting on Mill Creek in the vicinity of the demonstration from the hazards associated with a potential crash, the Coast Guard is establishing a safety zone bound by a 1,320 foot radius around approximate position 37°04′04″ N/076°18′04″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Rule

The Coast Guard is establishing a 1,320 foot radius safety zone on specified waters of Mill Creek around approximate position 37°04′04″ N/076°18′04″ W (NAD 1983) in the vicinity of the Fort Monroe Military Reservation, Virginia. This safety zone is proposed in the interest of public safety during the USNORTHCOM Civic Leader Tour Aviation Demonstration and will be enforced from 9 a.m. to 11:30 a.m. and 1:30 p.m. to 4 p.m. on April 28, 2009, and from 2:30 p.m. to 4:30 p.m. on April 29, 2009. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the safety zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly so as to avoid any potential delays in transit. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of

vessels intending to transit or anchor in a portion of Mill Creek from 9 a.m. to 11:30 a.m. and from 1:30 p.m. to 4 p.m. on April 28, 2009, and from 2:30 p.m. to 4:30 p.m. on April 29, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be in place for a limited duration and is of a limited size. Before the effective period, the Coast Guard will issue maritime orders allowing mariners to adjust their plans accordingly so as to avoid any potential delays in transit.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves a temporary safety zone that will be in effect for less than one week and is intended to keep the public and mariners safe from the hazards associated with aviation displays. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects 33 CFR Part 165

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

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

PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 3306, 3703 and Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0263 to read as follows:

§ 165.T05–0263 Safety Zone: Mill Creek, Fort Monroe, VA, USNORTHCOM Civic Leader Tour and Aviation Demonstration.

(a) *Regulated Area.* The following area is a safety zone: All waters in the vicinity of the Fort Monroe Military Reservation on Mill Creek within a 1,320 foot radius of position 037°04′04″ N/076°18′04″ W (NAD 1983).

(b) *Definition:* For the purposes of this part, *Captain of the Port Representative:* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

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

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

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

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

(3) The Captain of the Port, Hampton Roads can be contacted on VHF–FM marine band radio channel 16 (156.8 Mhz) or at telephone number 757–668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz). (d) Enforcement Period: This regulation will be enforced from 9 a.m. to 11:30 a.m. and from 1:30 p.m. to 4 p.m. on April 28, 2009, and from 2:30 p.m. to 4:30 p.m. on April 29, 2009.

Dated: April 10, 2009.

J.P. Novotny,

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

[FR Doc. E9–9798 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 51 and 58

RIN 2900–AM97

Per Diem for Nursing Home Care of Veterans in State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations which set forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. More specifically, we are updating the basic per diem rate, implementing provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006, and making several other changes to better ensure that veterans receive quality care in State homes.

DATES: Effective date: May 29, 2009. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Theresa Hayes at (202) 461–6771 (for issues concerning per diem payments), and Christa Hojlo, PhD at (202) 461–6779 (for all other issues raised by this document), Office of Geriatrics and Extended Care, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (The telephone numbers set forth above are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This document amends the regulations at 38 CFR part 51 (referred to below as the regulations), which set forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. Under the regulations, VA pays per diem to a State for providing nursing home care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a determination that the facility meets the standards set forth in subpart D of the regulations. The standards set forth minimum requirements that are intended to ensure that VA pays per diem for eligible veterans only if the State homes provide quality care. This document also makes corresponding changes concerning VA forms set forth at 38 CFR part 58.

This final rule is based on a proposed rule published in the **Federal Register** on November 28, 2008 (73 FR 72399). The proposed rule called for a 30 day comment period that ended on December 29, 2008. We received a number of comments from eight commenters (one commenter provided two submissions). One commenter merely agreed with the proposed changes. The other comments are discussed below. Based on the rationale set forth in the proposed rule and this document, we have adopted the provisions of the proposed rule as a final rule with changes discussed below.

Nurse Practitioners

Proposed § 51.2 defined the term ''nurse practitioner'' as ''a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by a nationally recognized body that provides such certification for nurse practitioners, such as the American Nurses Credentialing Center or the American Academy of Nurse Practitioners.''

Three commenters argued directly or implicitly that certification is not essential for the provision of high quality care and that licensure is a sufficient measure of competence. One of the commenters argued that national certification would create an undue burden for nurse practitioners (''enroll in an exam course, pay for course work, travel, lodging and registration fees, and sit for the exam'') and indicated that some may fail the exam or fail to meet renewal requirements. The commenter further asserted that nurse practitioners who are currently employed should be subject to a grandfather clause that allows them to work as nurse practitioners without national certification. We made no changes based on these comments. The proposed rule did not create a new certification requirement but merely broadened the list of certifying organizations to any nationally recognized certifying body because the previously listed organization does not provide such certification.

Recognition and Certification

Proposed § 51.30(a)(1) provided that VA would not conduct the recognition survey until the new facility has at least 21 residents or the number of residents consists of at least 50 percent of the new bed capacity of the facility.

One commenter seemed to read the provisions at proposed § 51.30(a)(1) by associating the portion of the formula regarding 21 residents with new facilities and associating the portion of the formula regarding 50 percent of the new bed capacity to renovations. This is not what was intended. Both portions of the formula were intended to apply to recognition surveys. Accordingly, we clarified the regulation to state that the recognition survey will be conducted only after the new facility either has at least 21 residents or has a number of residents that consist of at least 50 percent of the new bed capacity of the new facility. We also note that under

§ 51.30(b), a separate recognition is required for changes involving an annex, branch, enlargement, expansion, or relocation.

Two commenters asserted that the portion of the formula concerning 21 residents is excessive. One commenter noted that CMS (Centers for Medicare & Medicaid Services) only requires 3 residents to determine whether a facility meets the CMS standards. Another commenter asserted that a facility should only be required to have ten residents for an initial test survey and that per diem could begin after the initial test survey with a more detailed survey to follow. New providers/suppliers must be in operation and providing services to patients when surveyed. This means that at the time of survey, the institution must have opened its doors to admissions, be furnishing all services necessary to meet the applicable provider or supplier definition, and demonstrate the operational capability of all facets of its operations. To be considered ''fully operational,'' initial applicants must be serving a sufficient number of patients so that compliance with all requirements can be determined. Centers for Medicare & Medicaid Services, State Operations Manual, Pub. No. 100–07, Ch. 2 sec. 2008A. The commenters ultimately asserted that the proposed provisions would place a financial burden on veterans who might be responsible for costs until VA begins paying per diem. We made no changes based on these comments. Based on our experience in conducting surveys and following the progress of new State homes in meeting VA standards, the criteria as proposed set forth the minimum requirements (21 residents or 50 percent of new bed capacity) for conducting a survey that could determine whether a facility meets VA standards.

Proposed § 51.30(d), (e), and (f) sets forth the process by which a State may appeal a decision by a director of a VA medical center of jurisdiction that a State home facility or facility management did not meet the standards of subpart D. The appeal is made to the Under Secretary for Health. The proposed provisions were intended to allow appeals to the Under Secretary in response to directors' recommendations regardless of whether the recommendations were made prior to recognition or after recognition. One commenter indicated that there is no procedure to appeal the decision of the Under Secretary. A decision of the Under Secretary, however, may be appealed to the Board of Veterans' Appeals. For further information on this appeal process, please refer to 38 U.S.C. 7104 and 7105 and 38 CFR part 20. We clarified § 51.30(f) to state that the decisions of the Under Secretary are final decisions that may be appealed to the Board of Veterans' Appeals. The commenter further asserted that there is no requirement that the Under Secretary take into account the arguments and evidence presented in a State's appeal. We made no changes based on this comment. Section 51.30(f) states that the Under Secretary will review any relevant supporting information. This would include the arguments and evidence presented by the State.

Rate Based on Service Connection

The provisions of 38 U.S.C. 1745(a), which were established by section 211 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. 109–461), set forth a mechanism for paying a higher per diem rate for certain veterans with service-connected disabilities receiving nursing home care in State homes.

Under this authority, the per diem rate was increased for:

- Any veteran in need of nursing home care for a service-connected disability, and
- Any veteran who has a service-connected disability rated at 70 percent or more and is in need of nursing home care.

Under the cited statutory authority, the new per diem rate is the lesser of the following:

- The applicable or prevailing rate payable in the geographic area in which the State home is located, as determined by the Secretary, for nursing home care furnished in a non-Department nursing home (*i.e.,* a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care); or
- A rate not to exceed the daily cost of care in the State home facility, as determined by the Secretary, following a report to the Secretary by the director of the State home.

Several commenters seemed to be confused about the connection between higher per diem for certain veterans with service-connected disabilities and the provision of drugs and medicines to veterans in State homes. As more fully explained below, under the Veterans Benefits, Health Care, and Information Technology Act of 2006, VA does not have authority to provide drugs and medicines to veterans who are receiving care for which the higher per diem is payable.

Proposed § 51.41(a)(2) stated that the higher per diem rate for certain veterans with service-connected disabilities would apply to a veteran with a rating of total disability based on individual unemployability. One commenter questioned whether all veterans must have a rating of total disability based on individual unemployability as a condition for receiving the higher rate of per diem based on service connection. Another commenter questioned whether § 51.41(a)(2) would be applicable to an individual who is unemployable because of disabilities that are not service connected. We made no changes based on these comments. Veterans who are otherwise eligible for the higher per diem do not also need a rating of total disability based on individual unemployability from VA for the State to receive the higher rate of per diem on their behalf. However, the law permits VA to pay a higher per diem for veterans only based on their service-connected disabilities. States thus would not receive the higher per diem for veterans who are unemployable based on disabilities that are not service connected unless these veterans also have service-connected disabilities that meet the requirements for payment of the higher per diem.

With respect to the higher per diem rate for certain veterans in State homes, one commenter questioned whether a State home would receive different amounts based on the rating, *i.e.,* 70 percent of the maximum per diem for a veteran with a rating of 70 percent, 80 percent of the maximum per diem for a veteran with a rating of 80 percent, and so on. We made no changes based on this comment. Under the statutory provisions of 38 U.S.C. 1745 and § 51.41, the State home would receive the same per diem amount for these veterans.

With respect to the calculation of the higher per diem, commenters objected to the methodology in the proposed rule. One commenter asserted that the higher per diem rate should be the actual cost of care as determined by the State home. The commenter also asserted that the amount should be not less than the Medicare amount, the Medicaid amount, or the amount VA pays for veterans in private nursing homes. One commenter argued that, compared to the population used in the proposed methodology, these service-connected veterans would need more care because they are generally older and mostly male. The commenter also indicated that the population used for the calculations would be based in large part on Medicare factors and asserted that some nursing homes do not take Medicare payments. The commenter further asserted that VA should use data from State homes. We made no changes based on these comments. The statutory

provisions at 38 U.S.C. 1745 require that the new higher per diem rate be the lesser of the following:

- The applicable or prevailing rate payable in the geographic area in which the State home is located, as determined by the Secretary, for nursing home care furnished in a non-Department nursing home (*i.e.,* a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care); or
- A rate not to exceed the daily cost of care in the State home facility, as determined by the Secretary, following a report to the Secretary by the director of the State home.

The law thus requires VA to use the actual cost of care in State homes based on a report from the home in determining the higher per diem, and the home will receive its actual cost if it is less than the applicable or prevailing rate. However, as stated in the preamble to the proposed rule: ''VA is considering a modification to the proposed payment structure to be introduced after two or three years of experience with the [Resource Utilization Group-III (RUG III)] approach. In the modification, VA would use the actual case-mix of the individual state veteran nursing home to determine the reimbursement rate, rather than assuming that every nursing home has an equal number of veterans in each of the 53 RUG III levels. This modification will allow for more accurate payments, reimbursing nursing homes at a higher rate for treating veterans with more intensive needs.'' One commenter asserted that we should use the earlier time frame of two years to take action to modify the payment structure. We made no changes based on this comment. We will work as fast as possible to take any actions necessary to improve the payment methodology.

One commenter asserted that there is no indication in the proposed rule as to how frequently adjustments would be made to payments under § 51.41(b)(1) and further asserted that the regulations should include the process for adjustment. One commenter questioned whether VA would recalculate amounts each month for the higher per diem rate. In response, we note that the preamble to the proposed rule made clear that the adjustments would be made annually (see 73 FR 72401–72402). As stated in the preamble, the formula for establishing the rate includes CMS information that is published in the **Federal Register** every summer and is effective beginning October 1 for the entire fiscal year. We have added information in the note to § 51.41(b)(1), explaining that adjustments will be made annually.

One commenter argued that the conclusion that the physician portion should be based on one hour per month is too little. Another commenter asked how the formula would include costs for physician extenders. Another commenter questioned whether a facility would receive a higher payment ''if it is determined that each patient receives (and needs) substantially more than one hour of combined physician contact each month.'' Another commenter asserted that Texas does not use salaried physicians at their State homes and questioned whether Texas State homes would receive higher amounts to offset this practice. As an alternative, the commenter asserted that State homes should be allowed to continue to use Medicare Part B for the physician portion. We made no changes based on these comments. Based on our experience, we believe that one hour is the appropriate amount of time for the calculations for all of the primary care that would be provided by physicians or physician extenders as authorized under the regulations. The rate is based on averages, and it would not be administratively feasible to make a separate formula for each facility.

One commenter further asserted that State homes should not be required to pay for outside specialist costs. We made no changes based on this comment. Outside specialty care is not considered a part of nursing home care.

One commenter asked for VA to provide sample calculations to show how the formula works for VA's computation of the higher per diem. We made no changes based on this comment. The commenter was sent a sample calculation. We would be happy to provide sample per diem calculations to others upon request (see **FOR FURTHER INFORMATION CONTACT** above for contact information).

One commenter asserted that the higher per diem rate should be made applicable to VA programs outside of the State home program. We made no changes based on this comment because it is not within the scope of this rulemaking proceeding. This rule implements only the statutory provisions at 38 U.S.C. 1741–1743 and 1745 regarding nursing home care provided in State homes.

Drugs and Medicines

The provisions of 38 U.S.C. 1745(b) require VA to furnish recognized State homes with such drugs and medicines as may be ordered by prescription of a duly licensed physician as specific therapy in the treatment of illness or injury for certain veterans with service-connected disabilities.

One commenter questioned whether veterans for whom the higher per diem rate is payable would also receive drugs and medicines under section 1745(b). Two commenters argued that the payment of the higher per diem for veterans should not bar the receipt of drugs and medicines under 38 U.S.C. 1712(d) and corresponding VA regulations. One of the commenters questioned whether all veterans with a service-connected disability would receive drugs and medicines under proposed § 51.41. We made no changes based on these comments. Section 1745(b) states that drugs and medicines provided under that statutory provision cannot be provided to veterans who are being provided nursing home care for which the higher per diem is payable. In addition, section 1745(a)(3) provides that payment by VA of the higher per diem constitutes payment in full to the State home for the veteran's nursing home care. We interpret this provision to mean that the higher per diem includes the cost of drugs and medicines, which provides the basis for the provision in § 51.41 that, as a condition of receiving payments, the State home must agree not to accept drugs and medicines from VA on behalf of veterans provided under 38 U.S.C. 1712(d) and corresponding VA regulations. Also, section 1745(b) does not authorize VA to provide drugs to all veterans with a service-connected disability.

One commenter questioned, for purposes of proposed § 51.42, who would determine if drugs and medicines are needed and how fast these determinations would be made. We made no changes based on these comments. As indicated in § 51.42, the physician prescribing the drug or medicine would make this determination. These determinations would be made in the normal course of business.

One commenter questioned whether a facility would have a choice in how the medications sent to the facility would be packaged, *e.g.,* punch cards, unit doses, stock. We made no changes based on this comment. VA will work with State homes and when practical meet the requests of State homes for packaging the drugs and medications.

One commenter questioned how veterans would receive drugs and medicines that may be needed before they could be supplied by VA. Two commenters questioned how the State home would receive reimbursement for supplying such drugs and medications. We made no changes based on these comments. The statute at 38 U.S.C. 1745(b) does not authorize VA to

reimburse States for the cost of drugs and medicines. However, as we have done in the existing VA program under which VA provides drugs and medicines to State homes on behalf of certain service-connected veterans, VA will work with State homes to establish working relationships that will allow for the most efficient methods of supplying drugs and medicines.

Retroactive Payments

Section 211(a)(5) of Public Law 109–461 required the higher per diem rate based on service connection to take effect on March 21, 2007 (90 days after enactment of the law). This authority also required that the provision of drugs and medicines for specified veterans take effect on the same date. Accordingly, the preamble to the proposed rule indicated that VA would make retroactive payments constituting the difference between the basic per diem actually paid and the higher per diem required for care provided to specified veterans on and after March 21, 2007. The preamble also indicated that VA would make retroactive payments constituting the amount State homes paid for drugs and medicines for specified veterans on and after March 21, 2007 (not including any administrative costs) (73 FR 72401).

The preamble to the proposed rule also asserted that VA would not make retroactive payments if the State home received any payment for such care or for such medicines and drugs from any source unless the amount received was returned to the payor (73 FR 72401). One commenter indicated that States should not be required to make refunds prior to receipt of VA payments because some States may not have sufficient funds to advance the payor. One commenter asserted that VA should establish a process for returning payments received under the Medicare and Medicaid programs. The commenter also asserted that VA should establish a process for reimbursing physicians who are not State employees and who obtained payments under Medicare Part B. One commenter asserted that a State should make repayments to the estate of a deceased veteran prior to receiving retroactive payments from VA that cover payments previously made by the veteran. We made no changes based on these comments. Regardless of whether the return of payment is made prior to VA's payment or immediately after VA's payment, the responsibility for the return of a payment rests with the State home that received the payment.

One commenter questioned whether VA will make retroactive payments from March 2007. As stated in the preamble to the proposed rule (73 FR 72401), VA will make retroactive payments for care provided on and after March 21, 2007, and for drugs and medicines provided on and after March 21, 2007.

Proposed § 51.43(d) provided that per diem payments would be made retroactively for care that was provided on and after the date of the completion of VA's survey of the facility that provided the basis for determining that the facility met VA's standards. One commenter asserted that VA should pay per diem payments retroactively back to the date the State home opened for operation. We made no changes based on this comment. The statutory provisions at 38 U.S.C. 1741(d) provide for payment of per diem to commence on the date of the completion of the inspection that recognized the State home as meeting VA's standards, as determined by the Secretary.

One commenter essentially questioned when new VA Form 10–0460 (captioned ''Request for Prescription Drugs from an Eligible Veteran in a State Home'') would be used by State homes. We made no changes based on this comment. The form should be used from the effective date of this document.

Time Limits

One commenter asserted that a State home should be given 30 days to apply for retroactive payments and monthly per diem and VA should be given 30 days to act on applications and begin making payments. We made no changes based on this comment. State homes are allowed to submit immediately for VA retroactive payments and are allowed to submit requests for monthly payments as soon as they are due. The regulation imposes no deadline on when States must seek retroactive payments. VA will respond promptly to States' requests but will not establish the deadline suggested by the commenter because it is difficult to predict the availability of resources at any given time.

Compensation

One commenter asserted that those veterans receiving VA compensation should not be required to use any of such funds for the cost of their State home care. We made no changes based on this comment. We know of no basis for treating VA compensation differently from other income or other funds of a resident except that the State home is prohibited from charging a veteran for nursing home care when VA pays the higher per diem rate based on service connection because VA's payment constitutes payment in full for the care provided (see 38 U.S.C. 1745(a)(3)).

Bed Holds

We proposed to make changes to the bed hold rule. Proposed § 51.43(c) provided that per diem would be paid for a bed hold only if the veteran has established residency by being in the facility for 30 consecutive days (including overnight stays) and the facility has an occupancy rate of 90 percent or greater. In addition, we proposed that per diem for a bed hold would be paid ''only for the first 10 consecutive days during which the veteran is admitted as a patient in a VA or other hospital (this could occur more than once in a calendar year) and only for the first 12 days in a calendar year during which the veteran is absent for purposes other than receiving hospital care.''

One commenter argued that residency should be established by admission and that a transfer to an acute care facility should not affect residency. The commenter further asserted that the proposed rule failed to provide a rationale for the residency requirement. One commenter asserted that the regulations should allow a bed hold for at least 15 days for a resident who is absent due to hospitalization unless the nursing home documents that it has objective information from the hospital confirming that the patient will not return to the nursing home within 15 days of the hospital admission. We made no changes based on these comments. As we indicated in the preamble to the proposed rule, VA believes that State homes should receive per diem for bed holds only if the State would likely fill the bed without such payments and only if the veteran has established residency at the State home (73 FR 72402). We believe that 30 days is a minimal amount of time for demonstrating that a veteran intends to be a resident at the State home and that the veteran was not temporarily placed in the State home.

With respect to hospital absences, one commenter questioned whether the regulations provide for VA to pay per diem ''for only 10 consecutive overnight hospital absences or any number of overnight hospital absences but only up to ten consecutive days maximum period each time.'' We have clarified the regulations to state that VA will provide per diem ''only for the first 10 consecutive days during which the veteran is admitted as a patient for any stay in a VA or other hospital (a hospital stay could occur more than once in a calendar year).''

One commenter asserted that the 90 percent occupancy requirement should not apply to a new facility for the first

two years of operation. The commenter asserted that this would afford the time to safely fill the building to the 90 percent occupancy rate. We made no changes based on this comment. The request is inconsistent with the purpose of a bed hold. As stated in the preamble to the proposed rule, payments for bed holds are intended to assure that nursing home residents who are hospitalized or who are granted leave for other purposes are assured a nursing home bed upon return to the nursing home (73 FR 72402). It is unlikely that facilities with an occupancy of less than 90 percent would fill the bed of an absent resident.

One commenter questioned how to determine when a facility has an occupancy rate of 90 percent or greater. We made no changes based on this comment. The occupancy rate would be determined by dividing the number of residents by the number of beds identified in the recognition process. If a facility is recognized as a 100 bed facility and has 90 residents, the occupancy rate is 90 percent.

One commenter asserted that their facility was constructed with a 400-bed capacity but now, because of a nurse shortage, operates at a maximum of 300 beds. The commenter asked whether the 90 percent requirement would apply to the lower amount. We made no changes based on this comment. The lower amount would apply only if the amount were based on a formal re-recognition action.

Resident Rights

Proposed § 51.70(c)(5) provided that ''[u]pon the death of a resident with a personal fund deposited with the facility, the facility management must convey within 90 calendar days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; or other appropriate individual or entity, if State law allows.'' One commenter asserted that the regulations should provide a waiver from the 90 day requirement in those cases when ''funds are inadequate, there are multiple creditors and relatives and the matter is tied in probate or no relative or creditor is located or willing to open an estate.'' We made no changes based on this comment. The regulations only require that the time limit be met when the funds can be conveyed ''to the individual or probate jurisdiction administering the resident's estate; or other appropriate individual or entity, if State law allows.'' VA sees no reason why funds should be retained for longer periods under these circumstances.

Quality of Life

Proposed § 51.100(h)(2) clarified the regulations to specify that a nursing home with 100 or more beds would be required to employ one or more qualified social workers who work for a total period that equals at least the work time of one full-time employee (FTE). We also proposed to clarify the regulations to specify that a State home must provide qualified social worker services in proportion to the total number of beds in the home, specifically one or more social worker FTE per 100 beds. For example, under the proposal a nursing home with 50 beds would be required to employ one or more qualified social workers who work for a total period equaling at least one-half FTE and a nursing home with 150 beds would be required to employ qualified social workers who work for a total period equaling at least one and one-half FTE. One commenter asserted that this requirement is too onerous and that others could perform the social work under the supervision of a social worker. The commenter further asserted that a grandfather clause, a waiver, or a phase-in time should be allowed for those not meeting the requirement. The commenter also asserted that, instead of a 1:100 ratio, VA should establish the ratio of 1:120.

We believe that a resident must have access to a quality social work program to help ensure the well being of the resident. We believe that we could increase the ratio to 1:120, which is the CMS standard and still allow for sufficient availability of social workers. Accordingly, the final rule reflects this change. However, we made no further changes because we believe that only qualified social workers would have the skills necessary to provide this specialized help needed by residents.

Resident Assessment

Section 51.110 requires facility management to ''conduct initially, annually and as required by a change in the resident's condition a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.'' Section 51.110(b)(3) also requires quarterly reassessments.

Proposed § 51.110(b)(1)(i) required officials conducting such assessments, among other things, to use the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument Minimum Data Set (RAI/MDS), Version 2.0. Two commenters asserted that the version will be updated and that we should use a generic reference so that we could require compliance with the changed versions as they are adopted. We made no changes based on these comments. We prefer our incremental approach because it allows us to review each new version of the standard prior to making it applicable.

Two commenters asserted that VA should clarify the purposes for such CMS RAI/MDS submissions. One of the commenters further questioned whether VA would calculate RUG scores from this information and questioned how differences between VA and facilities would be resolved. We made no changes based on these comments. The purpose for obtaining the information is not to challenge the data reviewed. VA uses the quality indicators to prepare for surveys.

Also, we proposed to require each State home to submit each assessment to VA at a VA email address. Two commenters asserted that facilities should be able to submit the data by electronic means other than email. We agree that the information should be submitted electronically in a form other than email. Accordingly, the final rule requires the submission to be made electronically to the IP address provided by VA.

Physical Environment

Proposed § 51.200 required State home facilities to meet certain provisions of the National Fire Protection Association's NFPA 101, Life Safety Code and the NFPA 99, Standard for Health Care Facilities. These documents are incorporated by reference in accordance with the provisions of 5 U.S.C. 552(a) and 1 CFR Part 51. We proposed to change the regulations to update these documents to refer to the current editions of the NFPA code and standard. One commenter asserted that the updates should apply only to new construction and renovation. The commenter further asserted that existing State homes ''should be grandfathered and assessed under the standards that were in place when the Homes were constructed and initially surveyed.'' These documents represent national consensus standards that are generally recognized as minimum standards for life and safety. Ultimately, we believe that State homes must work to protect residents by meeting the minimum consensus standards contained in these documents.

The standards for existing facilities take into account that some changes may take a considerable amount of time to make, such as installation of sprinkler systems for existing nursing homes. The Centers for Medicare & Medicaid Services (CMS) has determined that

August 13, 2013, provides a reasonable amount of time to install sprinkler systems in existing nursing homes, as required by paragraph 19.3.5.1 in the 2006 edition of NFPA 101, which specifically states ''Buildings containing nursing homes shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with Section 9.7, unless otherwise permitted by 19.3.5.4.'' We agree, and therefore based on the above comment we have included such a requirement in the final rule. We note that paragraph 13–3.5.1 in the 1997 edition of NFPA 101 requires sprinkler protection for buildings of certain construction types. The requirement for sprinkler protection due to construction type is also found in paragraph 19.1.6 in the 2006 edition of NFPA 101. The changes in § 51.200 are not intended to postpone enforcement of the existing requirement for sprinkler protection in nursing homes due to the construction type of the building.

The proposed rule indicated that we would incorporate by reference the 2006 edition of the standard. This was in error since the latest edition of the standard is the 2005 edition. Therefore, we are incorporating by reference the 2005 edition.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

The final rule at §§ 51.43, 58.11, 58.13, and 58.18 contains collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) assigns a control number for each collection of information it approves. VA 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. These regulations set forth a mechanism for State homes to obtain per diem payments as well as drugs and medicines.

The final rule at § 51.110 also contains a collection of information. VA has already obtained OMB clearance for the use of Minimum Data Sets (initial, annual, significant change in condition, and quarterly) (OMB Control Number 2900–0160). However, the final rule requires such Minimum Data Sets to be electronically transmitted to VA.

In a notice published in the **Federal Register** on November 28, 2008 (73 FR 72399), we requested public comments on these collections of information. We did not receive any comments.

OMB has approved those collections and a number of other collections in part 51 under OMB Control Numbers 2900–0160 and 2900–0091. We are adding a statement to all of the sections in part 51 for which collections have been approved so that each applicable control number is displayed for each collection.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action'' requiring review by OMB, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of entitlement recipients; (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866 because it may result in a rule that raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rulemaking will affect veterans, State homes, and pharmacies. The State homes that are subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities. Also, this rulemaking will have only an insignificant impact on a small number of pharmacies that could be considered small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.026, Veterans State Adult Day Health Care.

List of Subjects in 38 CFR Parts 51 and 58

Administrative practice and procedure, Claims, Day care, Dental health, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Incorporation by reference, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: February 27, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR parts 51 and 58 are amended as follows:

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

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

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 1745.

■ 2. Amend part 51 by removing the phrase ''Geriatrics and Extended Care Strategic Healthcare Group'' each place it appears and adding, in its place, ''Office of Geriatrics and Extended Care''.

Subpart A—General

■ 3. Amend § 51.2 by revising the definitions of the terms ''Clinical nurse specialist'' and ''Nurse practitioner'' to read as follows:

§ 51.2 Definitions.

* * * * *

Clinical nurse specialist means a licensed professional nurse who has a Master's degree in nursing with a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing and who is certified by a nationally recognized credentialing body (such as the National League for Nursing, the American Nurses Credentialing Center, or the Commission on Collegiate Nursing Education).

* * * * *

Nurse practitioner means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by a nationally recognized body that provides such certification for nurse practitioners, such as the American Nurses Credentialing Center or the American Academy of Nurse Practitioners.

* * * * *

Subpart B—Obtaining Per Diem for Nursing Home Care in State Homes

■ 4. Amend § 51.20 by revising paragraph (a) and adding a parenthetical statement after the authority citation, to read as follows:

§ 51.20 Application for recognition based on certification.

* * * * *

(a) Send a request for recognition and certification to the Chief Consultant, Office of Geriatrics and Extended Care (114), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)

■ 5. Amend § 51.30 as follows:
■ a. Revise paragraph (a)(1).
■ b. Revise paragraphs (d), (e), and (f).
■ c. Add a parenthetical statement after the authority citation.

The revisions and addition read as follows:

§ 51.30 Recognition and certification.

(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a recommendation from the director of the VA medical center of jurisdiction regarding whether, based on a VA survey, the facility and facility management meet or do not meet the standards of subpart D of this part. The recognition survey will be conducted only after the new facility either has at least 21 residents or has a number of residents that consist of at least 50 percent of the new bed capacity of the new facility.

* * * * *

(d) If, during the process for recognition and certification, the director of the VA medical center of jurisdiction recommends that the State home facility or facility management does not meet the standards of this part or if, after recognition and certification have been granted, the director of the VA medical center of jurisdiction determines that the State home facility or facility management does not meet the standards of this part, the director will notify the State home facility in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N 1–22), the Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care (114). The letter will include the reasons for the recommendation or decision and indicate that the State has the right to appeal the recommendation or decision.

(e) The State must submit the appeal to the Under Secretary for Health in writing, within 30 days of receipt of the notice of the recommendation or decision regarding the failure to meet the standards. In its appeal, the State must explain why the recommendation or determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous recommendation or determination. If the Under Secretary for Health decides that the facility does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision (or not grant recognition and certification and not pay per diem if the appeal occurs during the recognition process). The decision of the Under Secretary for Health will constitute a final decision that may be appealed to the Board of Veterans' Appeals (see 38 U.S.C. 7104 and 7105 and 38 CFR Part 20). The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)

Subpart C—Per Diem Payments

■ 6. Revise § 51.40 to read as follows:

§ 51.40 Basic per diem.

Except as provided in § 51.41 of this part,

(a) During Fiscal Year 2008 VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility:

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) $71.42 for each day the veteran is in the facility.

(b) During Fiscal Year 2009 and during each subsequent Fiscal Year, VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility:

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) The basic per diem rate for the Fiscal Year established by VA in accordance with 38 U.S.C. 1741(c).

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)

■ 7. Amend part 51 by adding new §§ 51.41 through 51.43, to read as follows:

§ 51.41 Per diem for certain veterans based on service-connected disabilities.

(a) VA will pay a facility recognized as a State home for nursing home care at the per diem rate determined under paragraph (b) of this section for nursing home care provided to an eligible veteran in such facility, if the veteran:

(1) Is in need of nursing home care for a VA adjudicated service-connected disability, or

(2) Has a singular or combined rating of 70 percent or more based on one or more service-connected disabilities or a rating of total disability based on individual unemployability and is in need of nursing home care.

(b) For purposes of paragraph (a) of this section, the rate is the lesser of the amount calculated under the paragraph (b)(1) or (b)(2) of this section.

(1) The amount determined by the following formula. Calculate the daily rate for the CMS RUG III (resource utilization groups version III) 53 case-mix levels for the applicable metropolitan statistical area if the facility is in a metropolitan statistical area, and calculate the daily rate for the CMS Skilled Nursing Prospective Payment System 53 case-mix levels for the applicable rural area if the facility is in a rural area. For each of the 53 case-mix levels, the daily rate for each State home will be determined by multiplying the labor component by the nursing home wage index and then adding to such amount the non-labor component and an amount based on the CMS payment schedule for physician services. The amount for physician services, based on information published by CMS, is the average hourly rate for all physicians, with the rate modified by the applicable urban or rural geographic index for physician work, and then with the modified rate multiplied by 12 and then divided by the number of days in the year.

Note to paragraph (b)(1): The amount calculated under this formula reflects the applicable or prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care). Further, the formula for establishing these rates includes CMS information that is published in the **Federal Register** every summer and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

(2) A rate not to exceed the daily cost of care for the month in the State home facility, as determined by the Chief Consultant, Office of Geriatrics and Extended Care, following a report to the Chief Consultant, Office of Geriatrics and Extended Care under the provisions of § 51.43(b) of this part by the director of the State home.

(c) Payment under this section to a State home for nursing home care provided to a veteran constitutes payment in full to the State home by VA for such care furnished to that veteran. Also, as a condition of receiving payments under this section, the State home must agree not to accept drugs and medicines from VA on behalf of veterans provided under 38 U.S.C. 1712(d) and corresponding VA regulations (payment under this section includes payment for drugs and medicines).

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)

§ 51.42 Drugs and medicines for certain veterans.

(a) In addition to per diem payments under § 51.40 of this part, the Secretary shall furnish drugs and medicines to a facility recognized as a State home as may be ordered by prescription of a duly licensed physician as specific therapy in the treatment of illness or injury for a veteran receiving care in a State home, if:

(1) The veteran:

(i) Has a singular or combined rating of less than 50 percent based on one or more service-connected disabilities and is in need of such drugs and medicines for a service-connected disability; and

(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability, or

(2) The veteran:

(i) Has a singular or combined rating of 50 or 60 percent based on one or more service-connected disabilities and is in need of such drugs and medicines; and

(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability.

(b) VA may furnish a drug or medicine under paragraph (a) of this section only if the drug or medicine is included on VA's National Formulary, unless VA determines a non-Formulary drug or medicine is medically necessary.

(c) VA may furnish a drug or medicine under paragraph (a) of this section by having the drug or medicine delivered to the State home in which the veteran resides by mail or other means determined by VA.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)

§ 51.43 Per diem and drugs and medicines—principles.

(a) As a condition for receiving payment of per diem under this part, the State home must submit to the VA medical center of jurisdiction for each veteran a completed VA Form 10–10EZ, Application for Medical Benefits (or VA Form 10–10EZR, Health Benefits Renewal Form, if a completed Form 10–10EZ is already on file at VA), and a completed VA Form 10–10SH, State Home Program Application for Care—Medical Certification. These VA Forms must be submitted at the time of admission and with any request for a change in the level of care (domiciliary, hospital care or adult day health care). In case the level of care has changed or contact information is outdated, VA Forms 10–10EZ and 10–10EZR are set forth in full at § 58.12 and VA Form 10–10SH is set forth in full at § 58.13. If the facility is eligible to receive per diem payments for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph, except that VA will pay per diem from the day on which the veteran was admitted to the facility if the completed forms are received within 10 days after admission.

(b) VA pays per diem on a monthly basis. To receive payment, the State must submit to the VA medical center of jurisdiction a completed VA Form 10–5588, State Home Report and Statement of Federal Aid Claimed. This form is set forth in full at § 58.11 of this chapter.

(c) Per diem will be paid under §§ 51.40 and 51.41 for each day that the veteran is receiving care and has an overnight stay. Per diem also will be paid when there is no overnight stay if the veteran has resided in the facility for 30 consecutive days (including overnight stays) and the facility has an occupancy rate of 90 percent or greater. However, these payments will be made only for the first 10 consecutive days during which the veteran is admitted as a patient for any stay in a VA or other hospital (a hospital stay could occur more than once in a calendar year) and only for the first 12 days in a calendar year during which the veteran is absent for purposes other than receiving hospital care.

(d) Initial per diem payments will not be made until the Under Secretary for Health recognizes the State home. However, per diem payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the

facility that provided the basis for determining that the facility met the standards of this part.

(e) The daily cost of care for an eligible veteran's nursing home care for purposes of §§ 51.40(a)(1) and 51.41(b)(2) consists of those direct and indirect costs attributable to nursing home care at the facility divided by the total number of residents at the nursing home. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, ''Cost Principles for State, Local, and Indian Tribal Governments.''

(f) As a condition for receiving drugs and medicines under this part, the State must submit to the VA medical center of jurisdiction a completed VA Form 10–0460 for each eligible veteran. This form is set forth in full at § 58.18 of this chapter. The corresponding prescriptions described in § 51.42 also should be submitted to the VA medical center of jurisdiction.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0091 and 2900–0160.)

Subpart D—Standards

■ 8. Amend § 51.70, in paragraph (c)(5), by removing ''30 days'' and adding, in its place, ''90 calendar days'' and after the authority citation by adding

''(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)''.

■ 9. Amend §§ 51.80, and 51.90 by adding after the authority citation for each section

''(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.).''

■ 10. Amend § 51.100, by revising paragraph (h)(2) and adding a parenthetical statement after the authority citation, to read as follows:

§ 51.100 Quality of life.

* * * * *

(h) * * *

(2) For each 120 beds, a nursing home must employ one or more qualified social workers who work for a total period that equals at least the work time of one full-time employee (FTE). A State home that has more or less than 120 beds must provide qualified social worker services on a proportionate basis (for example, a nursing home with 60 beds must employ one or more qualified social workers who work for a total period equaling at least one-half FTE and a nursing home with 180 beds must employ qualified social workers who work for a total period equaling at least one and one-half FTE).

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)

■ 11. Amend § 51.110 by:

■ a. Revising paragraph (b)(1)(i).

■ b. Removing paragraph (b)(1)(iii).

■ c. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively.

■ d. Adding a new paragraph (d).

■ e. Adding a parenthetical statement after the authority citation. The revision and additions read as follows:

§ 51.110 Resident assessment.

* * * * *

(b) * * *

(1) * * *

(i) Using the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument Minimum Data Set, Version 2.0; and

* * * * *

(d) Submission of assessments. Each assessment (initial, annual, change in condition, and quarterly) using the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument Minimum Data Set, Version 2.0 must be submitted electronically to VA at the IP address provided by VA to the State within 30 days after completion of the assessment document.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)

■ 12. Amend §§ 51.120, 51.130, 51.150, 51.160, 51.180, and 51.190 by adding after the authority citation for each section ''(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)''.

■ 13. Amend § 51.200, by:

■ a. In paragraph (a), removing the phrase, ''(1997 edition)'' and adding, in its place, ''(2006 edition), except that the requirement in paragraph 19.3.5.1 for all buildings containing nursing homes to have an automatic sprinkler system is not applicable until August 13, 2013, unless an automatic sprinkler system was previously required by the Life Safety Code''; removing the phrase, ''(1996 edition)'' each time it appears and adding, in its place, ''(2005 edition)''; and removing ''Office of Regulations Management (02D), Room 1154,'' and adding, in its place ''Office of Regulation Policy and Management (02REG),'' and by removing ''or at'' and adding, in its place '', call 202–461–4902, or at''.

■ b. In paragraph (b), removing the phrase, ''(1997 edition)'' each time it appears and adding, in its place, ''(2006 edition)'' and removing the phrase, ''(1996 edition)'' each time it appears and adding, in its place, ''(2005 edition)''; and

■ 14. Amend §§ 51.210 by adding after the authority citation ''(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)''.

PART 58—FORMS

■ 15. The authority citation for part 58 is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 1745.

■ 16. Amend § 58.11 by revising VA Form 10–5588 to read as follows:

§ 58.11 VA Form 10–5588—State Home Report and Statement of Federal Aid Claimed.

BILLING CODE 8320–01–P

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

Department of Veterans Affairs

INSTRUCTIONS FOR STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED

1. USE OF VA FORM 10-5588, STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED

The VA Form 10-5588 consists of several parts. This report is a monthly statement of gains and losses, days of care, average daily census, total per diem cost, per diem claimed and total amount claimed for hospital, nursing home, domiciliary, and adult day health care. The State home will be paid monthly. Payments will be made only after the State submits a completed VA Form 10-5588.

a. One copy of the monthly statement of account will be submitted by each State home to VA medical center of jurisdiction by the end of the 5th workday after the close of each monthly report period.

b. VA medical center of jurisdiction staff will review each monthly report for accuracy, resolve any discrepancies with the State home, make payment by electronic fund transfer and file the report. A report should not be accepted by a VA medical center staff if the report is incomplete (i.e., all appropriate blanks are complete and report is signed by the State home administrator and State employee when under management contract arrangement).

c. The original monthly statement will be verified and signed by the VA medical center staff person assigned as the point of contact for oversight of the State Home Program and forwarded in duplicate to the Business Office for audit and payment. On completion of VA accounting certification, one copy of each report will be sent to VA Central Office, not later than the 15th workday after the month ends. This information is used to prepare the quarterly program reports of expenditures that are the basis or long range budget projections. The VA Central Office copy will be addressed to: Chief Consultant/Chief State Home Per Diem Program, Office of Geriatrics and Extended Care (114), VA Headquarters, 810 Vermont Avenue, NW, Washington, DC 20420.

2. GENERAL INSTRUCTIONS

a. Enter the last day of the calendar month covered by the report in the box labeled "For Month Ending."

b. Enter line entries for domiciliary, column A; nursing home, column B; hospital, column C; or adult day health care, column D in appropriate columns.

c. Lines 1 through 13 are to be completed for each level of care. Lines 1-9 will be completed as a monthly veteran residents accountability. Lines 10- 13 will be completed as the end of month resident accountability.

(1) Line 1, Total Veteran Residents Remaining End of Prior Month. Enter the number of veteran eligible residents present and remaining on the rolls of the State home as of midnight on the last day of the prior month. Entries on this line will be the same as those shown on line 9 for the prior month.

(2) Line 2, Admissions (Change of Status). Enter the number of eligible veterans whose status was changed by transfer from one level of care to another.

(3) Line 3, Admissions (Other). Enter the number of eligible veterans admitted to the State home during the report month.

(4) Line 4, Return From Leave of Absence of 10 consecutive overnight absences at a VA or other hospital and for the first 12 other types of overnight absences in a calendar year.

(5) Line 5, Discharges (Change of Status). Enter the number of eligible veterans whose status was changed by transfer to another level of care in the State home. The total entries on line 2 and 5 for the month will be the same.

(6) Line 6, Discharges (Others). Enter the number of eligible veterans who were discharged from the State home or dropped from the rolls, except for deaths.

(7) Line 7, Deaths. Enter the number of eligible veterans who died during the report month. Attach a separate sheet to identify deaths by name.

(8) Line 8, Leave of Absence of 10 consecutive overnight absences at a VA or other hospital and for the first 12 other types of overnight absences in a calendar year

(9) Line 9, Total Veteran Residents Remaining End of Month. Enter the number of eligible male and female veterans present and remaining as of midnight on the last day of the report month. This entry will be equal to the sum of lines 1, 2, 3 and 4 minus lines 5, 6, 7 and 8.

(10) Line 10, Non-Veteran Residents Remaining End of Month. Enter number of residents not eligible for reimbursement by VA that are present on the last day of the report month. DO NOT REPORT eligible veteran residents in this cell.

(11) Line 11, Total Nursing Home Care Veterans that are 70% Disabled or Admitted for a Service Connected Condition. Enter number of residents included on line 9, that are over 70% service connected disabled or admitted for a service connected condition.

(12) Line 12, Female Veteran Residents Remaining at the end of the month.

VA FORM JUL 2008 **10-5588**

CONTINUED INSTRUCTIONS FOR STATE HOME REPORT AND STATEMENT OF FEDERAL AID

(13) Line 13, Total Veteran Days of Care Provided. Enter total number of days of care provided, including days of care for eligible veterans absent 96 hours or less. One day of care may be counted for a veteran on the day the veteran is admitted. A day of care is not counted on the day of discharge. A gain and a loss on the same day will be reported as one day of care. When accounting for Nursing Home Care use lines 13a and 13b.

(13a) Line 13a, Total Veteran Days of Care Provided for Nursing Home Care. Enter total number of days of care provided to veterans 70% or more disabled or admitted for a service connected disability, including days of care for eligible veterans with leave of absence of 10 consecutive overnight absences at a VA or other hospital and for the first 12 other types of overnight absences in a calendar year. One day of care may be counted for a veteran on the day the veteran is admitted. A day of care is not counted on the day of discharge. A gain and a loss on the same day will be reported as one day of care.

3. INSTRUCTIONS FOR MONTHLY SUMMARY STATEMENT ACCOUNT.

a. Column E, Days of Care, Lines 14, 15, 16, and 17. Enter from line 13 the data in columns A for domiciliary, C for hospital care and D for adult day health care to show the total number of days for each level of care for the month. Enter from line 13b for B for nursing home care to show the total number of day for Nursing home Care for patients less than 70% service disabled or not admitted for a service connected condition. One day of care may be counted for a veteran on the day the veteran is admitted. A day of care is not counted on the day of discharge. A gain and a loss on the same day will be reported as one day of care.

b. Column F, Average Daily Census, Lines 14, 15, 16, and 17. Enter the average daily census computed by dividing the appropriate entry in column J by the number of calendar days in the month, carried to one decimal place.

c. Column G, Total Per Diem Cost, Lines 14, 15, 16, and 17. Enter on the appropriate line the total per diem costs for the month computed in accordance with relevant cost principles set forth in the Office of Management and Budget(OMB) Circular number A-87, dated May 4, 1995, "Cost Principles for State, Local, and Indian Tribal Governments." The total per diem cost will include the direct and indirect costs appropriate for each level of care.

d. Column H, Per Diem Claimed, 14, 15, 16, and 17. Enter the authorized (VA approved per diem rate for the Fiscal Year) per diem rate or one-half the amount shown in column L carried to two decimal places whichever is the lesser, for the appropriate level of care. VA will pay monthly one-half of the cost of each eligible veteran's care (domiciliary, nursing home, hospital or adult day health care) for each day the veteran is in a facility recognized as a State home, not to exceed the approved per diem rate for that level of care.

e. Column I, Total Amount Claimed.

(1) Line 18. Verify that the total amount claimed in line 17 does not exceed one-half the sum of products of entries in columns E and I, lines 14, 15, 16 and 17.

4. INSTRUCTIONS FOR CLAIM PER DIEM PAYMENTS OF 70% SC VETERANS IN STATE NURSING HOMES.

a. Column J, Days of Care, Lines 19 and 20 total number of days for each level of care for the month. Including days of care for eligible veterans absent 10 consecutive overnight absences at a VA or other hospital and for the first 12 other types of overnight absences in a calendar year. One day of care may be counted for a veteran on the day the veteran is admitted. A day of care is not counted on the day of discharge. A gain and a loss on the same day will be reported as one day of care. Total on line 21.

b. Column K, Total Veterans, Lines 19 and 20. Enter the total number of eligible veterans present on the last day of the report month on line 21.

c. Column L, Rate Per Day of SC Vet, 19 and 20. Use prevailing rate chart or (G) 15, whichever is less.

d. Column M, Amount Claimed, Lines 19 and 20. Enter the total amount by adding line 19 to line 20.

5. OPERATING BEDS

a. At the end of each month, State home management will enter the current operating bed capacities for domiciliary, nursing home, hospital or adult day health care in the appropriate spaces on Page 2 of the report form.b. Also on Page 2, facility management will enter bed capacities approved by VA. The approved bed capacity and the operating beds should be the same number of beds. If operating beds are closed for any reason, facility management is required to provide the date of closure, expected date the beds will be operational, type of bed (domiciliary, nursing home, hospital, or adult day health care), and the reason for the closure. Please specify if these beds were constructed with federal funds. Information related to closed beds may be entered under "Remarks".

6. CERTIFICATION

a. The facility management must certify that the information in the report is correct by signing and dating the report.

b. If the facility is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time, on site basis. This State employee must also certify that the information in the report is correct by signing and dating the report.

VA FORM JUL 2008 **10-5588**

Department of Veterans Affairs

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED

TO	VA FACILITY	FROM	NAME AND ADDRESS OF STATE HOME
PAY TO		FOR MONTH ENDING	

CHANGES IN RESIDENCY FOR THE MONTH

LINE NO.		ITEM	DOMICILIARY (A)	NURSING HOME CARE (B)	HOSPITAL (C)	ADULT DAY HEALTH CARE (D)
1		TOTAL VETERAN RESIDENTS REMAINING AT END OF PRIOR MONTH				
2	GAINS	ADMISSIONS *(Change of status)*				
3		ADMISSIONS *(Other)*				
4		RETURNS FROM LEAVE OF ABSENCE				
5	LOSSES	DISCHARGES *(Change of status)*				
6		DISCHARGES *(Other)*				
7		DEATHS				
8		LEAVES OF ABSENCE				
9		TOTAL VETERAN RESIDENTS AT END OF THE MONTH				

STATUS AS OF THE END OF THE MONTH

LINE NO.	ITEM	DOMICILIARY (A)	NURSING HOME CARE (B)	HOSPITAL (C)	ADULT DAY HEALTH CARE (D)
10	TOTAL NON-VETERAN RESIDENTS AT THE END OF THE MONTH				
11	TOTAL NURSING HOME CARE VETS THAT ARE 70% OR MORE SC OR IN NEED OF NH CARE FOR A SC CONDITION				
12	FEMALE VETERAN RESIDENTS REMAINING AT THE END OF THE MONTH				

TOTAL DAYS OF CARE FOR THE MONTH

LINE NO.	ITEM	DOMICILIARY (A)	NURSING HOME CARE (B)	HOSPITAL (C)	ADULT DAY HEALTH CARE (D)
13	TOTAL DAYS OF CARE FURNISHED TO VETERANS WHO ARE ELIGIBLE FOR PER DIEM PAYMENTS *(Excluding 13a)*				
13a	TOTAL DAYS OF CARE FURNISHED TO VETERANS 70% OR MORE SC OR IN NEED OF CARE FOR A SC CONDITION				

VA FORM JUL 2008 **10-5588**

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED CONTINUED

CLAIM FOR BASIC PER DIEM PAYMENTS FOR ELIGIBLE VETERANS

LINE NO.	FEDERAL AID CLAIMED UNDER SEC.1741, TITLE 38, U.S.C., AS AMENDED	DAYS OF CARE (E)	AVERAGE DAILY CENSUS (F)	DAILY COST OF CARE FOR THE MONTH* (G)	PER DIEM CLAIMED (H)	TOTAL AMOUNT CLAIMED (I)
14	DOMICILIARY CARE					
15	NURSING HOME					
16	HOSPITAL CARE					
17	ADULT DAY HEALTH CARE					
18	TOTAL AMOUNT CLAIMED					

CLAIM FOR PER DIEM PAYMENTS FOR CERTAIN SC VETERANS IN STATE NURSING HOMES

LINE NO.	VETERAN CATEGORY	DAYS OF CARE (J)	AVERAGE DAILY CENSUS (K)	PREVAILING RATE FROM CHART OR (G) 15 WHICHEVER IS LESS (L)	AMOUNT CLAIMED (M)
19	HAS A SINGULAR OR COMBINED RATING OF 70% OR MORE BASED ON 1 OR MORE SERVICE-CONNECTED DISABILITIES OR A RATING OF TOTAL DISABILITY BASED ON INDIVIDUAL UNEMPLOYABILITY				
20	IS IN NEED OF NH CARE FOR A VA ADJUDICATED SC DISABILITY				
21	TOTALS:				

FOR UNITED STATES DEPARTMENT OF VETERANS AFFAIRS USE ONLY

I certify that this report is correct based on documentation provided to VA and that the bed capacity approved by VA is correct.

BED CAPACITY APPROVED BY VA

DOMICILIARY CARE	NURSING HOME CARE	HOSPITAL CARE	ADULT DAY HEALTH CARE

RECEIVING REPORT

- Services authorized under provisions of Sec. 1741, 1742, 1743 and 1745, Title 38, U.S.C., have been rendered in the quantity claimed and payment is recommended except as follows:

TOTAL AMOUNT APPROVED BY VA FOR PAYMENT (add block 18i and 21M)

SIGNATURE AND TITLE OF VA STATE HOME COORDINATOR | DATE

ACCOUNTING CERTIFICATION - AUDIT BLOCK

AMOUNT DUE | DATE | VOUCHER AUDITOR

SIGNATURE AND TITLE OF AUDITOR | DATE

The daily cost of care per veteran is the direct cost plus the indirect cost for the month, divided by patients or residents days of care. Compute this cost in accordance with relevant cost principles set forth in the Office of Management and Budget (OMB) Circular number A-87, dated May 4, 1995, Cost Principles for State, Local, and Indian Tribal Governments.

VA FORM JUL 2008 **10-5588**

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED CONTINUED

TOTAL STATE OPERATING BEDS AT END OF THE MONTH

DOMICILIARY CARE	NURSING HOME CARE	HOSPITAL CARE	ADULT DAY HEALTH CARE

I certify that this report is correct, that all residents included in the report were physically present during the period for which Federal aid is claimed, except for authorized absences of 96 hours or less, and that facility management has complied with all provisions of Title VI, Public Law 88-352, entitled Civil Rights Act of 1964.

SIGNATURE OF STATE HOME ADMINISTRATOR	DATE

SIGNATURE OF STATE EMPLOYEE WHEN APPLICABLE	DATE

REMARKS

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. Although completion of this form is voluntary, VA will be unable to provide reimbursement for services rendered without a completed form. Failure to complete the form will have no effect on any other benefits to which you may be entitled. This information is collected under the authority of Title 38 CFR Parts 51 and 52.

VA FORM JUL 2008 **10-5588**

■ 17. Amend § 58.12 by:
■ a. Revising the section heading.
■ b. Revising VA Form 10–10EZ.
■ c. Adding VA Form 10–10EZR.

The revisions and addition read as follows:

§ 58.12 VA Forms 10–10EZ and 10–10EZR—Application for Health Benefits and Renewal Form.

OMB Approved No. 2900-0091
Estimated Burden Avg. 45 min.

Department of Veterans Affairs

APPLICATION FOR HEALTH BENEFITS

SECTION I - GENERAL INFORMATION

Federal law provides criminal penalties, including a fine and/or imprisonment for up to 5 years, for concealing a material fact or making a materially false statement. (See 18 U.S.C. 1001)

1. VETERAN'S NAME *(Last, First, Middle Name)*
2. OTHER NAMES USED
3. MOTHER'S MAIDEN NAME
4. GENDER ☐ MALE ☐ FEMALE

5. ARE YOU SPANISH, HISPANIC, OR LATINO? ☐ YES ☐ NO

6. WHAT IS YOUR RACE? *(You may check more than one.) (Information is required for statistical purposes only.)* ☐ AMERICAN INDIAN OR ALASKA NATIVE ☐ BLACK OR AFRICAN AMERICAN ☐ ASIAN ☐ WHITE ☐ NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER

7. SOCIAL SECURITY NUMBER
8. CLAIM NUMBER
9. DATE OF BIRTH *(mm/dd/yyyy)*
9A. PLACE OF BIRTH *(City and State)*
10. RELIGION

11. PERMANENT ADDRESS *(Street)*
11A. CITY
11B. STATE
11C. ZIP CODE *(9 digits)*
11D. COUNTY
11E. HOME TELEPHONE NUMBER *(Include area code)*
11F. E-MAIL ADDRESS
11G. CELLULAR TELEPHONE NUMBER *(Include area code)*
11H. PAGER NUMBER *(Include area code)*

12. TYPE OF BENEFIT(S) APPLIED FOR *(You may check more than one)* ☐ HEALTH SERVICES ☐ NURSING HOME ☐ DOMICILIARY ☐ DENTAL

13. IF APPLYING FOR HEALTH SERVICES OR ENROLLMENT, WHICH VA MEDICAL CENTER OR OUTPATIENT CLINIC DO YOU PREFER?

14. DO YOU WANT AN APPOINTMENT WITH A VA DOCTOR OR PROVIDER AS SOON AS ONE BECOMES AVAILABLE? ☐ YES ☐ NO I am only enrolling in case I need care in the future.

15. HAVE YOU BEEN SEEN AT A VA HEALTH CARE FACILITY? ☐ YES, **LOCATION:** ☐ NO

16. CURRENT MARITAL STATUS *(Check one)* ☐ MARRIED ☐ NEVER MARRIED ☐ SEPARATED ☐ WIDOWED ☐ DIVORCED ☐ UNKNOWN

17. NAME, ADDRESS AND RELATIONSHIP OF NEXT OF KIN
17A. NEXT OF KIN'S HOME TELEPHONE NUMBER *(Include area code)*
17B. NEXT OF KIN'S WORK TELEPHONE NUMBER *(Include area code)*

18. NAME, ADDRESS AND RELATIONSHIP OF EMERGENCY CONTACT
18A. EMERGENCY CONTACT'S HOME TELEPHONE NUMBER *(Include area code)*
18B. EMERGENCY CONTACT'S WORK TELEPHONE NUMBER *(Include area code)*

19. INDIVIDUAL TO RECEIVE POSSESSION OF YOUR PERSONAL PROPERTY LEFT ON PREMISES UNDER VA CONTROL AFTER YOUR DEPARTURE OR AT THE TIME OF DEATH. NOTE: THIS DOES NOT CONSTITUTE A WILL OR TRANSFER OF TITLE *(Check one)* ☐ EMERGENCY CONTACT ☐ NEXT OF KIN

APPLICATION FOR HEALTH BENEFITS, Continued

VETERAN'S NAME *(Last, First, Middle)*

SOCIAL SECURITY NUMBER

SECTION II - INSURANCE INFORMATION *(Use a separate sheet for additional information)*

1. ARE YOU COVERED BY HEALTH INSURANCE? *(Including coverage through a spouse or another person)* ☐ YES ☐ NO

2. HEALTH INSURANCE COMPANY NAME, ADDRESS AND TELEPHONE NUMBER

3. NAME OF POLICY HOLDER

4. POLICY NUMBER

5. GROUP CODE

	YES	NO	
6. ARE YOU ELIGIBLE FOR MEDICAID?	☐	☐	
7. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART A?	☐	☐	7A. EFFECTIVE DATE *(mm/dd/yyyy)*
8. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART B?	☐	☐	8A. EFFECTIVE DATE *(mm/dd/yyyy)*

9. NAME EXACTLY AS IT APPEARS ON YOUR MEDICARE CARD

10. MEDICARE CLAIM NUMBER

11. IS NEED FOR CARE DUE TO ON THE JOB INJURY? *(Check one)* ☐ YES ☐ NO

12. IS NEED FOR CARE DUE TO ACCIDENT? *(Check One)* ☐ YES ☐ NO

SECTION III - EMPLOYMENT INFORMATION

1. VETERAN'S EMPLOYMENT STATUS *(Check one)*
If employed or retired, complete item 1A
☐ FULL TIME ☐ NOT EMPLOYED
☐ PART TIME ☐ RETIRED
Date of retirement (mm/dd/yyyy)

1A. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER

2. SPOUSE'S EMPLOYMENT STATUS *(Check one)*
If employed or retired, complete item 2A
☐ FULL TIME ☐ NOT EMPLOYED
☐ PART TIME ☐ RETIRED
Date of retirement (mm/dd/yyyy)

2A. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER

SECTION IV - MILITARY SERVICE INFORMATION

1. LAST BRANCH OF SERVICE	1A. LAST ENTRY DATE	1B. LAST DISCHARGE DATE	1C. DISCHARGE TYPE	1D. MILITARY SERVICE NUMBER

2. CHECK YES OR NO	YES	NO		YES	NO
A. ARE YOU A PURPLE HEART AWARD RECIPIENT?	☐	☐	E1. ARE YOU RECEIVING DISABILITY RETIREMENT PAY INSTEAD OF VA COMPENSATION?	☐	☐
B. ARE YOU A FORMER PRISONER OF WAR?	☐	☐	F. DO YOU NEED CARE OF CONDITIONS POTENTIALLY RELATED TO SERVICE IN SW ASIA DURING THE GULF WAR?	☐	☐
C. DO YOU HAVE A VA SERVICE-CONNECTED RATING?	☐	☐	G. WERE YOU EXPOSED TO AGENT ORANGE WHILE SERVING IN VIETNAM?	☐	☐
C1. IF YES, WHAT IS YOUR RATED PERCENTAGE? %			H. WERE YOU EXPOSED TO RADIATION WHILE IN THE MILITARY?	☐	☐
D. DID YOU SERVE IN COMBAT AFTER 11/11/1998?	☐	☐	I. DID YOU RECEIVE NOSE AND THROAT RADIUM TREATMENTS WHILE IN THE MILITARY?	☐	☐
E. WAS YOUR DISCHARGE FROM MILITARY FOR A DISABILITY INCURRED OR AGGRAVATED IN THE LINE OF DUTY?	☐	☐	J. DO YOU HAVE A SPINAL CORD INJURY?	☐	☐

SECTION V - PAPERWORK REDUCTION ACT AND PRIVACY ACT INFORMATION

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of Section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 45 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

Privacy Act Information: VA is asking you to provide the information on this form under 38 U.S.C. Sections 1705, 1710, 1712, and 1722 in order for VA to determine your eligibility for medical benefits. Information you supply may be verified through a computer-matching program. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices and in accordance with the VHA Notice of Privacy Practices. Providing the requested information is voluntary, but if any or all of the requested information is not provided, it may delay or result in denial of your request for health care benefits. Failure to furnish the information will not have any effect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

APPLICATION FOR HEALTH BENEFITS, Continued

VETERAN'S NAME *(Last, First, Middle)*

SOCIAL SECURITY NUMBER

SECTION VI - FINANCIAL DISCLOSURE

Disclosure allows VA to accurately determine whether certain veterans will be charged copayments for care and medications, their eligibility for other services and enrollment priority. Veterans are not required to disclose their financial information; however, VA is not currently enrolling new applicants who decline to provide their financial information unless they have a special eligibility factor. **Recent combat veterans (e.g., OEF/OIF) who were discharged within the past 5 years or were discharged more than 5 years ago and applying for enrollment by Jan. 27, 2011 are eligible for enrollment without disclosing their financial information** but like other veterans may provide it to establish their eligibility for travel reimbursement, cost-free medication and/or medical care for services unrelated to military experience.

☐ **No, I do not wish to provide financial information in Sections VII through X.** I understand that VA is not enrolling new applicants who do not provide this information and who do not have a special eligibility factor (e.g., recently discharged combat veteran, compensable service connection, receipt of VA pension or Medicaid benefits.) If I am enrolled, I agree to pay applicable VA copayments. *Sign and date the form in Section XII.*

☐ **Yes, I will provide my household financial information for last calendar year.** Complete applicable sections VII through X. *Sign and date the form in Section XII.*

SECTION VII - DEPENDENT INFORMATION *(Use a separate sheet for additional dependents)*

1. SPOUSE'S NAME *(Last, First, Middle Name)*	2. CHILD'S NAME *(Last, First, Middle Name)*
1A. SPOUSE'S MAIDEN NAME	2A. CHILD'S RELATIONSHIP TO YOU *(Check one)* ☐ Son ☐ Daughter ☐ Stepson ☐ Stepdaughter
1B. SPOUSE'S SOCIAL SECURITY NUMBER	2B. CHILD'S SOCIAL SECURITY NUMBER / 2C. DATE CHILD BECAME YOUR DEPENDENT *(mm/dd/yyyy)*
1C. SPOUSE'S DATE OF BIRTH *(mm/dd/yyyy)* / 1D. DATE OF MARRIAGE *(mm/dd/yyyy)*	2D. CHILD'S DATE OF BIRTH *(mm/dd/yyyy)*
1E. SPOUSE'S ADDRESS AND TELEPHONE NUMBER *(Street, City, State, ZIP)*	2E. WAS CHILD PERMANENTLY AND TOTALLY DISABLED BEFORE THE AGE OF 18? ☐ YES ☐ NO 2F. IF CHILD IS BETWEEN 18 AND 23 YEARS OF AGE, DID CHILD ATTEND SCHOOL LAST CALENDAR YEAR? ☐ YES ☐ NO
3. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR ENTER THE AMOUNT YOU CONTRIBUTED TO THEIR SUPPORT. SPOUSE $ CHILD $	2G. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING *(e.g., tuition, books, materials)* $

SECTION VIII - PREVIOUS CALENDAR YEAR GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN *(Use a separate sheet for additional dependents)*

	VETERAN	SPOUSE	CHILD 1
1. GROSS ANNUAL INCOME FROM EMPLOYMENT *(wages, bonuses, tips, etc.)* EXCLUDING INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	$	$	$
2. NET INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	$	$	$
3. LIST OTHER INCOME AMOUNTS *(eg., Social Security, compensation, pension interest, dividends)*, EXCLUDING WELFARE.	$	$	$

SECTION IX - PREVIOUS CALENDAR YEAR DEDUCTIBLE EXPENSES

1. TOTAL NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE *(e.g., payments for doctors, dentists, medications, Medicare, health insurance, hospital and nursing home) VA will calculate a deductible and the net medical expenses you may claim.*	$
2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD *(Also enter spouse or child's information in Section VII.)*	$
3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES *(e.g., tuition, books, fees, materials) DO NOT LIST YOUR DEPENDENTS' EDUCATIONAL EXPENSES.*	$

SECTION X - PREVIOUS CALENDAR YEAR NET WORTH *(Use a separate sheet for additional dependents)*

	VETERAN	SPOUSE	CHILD 1
1. CASH, AMOUNT IN BANK ACCOUNTS *(e.g., checking and savings accounts, certificates of deposit, individual retirement accounts, stocks and bonds)*	$	$	$
2. MARKET VALUE OF LAND AND BUILDINGS MINUS MORTGAGES AND LIENS. *(e.g., second homes and non-income producing property. Do not count your primary home.)*	$	$	$
3. VALUE OF OTHER PROPERTY OR ASSETS *(e.g., art, rare coins, collectables)* MINUS THE AMOUNT YOU OWE ON THESE ITEMS. INCLUDE VALUE OF FARM, RANCH OR BUSINESS ASSETS. *Exclude household effects and family vehicles.*	$	$	$

SECTION XI - CONSENT TO COPAYMENTS

If you are a 0% SC veteran and do not receive VA monetary benefits or a NSC veteran (and you are not a Former POW, Purple Heart Recipient or VA pensioner) and your household income (or combined income and net worth) exceeds the established threshold, this application will be considered for enrollment, but only if you agree to pay VA copayments for treatment of your NSC conditions. **If you are such a veteran by signing this application you are agreeing to pay the applicable VA copayments as required by law.**

SECTION XII - ASSIGNMENT OF BENEFITS

I understand that pursuant to 38 U.S.C. Section 1729, VA is authorized to recover or collect from my health plan (HP) for the reasonable charges of nonservice-connected VA medical care or services furnished or provided to me. I hereby authorize payment directly to VA from any HP under which I am covered (including coverage provided under my spouse's HP) that is responsible for payment of the charges for my medical care, including benefits otherwise payable to me or my spouse.

ALL APPLICANTS MUST SIGN AND DATE THIS FORM. REFER TO INSTRUCTIONS WHICH DEFINE WHO CAN SIGN ON BEHALF OF THE VETERAN.

SIGNATURE OF APPLICANT	DATE

OMB Approved No. 2900-0091
Estimated Burden Avg. 24 min.

Department of Veterans Affairs

HEALTH BENEFITS RENEWAL FORM

SECTION I - GENERAL INFORMATION

Federal law provides criminal penalties, including a fine and/or imprisonment for up to 5 years, for concealing a material fact or making a materially false statement. (See 18 U.S.C. 1001)

1. VETERAN'S NAME *(Last, First, Middle Name)*
2. OTHER NAMES USED
3. GENDER ☐ MALE ☐ FEMALE
4. SOCIAL SECURITY NUMBER
5. DATE OF BIRTH *(mm/dd/yyyy)*
6. PERMANENT ADDRESS *(Street)*
6A. CITY
6B. STATE
6C. ZIP
6D. COUNTY
6E. HOME TELEPHONE NUMBER *(Include area code)*
6F. E-MAIL ADDRESS
6G. CELLULAR TELEPHONE NUMBER *(Include area code)*
6H. PAGER NUMBER *(Include area code)*
7. CURRENT MARITAL STATUS *(Check one)* ☐ MARRIED ☐ NEVER MARRIED ☐ SEPARATED ☐ WIDOWED ☐ DIVORCED ☐ UNKNOWN
8. NAME, ADDRESS AND RELATIONSHIP OF NEXT OF KIN
8A. NEXT OF KIN'S HOME TELEPHONE NUMBER *(Include area code)*
8B. NEXT OF KIN'S WORK TELEPHONE NUMBER *(Include area code)*
9. NAME, ADDRESS AND RELATIONSHIP OF EMERGENCY CONTACT
9A. EMERGENCY CONTACT'S HOME TELEPHONE NUMBER *(Include area code)*
9B. EMERGENCY CONTACT'S WORK TELEPHONE NUMBER *(Include area code)*
10. INDIVIDUAL TO RECEIVE POSSESSION OF YOUR PERSONAL PROPERTY LEFT ON PREMISES UNDER VA CONTROL AFTER YOUR DEPARTURE OR AT THE TIME OF DEATH.
Note: This does not constitute a will or transfer of title. *(Check one)* ☐ EMERGENCY CONTACT ☐ NEXT OF KIN

SECTION II - INSURANCE INFORMATION (Use a separate sheet for additional information)

1. ARE YOU COVERED BY HEALTH INSURANCE, INCLUDING COVERAGE THROUGH A SPOUSE OR ANOTHER PERSON? ☐ YES ☐ NO
2. HEALTH INSURANCE COMPANY NAME, ADDRESS AND TELEPHONE NUMBER
3. NAME OF POLICY HOLDER
4. POLICY NUMBER
5. GROUP CODE
6. ARE YOU ELIGIBLE FOR MEDICAID? ☐ YES ☐ NO
7. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART A? ☐ YES ☐ NO
7A. EFFECTIVE DATE *(mm/dd/yyyy)*
8. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART B? ☐ YES ☐ NO
8A. EFFECTIVE DATE *(mm/dd/yyyy)*
9. NAME EXACTLY AS IT APPEARS ON YOUR MEDICARE CARD
10. MEDICARE CLAIM NUMBER

SECTION III - EMPLOYMENT INFORMATION

1. VETERAN'S EMPLOYMENT STATUS *(check one)* ☐ FULL TIME ☐ NOT EMPLOYED
If employed or retired, complete item 1A ☐ PART TIME ☐ RETIRED *Date of retirement (mm/dd/yyyy)*
1A. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER
2. SPOUSE'S EMPLOYMENT STATUS *(check one)* ☐ FULL TIME ☐ NOT EMPLOYED
If employed or retired, complete item 2A ☐ PART TIME ☐ RETIRED *Date of retirement (mm/dd/yyyy)*
2A. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER

SECTION IV - PAPERWORK REDUCTION ACT AND PRIVACY ACT INFORMATION

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of Section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 24 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

Privacy Act Information: VA is asking you to provide the information on this form under 38 U.S.C. Sections 1710, 1712, and 1722 in order for VA to determine your eligibility for medical benefits. Information you supply may be verified through a computer-matching program. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices and in accordance with the VHA Notice of Privacy Practices. Providing the requested information is voluntary, but if any or all of the requested information is not provided, it may delay or result in denial of your request for health care benefits. Failure to furnish the information will not have any effect on any other benefits to which you may be entitled If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

Department of Veterans Affairs

VETERAN'S NAME *(Last, First, Middle)*	SOCIAL SECURITY NUMBER

SECTION V - FINANCIAL DISCLOSURE

Disclosure allows VA to accurately determine whether certain veterans will be charged copayments for care and medications, their eligibility for other services and enrollment priority. Veterans are not required to disclose their financial information. **Recent combat veterans (e.g., OEF/OIF)** like other veterans may answer YES in Section V and complete Sections VI-IX to have their priority for enrollment and financial eligibility for cost-free medical care, medications, long-term care and beneficiary travel for treatment of nonservice-connected conditions assessed.

☐ **No, I do not wish to provide financial information in Sections VI through IX.** If I am enrolled, I agree to pay applicable VA copayments. *Sign and date the form in Section XI.*

☐ **Yes, I will provide my household financial information for last calendar year.** Complete applicable Sections VI through IX. *Sign and date the form in Section XI.*

SECTION VI - DEPENDENT INFORMATION (Use a separate sheet for additional dependents)

1. SPOUSE'S NAME *(Last, First, Middle Name)*	2. CHILD'S NAME *(Last, First, Middle Name)*
1A. SPOUSE'S MAIDEN NAME	2A. CHILD'S RELATIONSHIP TO YOU *(Check one)* ☐ Son ☐ Daughter ☐ Stepson ☐ Stepdaughter
1B. SPOUSE'S SOCIAL SECURITY NUMBER	2B. CHILD'S SOCIAL SECURITY NUMBER / 2C. DATE CHILD BECAME YOUR DEPENDENT *(mm/dd/yyyy)*
1C. SPOUSE'S DATE OF BIRTH *(mm/dd/yyyy)* / 1D. DATE OF MARRIAGE *(mm/dd/yyyy)*	2D. CHILD'S DATE OF BIRTH *(mm/dd/yyyy)*
1E. SPOUSE'S ADDRESS AND TELEPHONE NUMBER *(Street, City, State, ZIP)*	2E. WAS CHILD PERMANENTLY AND TOTALLY DISABLED BEFORE THE AGE OF 18? ☐ YES ☐ NO 2F. IF CHILD IS BETWEEN 18 AND 23 YEARS OF AGE, DID CHILD ATTEND SCHOOL LAST CALENDAR YEAR? ☐ YES ☐ NO
3. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR, ENTER THE AMOUNT YOU CONTRIBUTED TO THEIR SUPPORT SPOUSE $ CHILD $	2G. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING *(e.g., tuition, books, materials)* $

SECTION VII - PREVIOUS CALENDAR YEAR GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN (Use a seperate sheet for additional dependents)

	VETERAN	SPOUSE	CHILD 1
1. GROSS ANNUAL INCOME FROM EMPLOYMENT *(eg., wages, bonuses, tips, etc.)* EXCLUDING INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS.	$	$	$
2. NET INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS.	$	$	$
3. LIST OTHER INCOME AMOUNTS *(e.g., Social Security, compensation, pension, interest, dividends)*. EXCLUDING WELFARE.	$	$	$

SECTION VIII - PREVIOUS CALENDAR YEAR DEDUCTIBLE EXPENSES

1. TOTAL NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE LAST CALENDAR YEAR *(e.g., payments for doctors, dentists, medications, Medicare, health insurance, hospital and nursing home)* VA will calculate a deductible and the net medical expenses you may claim.	$
2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD *(Also enter spouse or child's information in Section VI.)*	$
3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES *(e.g., tuition, books, fees, materials)* DO NOT LIST YOUR DEPENDENTS' EDUCATIONAL EXPENSES.	$

SECTION IX - PREVIOUS CALENDAR YEAR NET WORTH (Use a separate sheet for additional dependents)

	VETERAN	SPOUSE	CHILD 1
1. CASH, AMOUNT IN BANK ACCOUNTS *(e.g., checking and savings accounts, certificates of deposit, individual retirement accounts, stocks and bonds.)*	$	$	$
2. MARKET VALUE OF LAND AND BUILDINGS MINUS MORTGAGES AND LIENS. *(e.g., second homes and non-income producing property.)* DO NOT INCLUDE YOUR PRIMARY HOME.	$	$	$
3. VALUE OF OTHER PROPERTY OR ASSETS *(e.g., art, rare coins, collectables)* MINUS THE AMOUNT YOU OWE ON THESE ITEMS. INCLUDE VALUE OF FARM, RANCH OR BUSINESS ASSETS. *Exclude household effects and family vehicles.*	$	$	$

SECTION X - CONSENT TO COPAYMENTS

If you are a 0% SC veteran and do not receive VA monetary benefits or a NSC veteran (and you are not a Former POW, Purple Heart Recipient or VA pensioner) and your household income (or combined income and net worth) exceeds the established threshold, this application will be considered for enrollment, but only if you agree to pay VA copays for treatment of your NSC conditions. **If you are such a veteran by signing this application you are agreeing to pay the applicable VA copays as required by law.**

SECTION XI - ASSIGNMENT OF BENEFITS

I understand that pursuant to 38 U.S.C. Section 1729, VA is authorized to recover or collect from my health plan (HP) for the reasonable charges of nonservice-connected VA medical care or services furnished or provided to me. I hereby authorize payment directly to VA from any HP under which I am covered (including coverage provided under my spouse's HP) that is responsible for payment of the charges for my medical care, including benefits otherwise payable to me or my spouse.

ALL APPLICANTS MUST SIGN AND DATE THIS FORM. REFER TO INSTRUCTIONS ON WHO CAN SIGN ON BEHALF OF THE VETERAN.

SIGNATURE OF APPLICANT	DATE *(mm/dd/yyyy)*

VA FORM JUL 2008 **10-10EZR** PAGE 2

■ 18. Amend § 58.13 by revising VA Form 10–10SH to read as follows:

§ 58.13 VA Form 10–10SH—State Home Program Application for Veteran Care Medical Certification.

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

Department of Veterans Affairs

STATE HOME PROGRAM APPLICATION FOR VETERAN CARE MEDICAL CERTIFICATION

PART I - ADMINISTRATIVE

STATE HOME FACILITY	DATE ADMITTED	GENDER ☐ M ☐ F
RESIDENT'S NAME *(Last, First, Middle) (This is a mandatory field)*	SOCIAL SECURITY NUMBER. *(Mandatory field)*	
RESIDENT'S STREET ADDRESS	AGE	DATE OF BIRTH *(mm/dd/yyyy)*
CITY, STATE AND ZIP CODE	ADVANCED MEDICAL DIRECTIVE ☐ NO ☐ YES	

PART II - HISTORY AND PHYSICAL *(Use separate sheet if necessary)*

HISTORY

HEIGHT	WEIGHT	TEMP	PULSE	BP	HEAD/EYES/EAR/NOSE AND THROAT

NECK	CARDIOPULMONARY
ABDOMEN	GENITOURINARY
RECTAL	EXTREMITIES
NEUROLOGICAL	ALLERGY/DRUG SENSITIVITY

X-RAY/ LAB						
	CHEST X-RAY	DATE *(mm/dd/yyyy)*	RESULTS	CBC	DATE *(mm/dd/yyyy)*	RESULTS
	SEROLOGY					
	URINALYSIS	DATE *(mm/dd/yyyy)*	ALBUMEN	SUGAR	ACETONE	

CHECK ALL BOXES THAT APPLY OR CHECK NA ☐

IS DEMENTIA THE PRIMARY DIAGNOSIS	IS THERE A DIAGNOSIS OF MENTAL ILLNESS	HAS RESIDENT RECEIVED MENTAL SERVICES WITHIN THE PAST 2 YEARS	IS CLIENT A DANGER TO SELF OR OTHERS
☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO

IS THERE ANY PRESSING EVIDENCE OF MENTAL ILLNESS SUCH AS:
☐ SCHIZOPHRENIA ☐ PARANOIA ☐ OTHER PSYCHOTIC OR MENTAL DISORDERS LEADING TO CHRONIC DISABILITY
☐ MOOD SWINGS ☐ SOMATOFORM DISORDER ☐ PANIC OR SEVERE ANXIETY DISORDER ☐ PERSONALITY DISORDER

OXYGEN				FOLEY CATHETER
☐ MASK	☐ PRN	☐ TUBE FEEDING	☐ DECUBITUS ULCERS	☐ TEMPORARY
☐ NASAL CANULAR	☐ CONTINUOUS	☐ OSTOMY	☐ DRAINING WOUND	☐ PERMANENT
		☐ TRACHOSTOMY	☐ WOUND CULTURED	

REFERRING PHYSICIAN	PRIMARY DIAGNOSIS
SECONDARY DIAGNOSIS	TERTIARY DIAGNOSIS

TYPE OF CARE RECOMMENDED: ☐ SKILLED NURSING HOME CARE ☐ DOMICILIARY CARE ☐ ADULT HEALTH CARE ☐ HOSPITAL

MEDICATION AND TREATMENT ORDERS ON ADMISSION, CONTINUE ON SEPARATE SHEET IF NECESSARY

PRINTED OR TYPED NAME OF PRIMARY PHYSICIAN ASSIGNED	SIGNATURE OF PRIMARY PHYSICIAN ASSIGNED

STATE HOME PROGRAM APPLICATION FOR VETERAN CARE - MEDICAL CERTIFICATION, CONTINUED

RESIDENT'S NAME *(Last, First, Middle)* | SOCIAL SECURITY NUMBER

EVALUATION (Select an appropriate number in each category)

COMMUNICATION	1. Transmits messages/receives information 2. Limited ability 3. Nearly or totaly unable	**SPEECH**	1. Speak clearly with others of same language 2. Limited ability 3 Unable to speak clearly or not at all
HEARING	1. Good 2. Hearing slightly impaired 3 Nearly or totaly unable 4. Virtually/completely deaf	**SIGHT**	1. Good 2. Vision adequate - Unable to read/see details 3. Vision limited - Gross object differantiation 4. Blind
TRANSFER	1 No assistance 2. Equipment only 3. Supervision only 4. Requires human transfer w/wo equipment 5. Bedfast	**AMBULATION**	1. Independence w/wo assistive device 2. Walks with supervision 3. Walks with continuous human support 4. Bed to chair (total help) 5. Bedfast
ENDURANCE	1. Tolerates distances (250 feet sustained activity) 2. Needs intermitten rest 3 Rarely tolerates short actrvites 4. No tolerance	**MENTAL AND BEHAVIOR STATUS**	1 Alert 2. Confused 3. Disoriented 4. Comatose 5. Agreeable 6. Disruptive 7. Apathetic 8. Well motivated
TOILETING	1. No assistance 2. Assistance to and from and transfer 3. Total assistance including personal hygiene, help with clothes A. Bathroom B. Bedside commode C. Bedpan	**BATHING**	1. No assistance 2. Supervision Only 3. Assistance 4. Is bathed A. Tub B. Shower C. Sponge bath
DRESSING	1. Dresses self 2. Minor assistance 3 Needs help to complete dressing 4 Has to be dressed	**FEEDING**	1. No assistance 2. Minor assistance, needs tray set up only 3. Help feeding/encouraging 4. Is fed
BLADDER CONTROL	1 Continent 2. Rarely incontinent 3. Occasional - once/week or less 4. Frequent - up to once a day 5. Total incontinence 6 Catheter, indwelling	**BOWEL CONTROL**	1. Continent 2. Rarely incontinent 3. Occasional - once/week or less 4. Frequent - up to once a day 5. Total incontinence 6. Ostomy
SKIN CONDITION	1. Intact 2 Dry/Fragile 3. Imitations (Rash) 4 Open wound 5 Decubitus Number _____ Stage _____	**WHEEL CHAIR USE**	1. Independence 2. Assistance in difficult maneuvering 3. Wheels a few feet 4. Unable to use NA

SIGNATURE OF REGISTERED NURSE OR REFERRING PHYSICIAN | DATE

PHYSICAL THERAPY *(To be completed by Physical Therapist or Referring Physician)* NEW REFERRAL CONTINUATION OF THERAPY

SENSATION IMPAIRED	RESTRICT ACTIVITY	PRECAUTIONS	FREQUENCY OF TREATMENT
YES NO	YES NO	CARDIAC OTHER *(Specify)*	

TREATMENT GOALS: ACTIVE; STRETCHING; PASSIVE ROM; ACTIVE ASSISTIVE; PROGRESSIVE RESISTIVE; COORDINATING ACTIVITIES; NON-WEIGHT BEARING; PARTIAL WEIGHT BEARING; FULL WEIGHT BEARING; PROGRESS BED TO WHEELCHAIR; RECOVERY TO FUL FUNCTION; WHEELCHAIR INDEPENDENT; COMPLETE AMBULATION

ADDITIONAL THERAPIES	SIGNATURE OF AND TITLE OF THERAPIST	DATE
O.T. SPEECH DIETARY		

SOCIAL WORK ASSESSMENT *(To be completed by Social Worker)*

PRIOR LIVING ARRANGEMENTS	LONG RANGE PLAN	
ADJUSTMENT TO ILLNESS OR DISABILITY	SIGNATURE OF SOCIAL WORKER	DATE

VA AUTHORIZATION FOR PAYMENT

DATE RECEIVED BY VA	ELIGIBILITY FOR PER DIEM PAYMENT	LEVEL OF CARE RECOMMENDED
	APPROVED DISAPPROVED	NHC DOMICILIARY HOSPITAL ADHC

APPROVED FOR 70% SERVICE CONNECTED DISABILITY	APPROVED FOR ADMITANCE BECAUSE OF SERVICE CONNECTED ILLNESS (IF LESS THAN 70%) ILLNESS:
YES NO	

SIGNATURE OF VA OFFICIAL	DATE	SIGNATURE OF VA PHYSICIAN	DATE

VA FORM APR 2009 **10-10SH**

PAPERWORK REDUCTION ACT AND PRIVACY ACT NOTICE

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. The information requested on this form is solicited under the authority of Title 38, U.S.C., Sections 1741, 1742 and 1743. It is being collected to enable us to determine your eligibility for medical benefits in the State Home Program and will be used for that purpose. The income and eligibility you supply may be verified through a computer matching program at any time and information may be disclosed outside the VA as permitted by law; possible disclosures include those described in the "routine uses" identified in the VA system of records 24VA136, Patient Medical Record-VA, published in the Federal Register in accordance with the Privacy Act of 1974. Disclosure is voluntary; however, the information is required in order for us to determine your eligibility for the medical benefit for which you have applied. Failure to furnish the information will have no adverse affect on any other benefits to which you may be entitled. Disclosure of Social Security number(s) of those for whom benefits are claimed is requested under the authority of Title 38, U.S.C., and is voluntary. Social Security numbers will be used in the administration of veterans benefits, in the identification of veterans or persons claiming or receiving VA benefits and their records and may be used for other purposes where authorized by Title 38, U.S.C., and the Privacy Act of 1974 (5 U.S.C. 552a) or where required by other statute.

VA FORM
APR 2009 **10-10SH**

■ 19. Add § 58.18 to read as follows:

§ 58.18 VA Form 10–0460—Request for Prescription Drugs from an Eligible Veteran in a State Home.

OMB Approval No. 2900-XXXX
Estimated Burden: 30 minutes

Department of Veterans Affairs	Request for Prescription Drugs from an Eligible Veteran in a State Home		
To:	VA Facility	From:	Name and Address of State Home

I am a veteran who was admitted to the _____ State Nursing Home.
I request that I be furnished with prescription drugs by the United States Department of Veterans Affairs as provided for in Title 38 of the Code of Federal Regulations, Section(s) 17.96 and/or 51.42.

I am eligible for this benefit by reason of being (check any of the following):

☐ (1) a veteran in receipt of increased VA compensation, or increased VA pension because I am permanently housebound or in need of regular aid and attendance.

☐ (2) a veteran in need of regular aid and attendance who was formerly in receipt of increased pension but whose pension has been discontinued solely by reason of excess income, and whose annual income does not exceed the maximum annual income limitation by more than $1,000.

☐ (3) a veteran who
(i) Has a singular or combined rating of 50 percent or 60 percent based on one or more service-connected disabilities or unemployability and is in need of such drugs and medicines; and
(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability.

☐ (4) a veteran who
(i) Has a singular or combined rating of less than 50 percent, based on one or more service-connected disabilities, and is in need of such drugs and medicines for a service-connected disability, and
(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability.

Signature of Veteran Applying for Benefit _____ **Date of Application** _____

Applicant Information

Veteran's Name (last, first, and middle initial):	
Veteran's Social Security Number:	Date of Admission to the State Nursing Home:

Date that A&A or Housebound was awarded by VA:

(a copy of this award ☐ is or ☐ is not attached with this request)

VA FORM FEB 2008 **10-0460**

Diagnosis/Diagnoses for which the Applicant was Admitted to the State Nursing Home		
Diagnosis Code	**Diagnosis Name**	**Category of Eligibility from page 1** *(1, 2, 3 or 4)*
Name of Prescribing Physician:		**Telephone Number:**

I certify that the following medications are prescribed for _____.
Veteran's Name

_____
Signature of State Home Representative

VA FORM FEB 2008 10-0460

Page 2 of 3

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of this Act. We may not conduct or sponsor, and the respondent is not required to respond to, a collection unless it displays a valid OMB Control Number. The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, gather the necessary facts and fill out the form. This information is collected under the authority of Title 38 CFR Parts 51 and 58. It is being collected under the medical benefits in the State Homes Program and will be used for that purpose.

Privacy Act Information: It is being collected to enable us to determine your eligibility for medical benefits and will be used for that purpose. The income and eligibility you supply may be verified through a computer matching program at any time and information may be disclosed outside the VA as permitted by law; possible disclosures include those described in the "routine uses" identified in the VA system of records 24VA136, Patient Medical Record-VA, published in the Federal Register in accordance with the Privacy Act of 1974. Disclosure is voluntary; however, the information is required in order for us to determine your eligibility for the medical benefit for which you have applied. Failure to furnish the information will have no adverse affect on any other benefits to which you may be entitled. Disclosure of Social Security number(s) of those for whom benefits are claimed is requested under the authority of Title 38, U.S.C., and is mandatory. Social Security numbers will be used in the administration of veterans benefits, in the identification of veterans or persons claiming or receiving VA benefits and their records and may be used for other purposes where authorized by Title 38, U.S.C., and the Privacy Act of 1974 (5 U.S.C. 552a) or where required by other statute

[FR Doc. E9–9753 Filed 4–28–09; 8:45 am]
BILLING CODE 8320–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0898; FRL–8898–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania: Transportation Conformity Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania. The revisions establish State transportation conformity requirements. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on June 29, 2009 without further notice, unless EPA receives adverse written comment by May 29, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0898 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: febbo.carol@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0898, Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the listed EPA Region III address. 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–R03–OAR–2008–0898. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (*i.e.,* CBI or other information), disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control Rachel Carson State Office Building, 400 Market Street, 12th Floor, Harrisburg, PA 17105–8468.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

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

I. What Is Transportation Conformity?

Transportation conformity is required under Section 176(c) of the Clean Air Act to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the approved SIP. Transportation Conformity currently applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (maintenance areas), with maintenance plans developed under section 175A of the Clean Air Act for the following transportation related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity with the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS). The Federal transportation conformity regulations (Federal Rule) are found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. What Is the Background for This Action?

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was signed into law. SAFETEA–LU revised certain provisions of section 176(c) of the Clean Air Act, related to transportation conformity. Prior to SAFETEA–LU, states were required to address all of the Federal Rule's provisions in their conformity SIPs. After SAFETEA–LU, state's SIPs were required to contain all or portions of only the following three sections of the Federal Rule, modified as appropriate to each state's circumstances: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (written commitments to implement certain kinds of control measures); and 40 CFR 93.125(c) (written commitments to implement certain kinds of mitigation measures). Pursuant to SAFETEA–LU, States are no longer required to submit conformity SIP revisions that address the other sections of the Federal Rule.

III. What Did the State Submit and How Did We Evaluate It?

On May 29, 2008, the Pennsylvania Department of Environmental Protection submitted a revision to its State Implementation Plan (SIP) for Transportation Conformity purposes. The SIP revision consists of eighteen executed Memorandams of Agreements (MOAs) which will constitute the Pennsylvania SIP for transportation conformity purposes. The eighteen MOAs were executed among the State of Pennsylvania and the various

Metropolitan Planning Organizations and Rural Planning Organizations within the Commonwealth of Pennsylvania which have responsibility for undertaking transportation conformity in conjunction with transportation planning activities. These MOAs which make up the SIP revision address the three provisions of the Federal Rule required under SAFETEA–LU: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (certain control measures), and 40 CFR 93.125(c) (mitigation measures).

We reviewed the submittal to assure consistency with the February 14, 2006, ''Interim Guidance for Implementing the Transportation Conformity provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)''. The guidance document can be found at *http://epa.gov/otaq/stateresources/transconf/policy.htm*. The guidance document states that each state is only required to address and tailor the aforementioned three sections of the Federal Rule in their state conformity SIPs.

EPA's review of Pennsylvania's Transportation Conformity SIP revision indicates that it is consistent with EPA's guidance in that the SIP revision included the three elements specified by SAFETEA–LU and EPA's guidance. Consistent with the Federal Rule at 40 CFR 93.105 (consultation procedures), paragraph (a)(2) of each of the executed MOAs establishes the requirements for the appropriate agencies, procedures and allocation of responsibilities as required under 40 CFR 93.105 for consultation procedures. In addition, the executed MOAs provide for appropriate public consultation/public involvement consistent with 40 CFR 93.105. With respect to 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), paragraphs (a)(3) and (a)(4) of the executed MOAs specify that written commitments for implementation of control measures and mitigation measures for meeting these requirements will be provided as needed.

IV. Final Action

EPA is hereby approving the Pennsylvania SIP revision for Transportation Conformity, which was submitted on May 29, 2008. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 29, 2009 without further notice unless EPA receives adverse comment by May 29, 2009. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 29, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action to approve the Pennsylvania Transportation Conformity SIP 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, Volatile organic compounds.

Dated: April 15, 2009.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

■ In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for Transportation Conformity Requirements at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e)(1)* * *

EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MATERIAL

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Transportation Conformity Requirements.	Entire State	5/29/08	4/29/09 *[Insert page number where the document begins]*.	Memoranda of Understanding between EPA, FHWA, FTA, Pennsylvania, Virginia, and eighteen Metropolitan and Rural Planning Organizations.

* * * * *

[FR Doc. E9–9846 Filed 4–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2009–0916; FRL–8898–7]

Pennsylvania: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Pennsylvania has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Pennsylvania's revisions through this immediate final action. EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Pennsylvania's revisions to its hazardous waste program will take effect. If we receive comments that oppose this action we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize revisions to Pennsylvania's program that were the subject of adverse comments. Today's document also corrects errors made in the authorization history that was published in the January 20, 2004 **Federal Register** authorization document for Pennsylvania.

DATES: This final authorization will become effective on June 29, 2009, unless EPA receives adverse written comments by May 29, 2009. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect as scheduled.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2009–0916, by one of the following methods:

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

2. *E-mail: bentley.pete@epamail.epa.gov*

3. *Mail:* Charles Bentley, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

4. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

You may inspect and copy Pennsylvania's application from 8 a.m. to 4:00 p.m., Monday through Friday at the following locations: Pennsylvania Department of Environmental Protection, Environmental Education and Information Center, 1st Floor, Rachel Carson State Office Building, 400 Market St., Harrisburg, PA 17105, Phone number (717) 772–1828; Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222, Phone number: (412) 442–4097; and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254. Persons with a disability may use the AT&T Relay Service to contact Pennsylvania Department of Environmental Protection by calling (800) 654–5984 (TDD users), or (800) 654–5988 (voice users).

Instructions: Direct your comments to Docket ID No. EPA–R03–RCRA–2009–0916. EPA's policy is that all comments received will be included in the public file without change and may be made available on line *at http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The Federal *http://www.regulations.gov* Web site is an ''anonymous access'' system which means that 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 file 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 and any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT:

Charles Bentley, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–3379.

SUPPLEMENTARY INFORMATION:

I. Corrections to January 20, 2004 (69 FR 2674) Authorization Document

The January 20, 2004 authorization document for Pennsylvania (69 FR 2674, column 2) contains an erroneous paragraph at Section F. The existing paragraph should be replaced with the following language:

''Initially, Pennsylvania received final authorization to implement its hazardous waste management program effective January 30, 1986 (51 FR 1791). EPA granted authorization for changes to Pennsylvania's regulatory program on September 26, 2000, effective November 27, 2000 (65 FR 57734). ''

II. Authorization of Revisions to Pennsylvania's Hazardous Waste Program

A. Why Are Revisions to State Programs Necessary

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. Authorization of revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule

EPA concludes that Pennsylvania's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Pennsylvania final authorization to operate its hazardous waste program with revisions described in its application for program revisions, subject to the procedures described in section E, below. Pennsylvania has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Pennsylvania has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What Is the Effect of This Authorization Decision

This decision serves to authorize revisions to Pennsylvania's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Pennsylvania is being authorized by today's action are already effective and are not changed by today's action. Pennsylvania has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Pennsylvania has taken its own actions.

D. Why Wasn't There a Proposed Rule Before This Rule

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize Pennsylvania's program revisions. If EPA receives comments that oppose this authorization, or portions thereof, that document will serve as a proposal to authorize the revisions to Pennsylvania's program that were the subject of adverse comment.

E. What Happens if EPA Receives Comments That Oppose This Action

If EPA receives comments that oppose this authorization, or portions thereof, we will withdraw this rule, or portions thereof, by publishing a document in the **Federal Register** before the rule would become effective. EPA will base any further decision on the authorization of Pennsylvania's program revisions on the proposal mentioned in the previous section. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose the authorization of a particular revision to the Commonwealth's hazardous waste program, we will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Pennsylvania Previously Been Authorized for

Initially, Pennsylvania received final authorization to implement its hazardous waste management program effective January 30, 1986 (51 FR 1791). EPA granted authorization for revisions to Pennsylvania's regulatory program on September 26, 2000, effective November 27, 2000 (65 FR 57734); and on January 20, 2004, effective March 22, 2004 (69 FR 2674).

G. What Revisions Are We Authorizing With This Action

On May 31, 2007, Pennsylvania submitted an initial program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Subsequently, on January 2, 2009, the Commonwealth submitted a revised program revision application. Pennsylvania's revision application includes various regulations that are equivalent to, and no less stringent than, revisions to the Federal hazardous waste program, as published in the **Federal**

Register on September 30, 1999, November 19, 1999, July 10, 2000, May 14, 2001 and from June 29, 2001 through October 12, 2005, as well as miscellaneous changes to its previously authorized program. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Pennsylvania's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Pennsylvania's final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

Pennsylvania seeks authority to administer the Federal requirements that are listed in Table 1. This Table lists the Commonwealth analogs that are being recognized as no less stringent than the analogous Federal requirements.[1] Unless otherwise stated, the Commonwealth's regulatory references are to Title 25, Pennsylvania Code (25 Pa. Code), Chapters 260a through 266a, 266b, 268a, and 270a, effective May 1, 1999, as amended December 14, 2002. Pennsylvania's authority to incorporate subsequent changes to the Federal program is found at Pa. Code Section 260a.3(e). The Commonwealth's statutory authority has not changed since August 10, 2000. For additional information on the Commonwealth's statutory authority please consult the Commonwealth's authorization revision **Federal Register** document (65 FR 57734) published on September 26, 2000.

TABLE 1—PENNSYLVANIA'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of federal requirement and **Federal Register** reference (revision checklists[2])	Federal requirement	Analogous Pennsylvania authority
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule) (09/30/99, 64 FR 52828; as amended 11/19/99, 64 FR 63209; Revision Checklist 182).	40 CFR 260.10 "dioxins and furans (D/F)"; 260.10 "TEQ"; 261.38/Table 1; 264.340(b)–(e); 264.601 introductory paragraph; 265.340(b) & (c); 266.100(b)–(h); 266.101(c) introductory paragraph & (c)(1); 266.105(c) & (d); 266.112(b)(1) introductory paragraph; 266.112(b)(2)(i) and Note; 266, Appendix VIII; 270.19 introductory paragraph; 270.19(e); 270.22 introductory paragraph; 270.42, Appendix I; 270.62 introductory paragraph; and 270.66 introductory paragraph.	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code Sections 260a.1(a), 261a.1, 264a.1(a), 265a.1(a), 266a.20 (as modified at 266a.100), 270a.1(a), and 270a.41(6).
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (07/10/00, 65 FR 42292; as amended 05/14/01, 66 FR 24270 and 07/03/01, 66 FR 35087; Revision Checklist 188).	40 CFR 261.38(c)(2)(iv); 264.340(b)(1) & (3); and 270.42(j)(2).	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 261a.1, 264a.1(a), and 270a.1(a).
Mixture and Derived From Rules Revision II (10/3/01, 66 FR 50332; as amended 12/3/01, 66 FR 60153; Revision Checklist 194).	40 CFR 261.3(a)(2)(iv); and 261.3(g)(4)	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Section 261a.1.
Inorganic Chemical Manufacturing (11/20/01, 66 FR 58258; as amended 04/09/02, 67 FR 17119; Revision Checklist 195).	40 CFR 261.4(b)(15); 261.32; 261, Appendix VII; 268.36(a)–(c); and 268.40, Table.	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 261a.1 and 268a.1(a).
CAMU Amendments (01/22/02, 67 FR 2962; Revision Checklist 196).	40 CFR 260.10; 264.550(a) & (b); 264.551(a) introductory paragraph; 265.552; 264.554(a); and 264.555.	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 260a.1(a) and 264a.1(a).
Hazardous Air Pollutant Standards for Combustors: Interim Standards (02/13/02, 67 FR 6792; Revision Checklist 197).	40 CFR 264.340(b)(1); 264.340(b)(4); 265.340(b)(1); 265.340(b)(3); 266.100(b)(2)(i)–(v); 270.19(e); 270.22 introductory paragraph; 270.62 introductory paragraph; 270.66 introductory paragraph; and 270.235.	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 264a.1(a), 265a.1(a), 266a.20 and 270a.1(a).
Hazardous Air Pollutant Standards for Combustors: Corrections (02/14/02, 67 FR 6968; Revision Checklist 198).	40 CFR 266.100(a); 266.100(b)(1); 266.100(d)(1)(i) (B); 266.100(d)(2); 266.100(d)(3) introductory paragraph; 266.100(d)(3)(i) introductory paragraph; 266.100(d)(3)(i) (D); and 270.42(j)(1).	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 266a.20 (as modified at 266a.100) and 270a.1(a).
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste (03/13/02, 67 FR 11251; Revision Checklist 199).	40 CFR 261.2(c)(3); 261.4(a)(17); and 261.24(a).	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Section 261a.1.
Zinc Fertilizers Made from Recycled Hazardous Secondary Materials (07/24/02, 67 FR 48393; Revision Checklist 200).	40 CFR 261.4(a)(20); 261.4(a)(21); 266.20(b); 266.20(d); and 268.40.	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 261a.1, 266a.20 and 268a.1(a).
National Treatment Variance for Radioactively Contaminated Batteries (10/0702, 67 FR 62618; Revision Checklist 201).	40 CFR 268.40/Table	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Section 268a.1(a).

[1] In its revision application Pennsylvania also sought authorization for the National Environmental Performance Track Program. On March 16, 2009, EPA announced its intention to halt and review the National Performance Track Program. Therefore, EPA is not granting Pennsylvania final authorization for "The National Environmental Performance Track Program (4/22/04, 69 FR21737; as amended 10/25/04, 69 FR 62217; Revision Checklist 204)."

TABLE 1—PENNSYLVANIA'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of federal requirement and **Federal Register** reference (revision checklists [2])	Federal requirement	Analogous Pennsylvania authority
NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Corrections (12/19/02, 67 FR 77687; Revision Checklist 202).	40 CFR 270.19(e); 270.22 introductory paragraph; 270.62 introductory paragraph and 270.66 introductory paragraph.	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Section 270a.1(a).
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks (04/26/04, 69 FR 22602; Revision Checklist 205).	40 CFR 264.1050(h); and 265.1050(g)	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 264a.1(a) and 265a.1(a).
Nonwastewaters from Productions of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants (02/24/05, 70 FR 9138, as amended 06/16/05, 70 FR 35032; Revision Checklist 206).	40 CFR 261.4(b)(15); 261.32(a); 261.32, Table; 261.32(b) through (d); 261, Appendix VII; 261, Appendix VIII; 268.20; 268.21 through 268.29; 268.40 Table; and 268.48(a) Table.	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 261a.1 and 268a.1(a).
Testing and Monitoring Activities: Methods Innovation Rule and SW–846 Update IIIB (06/14/05, 70 FR 34538; as amended 08/01/05, 70 FR 44150; Revision Checklist 208).	40 CFR 260.11; 260,21(d); 260.22(d)(1)(i); 261.3(a)(2)(v) introductory paragraph; 261.21(a)(1); 261.22(a)(1) & (a)(2); 261.35(b)(2)(iii)(A) & (B); 261.38(c)(7) introductory paragraph; 261, Appendices I, II and III; 264.190(a); 264.314(c); 264.1034(c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f); 264.1063(d)(2); 264, Appendix IX; 265.190(a); 265.314(d); 265.1034(c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f); 265.1063(d)(2); 265.1081 "Waste stabilization process"; 265.1084(a)(3)(ii)(C), (a)(3)(iii), (b)(3)(ii)(C), (b)(3)(iii) and (c)(3)(i); 266.100(d)(1)(ii) and (g)(2); 266.102(b)(1); 266.106(a); 266.112(b)(1) introductory paragraph and (b)(2)(i); 266, Appendix IX; 268.40(b); 268.40 Table; 268.48 Table; 268, Appendix IX; 270.19(c)(1)(iii) and (iv); 270.22(a)(2)(ii)(B); 270.62(b)(2)(i)(C), (b)(2)(i)(D), (c)(2)(i) and (c)(2)(ii).	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 260a.1(a), 261a.1, 264a.1(a), 265a.1(a), 266a.20, 268a.1(a) and 270a.1(a).
Project XL Site-Specific Rulemaking for the Ortho-McNeil Pharmaceutical, Inc. Facility in Spring House, PA Involving On-Site Treatment of Mixed Waste (06/27/05, 70 FR 36850).	40 CFR 261.4(b)(17)	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Section 261a.1.
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (10/04/05, 70 FR 57769; Revision Checklist 211).	40 CFR 261.3(a)(2)(iv)(A), (a)(2)(iv)(B), (a)(2)(iv)(D), (a)(2)(iv)(F) and (a)(2)(iv)(G).	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Section 261a.1.
National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (10/12/05, 70 FR 59401; Revision Checklist 212).	40 CFR 260.11(a) first sentence and (c)(1); 264.340(b)(1) first sentence and (b)(5); 265.340(b)(1) first sentence; 266.100(b)(1) first sentence, (b)(3) and (b)(4); 270.6; 270.10(l); 270.19(e) ; 270.22 introductory paragraph; 270.24(d)(3); 270.25(e)(3); 270.32(b)(3); 270.42(j)(1), (j)(2), (j)(3) and (k); 270.42 Appendix I, Section L; 270.62 introductory paragraph; 270.66 introductory paragraph; 270.235 section heading, (a)(1) introductory paragraph, (a)(2) introductory paragraph, (b)(1) introductory paragraph, (b)(2) and (c).	25 Pa. Code, Section 260a.3(e); Incorporated by reference at 25 Pa. Code, Sections 260a.1(a), 264a.1(a), 265a.1(a), 266a.20 and 270a.1(a).

The Commonwealth is not seeking authorization for the following RCRA revisions that occurred between July 30, 2003 and October 12, 2005, which address changes to the Federal recycled used oil, manifest, mercury-containing equipment and standardized permit regulations and the Project XL requirements for New York State Public Utilities.

Federal requirement	Regulatory explanation
68 FR 44659, 07/30/03 (Revision Checklist 203)	Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards.

[2] A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the **Federal Register**. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization Web page at *http://www.epa.gov/osw/laws-regs/state/index.htm*.

Federal requirement	Regulatory explanation
70 FR 10776, 03/04/05, as amended on June 16, 2005 (70 FR 35034) (Revision Checklist 207).	Modification of the Hazardous Waste Manifest System.
70 FR 29909, 05/24/05	Project XL Rulemaking Extension for New York State Public Utilities
70 FR 45508, 08/05/05 (Revision Checklist 209)	Mercury-Containing Equipment.
70 FR 53419, 09/08/05 (Revision Checklist 210)	Standardized Permit for RCRA Hazardous Waste Management Facilities.

2. Miscellaneous Changes

In addition to adopting the Federal program revisions discussed in Section G.1, Pennsylvania has made various regulatory revisions to its authorized program. Pennsylvania is seeking authorization for these miscellaneous changes. These changes are categorized as follows: (a) Redesignations and Corrections of Typographical Errors; (b) Clarification of Ambiguous Requirements; (c) Changes to Manifest Requirements; and (d) New Provisions Added for Clarification. Regulatory citations annotated with an asterisk are deemed to be more stringent than the Federal program. A further discussion of Pennsylvania's miscellaneous regulatory changes is found in the following application document for Pennsylvania: ''Pennsylvania Third Supplemental Legal Statement for Final Authorization.''

(a) Redesignations and Corrections of Typographical Errors

The Commonwealth provisions listed below were amended to correct typographical errors or were merely redesignated. All of these changes were made without affecting the stringency of the Commonwealth's currently authorized program. EPA has evaluated the changes described and has determined that they are consistent with and no less stringent than the corresponding Federal regulations.

Title 25, Pennsylvania Code (25 Pa. Code), §§ 261a.3(a), 261a.5(b), 262a.12(b) introductory paragraph through 262a.12(b)(1)(iv)*, 262a.21(a), 263a.20(a), 263a.20(b) introductory paragraph, 263.20(b)(1), 265a.13(1) introductory paragraph, 270a.42(b), 270a.60(a) introductory paragraph, 270a.60(a)(2), 270a.60(b)(1)(iv)*, 270a.60(b)(5), 270a.62, 270a.66 and 270a.81(b)(5).

(b) Clarification of Ambiguous Requirements

The Commonwealth has amended the following provisions in order to clarify ambiguities identified through the implementation of the regulations. Some of these amendments remove more stringent requirements or leave previously more stringent provisions equivalent to the federal program.

25 Pa. Code, §§ 260a.10 ''Treatment'', 262a.50, 264a.97(1)*, 264a.173(2)*, 265a.173(2)*, 265a.175 (Reserved), 270a.42(c)*, 270a.60(a)(1)*, 270a.83(a)(4), 270a.51(a), 270a.60(b)(2)(ii)*, 270a.60(b)(3)(ii)*, 270a.60(b)(4)(ii)* and 270a.60(b)(5)(ii)*.

(c) Changes to the Commonwealth's Manifest Requirements

The Commonwealth provisions listed below contain new and amended provisions that address the administration of the Pennsylvania hazardous waste manifest program. Some of these new provisions are additional requirements not found in the federal regulations and are therefore more stringent.

25 Pa. Code, §§ 262a.20 introductory paragraph, 262a.20(1), 262a.21(b), 262a.23(a)(1), 262a.23(a)(2)*, 262a.23(a)(3), 262a.23(a)(4), 263a.12(3)*, 263a.20(b)(2), 263a.20(b)(3), 263a.21(2), 263a.21(3)*, 264a.71(1), 264a.71(3)*, 264a.71(4), 265a.71(1), 265a.71(3)* and 265a.71(4).

(d) New Provisions Added for Clarification

The following provisions are new provisions that the Commonwealth added to provide clarity on how the hazardous waste program operates or to provide guidance on proper compliance methods. Some of these new provisions increase the stringency of the hazardous waste program. 25 Pa. Code, §§ 261a.3(b)*, 262a.11, 262a.12(b)(1)(v)*, 262a.34*, 262a.43 and 270a.51(b)–(d).

H. Where Are the Revised Pennsylvania Rules Different From the Federal Rules

1. Pennsylvania Requirements That Are Broader in Scope Than the Federal Program

The Pennsylvania hazardous waste program contains certain provisions that are beyond the scope of the Federal program. The following provisions from the December 20, 2002 amendments to the Commonwealth's regulations are new and amended provisions that are broader in scope than the federal hazardous waste program.

25 Pa. Code, §§ 263a.12(1) & (2), 263a.13, 263a.24(b), 263a.26(c), 270a.3, and 262a.12(b)(2).

These broader in scope provisions are not part of the program being authorized by today's action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Pennsylvania law. A further discussion of Pennsylvania's broader in scope provisions is found in the following application document for Pennsylvania: ''Pennsylvania Third Supplemental Legal Statement for Final Authorization.''

2. Pennsylvania Requirements That Are More Stringent Than the Federal Program

The Pennsylvania hazardous waste program contains some provisions that are more stringent than is required by the RCRA program as codified in the July 1, 2004 edition of title 40 of the Code of Federal Regulations (CFR), as amended through October 12, 2005. These more stringent provisions are being recognized as a part of the Federally authorized program. The specific more stringent provisions are noted in Section G.2.

I. Who Handles Permits After This Authorization Takes Effect?

After authorization, Pennsylvania will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. Until such time as formal transfer of EPA permit responsibility to Pennsylvania occurs and EPA terminates its permit, EPA and Pennsylvania agree to coordinate the administration of permits in order to maintain consistency. We will not issue any more new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Pennsylvania is not yet authorized.

J. How Does This Action Affect Indian Country (18 U.S.C. 115) in Pennsylvania

Pennsylvania is not seeking authorization to operate the program on

Indian lands, since there are no Federally recognized Indian lands in Pennsylvania.

K. What Is Codification and Is EPA Codifying Pennsylvania's Hazardous Waste Program as Authorized in This Rule

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart NN, for this authorization of Pennsylvania's program revisions until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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). For the same reason, this action would not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in the Commonwealth of Pennsylvania.

This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks that may disproportionately affect children. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701, *et seq.*) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. 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 document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2); this action will be effective June 29, 2009.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 9, 2009.

William C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. E9–9792 Filed 4–28–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0809251266–81485–02]

RIN 0648–XO65

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfers

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

ACTION: Temporary rule; inseason quota transfers.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2009 commercial summer flounder quota to the Commonwealth of Virginia. In addition, the Commonwealth of Virginia is transferring a portion of its 2009 commercial summer flounder quota to the State of New Jersey. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective April 24, 2009 through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, (978) 281–9244, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial

quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 14,950 lb (6,781 kg) of its 2009 commercial quota to Virginia to cover the summer flounder landings of one North Carolina vessel granted safe harbor in Virginia due to mechanical issues on February 26, 2009. In addition, Virginia has agreed to transfer 9,530 lb (4,241 kg) of its 2009 commercial quota to New Jersey to cover the summer flounder landings of one Virginia vessel granted safe harbor in New Jersey due to mechanical issues on February 27, 2009. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2009 are: North Carolina, 2,879,042 lb (1,305,911 kg); Virginia, 2,346,474 lb (1,064,343 kg); and New Jersey, 1,806,476 lb (819,404 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: April 24, 2009.

Kristen C. Koch,

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

[FR Doc. E9–9805 Filed 4–24–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–0956–02]

RIN 0648–XO93

Fisheries of the Exclusive Economic Zone Off Alaska; Deep–Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep–water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep–water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 23, 2009, through 1200 hrs, A.l.t., July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep–water species fishery in the GOA is 300 metric tons as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009), for the period 1200 hrs, A.l.t., April 1, 2009, through 1200 hrs, A.l.t., July 1, 2009.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep–water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep–water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep–water species fishery include sablefish, rockfish, deep–water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

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 the deep–water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 21, 2009.

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

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

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

Dated: April 24, 2009.

Kristen C. Koch

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

[FR Doc. E9–9821 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 74, No. 81

Wednesday, April 29, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0386; Directorate Identifier 2008–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model CN–235, CN–235–100, CN–235–200, and CN–235–300 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: During operation in icing conditions, an asymmetric configuration of the de-icing boots was detected, occurring during the inflation and deflation check of the de-icing system. This was found to be due to an unexpected failure mode in the pneumatic and de-icing system's control electronic logic. This condition, if not corrected, could affect the de-icing capabilities of the boots installed on the wing and horizontal stabilizers, potentially leading to 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 May 29, 2009.

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.

For service information identified in this proposed AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; e-mail *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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–2009–0386; Directorate Identifier 2008–NM–184–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 2008–0118, dated June 27, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During operation in icing conditions, an asymmetric configuration of the de-icing boots was detected, occurring during the inflation and deflation check of the de-icing system. This was found to be due to an unexpected failure mode in the pneumatic and de-icing system's control electronic logic. This condition, if not corrected, could affect the de-icing capabilities of the boots installed on the wing and horizontal stabilizers, potentially leading to loss of control of the aircraft.
>
> To address and correct this unsafe condition, EADS–CASA developed modification 31558, approved by DGAC-Spain and incorporated into the Type Design Definition through the approval of CN–235–300 version AE02, revision 14 of Spanish Type Certificate DGAC 01/86, dated 22 March 2002, and modification 31607, Minor Change approved by EADS–CASA under their DOA 21J.032 privileges, complementary to modification 31558. The entire modification package consists of an improvement of the de-icing boots electronic control system, making it capable of detecting all possible boot configurations on wings and horizontal stabilizers without affecting pneumatic system functions. The instructions for the in-service accomplishment of this modification have been published as CN–235 Service Bulletin (SB) 235–30–16 dated 21 January 2005.
>
> For the reasons described above, this EASA AD requires the modification of the De-Icing Boots control system in all aircraft that have not yet implemented the modification.

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

Relevant Service Information

European Aeronautic Defense and Space Company (EADS) CASA has issued Service Bulletin SB–235–30–16, dated January 21, 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 8 products of U.S. registry. We also estimate that it would take about 65 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 $193,603 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 $1,590,424, or $198,803 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, Incorporation by reference, 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:

Construcciones Aeronauticas, S.A. (CASA): Docket No. FAA–2009–0386; Directorate Identifier 2008–NM–184–AD.

Comments Due Date

(a) We must receive comments by May 29, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CASA Model CN–235, CN–235–100, CN–235–200, and CN–235–300 airplanes, certificated in any category, all serial numbers up to, but not including, C–139.

Subject

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

Reason

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

''During operation in icing conditions, an asymmetric configuration of the de-icing boots was detected, occurring during the inflation and deflation check of the de-icing system. This was found to be due to an unexpected failure mode in the pneumatic and de-icing system's control electronic logic. This condition, if not corrected, could affect the de-icing capabilities of the boots installed on the wing and horizontal stabilizers, potentially leading to loss of control of the aircraft.

''To address and correct this unsafe condition, EADS–CASA developed modification 31558, approved by DGAC-Spain and incorporated into the Type Design Definition through the approval of CN–235–300 version AE02, revision 14 of Spanish Type Certificate DGAC 01/86, dated 22 March 2002, and modification 31607, Minor Change approved by EADS–CASA under their DOA 21J.032 privileges, complementary to modification 31558. The entire modification package consists of an improvement of the de-icing boots electronic control system, making it capable of detecting all possible boot configurations on wings and horizontal stabilizers without affecting pneumatic system functions. The instructions for the in-service accomplishment of this modification have been published as CN–235 Service Bulletin (SB) 235–30–16 dated 21 January 2005.

''For the reasons described above, this EASA AD requires the modification of the De-Icing Boots control system in all aircraft that have not yet implemented the modification.''

Actions and Compliance

(f) Unless already done, within six months after the effective date of this AD: Modify the aircraft de-icing boots control system in accordance with the Accomplishment Instructions of European Aeronautic Defense and Space Company (EADS) CASA Service

Bulletin SB–235–30–16, dated January 21, 2005.

FAA AD Differences

Note 1: 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, 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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 2008–0118, dated June 27, 2008, and EADS CASA Service Bulletin SB–235–30–16, dated January 21, 2005, for related information.

Issued in Renton, Washington, on April 15, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–9730 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0379; Directorate Identifier 2008–NM–220–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series 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: An A320 operator experienced difficulties in extending the RAT [ram air turbine] during a deployment testing. During the trouble shooting, the Ejection Jack of the RAT was removed and investigated. The investigation identified excessive wear of the uplock segments against the inner cylinder of the Ejection Jack, due to an incorrect blend radius of the inner cylinder. This Ejection Jack failure may prevent the effective deployment and use of the RAT in emergency conditions. 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 May 29, 2009.

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.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; 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–2009–0379; Directorate Identifier 2008–NM–220–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 2008–0199, dated November 5, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An A320 operator experienced difficulties in extending the RAT [ram air turbine] during a deployment testing.

During the trouble shooting, the Ejection Jack of the RAT was removed and investigated.

The investigation identified excessive wear of the uplock segments against the inner cylinder of the Ejection Jack, due to an incorrect blend radius of the inner cylinder. This problem was determined to be caused during the previous rework of the Ejection Jack and was possible due to the incomplete requirements contained within the Component Maintenance Manual (CMM).

This Ejection Jack failure may prevent the effective deployment and use of the RAT in emergency conditions.

This AD therefore mandates the replacement of an Ejection Jack that has been previously reworked in accordance with the incomplete CMM requirements. This will restore the reliability of the Ejection Jack of the RAT.

The implementation of this modification was originally managed by an Airbus monitoring campaign. However, the rate of installation of the corrective action by operators has not met the predicated [sic] target. As such and to ensure continued compliance with the certification requirements, it is considered necessary to require compliance by means of an AD.

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

Relevant Service Information

Airbus has issued Service Bulletin A320–29–1136, including Appendix 01, dated February 20, 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 187 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $29,920, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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:

Airbus: Docket No. FAA–2009–0379; Directorate Identifier 2008–NM–220–AD.

Comments Due Date

(a) We must receive comments by May 29, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 series airplanes, certificated in any category, all certified models, all serial numbers, equipped with Hamilton Sundstrand (formerly Dowty) Ram Air Turbine (RAT) Ejection Jack, Model ERPS13EJ, part number (P/N) 114160004A or 114160005, except those airplanes on which Airbus modification 27189 was done in production or Airbus Service Bulletin A320–29–1100 was done in service, and on which Airbus modification 28413 was not done in production.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic Power.

Reason

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

An A320 operator experienced difficulties in extending the RAT during a deployment testing.

During the trouble shooting, the Ejection Jack of the RAT was removed and investigated.

The investigation identified excessive wear of the uplock segments against the inner cylinder of the Ejection Jack, due to an incorrect blend radius of the inner cylinder. This problem was determined to be caused during the previous rework of the Ejection Jack and was possible due to the incomplete requirements contained within the Component Maintenance Manual (CMM).

This Ejection Jack failure may prevent the effective deployment and use of the RAT in emergency conditions.

This AD therefore mandates the replacement of an Ejection Jack that has been previously reworked in accordance with the incomplete CMM requirements. This will restore the reliability of the Ejection Jack of the RAT.

The implementation of this modification was originally managed by an Airbus monitoring campaign. However, the rate of installation of the corrective action by operators has not met the predicated [sic] target. As such and to ensure continued compliance with the certification requirements, it is considered necessary to require compliance by means of an AD.

Actions and Compliance

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

(1) Within 12 months after the effective date of this AD, identify the serial number of the installed ejection jack of the RAT, in accordance with Accomplishment Instructions of Airbus Service Bulletin A320–29–1136, dated February 20, 2007. If the serial number is included in the affected batch identified in the service bulletin, before further flight, replace the ejection jack of the RAT with a modified or reworked ejection jack, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1136, dated February 20, 2007.

(2) As of the effective date of this AD, no person may install a RAT Ejection Jack Model ERPS13EJ, P/N 114160004A or 114160005, on any airplane unless the ejection jack has been modified or reworked in accordance with Airbus Service Bulletin A320–29–1136, dated February 20, 2007.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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 Airworthiness Directive 2008–0199, dated November 5, 2008, and Airbus Service Bulletin A320–29–1136, dated February 20, 2007, for related information.

Issued in Renton, Washington, on April 15, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. E9–9712 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0381; Directorate Identifier 2009–NM–008–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes and A340–200 and –300 Series 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: An A340 operator has reported an uncommanded engine N°4 shut down during taxi after landing. The root cause of this event has been identified as failure of the fuel pump Non Return Valve (NRV) preventing the collector cell jet pump from working. This led to engine N°4 collector cell fuel level to drop below the pump inlet and consequently causing engine N°4 flame out. Multiple NRV failures in combination with failure modes trapping fuel could potentially increase the quantity of unusable fuel on aircraft possibly leading to fuel starvation which could result in engine in-flight shut down and would constitute an unsafe condition. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 29, 2009.

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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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–2009–0381; Directorate Identifier 2009–NM–008–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 2008–0209, dated November 27, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An A340 operator has reported an uncommanded engine N°4 shut down during taxi after landing.
>
> The root cause of this event has been identified as failure of the fuel pump Non Return Valve (NRV) preventing the collector cell jet pump from working. This led to engine N°4 collector cell fuel level to drop below the pump inlet and consequently causing engine N°4 flame out.
>
> A330 aircraft which have a similar design are also impacted by this issue.
>
> Multiple NRV failures in combination with failure modes trapping fuel could potentially increase the quantity of unusable fuel on aircraft possibly leading to fuel starvation which could result in engine in-flight shut down and would constitute an unsafe condition.
>
> To prevent such an event, this Airworthiness Directive (AD) requires a periodic operational test to check the correct operation of NRV and to apply the associated corrective actions.

The corrective action includes replacing any failed NRV with a new NRV. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A330–28–3108 and A340–28–4123, both including Appendix 1, both dated October 13, 2008. The actions described in the 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 50 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $20,000, or $400 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, Incorporation by reference, 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:

Airbus: Docket No. FAA–2009–0381; Directorate Identifier 2009–NM–008–AD.

Comments Due Date

(a) We must receive comments by May 29, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of the AD, certificated in any category.

(1) Airbus Model A330–200 and A330–300 series airplanes, all serial numbers.

(2) Airbus Model A340–200 and A340–300 series airplanes, all serial numbers.

Subject

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

Reason

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

An A340 operator has reported an uncommanded engine N°4 shut down during taxi after landing.

The root cause of this event has been identified as failure of the fuel pump Non-Return Valve (NRV) preventing the collector cell jet pump from working. This led to engine N°4 collector cell fuel level to drop below the pump inlet and consequently causing engine N°4 flame out.

A330 aircraft which have a similar design are also impacted by this issue.

Multiple NRV failures in combination with failure modes trapping fuel could potentially increase the quantity of unusable fuel on aircraft possibly leading to fuel starvation which could result in engine in-flight shut down and would constitute an unsafe condition.

To prevent such an event, this Airworthiness Directive (AD) requires a periodic operational test to check the correct operation of NRV and to apply the associated corrective actions.

The corrective action includes replacing any failed NRV with a new NRV.

Actions and Compliance

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

(1) For Model A330 series airplanes: At the later of the times in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, perform an operational test for correct functioning of the NRV and apply all applicable corrective actions, in accordance with instructions defined in Airbus Mandatory Service Bulletin A330–28–3108, including Appendix 1, dated October 13, 2008. Do all applicable corrective actions before further flight.

(i) Within 24 months or 8,000 flight hours after the effective date of this AD, whichever occurs first.

(ii) Before the accumulation of 10,000 flight hours after the first flight of the airplane.

(2) For Model A340–200 and –300 series airplanes: At the later of the times in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD, perform an operational test for correct functioning of the NRV and apply all applicable corrective actions in accordance with instructions defined in Airbus Mandatory Service Bulletin A340–28–4123, including Appendix 1, dated October 13, 2008. Do all applicable corrective actions before further flight.

(i) Within 24 months or 9,000 flight hours after the effective date of this AD, whichever occurs first.

(ii) Before the accumulation of 25,000 flight hours after the first flight of the airplane.

(3) Repeat the operational test specified in paragraph (f)(1) or (f)(2) of this AD at the applicable interval in paragraph (f)(3)(i) or (f)(3)(ii) of this AD.

(i) For Model A330 airplanes: At intervals not to exceed 10,000 flight hours.

(ii) For Model A340–200 and –300 airplanes: At intervals not to exceed 25,000 flight hours.

(4) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (f)(1) or (f)(2) of this AD to Airbus, at the time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD, as applicable. The report must include the information specified in Appendix 1 of Airbus Mandatory Service Bulletins A330–28–3108 and A340–28–4123, both dated October 13, 2008, as applicable. Send the report to Airbus Department SEEE6, Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, ATTN: SDC32 Technical Data and Documentation Services; fax: +33 5 61 93 28 06; e-mail: *sb.reporting@airbus.com.*

(i) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done on or prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or the principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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 Airworthiness Directive 2008–0209, dated November 27, 2008; and Airbus Mandatory Service Bulletins A330–28–3108 and A340–28–4123, both including Appendix 1, both dated October 13, 2008; for related information.

Issued in Renton, Washington, on April 15, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–9713 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 701

[Docket No. 080722875–8876–01]

RIN 0694–AE40

Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) is proposing to amend the Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms regulation (15 CFR part 701) to update and provide clarification with regard to the information U.S. companies are required to submit each year to BIS to support the preparation of the annual report to Congress on offsets in defense trade.

DATES: Comments must be received by June 29, 2009.

ADDRESSES: You may submit comments, identified by RIN 0694–AE40, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: OffsetReport@bis.doc.gov.* Include ''RIN 0694–AE40'' in the subject line of the message.
- *Fax:* 202–482–5650.
- *Mail/Hand Delivery:* Offset Program Manager, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, Room 3876, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, ATTN: RIN 0694–AE40.

FOR FURTHER INFORMATION CONTACT: Ronald DeMarines, Office of Strategic Industries and Economic Security, tel. (202) 482–3755, e-mail *rdemarin@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Defense Production Act Amendments of 1992 required the Secretary of Commerce to promulgate regulations for U.S. firms to furnish information regarding sales of defense articles or defense services to foreign countries or foreign firms when such sales are made pursuant to a contract subject to an offset agreement exceeding $5,000,000 in value. The Secretary of Commerce designated BIS as the organization responsible for promulgating such regulations. The Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms regulation (15 CFR part 701) (hereinafter, the ''Offset Reporting Regulation'') was first published in 1994. The information provided by U.S. firms pursuant to the Offset Reporting Regulation is aggregated and used to determine the impact of offset transactions on the defense preparedness, industrial competitiveness, employment, and trade of the United States. Summary reports are submitted annually to the Congress pursuant to Section 309 of the Defense Production Act of 1950, as amended.

Reasons for the Changes Proposed by This Rule

The changes proposed in this rule are a result of an internal BIS review of the data that has been collected in the past pursuant to the Offset Reporting Regulation. The changes in this proposed rule clarify the information BIS is seeking from companies. BIS anticipates that these changes will lead to less ambiguity and more consistency in submissions from industry and thus will allow BIS to improve the assessment of the economic effects of offsets on defense trade.

This proposed rule is also in response to a recommendation made by the Government Accountability Office (GAO) in its June 26, 2008 report entitled *Defense Production Act: Agencies Lack Policies and Guidance for Use of Key Authorities (GAO–08–854).* In its report, the GAO stated that Commerce provides useful summaries of offsets issues in its annual report to Congress, but that the type of data collected from prime contractors limits the ability of BIS to effectively analyze the impact of offsets on the U.S. economy. Consequently, the GAO recommended that Commerce update its offset reporting regulation to request more precise information on the industry sectors that offset activity was occurring in from prime contractors, in order to improve the assessment of the economic effects of offsets.

The revisions proposed in this rule are not anticipated to impose significant new burdens on parties subject to the reporting requirements of the Offset Reporting Regulation.

Specific Changes That Would be Made by This Proposed Rule

This rule would amend the last sentence of § 701.1 of the Offset Reporting Regulation to reflect that Commerce has already submitted and will continue to submit reports to Congress. The current § 701.1 suggests only that Commerce will be submitting reports in the future.

In addition, this rule would amend certain definitions in § 701.2 of the Offset Reporting Regulation to reflect BIS's 15-year experience in preparing the report to Congress. Specifically, the illustrative list of activities listed in the definition of ''offset transaction'' in § 701.2(f) would be updated. Activities not commonly reported to BIS would be removed (*i.e.,* countertrade, barter, counterpurchase, and buy back) and replaced with activities that are frequently reported (*i.e.,* credit assistance, training, and purchase). This list remains illustrative.

This rule also would amend the definitions for ''direct offset'' and ''indirect offset'' in § 701.2(g) and § 701.2(h) of the Offset Reporting Regulation. The current references to ''defense articles'' and ''defense goods'' in the definitions of ''direct offset'' and ''indirect offset'' would be deleted to clarify that U.S. firms are required to report on all offset transactions for which offset credit of $250,000 or more has been claimed from a foreign representative, even if the offset transaction itself does not involve a defense article or service (*i.e.,* items or services controlled pursuant to the International Traffic in Arms Regulations (22 CFR Parts 120–130) (ITAR)). Companies regularly report information to Commerce on offset transactions that do not involve defense articles or defense services. This change would clarify the intent of the reporting requirement and would reflect current reporting practices. Companies are required to keep records of each offset transaction for which offset credit is claimed, so this information is readily available to firms that are required to report under this section. The definitions would further be clarified and examples would be provided to illustrate the differences between direct and indirect offsets.

This rule would modify § 701.4 of the Offset Reporting Regulation by reordering the section in a logical fashion, beginning with the reporting period and date by which reports shall be submitted to BIS, followed by updated reporting instructions, and finally the contents of the required reports to BIS related to offset agreements and offset transactions concluded during the reporting period. BIS feels that this reordering will make it easier for those affected by this regulation to identify all of the information they need to submit timely and accurate reports. This section would also note that BIS publishes an annual notice in the **Federal Register** to remind companies of their responsibility to report on offset agreements and transactions and the deadline.

This rule would update the reporting instructions described in § 701.4(b) of the Offset Reporting Regulation regarding the address to which reported offsets data should be submitted, including through the addition of a new e-mail address. Reports are now requested to be submitted in both hardcopy format and electronic format when possible. This rule would also delete references to outdated software and hardware formats described in § 701.4(c) of the Offset Reporting Regulation.

The provisions of the Offset Reporting Regulation currently describing the contents of reports on offsets transactions (§ 701.4(d)) and offsets agreements entered into (§ 701.4(e)) would also be reordered so that offset agreement reporting requirements would be described in § 701.4(c)(1) and then offset transaction reporting requirements would be described later in § 701.4(c)(2). BIS believes it makes more sense to first describe reporting requirements for offsets agreements, and then describe reporting requirements for offsets transactions taken pursuant to offsets agreements. In addition, terminology would be updated and revised to ensure consistency throughout Part 701. BIS had used the term ''weapon system'' in § 701.4(d) and § 701.4(e). The proposed rule would replace the term ''weapon system'' with ''military export sale,'' a defined term in § 701.2, which BIS believes is a more appropriate term in § 701.4 because not all reported defense sales with offset agreements are of weapon systems. Further, additional clarifying changes would be made to the descriptions of information required to be reported under § 701.4 of the Offset Reporting Regulation.

This proposed rule would eliminate the requirement, currently found in § 701.4(e)(1)(iii) of the Offset Reporting

Regulation, that companies report the names and titles of the signatories to offset agreements. BIS believes that this information is not necessary for the preparation of BIS's annual report to Congress. Under proposed § 701.4(c)(1)(iv), companies would instead be required to report only the identity of the foreign government agency or branch that is a signatory to the offset agreement.

The proposed rule would also separate the reporting requirements on offset agreement performance measures and non-performance penalties currently found in § 701.4(e)(1)(vii) of the Offset Reporting Regulation. The current section contemplates that non-performance penalties would be included in a description of performance measures. However, BIS experience has revealed that such penalties are best treated as a separate category. Accordingly, Sections 701.4(c)(1)(viii) and 701.4(c)(1)(ix) in the proposed rule clarify the reporting requirements concerning offset agreement performance measures and non-performance penalties respectively and include lists of examples for each based on data collected during the past 15 years.

The proposed rule would require companies to assign the appropriate North American Industry Classification System (NAICS) code(s) to each military export sale for which there is an offset agreement triggering a reporting requirement (see proposed § 701.4(c)(1)(iii)), and to each offset transaction reported under the Offset Reporting Regulation (see proposed § 701.4(c)(2)(iv)). NAICS is the standard industrial classification system used in the United States. In the current regulation, BIS asks industry to classify offset transactions by broad industry classification and provide a name and description of the military export sale. Firms are directed to the Standard Industrial Classification (SIC) codes for assistance in identifying an appropriate industry category for offset transactions. The SIC has been replaced by the NAICS. (See 62 FR 17288, Apr. 4, 1997.)

All companies that conduct business with the U.S. Government are required to classify their products and services, including those regularly involved in military export sales reported to Commerce, in accordance with the NAICS (See *Central Contractor Registration Handbook, http://www.ccr.gov*). The U.S. Census Bureau posts instructions on its Web site on how to properly classify products and services in accordance with the NAICS. Requiring respondents to classify military export sales and offset transactions by NAICS codes will ensure that submissions under the Offset Reporting Regulation are prepared in a consistent manner. This change will also allow BIS to gather more accurate information on military export sales and offset transactions because NAICS is more specific and will enhance BIS's ability to assess the economic impact of offsets on the U.S. industrial base by allowing BIS to better utilize other data published by statistical agencies of the U.S. Government. BIS has included illustrative examples in § 701(c)(1)(iii) and § 701(c)(2)(iv) of the proposed rule on classifying military export sales and offset transactions by NAICS codes.

This proposed rule also would require companies to report for each offset transaction the date when the related offset agreement was signed (§ 701.4(c)(2)(ii)). This data will allow BIS to better track the fulfillment of offset agreements and identify trends in offset transaction activity. Companies involved in defense exports and offset agreements are required to keep records of each offset transaction for which offset credit is claimed so they can accurately account for their obligations, so this information is readily available to firms reporting under this section.

The proposed rule also would revise examples of offset transaction categories. Section 701.4(d)(1)(vii) in the current regulation, entitled ''Description of Offset Product/Service'', would be replaced by § 701.4(c)(2)(iii), entitled ''Offset Transaction Category.'' The categories of offset transactions listed as examples in the new section more accurately reflect the types of offset transactions that have been reported to BIS since 1994. In particular, the category of ''cash payment'' will be removed, and the categories of ''licensed production'', ''overseas investment'', and ''credit assistance'' will be added, as will a suggestion that other categories could be labeled ''other'' and accompanied by a description.

Finally, this rule would add a new section, § 701.6, to the Offset Reporting Regulation, to describe the penalties available under the Defense Production Act should companies not comply with this regulation. Willful violation of the Defense Production Act may result in punishment by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both. The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act.

Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection previously approved by the OMB under control number 0694–0084, which carries a burden hour estimate of nine hours for a reporting firm to prepare and submit once per year. In addition, this proposed rule will amend that collection for reporting on offset agreements and transactions by NAICS code, which carries an estimated burden of three hours for companies submitting annual reports to BIS. The 60-day comment period on this proposed rule will also serve as the public comment period regarding the burden of the collection of information associated with preparation and submission of offset agreements and transactions by NAICS code. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to the Offsets Program Manager, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this proposed rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare

a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel of Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards), (2) a small governmental jurisdiction that is a government of a city, 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. BIS has determined that this final rule would not affect any of these categories of small entities.

Since BIS began collecting in 1994, virtually all of the submissions that it received are from a small number of very large companies that do not meet the SBA size standards for a small business. Since 1994, the number of companies that submit data to BIS pursuant to this regulation has been less than 25 per year. On average, the companies that submit data to BIS have annual revenues well in excess of $1 billion. For instance, in the most recent year in which BIS collected data pursuant to this regulation, only four of the 25 companies that submitted data had reported revenue of less than $1 billion with the lowest revenue at $120 million. According to SBA's size standards, the maximum annual revenue for a small business is $33.5 million and the maximum number of employees is between 500 and 1,000.

Some small businesses likely are involved in fulfilling offset obligations by acting as subcontractors to the large prime contractors that report directly to BIS, meaning that they report indirectly to BIS pursuant to this section. However, this proposed rule will not significantly increase the burden on such companies. The information collected by BIS pursuant to this section is already collected by such small businesses so that they can accurately account for their obligations under the offset agreement and report them to the prime contractor. The only new reporting requirement in this proposed rule is the classification of offset agreements and transactions by NAICS code. Even subcontractors involved in the manufacture of defense articles are likely to conduct business with the U.S. government and, therefore, be required to classify their products and services, in accordance with the NAICS (See *Central Contractor Registration Handbook, http://www.ccr.gov*). In addition, the U.S. government takes steps to facilitate selection of the correct NAICS code by private parties. The U.S. Census Bureau posts instructions on its Web site on how to properly classify products and services in accordance with the NAICS. BIS has included illustrative examples in § 701(c)(1)(iii) and § 701(c)(2)(iv) on classifying military export sales and offset transactions by NAICS codes.

In addition, small governmental entities and small organizations, not being businesses, are not likely to be involved in international defense trade, and would therefore have no reason to submit data to BIS pursuant to this regulation. Consequently, this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 701

Administrative practice and procedure, Arms and munitions, Business and industry, Exports, Government contracts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the National Security Industrial Base Regulations (15 CFR parts 700–709) are amended as follows:

PART 701—AMENDED

1. The authority citation for part 701 is revised to read as follows:

Authority: 50 U.S.C. App. 2099 and Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901 and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166.

2. In § 701.1, revise the last sentence in the section to read:

§ 701.1 Purpose.

* * * Summary reports are submitted annually to Congress pursuant to Section 309 of the Defense Production Act of 1950, as amended.

3. In § 701.2, revise paragraphs (f), (g), and (h) to read as follows:

§ 701.2 Definitions.

* * * * *

(f) *Offset Transaction*—Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement offset agreements include co-production, technology transfer, subcontracting, credit assistance, training, licensed production, overseas investment, and purchases.

(g) *Direct Offset*—an offset transaction directly related to the article(s) or service(s) exported or to be exported pursuant to the military export sales agreement. For example, a U.S. firm subcontracting with a foreign firm to supply a subassembly for a defense article exported pursuant to that military export sales agreement could be a direct offset.

(h) *Indirect Offset*—an offset transaction unrelated to the article(s) or service(s) exported or to be exported pursuant to the military export sales agreement. For example, a U.S. firm co-producing, with a foreign government or foreign firm, an item unrelated to an article or service exported pursuant to that military export sales agreement could be an indirect offset.

4. Section 701.4 is revised to read as follows:

§ 701.4 Procedures.

(a) *Reporting period.* The Department of Commerce publishes a notice in the **Federal Register** annually reminding the public that U.S. firms are required to report annually on contracts for the sale of defense-related items or defense-related services to foreign governments or foreign firms that are subject to offset agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually on offset transactions completed in performance of existing offset commitments for which offset credit of $250,000 or more has been claimed from the foreign representative. Such reports must be submitted to the Department of Commerce no later than June 15 of each year for offset agreement and transaction data for the previous calendar year.

(b) *Reporting instructions.*

(1) To avoid double counting, firms shall report only offset transactions that they are directly responsible for reporting to the foreign customer (*i.e.,* prime contractors shall report for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(2) Reports must be submitted in hardcopy to the Offset Program Manager, U.S. Department of Commerce, Bureau of Industry and Security, Room 3876, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, and as an e-mail attachment to *OffsetReport@bis.doc.gov.* E-mail attachments must include the information in a computerized spreadsheet or database format. If unable to submit a report in

computerized format, companies should contact the Offset Program Manager for guidance. All submissions must include a point of contact (name and telephone number) and must be submitted by a company official authorized to provide such information.

(c) Reports must include the information described below. Any necessary comments or explanations relating to the information shall be footnoted and supplied on separate sheets attached to the reports.

(1) *Reporting on offset agreements.* U.S. firms shall provide an itemized list of new offset agreements entered into during the reporting period, including the information about each such agreement described in paragraphs (c)(1)(i) through (c)(1)(ix) of this section.

(i) *Name of foreign country.* Identify the country of the foreign entity involved in the military export sale associated with the offset agreement.

(ii) *Description of the military export sale.* Provide a name and description of the defense article and/or defense service referenced in the military export sale, as well as the date (month and year) of the related offset agreement.

(iii) *Military export sale classification.* Identify the six-digit North American Industry Classification System (NAICS) code(s) associated with the military export sale. Refer to U.S. Census Bureau's United States NAICS Manual for a listing of applicable NAICS codes (*www.census.gov/epcd/www/naics.html*). Paragraphs (c)(1)(iii)(A) through (c)(1)(iii)(E) of this section provide examples that illustrate how to select the appropriate NAICS code in the instances described therein.

(A) *Example 1.* Company A enters into an offset agreement associated with the sale of 24 fighter aircraft and guided missiles to country B. Fighter aircraft manufacturing is classified in the North American Industry Classification System (NAICS) as NAICS 336411, Aircraft Manufacturing. Guided missiles are classified in the NAICS as NAICS 336414, Guided Missile and Space Vehicle Manufacturing.

(B) *Example 2.* Company B enters into an offset agreement associated with the sale of a navigation system for a fleet of military aircraft to country C. Navigation system manufacturing is classified in the NAICS as NAICS 334511, Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.

(C) *Example 3.* Company C enters into an offset agreement associated with the sale of radio communication equipment to country D. Radio communication equipment is classified in the NAICS as NAICS 334220, Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing.

(D) *Example 4.* Company D enters into an offset agreement associated with the sale of 30 aircraft engines to country E. Aircraft engines are classified in the NAICS as NAICS 336412, Aircraft Engine and Engine Parts Manufacturing.

(E) *Example 5.* Company E enters into an offset agreement associated with the sale of armored vehicles to country F. Armored vehicles are classified in the NAICS as NAICS 336992, Military Armored Vehicle, Tank, and Tank Component Manufacturing.

(iv) *Foreign party to offset agreement.* Identify the foreign government agency or branch that is the signatory to the offset agreement.

(v) *Military export sale value.* Provide the dollar value of the military export sale. Should the military export sale involve more than one NAICS code, please separately list the values associated with each NAICS code.

(vi) *Offset agreement value.* Provide the value of the offset agreement.

(vii) *Offset agreement term.* Identify the term of the offset agreement in months.

(viii) *Offset agreement performance measures.* Identify each category that describes the offset agreement's performance measures: best efforts, accomplishment of obligation, or other (please describe).

(ix) *Offset agreement penalties for non-performance.* Identify each category that describes the offset agreement's penalties for non-performance. For example, the agreement may include penalties such as liquidated damages, debarment from future contracts, added offset requirements, fees, commissions, bank credit guarantees, or other (please describe).

(2) *Reporting on offset transactions.* U.S. firms shall provide an itemized list of offset transactions completed during the reporting period, including the elements listed in paragraphs (c)(2)(i) through (c)(2)(x) of this section for each such transaction (estimates are acceptable when actual figures are unavailable; estimated figures shall be followed by the letter ''E'').

(i) *Name of foreign country.* Identify the country of the foreign entity involved in the military export sale associated with the offset transaction.

(ii) *Description of the military export sale.* Provide a name and description of the defense article and/or defense service referenced in the military export sale associated with the offset transaction, as well as the date the offset agreement was signed (month and year).

(iii) *Offset transaction category.* Identify each category that describes the offset transaction: co-production, technology transfer, subcontracting, training, licensing of production, overseas investment, purchasing, credit assistance or other (please describe).

(iv) *Offset transaction classification.* Identify the six-digit North American Industry Classification System (NAICS) code(s) associated with the offset transaction. Refer to U.S. Census Bureau's United States NAICS Manual for a listing of applicable NAICS codes (*http://www.census.gov/epcd/www/naics.html*). Paragraphs (c)(2)(iv)(A) through (c)(2)(iv)(E) of this section provide examples that illustrate how to select the appropriate NAICS code in the instances described therein.

(A) *Example 1.* Company A completes an offset transaction by co-producing aircraft engines in country B. Aircraft engine manufacturing is classified in the NAICS as NAICS 336412, Aircraft Engine and Engine Parts Manufacturing.

(B) *Example 2.* Company B completes an offset transaction by licensing the production of automotive electrical switches in country C. Company B also assists in structuring a wholesale distribution network for these products. Automotive electrical switch manufacturing is classified in the NAICS as NAICS 335931, Current Carrying Wiring Device Manufacturing, and the wholesale distribution network is classified in the NAICS as NAICS 423120, Motor Vehicle Supplies and New Parts Merchant Wholesalers.

(C) *Example 3.* Company C completes an offset transaction by transferring technology to establish a biotechnology research center in country D. Biotechnology research and development is classified in the NAICS as NAICS 541711, Research and Development in Biotechnology.

(D) *Example 4.* Company D completes an offset transaction by purchasing steel forgings from a steel mill in country E. Steel forgings are classified in the NAICS as NAICS 331111, Iron and Steel Mills.

(E) *Example 5.* Company E completes an offset transaction by providing training assistance services in country F to certain plant managers. Training assistance is classified in the NAICS as NAICS 611430, Professional and Management Development Training.

(v) *Offset transaction type.* Identify the offset transaction as a direct offset transaction, an indirect offset transaction, or a combination of both.

(vi) *Name of offset performing entity.* Identify, by name, the entity performing the offset transaction on behalf of the

U.S. entity that entered into the offset agreement.

(vii) *Name of offset receiving entity.* Identify the foreign entity receiving benefits from the offset transaction.

(viii) *Actual offset value.* Provide the dollar value of the offset transaction without taking into account multipliers or intangible factors. Should the offset transaction involve more than one NAICS code, please list the values associated with each NAICS code.

(ix) *Offset credit value.* Provide the dollar value credits claimed by the offset performing entity, including any multipliers or intangible factors. Should an offset transaction involve more than one NAICS code, please list the values associated with each NAICS code.

(x) *Offset transaction performance location.* Name the country where each offset transaction was fulfilled, such as the purchasing country, the United States, or a third country.

5. Section 701.6 is added to read as follows:

§ 701.6 Violations, penalties, and remedies.

(a) Willful violation of the Defense Production Act may result in punishment by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both.

(b) The government may seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act and this regulation.

Dated: April 21, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–9514 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–JT–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0898; FRL–8898–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Transportation Conformity Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for Transportation Conformity Requirements. 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, 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.

DATES: Comments must be received in writing by May 29, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0898 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: febbo.carol@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0898, Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2008–0898. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI (or otherwise protected) through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access system'', which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, Rachel Carson State Office Building, 400 Market Street, 12th Floor, Harrisburg, PA 17105–8468.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: April 15, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–9842 Filed 4–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R10–OAR–2009–0111; FRL–8898–8]

Outer Continental Shelf Air Regulations Consistency Update for Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule-reopening of comment period.

SUMMARY: On March 3, 2009, EPA proposed the rulemaking ''Outer Continental Shelf Air Regulations Consistency Update for Alaska''. The original comment period closed on April 2, 2009. In this notice, we are announcing a 14-day reopening of the public comment period for the proposal.

DATES: Written comments must be received on or before May 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R10–OAR–2009–0111, by one of the following methods:

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

B. *E-Mail: greaves.natasha@epa.gov;*

C. *Mail:* Natasha Greaves, Federal and Delegated Air Programs Unit, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT–107, Seattle, WA 98101;

D. *Hand Delivery:* U.S. Environmental Protection Agency Region 10, Attn: Natasha Greaves (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, 9th Floor. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2009–0111. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Natasha Greaves, Federal and Delegated Air Programs Unit, Office of Air, Waste, and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT–107, Seattle, WA 98101; telephone number: (206) 553–7079; e-mail address: *greaves.natasha@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 3, 2009 we solicited public comment on a proposal to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of Alaska. The intended effect of approving the OCS requirements for the State of Alaska is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations. *See* 74 FR 9180. In the proposal, we stated that EPA would accept public comments on the proposal until April 2, 2009.

During the public comment period that ended on April 2, 2009, the North Slope Borough asked for an extension of the public comment period. In light of the North Slope Borough's interest in this proposal, we are extending the public comment period to *May 13, 2009,* to provide additional time for interested parties to submit written comments. All written comments received by *May 13, 2009,* will be considered in our final action.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 20, 2009.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. E9–9836 Filed 4–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2009–0238; FRL–8896–1]

Outer Continental Shelf Air Regulations Consistency Update for Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule-consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of a State's seaward boundary must be updated periodically to maintain continuity and ensure consistency with the regulations of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The specific portion of the regulations that are being updated pertains to the requirements for

OCS sources in the State of Delaware (Delaware). The intended effect of approving the OCS regulations for Delaware is to regulate air emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Written comments must be received on or before *May 29, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0238 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: caprio.amy@epa.gov.*
3. *Mail:* EPA–R03–OAR–2009–0238, Amy Caprio, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
4. *Hand Delivery or Courier:* At the previously-listed EPA Region III address. 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–R03–OAR–2009–0238. 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* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156 or by e-mail at *caprio.amy@epa.gov*.

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

Table of Contents

I. Background and Purpose
II. EPA's Evaluation
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources, in order to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the CAA. Part 55 applies to all OCS sources offshore of the States, except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS regulations are based on those onshore regulations, and onshore requirements may from time-to-time change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore regulations.

Pursuant to 40 CFR 55.12(b), where an OCS activity is occurring within 25 miles of a State seaward boundary, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a State or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken to update 40 CFR part 55 as necessary to maintain consistency with the regulations of Delaware, in order to attain and maintain Federal and State ambient standards and comply with part C of title I of the CAA. 40 CFR 55.12(a). Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of a State's seaward boundary that are the same as would be applicable if the source were located in the corresponding onshore area. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore and as they relate to protection of ambient standards. This prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's State implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

In the process of revising or updating 40 CFR part 55, EPA first conducted a review of Delaware's rules for inclusion into part 55 to ensure that those State rules: (1) Are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or part C of title I of the CAA; (2) are not designed or used for the purpose of preventing exploration and development of the OCS; and (3) are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that

[1] The Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) provide further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will

Continued

regulate toxics which are not rationally related to the attainment and maintenance of Federal and State ambient air quality standards. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Region III Office listed in the **ADDRESSES** section of this **Federal Register**.

III. Proposed Action

EPA is proposing to incorporate the rules applicable to sources for which the State of Delaware will be the COA. The rules that EPA proposes to incorporate are applicable provisions of Title 7 of the Delaware Administrative Code, specifically, Air Quality Management Section 1100. The rules EPA proposes to incorporate are listed in detail at the end of the document.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

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

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (ICR) No. 1601.07 was published in the **Federal Register** on February 17, 2009 (74 FR 7432). The approval expires January 31, 2012. As EPA previously indicated (73 FR 66037 (November 6, 2008)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 112 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

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

These rules will not have a significant economic impact on a substantial number of small entities. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare 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 of more in any one year.

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

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use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in Delaware, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4).

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

E. Executive Order 13132, Federalism

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

This proposed 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. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. These rules do not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

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

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

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

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 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 laws or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, these rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act,

without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the State to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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 lacks the discretionary authority to address environmental justice in this proposed action. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements.

Although EPA lacks authority to modify today's regulatory decision on the basis of environmental justice considerations, EPA nevertheless explored this issue and found the following. This action, namely, updating the OCS rules to make them consistent with current COA requirements, 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. Environmental justice considerations may be appropriate to consider in the context of a specific OCS permit application.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Continental Shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 15, 2009.

William C. Early,

Acting Regional Administrator, Region III.

Title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended as follows:

a. By adding paragraph (d)(5),

b. By revising paragraph (e) introductory text, and

c. By adding paragraph (e)(5).

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(d) * * *

(5) Delaware.

(i) 40 CFR part 52, subpart I.

(ii) [Reserved]

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(e) *State and local requirements.* State and local requirements promulgated by EPA as applicable to OCS sources located within 25 miles of States' seaward boundaries have been compiled into separate documents organized by State and local areas of jurisdiction. These documents, set forth below, are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of rules pertaining to particular States or local areas may be inspected or obtained from the EPA Air Docket (A–91–76), U.S. EPA, room M–1500, 401 M St., SW., Washington DC 20460 or the appropriate EPA regional offices: U.S. EPA, Region I (Massachusetts) One Congress Street, Boston, MA 02114–2023; U.S. EPA, Region III (Delaware) 1650 Arch Street, Philadelphia, PA 19103; U.S. EPA, Region 4 (Florida and North Carolina), 61 Forsyth Street, Atlanta, GA 30303; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Francisco, CA 94105; and U.S. EPA, Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101, For an informational listing of the State and local requirements incorporated into this part, which are applicable to sources of air pollution located on the OCS, see appendix A to this part.

* * * * *

(5) Delaware.

(i) State requirements.

(A) State of Delaware Requirements Applicable to OCS Sources, December 19, 2008.

(B) [Reserved]

(ii) Local requirements.

(A) [Reserved]

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3. Appendix A to part 55 is amended by adding an entry for Delaware in alphabetical order to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, By State

* * * * *

Delaware

(a) State requirements.

(1) The following State of Delaware requirements are applicable to OCS Sources, December 19, 2008, State of Delaware—Department of Natural Resources and Environmental Control. The following sections of 7 DE Admin. Code 1100—Air Quality Management Section:

7 DE Admin. Code 1101: Definitions and Administrative Principals

Section 1.0: General Provisions (Effective 02/01/1981)

Section 2.0: Definitions (Effective 09/11/1999)

Section 3.0: Administrative Principles (02/01/1981)

Section 4.0: Abbreviations (Effective 02/01/1981)

7 DE Admin. Code 1102: Permits

Section 1.0: General Provisions (Effective 06/11/2006)

Section 2.0: Applicability (Effective 06/11/2006)

Section 3.0: Application/Registration Prepared by Interested Party (Effective 06/01/1997)
Section 4.0: Cancellation of Construction Permits (Effective 06/01/1997)
Section 5.0: Action on Applications (Effective 06/01/1997)
Section 6.0: Denial, Suspension or Revocation of Operating Permits (Effective 06/11/2006)
Section 7.0: Transfer of Permit/Registration Prohibited (Effective 06/01/1997)
Section 8.0: Availability of Permit/Registration (Effective 06/01/1997)
Section 9.0: Registration Submittal (Effective 06/01/1997)
Section 10.0: Source Category Permit Application (Effective 06/01/1997)
Section 11.0: Permit Application (Effective 06/11/2006)
Section 12.0: Public Participation (Effective 06/11/2006)
Section 13.0: Department Records (Effective 06/01/1997)
Section 1102: Appendix A (Effective 06/11/2006)

7 DE Admin. Code 1103: Ambient Air Quality Standards

Section 1.0: General Provisions (Effective 09/11/1999)
Section 2.0: General Restrictions (Effective 02/01/1981)
Section 3.0: Suspended Particulates (Effective 02/01/1981)
Section 4.0: Sulfur Dioxide (Effective 02/01/1981)
Section 5.0: Carbon Monoxide (Effective 02/01/1981)
Section 6.0: Ozone (Effective 09/11/1999)
Section 7.0: Hydrocarbons (Effective 02/01/1981)
Section 8.0: Nitrogen Dioxide (Effective 02/01/1981)
Section 9.0: Hydrogen Sulfide (Effective 02/01/1981)
Section 10.0: Lead (Effective 02/01/1981)
Section 11.0: PM10 and PM2.5 Particulates (Effective 2/11/2003)

7 DE Admin. Code 1104: Particulate Emissions from Fuel Burning Equipment

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Emission Limits (Effective 02/01/1981)

7 DE Admin. Code 1105: Particulate Emissions from Industrial Process Operations

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: General Restrictions (Effective 02/01/1981)
Section 3.0: Restrictions on Hot Mix Asphalt Batching Operations (Effective 02/01/1981)
Section 4.0: Restrictions on Secondary Metal Operations (Effective 02/01/1981)
Section 5.0: Restrictions on Petroleum Refining Operations (Effective 02/01/1981)
Section 6.0: Restrictions on Prill Tower Operations (Effective 02/01/1981)
Section 7.0: Control of Potentially Hazardous Particulate Matter (Effective 02/01/1981)

7 DE Admin. Code 1106: Particulate Emissions From Construction and Materials Handling

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Demolition (Effective 02/01/1981)
Section 3.0: Grading, Land Clearing, Excavation and Use of Non-Paved Roads (Effective 02/01/1981)
Section 4.0: Material Movement (Effective 02/01/1981)
Section 5.0: Sandblasting (Effective 02/01/1981)
Section 6.0: Material Storage (Effective 02/01/1981)

7 DE Admin. Code 1107: Emissions From Incineration of Noninfectious Waste

Section 1.0: General Provisions (Effective 10/13/1989)
Section 2.0: Restrictions (Effective 10/13/1989)

7 DE Admin. Code 1108: Sulfur Dioxide Emissions From Fuel Burning Equipment

Section 1.0: General Provisions (Effective 12/08/1983)
Section 2.0: Limit on Sulfur Content of Fuel (Effective 05/09/1985)
Section 3.0: Emission Control in Lieu of Sulfur Content Limits of 2.0 of This Regulation (Effective 05/09/1985)

7 DE Admin. Code 1109: Emissions of Sulfur Compounds From Industrial Operations

Section 1.0: General Provisions (Effective 05/09/1985)
Section 2.0: Restrictions on Sulfuric Acid Manufacturing Operations (Effective 02/01/1981)
Section 3.0: Restriction on Sulfuric Recovery Operations (Effective 02/01/1981)
Section 4.0: Stack Height Requirements (Effective 02/01/1981)

7 DE Admin. Code 1110: Emissions of Sulfur Compounds From Industrial Operations

Section 1.0: Requirements for Existing Sources of Sulfur Dioxide (Effective 01/18/1981)
Section 2.0: Requirements for New Sources of Sulfur Dioxide (Effective 02/01/1981)

7 DE Admin. Code 1111: Carbon Monoxide Emissions From Industrial Process Operations New Castle County

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Restrictions on Petroleum Refining Operations (Effective 02/01/1981)

7 DE Admin. Code 1112: Control of Nitrogen Oxide Emissions

Section 1.0: Applicability (Effective 11/24/1993)
Section 2.0: Definitions (Effective 11/24/1993)
Section 3.0: Standards (Effective 11/24/1993)
Section 4.0: Exemptions (Effective 11/24/1993)
Section 5.0: Alternative and Equivalent RACT Determinations (Effective 11/24/1993)
Section 6.0: RACT Proposals (Effective 11/24/1993)
Section 7.0: Compliance Certification, Recordkeeping, and Reporting Requirements (Effective 11/24/1993)

7 DE Admin. Code 1113: Open Burning

Section 1.0: Purpose (Effective 04/11/2007)
Section 2.0: Applicability (Effective 04/11/2007)
Section 3.0: Definitions (Effective 04/11/2007)
Section 4.0: Prohibitions and Related Provisions (Effective 04/11/2007)
Section 5.0: Season and Time Restrictions (Effective 04/11/2007)
Section 6.0: Allowable Open Burning (Effective 04/11/2007)
Section 7.0: Exemptions (Effective 04/11/2007)

7 DE Admin. Code 1114: Visible Emissions

Section 1.0: General Provisions (Effective 07/17/1984)
Section 2.0: Requirements (Effective 07/17/1984)
Section 3.0: Alternate Opacity Requirements (Effective 07/17/1984)
Section 4.0: Compliance With Opacity Standards (Effective 07/17/1984)

7 DE Admin. Code 1115: Air Pollution Alert and Emergency Plan

Section 1.0: General Provisions (Effective 07/17/1984)
Section 2.0: Stages and Criteria (Effective 03/29/1988)
Section 3.0: Required Actions (Effective 02/01/1981)
Section 4.0: Standby Plans (Effective 02/01/1981)

7 DE Admin. Code 1116: Sources Having Interstate Air Pollution Potential

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Limitations (Effective 02/01/1981)
Section 3.0: Requirements (Effective 02/01/1981)

7 DE Admin. Code 1117: Source Monitoring, Record Keeping And Reporting

Section 1.0: Definitions and Administrative Principals (Effective 01/11/1993)
Section 2.0: Sampling and Monitoring (Effective 07/17/1984)
Section 3.0: Minimum Emissions Monitoring Requirements For Existing Sources (Effective 07/17/1984)
Section 4.0: Performance Specifications (Effective 07/17/1984)
Section 5.0: Minimum Data Requirements (Effective 07/17/1984)
Section 6.0: Data Reduction (Effective 07/17/1984)
Section 7.0: Emission Statement (Effective 01/11/1993)

7 DE Admin. Code 1120: New Source Performance Standards

Section 1.0: General Provisions (Effective 12/07/1988)
Section 2.0: Standards of Performance for Fuel Burning Equipment (Effective 04/18/1983)
Section 3.0: Standards of Performance for Nitric Acid Plants (Effective 04/18/1983)
Section 5.0: Standards of Performance for Asphalt Concrete Plants (Effective 04/18/1983)
Section 6.0: Standards of Performance for Incinerators (Effective 04/18/1983)
Section 7.0: Standards of Performance for Sewage Treatment Plants (Effective 04/18/1983)
Section 8.0: Standards of Performance for Sulfuric Acid Plants (Effective 04/18/1983)
Section 9.0: Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978 (Effective 04/18/1983)
Section 10.0: Standards of Performance for Stationary Gas Turbines (Effective 11/27/1985)
Section 11.0: Standards of Performance for Petroleum Refineries (Effective 11/27/1985)
Section 12.0: Standards of Performance for Steel Plants: Electric Arc Furnaces (Effective 11/27/1985)
Section 20.0: Standards of Performance for Bulk Gasoline Terminals (Effective 11/27/1985)
Section 22.0: Standards of Performance for Equipment Leaks at Petroleum Refineries (Effective 11/27/1985)
Section 27.0: Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984 (Effective 12/07/1988)
Section 29.0: Standards of Performance for Hospital/Medical/Infectious Waste Incinerators (Effective 09/11/1998)

7 DE Admin. Code 1122: Restriction on Quality of Fuel in Fuel Burning Equipment

Section 1.0: Prohibition of Waste Oil (Effective 11/27/1985)

7 DE Admin. Code 1124: Control of Volatile Organic Compounds

Section 1.0: General Provisions (Effective 01/11/1993)
Section 2.0: Definitions (Effective 01/11/2002)
Section 3.0: Applicability (Effective 01/11/1993)
Section 4.0: Compliance, Certification, Recordkeeping, and Reporting Requirements for Coating Sources (Effective 11/29/1994)
Section 5.0: Compliance, Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources (Effective 01/11/1993)
Section 6.0: General Recordkeeping (Effective 01/11/1993)
Section 7.0: Circumvention (Effective 01/11/1993)
Section 8.0: Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs) (Effective 11/29/1994)
Section 9.0: Compliance, Permits, Enforceability (Effective 01/11/1993)
Section 10.0: Aerospace Coatings (Effective 08/11/2002)
Section 11.0: Mobile Equipment Repair and Refinishing (Effective 11/11/2001)
Section 12.0: Surface Coating of Plastic Parts (Effective 11/29/1994)
Section 13.0: Automobile and Light-Duty Truck Coating Operations (Effective 01/11/1993)
Section 14.0: Can Coating (Effective 01/11/1993)
Section 15.0: Coil Coating (Effective 01/11/1993)
Section 16.0: Paper Coating (Effective 01/11/1993)
Section 17.0: Fabric Coating (Effective 01/11/1993)
Section 18.0: Vinyl Coating (Effective 01/11/1993)
Section 19.0: Coating of Metal Furniture (01/11/1993)
Section 20.0: Coating of Large Appliances (01/11/1993)
Section 21.0: Coating of Magnet Wire (01/11/1993)
Section 22.0: Coating of Miscellaneous Parts (Effective 01/11/1993)
Section 23.0: Coating of Flat Wood Paneling (Effective 01/11/1993)
Section 24.0: Bulk Gasoline Plants (Effective 01/11/1993)
Section 25.0: Bulk Gasoline Terminals (Effective 11/29/1994)
Section 26.0: Gasoline Dispensing Facility Stage I Vapor Recovery (Effective 01/11/2002)
Section 27.0: Gasoline Tank Trucks (Effective 01/11/1993)
Section 28.0: Petroleum Refinery Sources (Effective 01/11/1993)
Section 29.0: Leaks from Petroleum Refinery Equipment (Effective 11/29/1994)
Section 30.0: Petroleum Liquid Storage in External Floating Roof Tanks (Effective 11/29/1994)
Section 31.0: Petroleum Liquid Storage in Fixed Roof Tanks (Effective 11/29/1994)
Section 32.0: Leaks from Natural Gas/Gasoline Processing Equipment (11/29/1994)
Section 33.0: Solvent Cleaning and Drying (Effective 11/11/2001)
Section 34.0: Cutback and Emulsified Asphalt (Effective 01/11/1993)
Section 35.0: Manufacture of Synthesized Pharmaceutical Products (Effective 11/29/1994)
Section 36.0: Stage II Vapor Recovery (Effective 01/11/2002)
Section 37.0: Graphic Arts Systems (Effective 11/29/1994)
Section 38.0: Petroleum Solvent Dry Cleaners (Effective 01/11/1993)
Section 40.0: Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment (Effective 01/11/1993)
Section 41.0: Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins (Effective 01/11/1993)
Section 42.0: Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry (Effective 01/11/1993)
Section 43.0: Bulk Gasoline Marine Tank Vessel Loading Facilities (Effective 08/08/1994)
Section 44.0: Batch Processing Operations (Effective 11/29/1994)
Section 45.0: Industrial Cleaning Solvents (Effective 11/29/1994)
Section 46.0: Crude Oil Lightering Operations (Effective 05/11/2007)
Section 47.0: Offset Lithographic Printing (Effective 11/29/1994)
Section 48.0: Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (Effective 11/29/1994)
Section 49.0: Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels (Effective 11/29/1994)
Section 50.0: Other Facilities that Emit Volatile Organic Compounds (VOCs) (Effective 11/29/1994)

7 DE Admin. Code 1124: Control of Organic Compound Emissions

Appendix A General Provisions: Test Methods and Compliance Procedures (Effective 11/29/1994)
Appendix B: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks (Effective 11/29/1994)
Appendix C: Alternative Compliance Methods for Surface Coating (Effective 11/29/1994)
Appendix D: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements (Effective 11/29/1994)
Method 30: Criteria for and Verification of a Permanent or Temporary Total Enclosure (Effective 11/29/1994)
Method 30A: Volatile Organic Compounds Content in Liquid Input Stream (Effective 11/29/1994)
Method 30B: Volatile Organic Compounds Emissions in Captured Stream (Effective 11/29/1994)
Method 30C: Volatile Organic Compounds Emissions in Captured Stream (Dilution Technique) (Effective 11/29/1994)
Method 30D: Volatile Organic Compounds Emissions in Fugitive Stream from Temporary Total Enclosure (Effective 11/29/1994)
Method 30E: Volatile Organic Compounds Emissions in Fugitive Stream from Building Enclosure (Effective 11/29/1994)
Appendix E: Determining the Destruction or Removal Efficiency of a Control Device (Effective 11/29/1994)
Appendix F: Leak Detection Methods for Volatile Organic Compounds (VOCs) (Effective 11/29/1994)
Appendix G: Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons (Effective 11/29/1994)
Appendix H: Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS) (Effective 11/29/1994)
Appendix I: Method to Determine Length of Rolling Period for Liquid/Liquid Material Balance (Effective 11/29/1994)

Appendix K: Emissions Estimation Methodologies (Effective 11/29/1994)
Appendix L: Method To Determine Total Organic Carbon for Offset Lithographic Solutions (Effective 11/29/1994)
Appendix M: Test Method for Determining the Performance of Alternative Cleaning Fluids (Effective 11/29/1994)

7 DE Admin. Code 1125: Requirements for Preconstruction Review

Section 1.0: General Provisions (Effective 08/11/2005)
Section 2.0: Emission Offset Provisions (EOP) (Effective 08/11/2005)
Section 3.0: Prevention of Significant Deterioration of Air Quality (Effective 08/11/2005)
Section 4.0: Minor New Source Review (MNSR) (Effective 08/11/2005)

7 DE Admin. Code 1127: Stack Heights

Section 1.0: General Provisions (Effective 07/06/1982)
Section 2.0: Definitions Specific to this Regulation (Effective 12/07/1988)
Section 3.0: Requirements for Existing and New Sources (Effective 02/18/1987)
Section 4.0: Public Notification (Effective 02/18/1987)

7 DE Admin. Code 1129: Emissions From Incineration of Infectious Waste

Section 1.0: General Provisions (10/13/1989)
Section 2.0: Exemptions (Effective 10/13/1989)
Section 3.0: Permit Requirements (Effective 10/13/1989)
Section 4.0: Sections of Treatment and Disposal (Effective 10/13/1989)
Section 5.0: Recordkeeping and Reporting Requirements (Effective 10/13/1989)
Section 6.0: Evidence of Effectiveness of Treatment (Effective 10/13/1989)
Section 7.0: Incineration (Effective 10/13/1989)

7 DE Admin. Code 1130: Title V State Operating Permit Program

Section 1.0: Program Overview (Effective 11/15/1993)
Section 2.0: Definitions (Effective 11/15/1993)
Section 3.0: Applicability (Effective 11/15/1993)
Section 5.0: Permit Applications (Effective 11/15/1993)
Section 6.0: Permit Contents (Effective 12/11/2000)
Section 7.0: Permit Issuance, Renewal, Reopening, and Revisions (Effective 12/11/2000)
Section 8.0: Permit Review by EPA and Affected States (Effective 11/15/1993)
Section 9.0: Permit Fees (Effective 11/15/1993)
Appendix A: Insignificant Activities (Effective 11/15/1993)

7 DE Admin. Code 1132: Transportation Conformity

Section 1.0: Purpose (Effective 11/11/2007)
Section 2.0: Definitions (Effective 11/11/2007)
Section 3.0: Consultation (Effective 11/11/2007)
Section 4.0: Written Commitments for Control and Mitigation Measures (Effective 11/11/2007)

7 DE Admin Code 1134: Emission Banking and Trading Program

Section 1.0: Program Overview (Effective 10/06/1997)
Section 2.0: Definitions (Effective 10/06/1997)
Section 3.0: Applicability (Effective 10/06/1997)
Section 4.0: Generating an Emission Reduction (Effective 10/06/1997)
Section 5.0: Application for Certification of an Emission Reduction as an ERC (Effective 10/06/1997)
Section 6.0: Source Baseline (Effective 10/06/1997)
Section 7.0: Post-Reduction Emission Rate (Effective 10/06/1997)
Section 8.0: Certification of an Emission Reduction (Effective 10/06/1997)
Section 9.0: Trading and Use of ERCs (Effective 10/06/1997)
Section 10.0: Record Keeping Requirements (Effective 10/06/1997)
Section 11.0: ERC Banking System (Effective 10/06/1997)
Section 12.0: Fees (Effective 10/06/1997)
Section 13.0: Enforcement (Effective 10/06/1997)
Section 14.0: Program Evaluation and Individual Audits (Effective 10/06/1997)

7 DE Admin. Code 1135: Conformity of General Federal Actions to the State Implementation Plans

Section 1.0: Purpose (Effective 08/14/1996)
Section 2.0: Definitions (Effective 08/14/1996)
Section 3.0: Applicability (Effective 08/14/1996)
Section 4.0: Conformity Analysis (Effective 08/14/1996)
Section 5.0: Reporting Requirements (Effective 08/14/1996)
Section 6.0: Public Participation and Consultation (Effective 08/14/1996)
Section 7.0: Frequency of Conformity Determinations (Effective 08/14/1996)
Section 8.0: Criteria for Determining Conformity of General Federal Actions (Effective 08/14/1996)
Section 9.0: Procedures for Conformity Determinations of General Federal Actions (Effective 08/14/1996)
Section 10.0: Mitigation of Airy Quality Impacts (Effective 08/14/1996)
Section 11.0: Savings Provisions (Effective 08/14/1996)

7 DE Admin. Code 1139: Nitrogen Oxides (NO_X) Budget Trading Program

Section 1.0: Purpose (Effective 12/11/2000)
Section 2.0: Emission Limitation (Effective 12/11/2000)
Section 3.0: Applicability (Effective 12/11/2000)
Section 4.0: Definitions (Effective 12/11/2000)
Section 5.0: General Provisions (Effective 12/11/2000)
Section 6.0: NO_X Authorized Account Representative for NO_X Budget Sources (Effective 12/11/2000)
Section 7.0: Permits (Effective 12/11/2000)
Section 8.0: Monitoring and Reporting (Effective 12/11/2000)
Section 9.0: NATS (Effective 12/11/2000)
Section 10.0: NO_X Allowance Transfers (Effective 12/11/2000)
Section 11.0: Compliance Certification (Effective 12/11/2000)
Section 12.0: End-of-Season Reconciliation (Effective 12/11/2000)
Section 13.0: Failure to Meet Compliance Requirements (Effective 12/11/2000)
Section 14.0: Individual Units Opt-Ins (Effective 12/11/2000)
Section 15.0: General Accounts (Effective 12/11/2000)
Appendix A: Allowance Allocations to NO_X Budget Units under 3.1.1.1 and 3.1.1.2 of DE Admin. Code 1139 (Effective 02/11/2000)
Appendix B: 7 DE Admin Code 1137—7 DE Admin. Code 1139 Program Transition (Effective 02/11/2000)

7 DE Admin. Code 1140: Delaware's National Low Emission Vehicle (NLEV) Regulation

Section 1.0: Applicability (Effective 09/11/1999)
Section 2.0: Definitions (Effective 09/11/1999)
Section 3.0: Program Participation (Effective 09/11/1999)

7 DE Admin. Code 1142: Specific Emission Control Requirements

Section 1.0: Control of NO_X Emissions from Industrial Boilers (Effective 12/12/2001)

7 DE Admin. Code 1143: Heavy Duty Diesel Engine Standards

Section 1.0: On Road Heavy Duty Diesel Requirements for Model Years 2005 and 2006 (Effective 02/11/2005)
Section 2.0: On Road Heavy Duty Diesel Requirements for Model Year 2007 and Later (Effective 02/11/2005)

7 DE Admin. Code 1144: Control of Stationary Generator Emissions [3]

Section 1.0: General (Effective 01/11/2006)
Section 2.0: Definitions (Effective 01/11/2006)
Section 3.0: Emissions (Effective 01/11/2006)
Section 4.0: Operating Requirements (Effective 01/11/2006)
Section 5.0: Fuel Requirements (Effective 01/11/2006)
Section 7.0: Emissions Certification, Compliance, and Enforcement (Effective 01/11/2006)
Section 8.0: Credit for Concurrent Emissions Reductions (Effective 01/11/2006)
Section 9.0: DVFA Member Companies (Effective 01/11/12006)

[3] All sections for 7 DE Admin. Code 1144: Control of Stationary Generator Emissions shall be incorporated by reference into 40 CFR part 55 except for all references to Carbon Dioxide (CO_2).

7 DE Admin. Code 1145: Excessive Idling of Heavy Duty Vehicles

Section 1.0: Applicability (Effective 04/11/2005)
Section 2.0: Definitions (Effective 04/11/2005)
Section 3.0: Severability (Effective 04/11/2005)
Section 4.0: Operational Requirements for Heavy Duty Motor Vehicles (Effective 04/11/2005)
Section 5.0: Exemptions (Effective 04/11/2005)
Section 6.0: Enforcement and Penalty (Effective 04/11/2005)

7 DE Admin. Code 1146: Electric Generating Unit (EGU) Multi-Pollutant Regulation

Section 1.0: Preamble (Effective 12/11/2006)
Section 2.0: Applicability (Effective 12/11/2006)
Section 3.0: Definitions (Effective 12/11/2006)
Section 4.0: NO_X Emissions Limitations (Effective 12/11/2006)
Section 5.0: SO_2 Emissions Limitations (Effective 12/11/2006)
Section 6.0: Mercury Emissions Limitations (Effective 12/11/2006)
Section 7.0: Record Keeping and Reporting (Effective 12/11/2006)
Section 8.0: Compliance Plan (Effective 12/11/2006)
Section 9.0: Penalties (Effective 12/11/2006)

7 DE Admin. Code 1148: Control of Stationary Combustion Turbine Electric Generating Unit Emissions

Section 1.0: Purpose (Effective 07/11/2007)
Section 2.0: Applicability (Effective 07/11/2007)
Section 3.0: Definitions (Effective 07/11/2007)
Section 4.0: NO_X Emissions Limitations (Effective 07/11/2007)
Section 5.0: Monitoring and Reporting (Effective 07/11/2007)
Section 6.0: Recordkeeping (Effective 07/11/2007)
Section 7.0: Penalties (Effective 07/11/2007)

(2) [Reserved]

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2009–0916; FRL–8898–6]

Pennsylvania: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pennsylvania has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Pennsylvania. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the revisions by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments that oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. However, if we receive comments that oppose this action we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by May 29, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2009–0916, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: bentley.pete@epamail.epa.gov.*
3. *Mail:* Charles Bentley, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
4. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

You may inspect and copy Pennsylvania's application from 8 a.m. to 4 p.m., Monday through Friday at the following locations: Pennsylvania Department of Environmental Protection, Environmental Education and Information Center, 1st Floor, Rachel Carson State Office Building, 400 Market St., Harrisburg, PA 17105, Phone number (717) 772–1828; Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222, Phone number: (412) 442–4097; and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254. Persons with a disability may use the AT&T Relay Service to contact Pennsylvania Department of Environmental Protection by calling (800) 654–5984 (TDD users), or (800) 654–5988 (voice users).

Instructions: Direct your comments to Docket ID No. EPA–R03–RCRA–2009–0916. EPA's policy is that all comments received will be included in the public file without change, 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 Federal *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 file 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 FURTHER INFORMATION CONTACT: Charles Bentley, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–3379.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: April 9, 2009.

William C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. E9–9790 Filed 4–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0175; FRL–8897–2]

National Oil and Hazardous Substance Pollution Contingency Plan; Montclair/West Orange and Glen Ridge Radium Superfund Sites; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; National Priorities List; notice of intent to delete.

SUMMARY: The Environmental Protection Agency (EPA)—Region II is issuing a Notice of Intent to Delete the Montclair/West Orange and Glen Ridge Radium Superfund Sites located in Montclair, West Orange, Glen Ridge, Bloomfield and East Orange, New Jersey from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by *May 29, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2009–0175, by one of the following methods:

- *http://www.regulations.gov*—Follow on-line instructions for submitting comments.
- *E-mail: donovan.betsy@epa.gov.*
- *Fax:* To the attention of Betsy Donovan at 212–637–4439.
- *Mail:* To the attention of Betsy Donovan, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency—Region 2, 290 Broadway, 19th Floor, New York, NY 10007–1866.
- *Hand delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: 212–637–4308). Such deliveries are only accepted during the Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2009–0175. 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 that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency—Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone: 212–637–4308. Hours: Monday to Friday 9 a.m. to 5 p.m.

Montclair Public Library Reference Department, 50 South Fullerton Avenue, Montclair, New Jersey 07042, Phone 973–744–0500. Hours: Monday to Thursday 10 a.m. to 9 p.m.; Friday & Saturday 10 a.m. to 5 p.m.; and Sunday 1 p.m. to 5 p.m.

The Township of West Orange Health Department, 66 Main Street, Room 203, West Orange, New Jersey 07052, Phone 973–325–4120. Hours: Monday to Friday 8:30 a.m. to 4:30 p.m.

Glen Ridge Public Library Reference Department, 240 Ridgewood Avenue, Glen Ridge, New Jersey 07028, Phone 973–748–5482. Hours: Monday 9 a.m. to 8 p.m.; Tuesday 9 a.m. to 5 p.m.; Wednesday 9 a.m. to 8 p.m.; and Thursday, Friday, Saturday 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Betsy Donovan, Remedial Project Manager, by mail: Emergency and Remedial Response Division, U.S. Environmental Protection Agency—Region 2, 290 Broadway, 19th Floor, New York, NY 10007–1866; (or) telephone (212) 637–4369; (or) fax (212) 637–4439; (or) e-mail *donovan.betsy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region 2 announces its intent to delete the Montclair/West Orange and Glen Ridge Radium Superfund Sites from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) that EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Trust Fund or Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Montclair/West Orange and Glen Ridge Radium Superfund Sites and demonstrates how they meet the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures apply to deletion of these Sites:

(1) EPA consulted with the State before developing this Notice of Intent to Delete.

(2) EPA provided the State with 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of New Jersey, through the Department of Environmental Protection, has concurred with the proposed deletion of the Sites from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, notices are being published in major local newspapers, The Montclair Times, The West Orange Chronicle, The Glen Ridge Paper, Bloomfield Life, and East Orange Record. The newspaper notices announce the 30-day public comment period concerning the Notice of Intent to Delete the Sites from the NPL.

(6) EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the information repositories for the Sites identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Sites, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Intended Site Deletion

The following information provides EPA's rationale for deleting these Sites from the NPL:

A. Site Background and History

The Montclair/West Orange Radium Superfund Site, CERCLIS ID Number NJD980785653, and the Glen Ridge Radium Superfund Site, CERCLIS ID Number NJD980785646, are located in Montclair, West Orange, Glen Ridge, Bloomfield and East Orange, Essex County, New Jersey.

The Montclair/West Orange and Glen Ridge Radium Sites are identified as two Sites on the Superfund National Priorities List (NPL). Although listed separately on the NPL, the two Sites are addressed jointly due to their geographic proximity and similar characteristics. The two Sites include three non-contiguous areas located in five residential communities of suburban Essex County in northeastern New Jersey, about 12 miles west of New York City. The Sites cover a total area of approximately 250 acres and include 900 residential and 24 municipal properties. Municipal properties are areas such as city streets, lots and parks.

Radium research and the radium products industry were prevalent in northern New Jersey from the early 1900s to the late 1920s. Radium was used to destroy cancerous tissue and as a pigment in luminous paint on wrist watch dials, gun sights, survey equipment, and instrument panels for airplanes and submarines.

The U.S. Radium Corporation, formerly known as the Radium Luminous Material Corporation, operated a facility in Orange, New Jersey from 1915 through 1926. The main activity at the facility involved the extraction and purification of radium from carnotite ore. At its peak, up to two tons of ore per day were processed at the plant. The extraction process removed about 85 percent of the radium. Because it was not economically feasible to remove all of the radium, the ore processing wastes contained residual amounts of radium and other radiological contaminants. Each ton of ore yielded five to seven milligrams of radium, which is a quantity no bigger than an average grain of sand. Consequently, a large volume of process wastes, or tailings, containing residual radioactive materials were generated and dumped in undeveloped, low-lying and marshy areas.

The Montclair/West Orange and Glen Ridge Sites were originally identified in 1979 by the New Jersey Department of Environmental Protection (NJDEP) as part of a program to investigate former radium processing facilities in the State. It was recognized that radioactive ore processing wastes could have been disposed at locations distant from the ore processing facilities.

In 1981, NJDEP requested that EPA conduct an aerial gamma radiation survey of a 12-square-mile area surrounding a former ore processing facility in Essex County. The EPA survey identified a number of locations with elevated levels of gamma radiation in Montclair and Glen Ridge, as well as the former U.S. Radium processing facility in nearby Orange, New Jersey, which is being addressed as a separate NPL site. The two Sites were proposed for inclusion on the NPL in October 1984 (49 FR 40320), and were formally added in February 1985 (50 FR 6320) in a special listing process.

On December 6, 1983, the Centers for Disease Control (CDC) issued a health advisory recommending immediate action to reduce the human health risks at the Sites. In response, EPA installed radon mitigation systems to reduce indoor radon gas concentrations in homes where radon measurements exceeded the recommended levels. Shielding (*e.g.,* lead) was also installed in areas with excessive gamma radiation measurements to reduce potential exposures. The systems and shielding were installed as temporary measures

until a soil cleanup program could be implemented to permanently remove the source of the radon gas and gamma radiation.

B. Remedial Investigation and Feasibility Study

In 1983, follow-up ground investigations were conducted in the areas exhibiting elevated surface gamma radiation as identified by the 1981 aerial survey. Investigations found that the soil was contaminated primarily with radionuclides in the uranium decay chain, including isotopes of radium, thorium, uranium and lead. The main radionuclide of concern was radium-226, because its radioactive decay can cause elevated indoor concentrations of radon gas and radon decay products. Radon monitoring in the study areas found many homes with radon gas above the recommended action level. In addition, some properties exhibited elevated levels of indoor and outdoor gamma radiation. Radionuclides are known human carcinogens. Long-term exposure to indoor radon and gamma radiation posed the major health threats at the Sites.

In May 1984, EPA and NJDEP jointly planned a pilot study to evaluate the feasibility of excavation and off-site disposal of the radium-contaminated soil. Twelve properties with varying degrees of contamination were selected for the pilot study and preliminary engineering assessments were prepared. In November 1984, EPA decided to forego the pilot study and instead began a comprehensive remedial investigation and feasibility study (RI/FS) to determine the nature and extent of the contamination and to identify cleanup alternatives. NJDEP proceeded with the pilot cleanup project on its own and began to excavate contaminated soil in June 1985. Nevada revoked the waste disposal permit, stranding thousands of drums and stalling cleanup at several properties, while other disposal solutions were identified, and a lawsuit over the permit revocation went to the U.S. Supreme Court. Eventually, all drums were disposed at licensed facilities in late 1988. The pilot study demonstrated that excavation of the contaminated soil was a feasible remedial action, but that transportation and disposal of the contaminated material would make excavation and off-site disposal a very tenuous cleanup approach.

The initial RI/FS report was released in September 1985 and during a November 1985 public meeting, EPA identified excavation of the contaminated soil along with off-site disposal as the preferred cleanup solution. However, the lack of a disposal facility and transportation uncertainties, as demonstrated by NJDEP's pilot study, would likely delay the implementation of such a remedy. This led EPA to initiate a supplemental feasibility study in March 1987 to research other cleanup alternatives, including additional interim measures. The supplemental feasibility study and proposed plan were made available to the public in April 1989.

Groundwater at the Sites was investigated; a June 2005 focused feasibility study was undertaken after the majority of the soil cleanup work had been completed. Investigation data and other studies indicated that any site-related impacts to the groundwater had been removed by the extensive soil cleanup effort and that groundwater quality at the Sites was comparable to background for the area.

C. Selected Remedy

Records of Decision (RODs) (one for each NPL site) were signed on June 30, 1989. These initial RODs selected a permanent remedy consisting of full excavation and off-site disposal for residential properties with the most extensive contamination and provided an interim solution (*i.e.,* limited excavation, engineering/institutional controls) for other properties where radon gas or indoor gamma radiation levels exceeded health guidelines. EPA made the decision to begin excavation of contaminated soil after a disposal facility that could accept a large quantity of radiological waste became available in 1990.

The subsequent remedy selected in the 1990 RODs (one for each NPL site) provided a permanent solution for the radium-contaminated soil at all properties (residential and municipal) and included the excavation of all soil exceeding the cleanup criteria. The remedy also called for environmental monitoring, as necessary, to ensure its effectiveness.

The remedial action objective was to reduce, to the lowest practical levels, the existing public health threats posed by indoor radon and radon decay product concentrations, indoor and outdoor gamma radiation levels, and the inhalation or ingestion of radium-contaminated materials. Construction activities were undertaken via a series of remedial action and disposal contracts awarded by the U.S. Army Corps of Engineers and funded by the EPA Superfund Trust Fund with a 10-percent share provided by the State of New Jersey.

The September 2005 RODs (one for each NPL site) for groundwater called for no action, based on investigation data and other studies indicating that any site-related impacts to the groundwater have been removed by the extensive soil remedial action and that groundwater quality at the Sites was comparable to background for the area. Public water is available in all five communities and there is no known use of the groundwater as a drinking water source at the present time. Risks associated with use of the site groundwater are in the same range as those estimated for groundwater regionally and are not related to the CERCLA releases, which have been addressed under the soil cleanup.

D. Response Actions

Architectural and engineering (A/E) firms under contract with the U.S. Army Corps of Engineers prepared designs for all cleanup work. Remedial designs were based on soil investigation data, consisting of samples collected and analyzed from boreholes. Four-inch diameter boreholes were typically augered by hand; samples were collected at six-inch intervals down to sixteen feet or more below the surface, where native soils were encountered. These sample results were used to plot the areas to be excavated to accomplish removal of the contaminated material. Primary excavation areas were designed to facilitate the removal of material that exceeded the cleanup criteria. Secondary excavation areas were designed to indicate where additional excavation might be required, due to the proximity of contamination, the presence of man-made fill material, or the presence of material exhibiting marginal concentrations below the cleanup criteria. Other project support services such as the maintenance of a field office compound, on-site quick count laboratory, verification sampling, data reporting, property status tracking, and structural assessments were included in the remedial design contract. Designs were prepared with civil survey data and detailed inventories of existing landscape and structural features on each property, as a reference for the post-excavation restoration.

Construction was completed in phases and included 340 residential and 16 municipal properties. The cleanup and restoration work on each individual property typically took from six to nine months to complete. The EPA soil cleanup effort took approximately 14 years to complete (1990 to 2004). About 100 families were temporarily relocated when the construction work (sub-slab excavation, utility disruptions, no access to dwelling, etc.) precluded safe

occupancy of the homes. Perimeter and on-site air monitoring was conducted for dust, radionuclides, and organic vapors during construction. Primary soil excavation was carried out according to the remedial design drawings and followed by confirmatory sampling per the project specifications. Secondary excavation was undertaken, by approval of EPA, if contamination was found beyond the limits of the primary excavation areas. Contaminated soil and debris were removed from each property by heavy equipment and loaded into containers. At residential properties with contamination beneath the basement slab, the material was removed by vacuum truck and then loaded into containers for transport. A majority of the contaminated material was transported by 28-cubic yard intermodal containers. Intermodal containers allowed transport by truck and rail without the need to handle the waste numerous times. Once the soil and debris were loaded, the containers were sealed and waste shipping manifests prepared. Containers were trucked to a transloading facility in Newark, New Jersey. After inspection, the containers were loaded onto railcars for transport to regulated and approved disposal facilities.

Disposal facilities were selected utilizing the U.S. Army Corps of Engineers—Kansas City District's pre-placed radiological disposal contracts. Radiological contaminated materials were disposed at Envirocare of Utah, Inc., located in Clive, Utah, and at U.S. Ecology Idaho, Inc., located in Grandview, Idaho.

Excavated areas were sampled to ensure that the contamination had been removed. After completion of the testing, the excavated areas were backfilled with clean fill material. Proposed backfill sources were tested to ensure they did not exceed the remediation goals and met the contract specifications. The backfill and topsoil were sampled at least every 5,000 cubic yards for radium, gamma radiation, EPA's target analyte list for metals, and EPA's target analyte compound list for volatile organic compounds. Properties were restored to pre-construction conditions with in-kind replacements or repairs to property damaged during excavation of contamination, including sidewalks, driveways, garages, decks, steps, porches, basement interiors, landscaping, fences, etc. All properties were restored in accordance with the contract restoration plans and landscaping specifications, as nearly as possible to their original conditions.

Since hazardous substances do not remain at the Montclair/West Orange and Glen Ridge Superfund Sites above health based levels for unrestricted use, there is no operation and maintenance or five-year review activities required.

E. Cleanup Goals

Health-based cleanup goals were identified in the RODs or subsequent documents and guidance, as follows: radon—4 picoCuries per liter (pCi/l); radon decay products—0.2 Working Levels (WL); gamma radiation rate—20 microRoentgens per hour (μR/hr); radium in soil 5—picoCuries per gram (pCi/g); radium-226 + thorum-232 ≤ 7 pCi/g in soil.

Two independent companies, the remedial action contractor and the A/E firm, sampled excavated areas to ensure that the contamination had been removed and cleanup goals were achieved. Year-long radon tests were performed at each residential property following the soil cleanup work to confirm that radon source material had been removed. All property owners received a final data package with post-excavation testing results for their records. In addition, the five municipalities received information for all properties included in the project areas for their records.

F. Community Involvement

Public availability sessions and public meetings for the local community and government officials were held throughout the project. EPA, the U.S. Army Corps of Engineers and the remedial action contractor provided written notices and updates involving work schedules and activities on a continuous basis for the immediate neighborhood and town officials. EPA also established a field office in close proximity to the Sites in Montclair, where project management and community involvement staff were located for nearly twenty years while directing and overseeing the cleanup.

G. Determination That Sites Meet Criteria for Deletion in the NCP

In accordance with the NCP at 40 CFR 300.425(e)(1)(ii), EPA and the State of New Jersey have determined that all appropriate Fund-financed response actions under CERCLA has been implemented at the Sites, and no further response action by responsible parties is appropriate. By letters February 19, 2009, from Irene Kropp, Assistant Commissioner of the NJDEP, the State concurred with the proposed deletion of the Sites from the NPL. Therefore, EPA, with the concurrence of the State of New Jersey, is proposing the deletion of the Sites from the NPL. While EPA and the State of New Jersey have determined that the Sites do not require further response, the Sites do remain eligible for further Fund-financed remedial action should future conditions warrant such action.

All of the completion requirements for the Sites have been met as described in the Superfund Final Close-Out Report, dated January 26, 2009. Documents supporting this action are available in the Sites files and deletion docket.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Dated: April 14, 2009.

George Pavlou,

Acting Regional Administrator, EPA—Region 2.

[FR Doc. E9–9648 Filed 4–28–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 74, No. 81

Wednesday, April 29, 2009

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

Commodity Credit Corporation

Information Collection: Assignments of Payment and Joint Payment Authorization

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection. The information collection is to allow farmers to voluntarily assign their payment to a third party and to authorize a joint payment.

DATES: We will consider comments that we receive by June 29, 2009.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include the date, volume and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Mail:* Farm Service Agency, USDA, ATTN: Deborah Simmons, Financial Specialist, FMD, Stop 0561, 1400 Independence Ave., SW., Washington, DC.
- *E-mail: Send comment to: Debbie.Simmons@wdc.usda.gov.*
- *Fax:* (703) 305–1144.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503.

Copies of the information collection may be obtained from Deborah Simmons at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Simmons, Financial Specialist, (703) 305–1309.

SUPPLEMENTARY INFORMATION:

Title: Assignment of Payments and Joint Payment Authorization.

Forms: CCC–36–Assignment of Payment, CCC–37–Joint Payment. Authorization, CCC–251–Notice of Assignment, and CCC–252–Instrument of Assignment.

OMB Control Number: 0560–0183.

Type of Request: Extension.

Abstract: Section 4(j) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b (j)) authorizes CCC to determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid. Pursuant to this authority, CCC allows producers to assign certain payments to a third party. Any such assignment must be made in accordance with the regulations at 7 CFR part 1404. There are no regulations governing joint payments, but this service is offered as a result of public requests for this type of payment option. There are no changes to the information collection since the last OMB approval.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response for CCC–36, CCC–37, and CCC–251, and 5 minutes per response for CCC–252.

Respondents: Participants in FSA or CCC farm programs.

Estimated Number of Respondents: 70,900 (50,000 for CCC–36; 20,000 for CCC–37, and 450 for CCC–251 and CCC–252).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11,778.

We are requesting comments on all aspects of this information collection including the following to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Signed at Washington, DC, on April 22, 2009.

Dennis J. Taitano,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9–9722 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Rural Cooperative Development Grant Application Deadlines

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Cooperative Development Grant (RCDG) program is administered through USDA Rural Development on a competitive basis. USDA Rural Development announces the availability of approximately $4.424 million in competitive grant funds for the fiscal year (FY) 2009 Rural Cooperative Development Grant (RCDG) Program. The intended effect of this notice is to solicit applications for FY 2009 and award grants on or before September 15, 2009. The maximum award per grant is $200,000 and matching funds are required. In accordance with section 310B(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(e)) as amended by section 6013 of the Food, Conservation and Energy Act of 2008, the Secretary has determined that a grant period of one year is in the best interest of the program at this time.

DATES: Applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than June 29, 2009, to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

Electronic copies must be received by June 29, 2009, to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

ADDRESSES: Application materials for a RCDG may be obtained at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm* or by contacting the applicant's USDA Rural Development State Office. Contact information for State Offices can be found at *http://www.rurdev.usda.gov/rbs/coops/rcdg/Contacts.htm.* Submit completed paper applications for a grant to Cooperative Programs, Attn: RCDG Program, 1400 Independence Avenue, SW., Mail Stop 3250, Room 4016–South, Washington, DC 20250–3250. The phone number that should be used for courier delivery is (202) 720–8460.

Submit electronic grant applications at *http://www.grants.gov,* following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm* for application assistance or contact your USDA Rural Development State Office.

Contact information may be obtained at *http://www.rurdev.usda.gov/rbs/coops/rcdg/Contacts.htm.* Applicants are encouraged to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: Rural Cooperative Development Grant.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.771.

Dates: Application Deadline: Completed applications for grants may be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than June 29, 2009, to be eligible for FY 2009 grant funding. Electronic copies must be received by June 29, 2009, to be eligible for FY 2009 grant funding.

Late applications are not eligible for FY 2009 grant funding.

I. Funding Opportunity Description

RCDGs are authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(e)) as amended by section 6013 of the Food, Conservation and Energy Act of 2008. Regulations are contained in 7 CFR part 4284, subparts A and F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. Grant funds are provided for the establishment and operation of Centers that have the expertise or who can contract out for the expertise to assist individuals or entities in the startup, expansion or operational improvement of rural businesses, especially cooperative or mutually-owned businesses (section 310B(e)(5)). The program is administered through USDA Rural Development State Offices.

Definitions

The definitions published at 7 CFR 4284.3 and 7 CFR 4284.504 are incorporated by reference. The definition of ''rural'' and ''rural area,'' as amended at section 6018(13)(A) of the Food, Conservation and Energy Act of 2008 is also incorporated by reference. In addition, since there has been some confusion on the Agency's meaning of the term ''conflict of interest,'' the Agency is providing clarification on what it means by this term.

Conflict of interest—A situation in which the ability of a person or entity to act impartially would be questionable due to competing professional or personal interests. An example of conflict of interest occurs when the grantee's employees, board of directors, including their immediate family, have a legal or personal financial interest in the recipients receiving the benefits or services of the grant.

Mutually-owned business—An organization owned and governed by members who either are its consumers, producers, employees, or suppliers.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2009.

Approximate Total Funding: $4.424 million.

Approximate Number of Awards: 22.

Approximate Average Award: $200,000.

Floor of Award Range: None.

Ceiling of Award Range: $200,000.

Anticipated Award Date: September 15, 2009.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Grants may be made to nonprofit corporations and institutions of higher education. Grants may not be made to public bodies.

B. Cost Sharing or Matching

The matching fund requirement is 25 percent of the total project cost (5 percent in the case of 1994 Institutions). Applicants must verify in their applications that all matching funds are available during the grant period. If an applicant is awarded a grant, additional verification documentation may be required. All of the matching funds must be spent on eligible expenses during the grant period, and must be from eligible sources. Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds. However, matching funds may include loan proceeds from Federal sources. Matching funds must be spent in advance or as a pro-rata portion of grant funds being expended. All of the matching funds must be provided by either the applicant or a third party in the form of cash or in-kind contributions. The Center must be able to document and verify the number of hours worked and the value associated with the in-kind contribution. Additionally, if the in-kind contributions are from board/advisory council members for their travel, incidentals, etc., the Center must have established written policies explaining how these costs are normally reimbursed, including rates, and an explanation of this policy must be included in the application. Otherwise, the in-kind contributions will not be considered eligible and may cause the application to be determined ineligible for funding. Please note that priority is no longer given to matching contributions greater than the required 25 percent. Therefore, to reduce the paperwork burden of the applicant with regard to verification of matching funds, the Agency will no longer accept board/advisory council members' time as an eligible match. In-kind contributions provided by individuals, businesses, or cooperatives which are being assisted by the Center can not be provided for the direct benefit of their own projects as USDA Rural Development considers this to be a conflict of interest or the appearance of a conflict of interest.

C. Other Eligibility Requirements

Grant Period Eligibility: Applications should have a timeframe of no more than 365 consecutive days with the time period beginning no earlier than October 1, 2009 and no later than January 1, 2010. Projects must be completed within the 1-year timeframe. The Agency may approve requests to extend the grant period for up to twelve months at the discretion of the Agency. However, the grant must be closed 30

days prior to the application deadline for the subsequent grant cycle or the grantee will not be eligible to apply for funding for the next fiscal year.

Completeness Eligibility: Applications without sufficient information to determine eligibility and scoring will be considered ineligible. Applications that are non-responsive to this notice will be considered ineligible.

Activity Eligibility: Applications must propose the development or continuation of the cooperative development center concept or they will not be considered for funding. Additionally, applications that focus assistance on only one cooperative or mutually-owned business will not be considered for funding. Applications requesting more than the maximum grant amount will not be considered for funding. Applications that have ineligible costs that equal more than 10 percent of the total project costs will be determined ineligible, and will not be considered for funding. If an application has ineligible costs of 10 percent or less of total project costs and is selected for funding, the applicant must remove all ineligible costs from the budget and replace them with eligible activities or the amount of the grant award will be reduced accordingly.

IV. Application and Submission Information

A. Address To Request Application Package

The application package for applying on paper for this funding opportunity can be obtained at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm.* For electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions.

B. Submission Dates and Times

Applicants may submit their applications to their State Rural Development Office for a preliminary review up to 30 days prior to the final application deadline published in this notice. The preliminary review will assess applicant and project eligibility of the application and completeness of the application in terms of presence of the required elements. Should the Agency identify missing or incomplete elements, the applicant will be notified and given an opportunity to submit the missing elements before the final deadline published in the **Federal Register**. This preliminary review is an informal assessment of the application and not an evaluation of the quality of the proposal. Findings of the preliminary review are courtesy only and are not binding on the Agency nor are they appealable.

Final paper applications must be postmarked and mailed, shipped, or sent overnight no later than June 29, 2009, to be eligible for FY 2009 grant funding. Applications postmarked, mailed, or shipped after June 29, 2009 will not be processed. Final electronic applications must be received by June 29, 2009, to be eligible for FY 2009 grant funding.

C. Content and Form of Submission

Applications must be submitted on paper or electronically. An application guide may be viewed at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm.* It is recommended that applicants use the template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for paper submission or it can be filled out electronically and submitted as an attachment through *http://www.grants.gov.*

The submission must include all pages of the application. It is recommended that the application be in black and white, not color. Those evaluating the application will only receive black and white images.

If the application is submitted electronically, the applicant must follow the instructions given at *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure they have obtained the proper authentication and have sufficient computer resources to complete the application.

Applicants must complete and submit the following elements. The Agency will then screen all applications for eligibility and to determine whether the application is sufficiently responsive to the requirements set forth in this notice to allow for an informed review. Information submitted as part of the application will be protected to the extent permitted by law. An application guide and forms are available online at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm.*

1. Form SF–424, ''Application for Federal Assistance.'' The form must be completed, signed and submitted as part of the application package.

Please note that applicants are required to have a DUNS number to apply for a grant from USDA Rural Development. The DUNS number is a nine-digit identification number which uniquely identifies business entities. There is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call 866–705–5711. For more information, see the RCDG Web site at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm* or contact the applicant's USDA Rural Development State Office. Contact information for State Offices can be found at *http://www.rurdev.usda.gov/rbs/coops/rcdg/Contacts.htm.*

2. Form SF–424A, ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package.

4. Survey on Ensuring Equal Opportunity for Applicants. The Agency is required to make this survey available to all nonprofit applicants. Submission of this form is voluntary.

5. Title Page. To include the title of the project as well as any other relevant identifying information.

6. Table of Contents. To include page numbers for each component of the application.

7. Executive Summary. A summary of the proposal, not to exceed two pages, must briefly describe the Center, including project goals and tasks to be accomplished, the amount requested, how the work will be performed (*e.g.,* Center staff, consultants, or contractors) and the percentage of work that will be performed among the parties.

8. Eligibility. The applicant must describe, not to exceed two pages, how it meets the applicant, matching, grant period and activity eligibility requirements.

9. Proposal Narrative. The proposal narrative is limited to a total of 40 pages.

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. If a title page was included under number 5 above, it is not necessary to include an additional title page under this section.

ii. Information Sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in this funding announcement, followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria. If the evaluation criteria are listed on the Table of Contents and specifically and individually addressed in narrative form, then it is not necessary to include an information sheet under this section.

iii. Goals of the Project. The applicant must include the following statements in this section of the narrative to

demonstrate that the Center is following these statutory requirements:

1. A statement that substantiates that the Center will effectively serve rural areas in the United States;

2. A statement that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

3. A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services. Expected economic impacts should be tied to tasks included in the work plan and budget; and

4. A statement that the Center, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

iv. Performance Evaluation Criteria. The Agency has established annual performance measures to evaluate the RCDG program. Applicants may provide estimates on the following performance measures.

- Number of groups who are not legal entities assisted.
- Number of businesses that are not cooperatives assisted.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance.
- Total number of jobs saved as a result of assistance.
- Number of jobs created for the Center as a result of RCDG funding.
- Number of jobs saved for the Center as a result of RCDG funding.

If the application is selected for funding, the applicant will be required to report actual numbers for these performance elements on a semi-annual basis and in the final performance report. Additional information on post-award requirements can be found in Section VI. Applicants must also suggest additional performance criteria in the event the proposal receives grant funding. These additional voluntary criteria should be specific, measurable performance criteria, but are not binding on USDA.

v. Undertakings. The applicant must include the following statements in this section of the narrative and expressly undertake to do them.

1. Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sectors;

2. Make arrangements for the Center's activities to be monitored and evaluated; and

3. Provide an accounting for the money received by the grantee in accordance with 7 CFR part 4284, subpart F.

vi. Work Plan. Please see section V. A. 6. for specific requirements on the work plan and budget. The work plan and budget should be presented under proposal evaluation criterion number 6. It is not necessary to include the work plan and budget under this section.

vii. Delivery of Technical Assistance and Other Services. Please see section V. A. 2. for specific requirements on delivery of technical assistance in rural areas to promote and assist the development of cooperatively and mutually owned businesses. Delivery should be presented under proposal evaluation criterion number 2. It is not necessary to include discussion on delivery of technical assistance under this section.

viii. Qualifications of Personnel. Please see section V. A. 7. for specific requirements on qualifications of personnel. Qualifications of personnel should be presented under proposal evaluation criterion number 7. It is not necessary to include discussion on qualifications of personnel under this section.

ix. Local Support. Please see section V. A. 8. for specific requirements for local support. Local support should be presented under proposal evaluation criterion number 8. It is not necessary to include discussion of local support under this section.

x. Future Support. Please see section V. A. 9. for specific requirements on future support. Future support should be presented under proposal evaluation criterion number 9. It is not necessary to include discussion on future support under this section.

xi. Proposal Evaluation Criteria. Each of the evaluation criteria referenced in this funding announcement must be specifically and individually addressed in narrative form. Applications that do not address all of the proposal evaluation criteria will be considered ineligible. See Section V. A. for a description of the Proposal Evaluation Criteria.

10. Certification of Judgment Owed to the United States. Applicants must certify that there are no current outstanding Federal judgments against them. No grant funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature is not required.

11. Certification of Matching Funds. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of the total project cost, not less than the required amount of matching funds will have been expended prior to submitting the request for reimbursement. Please note that this certification is a separate requirement from the Verification of Matching Funds requirement. To satisfy the Certification requirement, applicants should include a statement for this section that reads as follows: ''[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of the total project cost, at least 25 cents (5 cents for 1994 Institutions) of matching funds will have been expended prior to submitting the request for reimbursement.'' A separate signature is not required.

12. Verification of Matching Funds. Applicants must provide documentation of all proposed matching funds, both cash and in-kind. Matching funds must be used for eligible purposes and expenditures for this grant program. The documentation must be included in Appendix A and will not count towards the 40-page limitation. Template letters for each type of matching funds are available at *http://www.rurdev.usda.gov/rbs/coops/rcdg/verifymatchsample.doc.*

If matching funds are to be provided in cash, the following requirements must be met at the time of application. Additional documentation may be required if a grant is awarded.

Applicant: The application must include a statement verifying (1) the amount of the cash and (2) the source of the cash. If the applicant is paying for goods and/or services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such.

Third-party: The application must include a signed letter from the third party verifying (1) how much cash will be donated and (2) that it will be available corresponding to the proposed grant period or donated on a specific date within the grant period. Cash matching contributions from third-parties are to be used for Center

operations and cannot be used to provide services which directly benefit the third-party contributor. Contributors of cash matching contributions may not limit how or where the Center may use the contributions.

If matching funds are to be provided by an in-kind donation, the following requirements must be met.

Applicant: The application must include a signed letter from the applicant or its authorized representative verifying (1) the nature of the goods and/or services to be donated and how they will be used (2) when the goods and/or services will be donated (*i.e.,* corresponding to the proposed grant period or to specific dates within the grant period) and (3) the value of the goods and/or services.

Third-Party: The application must include a signed letter from the third party verifying (1) the nature of the goods and/or services to be donated and how they will be used, (2) when the goods and/or services will be donated (*i.e.,* corresponding to the proposed grant period or to specific dates within the grant period when matching contributions will be made available) and (3) the value of the goods and/or services. It should be noted that non-profit or other organizations contributing the services of affiliated volunteers must follow the third-party verification requirement above, for each individual volunteer.

Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for in-kind funds does not need to be included in the application. However, the applicant must be able to demonstrate how the valuation was derived at the time of notification of tentative selection for the grant award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the grant award may be withdrawn or the amount of the grant may be reduced.

Verification for funds donated outside the proposed time period of the grant will not be accepted.

Examples of unacceptable matching funds are in-kind contributions from individuals, businesses, or cooperatives being assisted by the Center to benefit their own project, donations of fixed equipment and buildings, and costs related to the preparation of the RCDG application package.

Expected program income may not be used to fulfill the matching funds requirement at the time of application. However, if there are contracts in place at the time of application, they may be treated as cash match. If program income is earned during the time period of the grant, it is subject to the requirements of 7 CFR part 3015, subpart F and 7 CFR part 3019.24 and any provisions in the Grant Agreement.

D. Submission Dates and Times

Application Deadline Date: June 29, 2009.

Explanation of Deadlines: Paper applications must be postmarked by the deadline date (see Section IV.F for the address). Electronic applications must be received by *http://www.grants.gov* by the deadline date. If the application does not meet the deadline above, it will not be considered for funding. The applicant will be notified if the application does not meet the submission requirements. The applicant will also be notified by mail or by e-mail if the application is received on time.

E. Intergovernmental Review of Applications

Executive Order 12372, Intergovernmental review of Federal programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of states that maintain an SPOC, please see the White House Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* If an applicant's state has an SPOC, the applicant may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to USDA Rural Development for consideration as part of the application. If the applicant's state has not established an SPOC, or the applicant does not want to submit a copy of the application, USDA Rural Development will submit the application to the SPOC or other appropriate agency or agencies.

Applicants are also encouraged to contact the USDA Rural Development State Office for assistance and questions on this process. Contact information for USDA Rural Development State Offices can be viewed at *http://www.rurdev.usda.gov/rbs/coops/rcdg/Contacts.htm.*

F. Funding Restrictions

Funding restrictions apply to both grant funds and matching funds. Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the total project cost.

1. Grant funds and matching funds may be used for, but are not limited to, providing the following to individuals, small businesses, cooperative and mutually-owned businesses and other similar entities in rural areas served by the Center (section 310B(e)(5)):

i. Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

ii. Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

iii. Training and instruction for the purpose of cooperative development.

iv. Loans and grants for the purpose of cooperative development in accordance with this notice and applicable regulations.

v. Technical assistance, research services and advisory services for the purpose of cooperative development.

vi. Programs providing for the coordination of services and sharing of information among the Centers (section 310B(e)(4)(C)(vi).

2. No funds made available under this solicitation shall be used for any of the following activities:

i. To duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond that which is currently being provided;

ii. To pay costs of preparing the application package for funding under this program;

iii. To pay costs of the project incurred prior to the date of grant approval;

iv. To fund political or lobbying activities;

v. To pay for assistance to any private business enterprise that does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

vi. To pay any judgment or debt owed to the United States;

vii. To plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

viii. To purchase, rent, or install fixed equipment, including laboratory equipment or processing machinery;

ix. To pay for the repair of privately owned vehicles;

x. To fund research and development;

xi. To pay costs of the project where a conflict of interest exists; or

xii. To fund any activities prohibited by 7 CFR parts 3015 or 3019.

G. Other Submission Requirements

A paper application for a grant must be submitted to Cooperative Programs, Attn: RCDG Program, 1400 Independence Avenue, SW., Mail Stop 3250, Room 4016–South, Washington, DC 20250–3250. The phone number that should be used for courier delivery is (202) 720–8460. Electronically submitted applications must apply using the following internet address: *http://www.grants.gov.* Applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Each application submission must contain all required documents.

V. Application Review Information

A. Proposal Evaluation Criteria

All eligible and complete applications will be evaluated based on the following criteria. Evaluators will base scores only on the information provided or cross-referenced in each individual evaluation criterion. The maximum amount of points available is 100. Note: Newly established or proposed Centers that do not yet have a track record on which to evaluate the following criteria should refer to the expertise and track records of staff or consultants expected to perform tasks related to the respective criteria.

1. *Administrative capabilities in support of Center activities.* (maximum score of 10 points) The Agency will evaluate the application to determine whether the applicant demonstrates a proven track record in carrying out activities to promote and assist the development of cooperatively and mutually owned businesses. Applicants that discuss the capabilities of their financial systems and audit controls, personnel and program administration performance measures and clear rules of governance that will be utilized, either in-house or by supporting institutions to support Center activities will receive more points.

2. *Technical assistance and other services.* (maximum score of 15 points) The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance and accomplishing effective outcomes in rural areas to promote and assist the development of cooperatively and mutually-owned businesses. The applicant should also discuss their potential for delivering effective technical assistance, the types of assistance provided, the expected effects of that assistance, the sustainability of organizations receiving the assistance, and the transferability of its cooperative development strategies and focus to other areas of the U.S. Applicants that evidence effective delivery systems for cooperative development will receive more points.

3. *Economic development.* (maximum score of 15 points) The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas. Applicants that provide statistics for historical and potential development and identify their role in economic development outcomes will receive more points.

4. *Networking and regional focus.* (maximum score of 10 points) The Agency will evaluate the applicant's demonstrated commitment to (a) networking with other cooperative development centers, and other organizations involved in rural economic development efforts, as well as (b) developing multi-organization and multi-state approaches to addressing the economic development and cooperative needs of rural areas.

5. *Commitment.* (maximum score of 10 points) The Agency will evaluate the applicant's commitment to providing technical assistance and other services to under-served and economically distressed areas in rural areas of the United States. Applicants that define the underserved and economically distressed areas within their service area, provide statistics, and identify projects within or affecting these areas, as appropriate, will receive more points.

6. *Work Plan/Budget.* (maximum score of 10 points) The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non-Federal funding commitments. Applicants must discuss the specific tasks (whether it be by type of service or specific project) to be completed using grant and matching funds. The work plan should reflect projects initiated by the applicant and in which the applicant plays a key role. The work plan should also show how customers will be identified, key personnel to be involved, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

7. *Qualifications of those performing the tasks.* (maximum score of 10 points) The Agency will evaluate the application to determine if the personnel expected to perform key tasks have a track record of positive solutions for complex cooperative development and/or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to applicant's success as determined by the tasks identified in the applicants work plan. The applicant must also identify whether the personnel expected to perform the tasks are full/part-time employees of the applicant or are contract personnel. Applicants that evidence commitment/availability of qualified personnel expected to perform the tasks will receive more points.

8. *Local support.* (maximum score of 10 points) The Agency will evaluate applications for previous and expected local support for the applicant, and plans for coordinating with other developmental organizations in the proposed service area or with state and local government institutions. Applicants that evidence strong support from potential beneficiaries and formal evidence of intent to coordinate with other developmental organizations will receive more points. Support should be discussed directly within the response to this criterion. The applicant may submit a maximum of 10 letters of support or intent to coordinate with the application. These letters should be included in Appendix B of the application and will not count against the 40-page limit for the narrative.

9. *Future support.* (maximum score of 10 points) The Agency will evaluate the applicant's vision for funding its operations in future years. Applicants should document new and existing funding sources that support its goals. Applicants should also discuss reliance on Federal, State, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. Applications that evidence vision and likelihood of long-term sustainability with diversification of funding sources and building in-house technical assistance capacity will receive more points.

B. Review and Selection Process

The Agency will screen all of the proposals to determine whether the application is eligible and sufficiently responsive to the requirements set forth

in this notice to allow for an informed review.

The Agency will evaluate applications using a panel of qualified reviewers who will score the applications in accordance with the point allocation specified in this notice. Applications will be submitted to the Administrator in rank order, together with funding level recommendations.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about September 15, 2009.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from USDA Rural Development. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applicants will receive notification by mail, including appeal rights, as appropriate. Consolidated comments for reviewed applications will be made available.

B. Administrative and National Policy Requirements

7 CFR parts 3015, 3019, and 4284 are applicable to this program. To view these regulations, please see the following internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to grantees selected for this program:

- Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants).''
- Form RD 400–4, ''Assurance Agreement.''
- RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans,'' including Standard Form (SF) LLL, ''Disclosure of Lobbying Activities.''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm.*

Reporting Requirements: Grantees must provide USDA Rural Development with an original or electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on the Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of the grant.

1. Form SF–269 or SF–269A. A ''Financial Status Report'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special conditions on the use of award funds should be discussed. The report should also include a summary at the end of the report with the following elements to assist in documenting the annual performance goals of the RCDG program for Congress.

- Number of groups who are not legal entities assisted.
- Number of businesses that are not cooperatives assisted.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance.
- Total number of jobs saved as a result of assistance.
- Number of jobs created for the Center as a result of RCDG funding.
- Number of jobs saved for the Center as a result of RCDG funding.

Reports are due as provided in paragraph 1 of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks includes, but is not limited to: Feasibility studies, marketing plans, business plans, publication quality success stories, applied research reports, copies of surveys conducted, articles of incorporation and bylaws and an accounting of how outreach, training, and other funds were expended.

3. Final project performance reports. These reports shall include all of the requirements of the semi-annual performance reports and responses to the following:

i. What have been the most challenging or unexpected aspects of this program?

ii. What advice would the grantee give to other organizations planning a similar program? These should include strengths and limitations of the program. If the grantee had the opportunity, what would they have done differently?

iii. If an innovative approach was used successfully, the grantee should describe their program in detail so that other organizations might consider replication in their areas.

The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, applicants should contact their USDA Rural Development State Office at *http://www.rurdev.usda.gov/rbs/coops/rcdg/Contacts.htm.* If an applicant is unable to contact their State Office, please contact a nearby State Office or the USDA Rural Development National Office at 1400 Independence Avenue, SW., Mail Stop 3250, Rm. 4016–South, Washington, DC 20250–3250, telephone: (202) 720–8460, e-mail: *cpgrants@wdc.usda.gov.*

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Dated: April 14, 2009.

Pat Fiala,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–9759 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Foreign Market Development Cooperator Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.600.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2010 Foreign Market Development Cooperator (Cooperator) program. The intended effect of this notice is to solicit applications from eligible applicants and award funds in October 2009. The Cooperator program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, May 29, 2009. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *podadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/fmdprogram.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The Cooperator program is authorized by title VII of the Agricultural Trade Act of 1978, as amended. Cooperator program regulations appear at 7 CFR part 1484.

Purpose: The Cooperator program is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the Cooperator program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. All U.S. agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy, and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

II. Award Information

Under the Cooperator program, the FAS enters into agreements with eligible nonprofit U.S. trade organizations to share the cost of certain overseas marketing and promotion activities. Funding priority is given to organizations that have the broadest possible producer representation of the commodity being promoted and that are nationwide in membership and scope. Cooperators may receive assistance only for generic activities that do not involve promotions targeted directly to consumers. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. *Eligible Applicants:* To participate in the Cooperator program, an applicant must be a nonprofit U.S. agricultural trade organization.

2. *Cost Sharing:* To participate in the Cooperator program, an applicant must agree to contribute resources to its proposed promotional activities. The Cooperator program is intended to supplement, not supplant, the efforts of the U.S. private sector. The contribution must be at least 50 percent of the value of resources provided by CCC for activities conducted under the project agreement.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The Cooperator program regulations, in sections 1484.50 and 1484.51, provide detailed discussion of eligible and ineligible cost-share contributions.

3. *Other:* Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. *Address To Request Application Package:* Organizations are encouraged to submit their FMD applications to the FAS through the Unified Export Strategy (UES) application Internet Web site. The UES allows applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding and recommendations for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

Applicants planning to use the Internet-based system must contact the FAS/Program Operations Division at (202) 720–4327 to obtain site access information. The Internet-based application, including a help file that contains step-by-step instructions, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

The FAS highly recommends applying via the Internet-based application as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. However, applicants also have the option of submitting an electronic version (along with two paper copies) of their application to the FAS on compact disc. Organizations that choose to submit applications on compact disc can obtain the application format by contacting the Program Operations Division on (202) 720–4327.

2. *Content and Form of Application Submission:* To be considered for the Cooperator program, an applicant must submit to the FAS information required by the Cooperator program regulations in section 1484.20. In addition, in accordance with the Office of Management and Budget's policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are

receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs, including the Market Access Program (MAP), the Emerging Markets Program, the Quality Samples Program, and the Technical Assistance for Specialty Crops Program. Any organization that is not interested in applying for the Cooperator program but would like to request assistance through one of the other programs mentioned should contact the Program Operations Division on (202) 720–4327.

3. *Submission Dates and Times:* All applications must be received by 5 p.m. Eastern Daylight Time, May 29, 2009. All Cooperator program applicants, regardless of the method of submitting an application, also must submit by the application deadline, an original signed certification statement as specified in 7 CFR section 1484.20(a)(14). Applications or certifications received after this date will not be considered.

4. *Funding Restrictions:* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC also will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the Cooperator program regulations in sections 1484.54 and 1484.55.

5. *Other Submission Requirements and Considerations:* All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, May 29, 2009. Signed certification statements also must be received by that time at the address listed below.

All applications on compact disc (with two accompanying paper copies and a signed certification statement) and any other form of application must be received by 5 p.m. Eastern Daylight Time, May 29, 2009, at the following address:

Hand Delivery (including FedEx, DHL, UPS, *etc.*): U.S. Department of Agriculture, Foreign Agricultural Service, Program Operations Division, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

V. Application Review Information

1. *Criteria and Review Process:* Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator program funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at sections 1484.14 and 1484.20 of the Cooperator program regulations. Applications that meet the requirements then will be further evaluated by the appropriate Commodity Branch in the FAS Cooperator Programs Division. The Commodity Branch will review each application against the criteria listed in sections 1484.21 and 1484.22 of the Cooperator program regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among the applicants. Applicants will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Contribution Level (40)

- The applicant's 6-year average share (2005–2010) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to;
- The applicant's 6-year average share (2005–2010) of all Cooperator marketing plan expenditures.

(b) Past Export Performance (20)

- The 6-year average share (2004–2009) of the value of exports promoted by the applicant compared to;
- The applicant's 6-year average share (2004–2009) of all Cooperator marketing plan expenditures plus a 6-year average share (2004–2009) of MAP expenditures.

(c) Past Demand Expansion Performance (20)

- The 6-year average share (2004–2009) of the total value of world trade of the commodities promoted by the applicant compared to;
- The applicant's 6-year average share (2004–2009) of all Cooperator marketing plan expenditures plus a 6-year average share (2004–2009) of MAP expenditures.

(d) Future Demand Expansion Goals (10)

- The projected total dollar value of world trade of the commodities being promoted by the applicant for the year 2015 compared to;
- The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

- The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 2008 compared to;
- The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 2008, as specified in the 2005 Cooperator program application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total Cooperator program funds available and then multiplied by each weight factor to determine the amount of funds allocated to each applicant.

2. *Anticipated Announcement Date:* Announcements of funding decisions for the Cooperator program are anticipated during October 2009.

VI. Award Administration Information

1. *Award Notices:* The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and project agreement will specify the terms and conditions applicable to the project, including the levels of Cooperator program funding, and cost-share contribution requirements.

2. *Administrative and National Policy Requirements:* Interested parties should review the Cooperator program regulations, which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/fmdprogram.asp*. Hard copies may be obtained by contacting the Program Operations Division at (202) 720–2379.

3. *Reporting:* The FAS requires various reports and evaluations from Cooperators. Reporting requirements are detailed in the Cooperator program regulations in sections 1484.53, 1484.70, and 1484.72.

VII. Agency Contact(s)

For additional information and assistance, contact the Program

Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture. *Mailing Address:* AgBox 1020, 1400 Independence Avenue, SW., Washington, DC 20250–1020. *Courier Address:* Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024. *Phone:* (202) 720–4327, fax: (202) 720–9361, e-mail: *podadmin@fas.usda.gov.*

Signed at Washington, DC, on the 17th of April 2009.

Patricia R. Sheikh,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E9–9729 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Technical Assistance for Specialty Crops Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.604.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2010 Technical Assistance for Specialty Crops (TASC) program. The intended effect of this notice is to solicit applications from the private sector and from government agencies for FY 2010 and award funds in October 2009. The TASC program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: See paragraph IV.4 below for a detailed description of relevant dates.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *podadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/tasc/tasc.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The TASC program is authorized by section 3205 of Public Law 107–171. TASC regulations appear at 7 CFR part 1487.

Purpose: The TASC program is designed to assist U.S. organizations by providing funding for projects that address sanitary, phytosanitary, or related technical barriers that prohibit or threaten the export of U.S. specialty crops. U.S. specialty crops, for the purpose of the TASC program, are defined to include all cultivated plants, or the products thereof, produced in the United States, except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

As a general matter, TASC program projects should be designed to address the following criteria:

- Projects should address a sanitary, phytosanitary, or related technical barrier that prohibits or threatens the export of U.S. specialty crops;
- Projects should demonstrably benefit the represented industry rather than a specific company or brand; and
- Projects must address barriers to exports of commercially-available U.S. specialty crops for which barrier removal would predominantly benefit U.S. exports.

Examples of expenses that CCC may agree to reimburse under the TASC program include, but are not limited to: Initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

II. Award Information

In general, all qualified proposals received before the specified application deadlines will compete for funding. The limited funds and the range of barriers affecting the exports of U.S. specialty crops worldwide preclude CCC from approving large budgets for individual projects.

Applicants may submit multiple proposals, and applicants with previously approved TASC proposals may apply for additional funding. Please see 7 CFR part 1487 for additional restrictions.

FAS will consider providing either grant funds as direct assistance to U.S. organizations or technical assistance on behalf of U.S. organizations, provided that the organization submits timely and qualified proposals. FAS will review all proposals against the evaluation criteria contained in the program regulations.

Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project. FAS or another Federal agency may be involved in the implementation of approved projects.

III. Eligibility Information

1. *Eligible Applicants:* Any U.S. organization, private or government, with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and private companies.

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. *Cost Sharing or Matching:* FAS considers the applicant's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

IV. Application and Submission Information

1. *Application through the Unified Export Strategy (UES):* Organizations are encouraged to submit their applications to FAS through the UES application Internet Web site. Using the UES application process reduces paperwork and expedites FAS' processing and review cycle. Applicants planning to use the UES Internet-based system must contact FAS Program Operations Division on (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

2. *Application through electronic and hard copies:* The FAS highly recommends applying via the Internet-based UES application. However, applicants also have the option of submitting an electronic version of their application to FAS (along with two paper copies) on compact disc. Applicants may request the application format from the Program Operations Division at (202) 720–4327 or obtain the application format on the Internet at: *http://www.fas.usda.gov/mos/tasc/proposals.html.*

3. *Content and Form of Application Submission:* All TASC proposals must contain complete information about the proposed projects as described in 1487.5(b) of the TASC program regulations. In addition, in accordance

with the Office of Management and Budget's policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711.

Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

4. *Submission Dates and Times:* TASC funding is limited, and in order to assure sufficient resources are available to meet unanticipated needs during the fiscal year, TASC proposals will, generally, only be evaluated on a semi-annual basis. That is:

- Proposals received prior to, but not later than, 5 p.m. Eastern Daylight Time, May 29, 2009, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, May 29, 2009, will be considered for funding only if funding remains available.

Notwithstanding the foregoing, a proposal may be submitted for expedited consideration under the TASC Quick Response process if, in addition to meeting all requirements of the TASC program, a proposal clearly identifies a time-sensitive activity. In these cases, a proposal may be submitted at any time for an expedited evaluation.

FAS will track the time and date of receipt of all proposals.

5. *Funding Restrictions:* Although funded projects may take place in the United States, all eligible projects must specifically address sanitary, phytosanitary, or technical barriers to the export of U.S. specialty crops.

Certain types of expenses are not eligible for reimbursement by the program, such as the costs of market research, advertising, or other promotional expenses. CCC will also not reimburse unreasonable expenditures or any expenditure made prior to approval of a proposal.

6. *Other Submission Requirements:* All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, on May 29, 2009, to be considered.

All applications on compact disk (with two accompanying paper copies) and any other applications must be received by 5 p.m. Eastern Daylight Time, on May 29, 2009, at the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

V. Application Review Information

1. *Criteria:* FAS follows the evaluation criteria set forth in 1487.6 of the TASC regulations.

2. *Review and Selection Process:* FAS will review proposals for eligibility and will evaluate each proposal against the factors referred to above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs. FAS may, when appropriate, request the assistance of other U.S. government subject area experts in evaluating the merits of a proposal.

VI. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including levels of funding, timelines for implementation, and written evaluation requirements.

2. *Administrative and National Policy Requirements:* The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant. Interested parties should review the TASC program regulations found at 7 CFR part 1487 in addition to this announcement. TASC program regulations are available at the following URL address: *http://www.fas.usa.gov/mos/programs/TASC%201487%201-1-06.pdf*. Hard copies may be obtained by contacting the Program Operations Divison at (202) 720–4327.

3. *Reporting:* TASC participants are required to submit written report(s), on not less than an annual basis, and a final report, each of which evaluates their TASC project using the performance measures presented in the approved proposal.

VII. Agency Contact

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, by hand delivery or courier: Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, by phone: (202) 720–4327, by fax: (202) 720–9361, e-mail: *podadmin@fas.usda.gov*.

Signed at Washington, DC, on the 17th of April 2009.

Patricia R. Sheikh,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E9–9734 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Emerging Markets Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.603.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2010 Emerging Markets Program (EMP). The intended effect of this notice is to solicit additional applications from the private sector and from government agencies for FY 2010. The EMP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All proposals must be received by 5 p.m. Eastern Standard Time, May 29, 2009. Applications received after this time will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *podadmin@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/em-markets/em-markets.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The EMP is authorized by section 1542(d)(1)(D) of the Food, Agriculture, Conservation and Trade Act of 1990 (The Act), as amended. The EMP regulations appear at 7 CFR part 1486.

1. *Purpose*. The EMP assists U.S. entities in developing, maintaining, or expanding exports of U.S. agricultural commodities and products by funding technical assistance activities that promote U.S. products in emerging foreign markets. The EMP is intended primarily to support export market development efforts of the private sector, but EMP resources may also be used to assist public organizations.

All U.S. agricultural commodities, except tobacco, are eligible for consideration. Agricultural product(s) should be comprised of at least 50 percent U.S. origin content by weight, exclusive of added water, to be eligible for funding. Proposals that seek support for multiple commodities are also eligible. EMP funding may only be used to support exports of U.S. agricultural commodities and products through generic activities. EMP funding may not be used to support the export of another country's products to the United States, or to promote the development of a foreign economy as a primary objective. Funding provided for government participation may only be used to support the activities of government officials expert in assessing the food and rural business systems of other countries.

2. *Appropriate Activities*. Following are examples of the types of project activities that may be considered for funding under the EMP:

—Projects designed specifically to improve market access in emerging foreign markets. *Example:* Activities that mitigate the impact of political or economic events;

—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. *Examples:* Seminars on U.S. food safety standards and regulations; assessing and addressing pest and disease problems that inhibit U.S. exports;

—Short-term expert training in agricultural and agribusiness trade that will benefit U.S. exporters. *Examples:* Retail training; transportation/distribution seminars;

—Projects that help foreign governments collect and use market information and develop free trade policies that benefit U.S. exporters. *Examples:* Agricultural statistical analysis; development of market information systems;

—Assessments and follow-up activities designed to improve country-wide food and business systems, and to determine potential use of general export credit guarantees. *Examples:* Product needs assessments and market analysis;

—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports. *Examples:* Studies of grain storage handling and inventory systems or of distribution infrastructure development; and

—Marketing and distribution of value-added products. *Examples:* Market research on the potential for consumer-ready U.S. foods or new uses of a U.S. product.

EMP funds may not be used to support normal operating costs of individual organizations, nor as a source to recover pre-award costs or prior expenses from previous or ongoing projects. Proposals that counter national strategies or duplicate activities planned or already underway by U.S. non-profit agricultural commodity or trade associations (''cooperators'') will not be considered. Other ineligible expenditures include: Branded product promotions (in-store, restaurant advertising, labeling, etc.); advertising, administrative, and operational expenses for trade shows; Web site development; equipment purchases; and the preparation and printing of brochures, flyers, and posters (except in connection with specific technical assistance activities such as training seminars). For a more complete description of ineligible expenditures, please refer to the EMP regulations.

3. *Eligible Markets.* The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(a) Is taking steps toward developing a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(b) Has the potential to provide a viable and significant market for U.S. agricultural commodities or products of U.S. agricultural commodities.

Because EMP funds are limited and the range of potential emerging market countries is worldwide, consideration will be given only to proposals that target countries or regional groups with per capita income of less than $11,455 (the current ceiling on upper middle income economies as determined by the World Bank [World Development Indicators; July 2008, *http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS*] and populations of greater than 1 million.

Income limits and their calculation can change from year to year with the result that a given country may qualify under the legislative and administrative criteria one year but not the next. Therefore, CCC has not established a fixed list of emerging market countries.

A few countries technically qualify as emerging markets but may require a separate determination before funding can be considered because of political sensitivities.

II. Award Information

In general, all qualified proposals received before the application deadline will compete for EMP funding. Priority consideration will be given to proposals that identify and seek to address specific problems or constraints to trade in emerging markets through technical assistance activities that are intended to expand or maintain U.S. agricultural exports. Priority consideration will also be given to proposals that directly support or address at least one of the goals and objectives in the USDA and FAS Strategic Plans. The applicants' willingness to contribute resources, including cash, goods and services will be a critical factor in determining which proposals are funded under the EMP. Proposals will also be judged on the potential benefits to the industry represented by the applicant and the degree to which the proposal demonstrates industry support.

The limited funds and the range of eligible emerging markets worldwide generally preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most projects are funded at a level of less than $500,000 and for a duration of approximately one year. Private entities may submit multi-year proposals requesting higher levels of funding that may be considered in the context of a detailed strategic implementation plan. Funding in such cases is generally limited to three years and provided one year at a time with commitments beyond the first year subject to interim evaluations and funding availability. Federal government entities are not eligible for multi-year funding.

Funding for successful proposals will be provided through specific agreements. The CCC, through FAS, will be kept informed of the implementation of approved projects through the requirement to provide quarterly progress reports and final performance reports. Changes in the original project

timelines and adjustments within project budgets must be approved by FAS.

Note: EMP funds awarded to Federal government agencies must be expended or otherwise obligated by close of business, September 30, 2010.

III. Eligibility and Qualification Information

1. *Eligible Applicants:* Any United States private or Government entity with a demonstrated role or interest in exports of U.S. agricultural commodities or products may apply to the program. Government organizations consist of Federal, State, and local agencies; and state universities. Private organizations include non-profit trade associations, private universities, agricultural cooperatives, state regional trade groups (SRTG), profit-making entities, and consulting businesses. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation in and financial support from the U.S. industry. For-profit entities are also eligible but may not use program funds to conduct private business, promote private self-interests, supplement the costs of normal sales activities or promote their own products or services beyond specific uses approved by CCC in a given project.

U.S. market development cooperators and SRTGs may seek funding to address priority, market specific issues and to undertake activities not suitable for funding under other CCC marketing programs, *e.g.,* the Foreign Market Development Cooperator (Cooperator) Program and the Market Access Program (MAP). Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. *Cost Sharing:* No private sector proposal will be considered without the element of cost-share from the applicant and/or U.S. partners. The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. There is no minimum or maximum amount of cost-share, though the range in recent successful proposals has been between 35 and 75 percent. The degree of commitment to a proposed project, represented by the amount and type of private funding, is used in determining which proposals will be approved for funding. Cost-share may be actual cash invested or professional time of staff assigned to the project. Proposals for which private industry is willing to commit cash, rather than in-kind contributions such as staff resources, will be given priority consideration.

Cost-sharing is not required for proposals from U.S. Government agencies, but is mandatory for all other eligible entities, even when they may be party to a joint proposal with a U.S. Government agency. Contributions from USDA or other U.S. Government agencies or programs may not be counted toward the stated cost-share requirement of other applicants. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost-share requirement, but may be counted in the total cost of the project.

3. *Other:* Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

IV. Application and Submission Information

1. *Address To Request Application Package:* EMP applicants have the opportunity to utilize the Unified Export Strategy (UES) application process, an online system which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of the market development programs administered by FAS.

Organizations are encouraged to submit their application to FAS through the UES application Internet Web site. However, applicants are not required to use the UES format. The Internet-based format reduces paperwork and expedites the FAS processing and review cycle. Applicants planning to use the on-line UES system must contact the Program Operations Division at (202) 720–4327 to obtain site access information, including a user ID and password. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html.* A help file is available to assist applicants with the process. Applicants using the online system should also provide a printed or e-mailed version of each proposal (using Word or compatible format) to the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

Applicants electing not to use the on-line system must submit: (1) two printed copies of their application to the address above; and (2) an electronic version to *emo@fas.usda.gov.*

2. *Content and Form of Application Submission:* To be considered for the EMP, an applicant must submit to the FAS information required by the EMP regulations at 7 CFR part 1486. EMP regulations and additional information are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp.*

In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711.

Applications should be no longer than ten (10) pages and include the following information:

(a) Date of proposal;

(b) Name of organization submitting proposal;

(c) Organization address, telephone and fax numbers;

(d) Tax ID number;

(e) DUNS number;

(f) Primary contact person;

(g) Full title of proposal;

(h) Target market(s);

(i) Current conditions in the target market(s) affecting the intended commodity or product;

(j) Description of problem(s), *i.e.,* constraint(s), to be addressed by the project, such as inadequate knowledge of the market, insufficient trade contacts, lack of awareness by foreign officials of U.S. products and business practices, impediments (infrastructure, financing, regulatory or other non-tariff barriers), etc.;

(k) Project objectives;

(l) *Performance measures:* Benchmarks for quantifying progress in meeting the objectives;

(m) *Rationale:* Explanation of the underlying reasons for the project proposal and its approach, the anticipated benefits, and any additional pertinent analysis;

(n) Clear demonstration that successful implementation will benefit a particular industry as a whole, not just the applicant(s);

(o) Explanation as to what specifically could not be accomplished without

Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance;

(p) Specific description of activity/activities to be undertaken;

(q) Timeline(s) for implementation of activity, including start and end dates;

(r) Information on whether similar activities are or have previously been funded with USDA resources in target country or countries (*e.g.,* under MAP and/or Cooperator programs); and

(s) Detailed line item activity budget:

—Cost items should be allocated separately to each participating organization; and

—Expense items constituting a proposed activity's overall budget (*e.g.,* salaries, travel expenses, consultant fees, administrative costs, etc.), with a line item cost for each, should be listed, clearly indicating:

(1) Which items are to be covered by EMP funding;

(2) Which by the participating U.S. organization(s); and

(3) Which by foreign third parties (if applicable).

Cost items for individual consultant fees should show calculation of daily rate and number of days. Cost items for travel expenses should show number of trips, destinations, cost, and objective for each trip. Qualifications of applicant(s) should be included as an attachment.

3. *Submission Dates and Times:* All applications must be received by 5 p.m. Eastern Daylight Time May 29, 2009 in the Program Operations Division. Applications received after this time will be considered only if funds are still available.

4. *Funding Restrictions:* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses such as indirect overhead charges, travel expenses, and consulting fees. CCC will also not reimburse unreasonable expenditures or expenditures made prior to approval of a proposal. Full details of the funding restrictions are available in the EMP regulations.

5. *Other Submission Requirements and Considerations:* All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, May 29, 2009.

All applications on compact disc (with two accompanying paper copies) and any other form of application must be received by 5 p.m. Eastern Daylight Time, May 29, 2009, at the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

V. Application Review Information

1. *Criteria:* Key criteria used in judging proposals include, among others:

—Appropriateness of the activities for the targeted market(s) and the extent to which the project identifies market barriers, *e.g.,* a fundamental deficiency in the market and/or a recent change in market conditions;

—Potential of the project to expand U.S. market share, increase U.S. exports or sales, and/or improve awareness of U.S. agricultural commodities and products;

—Quality of the project's performance measures, and the degree to which they relate to the objectives, deliverables, and proposed approach and activities;

—Justification for Federal funding;

—Overall cost of the project and the amount of funding provided by the applicant and any partners; and

—Evidence that the organization has the knowledge, expertise, ability, and resources to successfully implement the project, including, timeliness and quality of reporting on past EMP activities.

Please see 7 CFR part 1486 for additional evaluation criteria.

2. *Review and Selection Process:* All applications undergo a multi-phase review within FAS, by appropriate FAS field offices, and as needed, by the private sector Advisory Committee on Emerging Markets to determine the qualifications, quality, appropriateness of projects, and reasonableness of project budgets.

VI. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements:* Interested parties should review the EMP regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp.*

3. *Reporting.* Quarterly progress reports for all programs one year or longer in duration are required. Projects of less than 1 year generally require a mid-term progress report. Final performance reports are due 90 days after completion of each project. Content requirements for both types of reports are contained in the Project Agreement. Final financial reports are also due 90 days after completion of each project as attachments to the final reports.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *podadmin@fas.usda.gov.*

Signed at Washington, DC, on the 17th day of April 2009.

Patricia R. Sheikh,

Acting Administrator, Foreign Agricultural Service, Vice President, Commodity Credit Corporation.

[FR Doc. E9–9740 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Quality Samples Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.605.

SUMMARY: The Commodity Credit Corporation (CCC) announces it is inviting proposals for the 2010 Quality Samples Program (QSP). The intended effect of this notice is to solicit applications from eligible applicants and award funds in October 2009. QSP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All proposals must be received by 5 p.m. Eastern Daylight Time, May 29, 2009. Applications received after this date will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *podadmin@fas.usda.gov.* Information is also available on the FAS Web site at

http://www.fas.usda.gov/mos/programs/QSP.asp.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: QSP is authorized under Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Purpose: QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities.

QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement for the sample purchase price, the cost of transporting the samples domestically to the port of export, and then to the foreign port or point of entry. Transportation costs from the foreign port or point of entry to the final destination will not be eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, for example, inspection or documentation fees. Although providing technical assistance is required for all projects, CCC will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

General Scope of QSP Projects: QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination.

As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product, that is, the product resulting from further processing, substantial transformation, or a technical seminar, may be provided to end-use consumers to demonstrate to importers consumer preference for that end product; and
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (*e.g.,* not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and audiences who:

- Have not previously purchased the U.S. commodity that will be transported under QSP;
- Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity;
- Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity (*e.g.,* because of improper specification, blending, formulation, sanitary, or phytosanitary issues);
- Are interested in testing or demonstrating the benefits of the U.S. commodity; or
- Need technical assistance in processing or using the U.S. commodity.

II. Award Information

Under this announcement, the number of projects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised of technical preparation seminars, that is, projects that do not include further processing or substantial transformation, will be limited to $15,000 of QSP reimbursement as these projects require smaller samples. Financial assistance will be made available on a reimbursement basis only; and cash advances will not be made available to any QSP participant.

All proposals will be reviewed against the evaluation criteria contained herein and funds will be awarded on a competitive basis. Funding for successful proposals will be provided through specific agreements between the applicant and CCC. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project.

III. Eligibility Information

1. Eligible Applicants: Any United States private or Government entity with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups (SRTGs), and profit-making entities.

2. Cost Sharing: FAS considers the applicant's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

IV. Application and Submission Information

1. Address to Request Application Package: Organizations are encouraged to submit their QSP applications to FAS through the Unified Export Strategy (UES) application Internet Web site. The UES allows applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding and recommendations for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

Applicants planning to use the Internet-based system must contact the FAS/Program Operations Division at (202) 720–4327 to obtain Web site access information. The Internet-based application, including a help file that contains step-by-step instructions, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

The FAS highly recommends applying via the Internet-based application as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. However, applicants also have the option of submitting an electronic version of their application to the FAS on compact disc along with two paper copies. Organizations that choose to

submit applications on compact disc can obtain the application format at the following URL address: *http://www.fas.usda.gov/mos/programs/qsp_appl.html* or by contacting the Program Operations Division at (202) 720–4327.

2. Content and Form of Application Submission: To be considered for QSP, an applicant must submit to FAS information detailed in this notice. Additionally, in accordance with the Office of Management and Budget's policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711. Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

FAS recommends that proposals contain, at a minimum, the following:

(a) *Organizational information, including:*

- Organization's name, address, Chief Executive Officer (or designee), Federal Tax Identification Number (TIN), and DUNS number;
- Type of organization;
- Name, telephone number, fax number, and e-mail address of the primary contact person;
- A description of the organization and its membership;
- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing an appropriate trade/technical assistance component;

(b) *Market information, including:*

- An assessment of the market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share (historic and goals) for 2003–2009;

(c) *Project information, including:*

- A brief project title;
- Amount of funding requested;
- A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2010–2012, which will be used to measure the effectiveness of the project, a benchmark performance measure for 2008, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;
- A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and its end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);
- A sample description (*i.e.,* commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);
- An itemized list of all estimated costs associated with the project for which reimbursement will be sought;
- Beginning and end dates for the proposed project; and
- The importer's role in the project regarding handling and processing the commodity sample.

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash and goods and services.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time, May 29, 2009. Applications received after this date will be considered only if funds are still available.

4. Funding Restrictions: Proposals that request more than $75,000 of CCC funding for individual projects will not be considered. Projects comprised of technical preparation seminars will be limited to $15,000 in QSP funding. CCC will not reimburse expenditures made prior to approval of a proposal or unreasonable expenditures.

5. Other Submission Requirements: All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, May 29, 2009.

All applications on compact disc (with two accompanying paper copies) and any other form of application must be received by 5 p.m. Eastern Daylight Time, May 29, 2009, at the following address:

Hand Delivery (including FedEx, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available QSP funds.

FAS will use the following criteria in evaluating proposals:

- The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;
- The extent to which the proposal is targeted to a market in which the United States is generally competitive;
- The potential for expanding commercial sales in the proposed market;
- The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;
- The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;
- The amount of reimbursement requested and the organization's willingness to contribute resources, including cash, goods and services of the U.S. industry and foreign third parties; and
- How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Proposals will be evaluated by the applicable FAS Commodity Branches in the Cooperator Programs Division. The Commodity Branches will review each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs.

2. Anticipated Announcement Date: Announcements of funding decisions for QSP are anticipated during October 2009.

VI. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of QSP funding and any cost-share contribution requirements.

2. Administrative and National Policy Requirements: The agreements will

incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of the effective date of agreement), compliance with cargo preference requirements (shipment on U.S. flag vessels, as required), compliance with the Fly America Act requirements (shipment on U.S. air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement.

QSP agreements are subject to review and verification by the FAS Compliance, Security and Emergency Planning Division. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

3. *Reporting:* A written evaluation report must be submitted within 90 days of the expiration of each participant's QSP agreement. Evaluation reports should address all performance measures that were presented in the proposal.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture by hand delivery or courier at: Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, by phone: (202) 720–4327, by fax: (202) 720–9361, or by e-mail: *podadmin@fas.usda.gov.*

Signed at Washington, DC, on the 17th of April 2009.

Patricia R. Sheikh,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E9–9695 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Market Access Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.601.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2010 Market Access Program (MAP). The intended effect of this notice is to solicit applications from eligible applicants and award funds in October 2009. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, May 29, 2009. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *podadmin@fas.usda.gov*. Information is also available on the FAS Web site at *http://www.fas.usda.gov/mos/programs/map.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The MAP is authorized under Section 203 of the Agricultural Trade Act of 1978, as amended. MAP regulations appear at 7 CFR part 1485.

Purpose: The MAP is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis, and applications will be reviewed against the evaluation criteria contained herein and in the MAP regulations. All U.S. agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

II. Award Information

Under the MAP, the CCC enters into agreements with eligible participants to share the cost of certain overseas marketing and promotion activities. MAP participants may receive assistance for generic or brand promotion activities. For generic activities, funding priority is given to organizations that have the broadest possible producer representation of the commodity being promoted and that are nationwide in membership and scope. Only small companies, U.S. agricultural trade organizations, nonprofit state regional trade groups, nonprofit U.S. agricultural cooperatives, and state agencies can participate in the brand program. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. *Eligible Applicants:* To participate in the MAP, an applicant must be a nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (SRTGs), a nonprofit U.S. agricultural cooperative, or a State agency. A small-sized U.S. commercial entity may participate through a MAP participant.

2. *Cost Sharing:* To participate in the MAP, an applicant must agree to contribute resources to its proposed promotional activities. The MAP is intended to supplement, not supplant, the efforts of the U.S. private sector. In the case of generic promotion, the contribution must be at least 10 percent of the value of resources provided by CCC for such generic promotion. In the case of brand promotion, the contribution must be at least 50 percent of the total cost of such brand promotion.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of

activities. The MAP regulations, in section 1485.13(c), provide detailed discussion of eligible and ineligible cost-share contributions.

3. *Other:* Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance, and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. *Address to Request Application Package:* Organizations are encouraged to submit their MAP applications to FAS through the Unified Export Strategy (UES) application Internet Web site. The UES allows interested applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding and recommendations for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

Applicants planning to use the Internet-based system must contact the FAS/Program Operations Division at (202) 720–4327 to obtain Web site access information. The Internet-based application, including a help file that contains step-by-step instructions, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

The FAS highly recommends applying via the Internet-based application as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. However, applicants also have the option of submitting an electronic version of their application to FAS on compact disc along with two paper copies. Organizations that choose to submit applications on compact disc can obtain the application format by contacting the Program Operations Division at (202) 720–4327.

2. *Content and Form of Application Submission:* To be considered for the MAP, an applicant must submit to the FAS information required by the MAP regulations in section 1485.13. In addition, in accordance with the Office of Management and Budget's policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs including the Foreign Market Development Cooperator (Cooperator) program, the Emerging Markets Program, the Quality Samples Program, and the Technical Assistance for Specialty Crops program. Any organization that is not interested in applying for the MAP, but would like to request assistance through one of the other programs mentioned, should contact the Program Operations Division at (202) 720–4327.

3. *Submission Dates and Times:* All applications must be received by 5 p.m. Eastern Daylight Time, May 29, 2009. All MAP applicants, regardless of the method of submitting an application, must also submit by the application deadline, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G). Applications or certifications received after this date will not be considered.

4. *Funding Restrictions:* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC also will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the MAP regulations in section 1485.16.

5. *Other Submission Requirements and Considerations:* All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, May 29, 2009. Signed certification statements also must be received by that time at the address listed below.

All applications on compact disc (with two accompanying paper copies and a signed certification statement) and any other form of application must be received by 5 p.m. Eastern Daylight Time, May 29, 2009, at the following address:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

V. Application Review Information

1. *Criteria and Review Process:* Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review:

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at sections 1485.12 and 1485.13 of the MAP regulations. Applications that meet the requirements then will be further evaluated by the appropriate Commodity Branch in FAS' Cooperator Programs Division. The Commodity Branch will review each application against the criteria listed in section 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review:

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among the applicants. Applicants will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (2007–2010) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities) compared to;
- The applicant's 4-year average share (2007–2010) of the funding level for all MAP participants.

(b) Past Performance (30)

- The 3-year average share (2006–2008) of the value of exports promoted by the applicant compared to;
- The applicant's 2-year average share (2008–2009) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program, the 2-year average share (2008–2009) of Cooperator marketing plan budgets.

(c) Projected Export Goals (15)

- The total dollar value of projected exports promoted by the applicant for 2010 compared to;
- The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

- Actual exports for 2008 as reported in the 2010 MAP application compared to;

• Past projections of exports for 2008 as specified in the 2008 MAP application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total MAP funds available and then multiplied by each weight factor as described above to determine the amount of funds allocated to each applicant.

2. *Anticipated Announcement Date:* Announcements of funding decisions for the MAP are anticipated during October 2009.

VI. Award Administration Information

1. *Award Notices:* The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and project agreement will specify the terms and conditions applicable to the project, including the levels of MAP funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements:* Interested parties should review the MAP regulations, which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/map.asp.* Hard copies may be obtained by contacting the Program Operations Division at (202) 720–4327.

3. *Reporting:* The FAS requires various reports and evaluations from MAP participants. Reporting requirements are detailed in the MAP regulations in section 1485.20(b) and (c).

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture. *Mailing Address:* AgBox 1020, 1400 Independence Avenue, SW., Washington, DC 20250–1020. *Courier Address:* Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024. *Phone:* (202) 720–4327, *fax:* (202) 720–9361, *e-mail: podadmin@fas.usda.gov.*

Signed at Washington, DC, on the 17th of April 2009.

Patricia R. Sheikh,

Acting, Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E9–9733 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Household Water Well System Grant Program Announcement of Application Deadlines and Funding

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: The United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) announces the availability of $993,000 in grant funds for the Household Water Well System (HWWS) Grant Program for fiscal year (FY) 2009, to be competitively awarded. A notice of funding availability and solicitation of applications was published in the November 20, 2008 **Federal Register**, 73 FR 70315, prior to passage of a final appropriations bill identifying a definite funding amount. For information and other requirements on how to apply for HWWS Grant Program funds, please refer to the November 20, 2008 issue of the **Federal Register**.

The HWWS Grant Program is authorized under Section 306E of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926e. The CONACT authorizes USDA Rural Development to make grants to qualified private nonprofit organizations to establish lending programs for household water wells. The non-profit organizations will use the grants to make loans to individual homeowners to construct or upgrade a household water well system for an existing home. The organizations must contribute an amount equal to at least 10 percent of the grant request to capitalize the loan fund. Applications may be submitted in paper or electronic format. The HWWS Grant Program regulations are contained in 7 CFR part 1776.

DATES: The deadline for completed applications for a HWWS grant is May 31, 2009. Applications in either paper or electronic format must be postmarked or time-stamped electronically on or before the deadline. Late applications will be ineligible for grant consideration.

ADDRESSES: Submit electronic grant applications through *http://www.grants.gov* (Grants.gov), following the instructions on that Web site. Submit completed paper applications to the U.S. Department of Agriculture, Rural Utilities Service, Mail Stop #1570, Room 2233–S, 1400 Independence Ave., SW., Washington, DC 20250–1570. Applications should be marked ''Attention: Water and Environmental Programs.'' Application guides and materials for the HWWS Grant Program may be obtained electronically through *http://www.usda.gov/rus/water/index.htm.* Call (202) 720–9589 to request paper copies of application guides and materials from the Water and Environmental Programs staff.

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, U.S. Department of Agriculture, Rural Development Programs, Water and Environmental Programs, telephone: (202) 720–1937, fax: (202) 690–0649, e-mail: *cheryl.francis@wdc.usda.gov.*

Dated: April 20, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–9728 Filed 4–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Circle One Global, Inc. of Cuthbert, Georgia, an exclusive license to U.S. Patent No. 7,361,499, ''Non-Aflatoxigenic Aspergillus Flavus Isolates'', issued on April 22, 2008, and to U.S. Patent Application Serial No. 11/848,866, ''Water Dispersible Formulation for Delivery of Biocontrol Fungi to Reduce Aflatoxin'', filed on August 31, 2007.

DATES: Comments must be received May 29, 2009.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Circle One Global, Inc. of Cuthbert, Georgia has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The

prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E9–9721 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Consultative Group To Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice; extension for receiving nominations.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture (USDA) is extending the period for receiving applications from individuals to serve as a non-government member of the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products (Consultative Group). On June 18, 2008, the Food, Conservation, and Energy Act of 2008 (The Act), also known as the 2008 Farm Bill, was enacted. The Act provides for the creation of the Consultative Group.

DATES: Applications must be received prior to 5 p.m. on May 13, 2009.

ADDRESSES: You may submit applications by any of the following methods:

—*USDA:* Applications should be sent by mail to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250; by hand (including DHL, FedEx, UPS, etc.) to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4133–S, 1400 Independence Ave., SW, Washington, DC 20250; by e-mail to: *kathryn.ting@fas.usda.gov;* or by fax to (202) 720–0340.

—*U.S. Department of Labor (DOL):* Applications should be sent by mail or by hand (including DHL, FedEx, UPS, etc.) to the Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5317, Washington, DC 20210; by e-mail to: *castro.charita@dol.gov;* or by fax to (202) 693–4830.

FOR FURTHER INFORMATION CONTACT: The Office of Negotiations and Agreements by fax to (202) 720–0340; by e-mail addressed to *kathryn.ting@fas.usda.gov;* or by mail addressed to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products was established by section 3205 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). Interested parties are invited to submit applications for membership in the Consultative Group to USDA or DOL as specified in the Submission of Applications paragraph below.

Duties

The Consultative Group will develop recommendations relating to a standard set of practices for independent, third-party monitoring and verification for the production, processing, and distribution of agricultural products or commodities to reduce the likelihood that agricultural products or commodities imported into the United States are produced with the use of forced labor or child labor. Recommendations developed by the Consultative Group will be submitted to the Secretary of Agriculture by June 18, 2010. Thereafter, the Consultative Group will continue to advise the Secretary as necessary.

Membership

As required under section 3205(d) of the Act, the Consultative Group will be composed of not more than 13 members, including two officials from USDA, one of whom will serve as the chairperson; the Deputy Under Secretary for International Affairs, DOL; and one representative from the Department of State. The Consultative Group will also include:

- Three members to represent private agriculture-related enterprises, which may include retailers, food processors, importers, and producers, of whom at least one member shall be an importer, food processor, or retailer who utilizes independent, third-party supply chain monitoring for forced labor or child labor;
- Two members to represent institutions of higher education and research institutions, as determined appropriate by the Bureau of International Labor Affairs, DOL;
- One member to represent an organization that provides independent, third-party certification services for labor standards for producers or importers of agricultural commodities or products; and
- Three members to represent organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 that have expertise on the issues of international child labor and do not possess a conflict of interest associated with establishment of the guidelines issued under section 3205(c)(2) of the Act, as determined by the Bureau of International Labor Affairs, DOL, including representatives from consumer organizations and trade unions, if appropriate.

Terms of Service

- Members shall serve through December 31, 2012;
- The Consultative Group shall meet no fewer than four times per year in person in Washington, DC or through alternative media;
- The Consultative Group shall make its recommendations to the Secretary of Agriculture no later than June 18, 2010. Thereafter, the Consultative Group submit annual reports to the Secretary through December 31, 2012;
- Members of the Consultative Group shall serve without compensation;
- Travel and lodging expenses will be borne by each member; and
- Meetings of the Consultative Group will be closed to the public.

Submission of Applications

- Membership in the Consultative Group is open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation.
- All applications must include the following information:

(1) Brief summary explaining the candidate's qualifications to serve as a member of the Consultative Group;

(2) Statement specifying the non-government membership category for which the candidate is best qualified (private agriculture-related enterprises, higher education and research institutions, etc.);

(3) Resume;

(4) Contact information of candidate; and

(5) Completed copy of form AD–755, ''Advisory Committee Membership Background Information.''

Applications from candidates of private agriculture-related enterprises and independent, third-party

certification services must be sent to the USDA contact listed above. Applications from candidates of higher education, research institutions, and 501(c)(3) organizations must be sent to the DOL contact listed above.

Member Selection

The requested applications will assist U.S. Government agencies in making appointments to the Consultative Group. Other qualified individuals may be considered in addition to those who submit applications in response to this notice.

Signed at Washington, DC, on April 17, 2009.

Patricia R Sheikh,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. E9–9727 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for New Construction in Fiscal Year 2009

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit initial applications for Section 515 Rural Rental Housing (RRH) loan funds, including applications for the nonprofit set-aside for eligible nonprofit entities, the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act), and the set-aside for Empowerment Zones and Enterprise Communities (EZ/ECs) and Rural Economic Area Partnership (REAP) zones, and a designated reserve for States with rental assistance programs. This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

DATES: The deadline for receipt of all applications in response to this NOFA is 5 p.m., local time for each United States Department of Agriculture (USDA) Rural Development State Office on June 29, 2009. The initial application closing deadline is firm as to date and hour. USDA Rural Development will not consider any initial application that is received after the closing deadline. Applicants intending to mail initial applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the USDA Rural Development State Office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the initial application package. USDA Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of USDA Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3618, TDD (334) 279–3495, Van McCloud.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Deborah Davis.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8768, TDD (602) 280–8706, Carol Torres.

Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3063, Greg Kemper.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5821, TDD (530) 792–5848, Debra Moretton.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, TDD (302) 857–3585, Pat Baker.

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.

Hawaii State Office, (Services all Hawaii, American Samoa, Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, TDD (808) 933–8321, Donald Estes.

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Miriam Haylett.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, Stephen Dye.

Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Heather Honkomp.

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–4590, Arlene Nunes.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Julie Putnam.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7812, TDD (651) 602–7830, Nancy Schmidt.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Colleen James.

Montana State Office, 900 Technology Blvd. Suite B, Bozeman, MT 59718, (406) 585–2515, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5734, TDD (402) 437–5093, Linda Anders.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222 (ext. 25), TDD (775) 885–0633, Angilla Denton.

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6050, TDD (603) 229–0536, Robert McCarthy.

New Jersey State Office, 5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Susan Ellzey.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, Beverly Casey.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2409, TDD (614) 255–2554, Cathy Simmons.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan S. Graves.

Oregon State Office, 1201 NE Lloyd Blv., Suite 801, Portland, OR 97232, (503) 414–3325, TDD (503) 414–3387, Sherryl Gleason.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Martha Eberhart.

Puerto Rico State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Lourdes Colon.

Rhode Island, Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Don Harris.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9765, TDD (254) 742–9712, Scooter Brockette.

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4325, TDD (801) 524–3309, Janice Kocher.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6021, TDD (802) 223–6365, Heidi Setien.

Virgin Islands, Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.

Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730, TDD (360) 704–7760, Robert Lund.

Western Pacific Territories, Served by Hawaii State Office.

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4872, TDD (304) 284–4836, David Cain.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7676, TDD (715) 345–7614, Cheryl Halverson.

Wyoming State Office, PO Box 11005, Casper, WY 82602, (307) 233–6715, TDD (307) 233–6733, Alan Brooks.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Sue Harris-Green, Deputy Director, Multi-Family Housing Preservation and Direct Loan Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–1660 (voice) (this is not a toll free number), (800) 877–8339 (TDD–Federal Information Relay Service), or via e-mail, *Susie.Harris@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Programs Affected

The RRH program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949, as amended, (42 U.S.C. 1485) provides USDA Rural Development with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, which may include a faith-based or community organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with USDA Rural Development financing. It is anticipated that RA will not be available for new construction in Fiscal Year (FY) 2009.

B. Distribution Methodology

The total amount available for FY 2009 for section 515 is $69,511,661.80, of which $13,902,332 is available for new construction as follows:

Non-Restricted	$1,904,373
Set-aside for nonprofits	5,237,026
Set-aside for Underserved Counties and Colonias	2,856,560
Set-aside EZ, EC, and REAP Zones	2,000,000
Designated Reserve for States with Rental Assistance Programs	1,904,373

C. Section 515 New Construction Funds

For Fiscal Year 2009, the Administrator has determined that it would not be practical to allocate funds to States because of funding limitations; therefore, Section 515 new construction funds will be distributed to *States* based on a National competition, as follows:

1. Applications will be divided by State. States will accept, review, score, and rank requests in accordance with 7 CFR Section 3560.56. The scoring factors are:

(a) The presence and extent of leveraged assistance for the units that will serve USDA Rural Development income-eligible tenants at basic rents as defined in 7 CFR 3560.11, comparable to those rents if USDA Rural Development provided full financing, computed as a percentage of the USDA Rural Development total development cost (TDC). Loan proposals that include leveraged/secondary funds which have been requested but have not yet been

committed will be processed as follows: The proposal will be scored based on the requested secondary funds, provided (1) the applicant includes evidence of a filed application for the funds; and (2) the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. Points will be awarded in accordance with the following table. Percentages will be rounded to the next higher whole number. (0 to 20 points)

Percentage of leveraging	Points
75 or more	20
70–74	19
65–69	18
60–64	17
55–59	16
50–54	15
45–49	14
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
15–19	8
10–14	7
5–9	6
0–4	0

(b) The units to be developed are in a colonia, tribal land, EZ, EC, or Rural Economic Area Partnership (REAP) community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for multifamily housing. (20 points)

(c) Pursuant to 7 CFR Section 3560.56 (c)(1)(iii), this year there will be a National Office initiative whereby preference points will be awarded to loan requests that meet the selection criteria as follows: in *State*s where USDA Rural Development has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the *State* to provide *State* financial resources (*State* funds, *State* RA, HOME funds, Community Development Block Grant (CDBG) funds, or Low-Income Housing Tax Credits (LIHTC)) for USDA Rural Development proposals; or where the *State* provides preference or points to USDA Rural Development proposals in awarding such *State* resources, 20 points will be provided to loan requests that include such *State* resources in an amount equal to at least 5 percent of the TDC. Native American Housing and Self Determination Act (NAHASDA) funds may be considered a *State* resource if the tribal plan for NAHASDA funds contains provisions for partnering with USDA Rural Development for multi-family housing. The applicant can contact its USDA Rural Development *State* office on whether a particular *State* falls into this initiative.

(d) The loan request includes donated land meeting the provisions of 7 CFR Section 3560.56(c)(1)(iv). (5 points)

(e) Pursuant to 7 CFR 3560.56(c)(1)(iii), in an effort to implement USDA's nationwide initiative to promote renewable energy and energy conservation, USDA Rural Development has adopted incentives for energy generation and energy conservation. Participation in these nationwide initiatives is voluntary, but is strongly encouraged.

Energy Generation. Applicants will be awarded points if the proposal requires the installation of energy generation systems, which will be funded by a third party. The proposal must include an overview of the energy generation system being proposed. Evidence that an energy generation system has been funded by a third party and that it has a quantifiable positive impact on reducing energy consumption will be required. (10 points)

Energy Conservation. Applicants will be awarded points to construct (or substantially rehabilitate) housing that earns the *Energy Star* label for new residential construction. Units earning the *Energy Star* label must be independently verified to meet guidelines for energy efficiency as set by the U.S. Environmental Protection Agency. All procedures used in verifying a unit for the *Energy Star* label must comply with national Home Energy Ratings System (HERS) guidelines. *Energy Star* guidelines for residential construction apply to homes that are three stories or less and single or low-rise multi-family residential buildings.

The Applicant will include in the summary an explanation of how it plans to incorporate *Energy Star.* Construction plans pertaining to energy efficiency must be developed with, reviewed, and accepted by a HERS certified rater, the contractor, and the owner. Progress inspections must be made at appropriate times by a HERS certified rater to ensure that the housing is being constructed or rehabilitated according to *Energy Star* specifications. In order to receive final payment, applicants will be required to submit the appropriate rating reports from the HERS rater to USDA Rural Development as evidence that the housing has been constructed to meet the standards of *Energy Star.* In the event that housing does not meet *Energy Star* guidelines for new residential construction, USDA Rural Development shall, at its discretion, deduct 5 points from future funding proposals. For further information about *Energy Star,* see *http://www.energystar.gov* or call the following toll-free numbers: (888) 782–7937 or (888) 588–9920 (TTY). (5 points)

(f) Pursuant to 7 CFR 3560.56(c)(1)(iii), this year there will be a National Office initiative whereby points will be awarded if the property is constructed in a Presidentially declared disaster area. For further information on Presidentially declared disaster areas, see *http://www.rurdev.usda.gov/rd/disasters/.* (10 points)

2. The National Office will rank all requests nationwide and distribute funds to *State*s from any FY 2009 appropriations to *State*s in rank order, within funding limits. If insufficient funds remain for the next ranked proposal, USDA Rural Development will select the next ranked proposal that falls within the remaining levels. Point score ties will be handled in accordance with 7 CFR 3560.56(c)(2).

D. Applications for New Construction RA

For FY 2009, $2,030,000 is available for New Construction rural rental assistance. The market study for proposals must clearly demonstrate a need and demand for the units by prospective tenants at income levels that can support the proposed rents. The proposed units must offer amenities that are typical for the market area at rents that are comparable to conventional rents in the market for similar units.

E. Set-asides

Loan requests will be accepted for the following set-asides:

1. Nonprofit set-aside. An amount of $5,237,026 has been set aside for nonprofit applicants as defined in 7 CFR Section 3560.11. All loan proposals must be in designated places in accordance with 7 CFR Section 3560.57. A *State* or jurisdiction may fund one proposal from this set-aside, which cannot exceed $1 million. A *State* could get additional funds from this set-aside if any funds remain after funding one proposal from each participating *State.* The National Office will inform the *State* offices if additional funds are available. If additional set-aside funds remain, each *State's* second highest scoring proposal will be funded. This method will also be used if additional funds are available to fund more than one loan proposal per *State* where there are insufficient funds to fund a second or more proposal for each *State.* If there are insufficient funds to fund one loan

request from each participating *State,* selection will be determined nationally by point score on each *State's* highest ranking proposal. This method will also be used if additional funds are available to fund more than 1 loan proposal per *State* where there are insufficient funds to fund a second or more proposal for each *State*. If there are any funds remaining, they will be handled in accordance with 42 U.S.C. 1485(w)(3). Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

(a) Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;

(b) Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;

(c) Has among its purposes the planning, development, or management of low-income housing or community development projects; and

(d) Is not affiliated with or controlled by a for-profit organization.

2. Underserved counties and colonias set-aside. An amount of $2,856,560 has been set-aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949, as amended.

3. EZ, EC, and REAP Set-aside. An amount of $2,000,000 has been set-aside to develop units in an EZ, EC, or REAP zone. Loan requests that are eligible for this set-aside are also eligible for regular Section 515 funds. Thus, requests for this set-aside exceed available funds, selection will be made in accordance with 7 CFR Section 3560.56(c) and ranking as described earlier in this NOFA.

4. $1,904,373 is available nationwide in a reserve for *State*s with viable *State* RA programs. In order to participate, *State*s are to submit specific written information about the State RA program, *i.e.,* a memorandum of understanding, documentation from the provider, etc., to the National Office.

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a *State's* average total development costs exceed the national average by 50 percent or more.

B. No *State* may receive more than 20% of the total available for new construction, including set-aside funds.

III. Rental Assistance (RA)

In addition to the State Matching RA program as described in Section I.E. of this Notice and subject to its availability, new construction RA will be held in the National Office for use with section 515 Rural Rental Housing New Construction loans. In addition, preferential consideration for RA will be given to projects: (1) Where a subsidy for rent is provided from within the State jurisdiction; and (2) where the least amount of RA is needed to make the project feasible, calculated as a percentage. New construction RA may not be used in conjunction with a transfer or subsequent loan for repairs or rehabilitation, preservation purposes or for inventory property sales.

IV. Application Process

All initial applications for section 515 new construction funds must be filed with the appropriate Rural Development State Office and must meet the requirements of 7 CFR 3560.56, as well as comply with the provisions of Section V. of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

V. Application Submission Requirements

A. Each application shall include the information, documentation, forms and exhibits required by 7 CFR 3560.56, as well as comply with the provisions of this NOFA.

Information required in initial application package:

I. To establish applicant eligibility:

A. Form SF 424, Application for Federal Assistance.

B. Form RD 400–4, Assurance Agreement.

C. Form RD 410–9, Statement Required by the Privacy Act (for individuals only).

D. Form HUD 2530, Previous Participation Certification.

E. Current (within *6 months*) financial statements with the following paragraph certified by someone with the legal authority to do so:

''I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.''

F. Check for $28 from individual applicants and $40 from corporate applicants made out to United States Department of Agriculture. This will be used to pay for credit reports obtained by the USDA Rural Development.

G. Statement signed by applicants that they will pay any cost overruns.

H. Proposed limited partnership agreement and certificates of limited partners, if applicable. (USDA Rural Development requirements should be contained in one section of the agreement and their location identified by the applicants or their attorney in a cover sheet.)

I. If a nonprofit organization:

1. Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.

2. Purpose statement, including the provision of low income housing.

3. Evidence of organization under *State* and local law, or copies of pending applications.

4. List of Board of Directors.

J. If a limited liability company, proposed operating agreement and the authorized agent who has the authority to complete the loan application and loan closing documents.

K. If a trust, organizational documents and attorney opinion letter that the trust is validly formed and identifying the authorized representative to act on the trust's behalf.

II. To Establish Project Feasibility:

A. Market feasibility documentation: Either a market study or a market survey, as appropriate.

B. Type of project and structures proposed (total number of units by bedroom size, size of each unit type, size and type of other facilities).

C. Schematic drawings:

1. Site plan, including contour lines;

2. Floor plan of each living unit type and other spaces, such as laundry facilities, community rooms, stairwells, etc.;

3. Building exterior elevations;

4. Typical building exterior wall section; and

5. Plot plan.

D. Description and justification of related facilities, schedule of separate charges for related facilities. Related facilities include community rooms that can be used by tenants and management at no additional charge to the tenants.

E. Type and method of construction (owner builder, negotiated bid, or contractor method).

F. Statement of estimated costs (Form RD 1924–13, Estimate and Certificate of Actual Costs).

G. Statement of proposed management.

H. Congregate services package/plan (if applicable).

I. Statement of support from other Government services providers to the project (congregate only).

J. Response to the Uniform Relocation Assistance Act (if applicable).

III. To Establish Project Financing:

A. Statement of budget and cash flow (applicant completes Form RD 3560–7, Multiple Family Housing Project Budget/Utility Allowance), including type of utilities and utility allowance, if applicable and contribution to reserves.

B. Congregate services charges (if applicable).

C. Status of efforts to obtain leveraged funds.

D. Proposed construction financing (interim or multiple advance; if interim financing, letter of interest from intended lender).

IV. Environmental and Site Information:

A. Environmental information (applicant completes Form RD 1940–20, Request for Environmental Information).

B. Evidence of compliance with Executive Order 12372 (A–95) (if applicable) Form SF 424 is sent to a clearinghouse for intergovernmental review.

C. Provide an American Society for Testing and Materials (ASTM) Phase I Environmental Site Assessment to cover environmental due diligence. The ASTM Phase I Environmental Site Assessment will be obtained from the company or person who performs the environmental site assessment.

D. Map showing location of community services such as schools, hospitals, fire and police departments, shopping malls and employment centers.

E. Evidence of submission of project description to State Housing Preservation Office with request for comments.

F. The applicant's comments regarding relevant offsite conditions.

G. The applicant's explanation of any proposed energy efficiency components.

Forms to be included in initial application package may be found at the following links:

1. Form SF 424, Application for Federal Assistance, which can be found online at *http://apply07.grants.gov/apply/forms/sample/SF424–V2.0.pdf*;

2. Form RD 1940–20, Request for Environmental Information, which can be found online at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD1940–0020_060400V01.pdf;*

3. Form RD 3560–7, Multiple Family Housing Project Budget/Utility Allowance, which can be found online at *https://formsadmin.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD3560–0007_060500V01.pdf;*

4. Form HUD 2530, Previous Participation Certification, which can be found online at *http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf*

5. Form RD 1924–13, Estimate and Certificate of Actual Costs, which can be found online at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD1924–0013.pdf*;

6. Form RD 400–4, Assurance Agreement, which can be found online at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD0400–0004_970300V01.pdf*;

7. Form RD 410–9, Statement Required by the Privacy Act (for individuals only), which can be found online at *https://formsadmin.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD0410–0009.pdf*;

Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development *State* office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application. All applicants will receive a letter notifying them of their selection or rejection. Applicants that are selected will be given instructions on how to proceed, following the procedures established in 7 CFR part 3560. Applicants that are rejected will be notified and given appeal rights under 7 CFR part 11.

B. Applicants are advised to contact the Rural Development *State* office serving the place in which they desire to submit an application for the following:

1. Questions pertaining to the application process; and

2. List of designated places for which applications for new section 515 facilities may be submitted.

VI. Areas of Special Emphasis or Consideration

Pursuant to 7 CFR 3560.56(c)(1)(iii), USDA Rural Development encourages the use of funding from other sources in conjunction with Rural Development loans through its national office initiative, outlined in Section I.C.1(c) of this Notice.

VII. Non-Discrimination Statement

U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: April 14, 2009.

Thomas E. Hannah,

Acting Administrator, Rural Housing Service.

[FR Doc. E9–9742 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–09–0018; FV09–996–1 N]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection as Board members for terms of office ending June 30, 2011, and June 30, 2012. Selected nominees sought by this action would fill two currently vacant industry representative positions for the remainder of terms of office ending June 30, 2011, and six producer and industry representatives who are currently serving for the term of office that ends June 30, 2009. The Board consists of 18 members representing producers and industry representatives.

DATES: Written nominations must be received on or before May 29, 2009.

ADDRESSES: Nominations should be sent to Dawana J. Clark, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737: Telephone: (301) 734–5247; Fax: (301) 734–5275; e-mail: *Dawana.Clark@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three

producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term ''peanut industry representatives'' includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would fill two currently vacant industry representative positions for the remainder of terms of office ending June 30, 2011, one from the Southeast and one from the Virginia-Carolina peanut producing regions. Nominees sought by this action would also replace six additional positions, one producer and one industry member from each peanut producing region who served for the term of office that ends June 30, 2009. New members filling the two current vacancies would serve the remaining 3-year term of office ending June 30, 2011. New members filling the positions expiring on June 30, 2009, would serve for a 3-year term of office ending June 30, 2012.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mrs. Clark at the address provided in the ''Addresses'' section above. Copies of this form may be obtained at the Internet site: *http://www.ams.usda.gov/fv* (below the ''See Also'' section, select ''More'' then select ''Peanut Quality Standards'' and below ''News'' select Background Information Form), or from Mrs. Clark. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Dated: April 20, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–9377 Filed 4–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability: Rural Development Voucher Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of Rural Development Voucher Program Availability.

SUMMARY: This notice informs the public that the U.S. Department of Agriculture (USDA) has established a demonstration Rural Development Voucher Program, as authorized under Section 542 of the Housing Act of 1949, as amended, (without regard to Section 542(b)), which is being administered by USDA. This notice informs the public that funding is now available for the Rural Development voucher program. The notice also sets forth the general policies and procedures for use of these vouchers. Rural Development Vouchers are only available to tenants of Rural Development-financed multifamily properties where the owner pays off the loan, either through prepayment or a foreclosure action prior to the loan's maturity date.

DATES: April 29, 2009.

FOR FURTHER INFORMATION CONTACT: Stephanie B.M. White, Director, Multi-Family Housing Portfolio Management Division, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0782, Washington, DC 20250–0782, telephone (202) 720–1615. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 106 of the Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009 (Pub. L. 110–329) (September 30, 2008) (Consolidated Appropriations Act, 2009) continued the level of funding and conditions until the earlier of an applicable appropriation act for fiscal year 2009 or March 6, 2009. Subsequently, the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) was enacted on March 11, 2009, and appropriated $4,965,000 to USDA for the Rural Development Voucher Program as authorized under Section 542 of the Housing Act of 1949, as amended, 42 U.S.C. 1471 *et seq.* (without regard to Section 542(b)).

The Omnibus Appropriations Act, 2009 provided that the Secretary of the U.S. Department of Agriculture shall carry out the Rural Development Voucher Program as follows:

> That of the funds made available under this heading, $4,965,000 shall be available for rural housing vouchers to any low-income household (including those not receiving Rental Assistance) residing in a property financed with a Section 515 loan which has been prepaid after September 30, 2005: *Provided further,* That the amount of such voucher shall be the difference between comparable market rent for the Section 515 unit and the tenant paid rent for such unit: *Provided further,* That funds made available for such vouchers shall be subject to the availability of annual appropriations: *Provided further,* That the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable to Section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (HUD) (including the ability to pay administrative costs related to delivery of the voucher funds).

This notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a Section 515 loan or Agency action results in a foreclosure after September 30, 2005.

Design Features of the Rural Development Voucher Program

This section sets forth the design features of the Rural Development Voucher Program, including the eligibility of families, the inspection of the units, and the calculation of the subsidy amount.

Rural Development vouchers under this part are administered by the Rural Housing Service; an Agency under the Rural Development mission area, in accordance with requirements set forth in this Notice of Funds Availability (NOFA) and further explained in, ''The Rural Development Voucher Program

Guide,'' which can be obtained by contacting any Rural Development office. Contact information for Rural Development offices can be found at *http://offices.sc.egov.usda.gov/locator/app.* These requirements are generally based on the housing choice voucher program regulations of HUD set forth at 24 CFR part 982, unless otherwise noted by this Notice.

The Rural Development Voucher Program is intended to offer protection to eligible multifamily housing tenants in properties financed through Rural Development's Section 515 Rural Rental Housing Program (515 property) who may be subject to economic hardship through prepayment of the Rural Development mortgage. When the owner of a 515 property pays off the loan prior to the loan's maturity date (either through prepayment or foreclosure action), the Rural Development affordable housing requirements and rental assistance subsidies generally cease to exist. Rents may increase, thereby making the housing unaffordable to tenants. When a prepayment occurs, whether or not the rent increases, the tenant will be responsible for the full payment of rent. The Rural Development Voucher Program applies to any 515 property where the mortgage is paid off prior to the maturity date in the promissory note and the payment occurs after September 30, 2005. This includes foreclosed properties. Tenants in foreclosed properties are eligible for a Rural Development voucher under the same conditions as properties that go through the standard prepayment process.

The Rural Development voucher will help tenants by providing an annual rental subsidy, renewable on the terms and conditions set forth herein and subject to the availability of funds, that will supplement the tenant's rent payment. This program enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance. Low-income tenants in the prepaying property are eligible to receive a voucher to use at their current rental property, or take to any other rental unit in the United States and its territories.

There are some general limitations on the use of a voucher. For instance, the rental unit must pass a Rural Development health and safety inspection, and the owner must be willing to accept a Rural Development voucher. Also, Rural Development vouchers will not be used for units in subsidized housing like Section 8 and public housing where two housing subsidies would result. The Rural Development voucher may be used for rental units in other properties financed by Rural Development, but it will not be used in combination with the Rural Development Rental Assistance program. The Rural Development voucher may not be used for the purchase of a home.

1. Family Eligibility

In order to be eligible for the Rural Development voucher under this notice, a family must (a) be residing in the Section 515 project on the date of the prepayment of the Section 515 loan or upon foreclosure by Rural Development; (b) the date of the prepayment or foreclosure must be after September 30, 2005; (c) as required by 42 U.S.C. 1436a the tenant must be a citizen, United States non-citizen national or qualified alien and will so provide proof of citizenship to Rural Development using one of the following:

Copy of U.S. Passport (unexpired or expired).

Copy of U.S. Military ID card (unexpired).

Copy of U.S. Military dependent's ID card (unexpired).

Copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal.

Copy of Certificate of U.S. Citizenship (Form N–560 or N–561).

Copy of Certificate of Naturalization (Form N–550 or N–570).

Copy of U.S. Citizen ID card (Form 1–197).

Copy of ID card for use of Resident Citizen in the United States (Form I–179).

Copy of Permanent Resident Card or Alien Registration Receipt Card with photograph (Form I–151 or I–1551).

Copy of Certification of Birth Abroad issued by the Department of State (Form FS–545 or Form DS–1350), and; (d) the family must be a low-income family on the date of the prepayment or foreclosure. A low-income family is a family whose annual income does not exceed 80 percent of the family median income for the area as defined by HUD. HUD's definition of median income can be found at *http://www.huduser.org/datasets/il/FY2008index_mfi.html.*

During the prepayment or foreclosure process, Rural Development will evaluate every tenant family to determine if it is low income. If Rural Development determines a family is low-income, immediately prior to the foreclosure or prepayment Rural Development will send the primary tenant a letter offering the family a voucher and will enclose a Voucher Obligation Request Form. If the family wants to participate in the Rural Development Voucher Program, the tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form to the local Rural Development office.

If Rural Development makes a determination that the tenant is ineligible for any reason, Rural Development will provide administrative appeal rights pursuant to 7 CFR part 11.

2. Obtaining a Voucher

Rural Development will monitor the prepayment request process or foreclosure process. During the prepayment request process or foreclosure process, Rural Development will send all tenants letters notifying them of the voucher program. As part of prepayment or foreclosure Rural Development will obtain a rent comparability study for the property *ninety days* prior to the date of prepayment or foreclosure. The rent comparability study will be used to calculate the amount of voucher each tenant is entitled to receive. All tenants will be notified of if they are eligible and their voucher calculations by Rural Development *immediately prior to* the date of prepayment or foreclosure. As previously stated, such notice will include a description of the Rural Development Voucher Program, a Voucher Obligation Request Form, and letter from Rural Development offering the tenant participation in Rural Development Voucher Program and Form HUD 52517, ''Request for Tenancy Approval.'' Once the primary tenant returns the Voucher Obligation Request Form and proof of citizenship to Rural Development office, a voucher will be issued *within 30 days.* All information necessary for a housing search, explanations of unit acceptability, and Rural Development contact information will be provided by Rural Development to the tenant at the time the voucher Obligation Form and proof of citizenship is received.

The family receiving a Rural Development voucher has an initial search period of 60 calendar days from receipt of the voucher to find a housing unit. At its discretion, Rural Development may grant one or more extensions of the initial search period for up to an additional 60 days. The maximum voucher search period for any family participating in the Rural Development Voucher Program is 120 days. If the family needs and requests an extension of the initial search period as a reasonable accommodation to make

the program accessible to a disabled family member, Rural Development will extend the voucher search period. If the Rural Development voucher remains unused after a period of 150 days from original issuance, the Rural Development voucher will become void, any funding will be cancelled, and the tenant will no longer be eligible to receive a Rural Development voucher.

3. Initial Lease Term

The initial lease term for the housing unit where the family wishes to use the Rural Development voucher must be for 1 year.

4. Inspection of Units and Unit Approval

Rural Development will inspect and determine if the housing standard is acceptable within 30 days of Rural Development receipt of the HUD Form 52517. The inspection standards currently in effect for the Rural Development Section 515 Multi-Family Housing Program apply to the Rural Development Voucher Program. Rural Development must inspect the unit and ensure that the unit meets the housing inspection standards of the program at 7 CFR 3560.103. Under no circumstances may Rural Development make voucher rental payments for any period of time prior to the date that Rural Development physically inspects the unit and determines the unit meets the housing inspection standards. In the case of properties financed by Rural Development under the Section 515 program, Rural Development may accept the results of physical inspections performed no more than one year prior to the date of receipt by Rural Development of Form HUD 52517, in order to make determinations on acceptable housing standards. Before approving a family's assisted tenancy or executing a Housing Assistance Payments contract, Rural Development must determine that the following conditions are met: (1) The unit has been inspected by Rural Development and passes the housing standards inspection or has otherwise been found acceptable as noted previously; and (2) the lease includes the HUD Tenancy Addendum. A copy of the HUD Tenancy Addendum will be provided when the tenant is informed he/she is eligible for a voucher.

Once the conditions in the above paragraph are met, Rural Development will approve the unit for leasing. Rural Development will then execute with the owner a Housing Assistance Payments (HAP) contract, Form HUD–52641. The HAP contract must be executed before Rural Development voucher payments can be made. Rural Development will use its best efforts to execute the HAP contract on behalf of the family before the beginning of the lease term. In the event that this does not occur, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term. If the HAP contract is executed during this 60-day period, Rural Development will pay retroactive housing assistance payments to cover the portion of the approved lease term before execution of the HAP contract. Any HAP contract executed after the 60-day period is untimely, and Rural Development will not pay any housing assistance payment to the owner for that period. In establishing the effective date of the voucher HAP contracts, Rural Development may not execute a housing assistance payments contract that is effective prior to the Section 515 loan prepayment.

5. Subsidy Calculations for Rural Development Vouchers

As stated earlier, if eligible the tenant will be notified of the voucher amount immediately prior to prepayment or foreclosure. The monthly housing assistance payment for the Rural Development Voucher Program is the difference between the comparable market rent for the family's former Section 515 unit and the tenant's rent contribution on the date of the prepayment. The tenant can appeal Rural Development's determination of the voucher amount through USDA's administrative appeal process, see 7 CFR part 11. The voucher amount will be based on the comparable market rent; the voucher amount will never exceed the comparable market rent at the time of prepayment for the tenant's unit if the tenant chooses to stay in-place. Also, in no event may the Rural Development voucher payment exceed the actual tenant lease rent. The amount of the voucher does not change over time or if the tenant chooses to move to a more expensive location.

6. Mobility and Portability of Rural Development Vouchers

An eligible family that is issued a Rural Development voucher may elect to use the assistance in the same project or may choose to move from the property. The Rural Development voucher may be used at the prepaid property or any other rental unit in the United States and its territories that passes Rural Development physical inspection standards, where the owner will accept a Rural Development voucher and execute a Form HUD 52641. HUD Section 8 and Federally-assisted public housing, however, is excluded from the Rural Development Voucher Program because these units are already Federally subsidized. Tenants with a Rural Development voucher would have to give up the Rural Development voucher to accept the assistance at those properties. The Rural Development voucher may be used in other properties financed by Rural Development, but it cannot be used in combination with the Rural Development RA program. Tenants with a Rural Development voucher that apply for housing in a Rural Development-financed property must choose between using the voucher or RA. If the tenant relinquishes the Rural Development voucher in favor of RA, the tenant is not eligible to receive another Rural Development voucher.

7. Term of Funding for Rural Development Vouchers

The Rural Development Voucher Program provides voucher assistance for 12 monthly payments. The voucher is issued to the household in the name of the primary tenant. If the primary tenant dies during the term of the voucher, after Rural Development receives notice of the death, the use of the voucher passes to the co-tenant.

The voucher is renewable subject to the availability of appropriations to the USDA. In order to renew a voucher a tenant must return a signed Voucher Obligation Form which will be sent to the tenant within 60–90 days before the current voucher is exhausted. Renewal requests will have no preference and will be processed as a new application as described in this NOFA.

8. Non-Discrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal

opportunity provider, employer, and lender.''

9. Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520) and assigned OMB control number 2577–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: April 22, 2009.

James C. Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. E9–9828 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Solicitation of Applications: Section 514, 515, and 516 Multi-Family Housing Revitalization Demonstration Program (MPR) for Fiscal Year 2009

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

Announcement Type: Inviting applications from eligible applicants for Fiscal Year (FY) 2009 funding.

Catalog of Federal Domestic Assistance Number (CFDA): 10.447.

SUMMARY: USDA Rural Development (Agency) which administers the programs of the Rural Housing Service (RHS) announces the timeframe to submit applications to participate in a demonstration program to preserve and revitalize existing rural rental housing projects financed by Rural Development under Section 515, Section 514, and Section 516 of the Housing Act of 1949, as amended. A subsequent Notice of Funding Availability (NOFA) will be published with specific funding information for fiscal year 2009 at a later date. The intended effect is to restructure selected existing Section 515 multi-family housing loans and Section 514 and 516 off-farm labor housing loans and grants expressly for the purpose of ensuring that sufficient resources are available to preserve the rental project for the purpose of providing safe and affordable housing for very low-, low-, or moderate-income residents. Expectations are that properties participating in this program will be revitalized and the affordable use will be extended without displacing tenants because of increased rents. No additional Agency rental assistance units will be made available under this program.

DATES: The deadline for receipt of all pre-applications in response to this Notice of Solicitation Availability (NOSA) is 5 p.m., Eastern Time, June 29, 2009. The pre-application closing deadline is firm as to date and hour. The Agency will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must allow sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage-due pre-applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Cynthia Foxworth, *cynthia.reesefoxworth@usda.gov,* (202) 720–1940, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0782 (Room 1263–S), U. S. Department of Agriculture, Rural Housing Service, 1400 Independence Avenue, SW., Washington, DC 20250–0782. (Please note this telephone number is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice have received approval from the Office of Management and Budget (OMB) under Control Number 0570–0190.

Overview

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 (Pub. L. 110–161), December 26, 2007, details which level of funding and conditions were continued by the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) (March 11, 2009), provides funding for and authorizes Rural Development to conduct a demonstration program for the preservation and revitalization of the Section 515 multi-family housing portfolio and Section 514 and 516 off-farm labor housing portfolio. Sections 514, 515 and 516 multi-family housing programs are authorized by the Housing Act of 1949, as amended (42 U.S.C. Sections 1484, 1485, 1486) and provide Rural Development with the authority to make loans for low-income multi-family housing and farm labor housing and related facilities.

Program Administration

I. Funding Opportunities Description

This NOSA solicits pre-applications from eligible borrowers/applicants to restructure existing multi-family housing within the Agency's Section 515 multi-family housing portfolio and the 514/516 off-farm labor housing portfolio for the purpose of revitalization and preservation. The demonstration program shall be referred to in this notice as the Multi-Family Housing Revitalization Demonstration program (MPR). Agency regulations for the Section 515 multi-family housing program and for the Sections 514/516 off farm labor housing program are published at 7 CFR part 3560.

The MPR is intended to assure that existing rental projects will continue to deliver decent, safe, and sanitary affordable rental housing for the lesser of the remaining term of the loan or 20 years from the date of the MPR transaction closing. Once an applicant has been confirmed eligible and the project has been selected by the Agency in the process described in this notice, and the applicant agrees to participate in the MPR demonstration by written notification to the Agency, an independent third-party capital needs assessment (CNA) will be conducted to provide a fair and objective review of projected capital needs. The Agency shall implement this NOSA through an MPR Conditional Commitment (MPRCC) Letter of Conditions with the eligible borrower, which will include all the terms and conditions under this NOSA, including the MPR Debt Deferral Agreement.

The primary restructuring tool to be used in this program is debt deferral for up to 20 years of the existing Section 514 and 515 loans obligated prior to October 1, 1991. The cash flow from the deferred payment will be deposited, as directed by the Agency, to the reserve account to help meet the future physical needs of the property or to reduce rents. Debt deferral is described as follows:

Debt Deferral: A deferral of the existing Agency debt for the lesser of the remaining term of the loan or 20 years. All terms and conditions of the deferral will be described in the MPR Debt Deferral Agreement. A balloon payment of principal and accrued interest will be due at the end of the deferral period. Interest will accrue at the promissory note rate and subsidy will be applied as set out in the Agency's Interest Credit Agreement. Interest will not be charged on the deferred interest.

If the resulting cash flow is not adequate to address the long-term needs

of the project, the Agency may use the following sources of funds:

(1) Other Agency Restructuring Tools as Follows

(i) *MPR Revitalization Grant:* A revitalization grant (for non-profit applicants/borrowers only) is limited to the cost of correcting health and safety violations as identified by the CNA. The grant administration will be in accordance with applicable provisions of 7 CFR parts 3015 and 3019, as applicable.

(ii) *MPR Revitalization Zero Percent Loan:* A revitalization loan at zero percent interest that will have a term of 30 years and be amortized over 50 years.

(iii) *MPR Soft-Second Loan:* A loan with a one percent interest rate that will have its accrued interest and principal deferred, to a balloon payment, due at the time the latest maturing Section 514 or Section 515 loan already in place at the time of closing becomes due. The term of the soft-second loan will not be timed to match the term of any new 515 loan added during the transaction.

MPR funds cannot be used to add new units, community rooms, playgrounds, and/or laundry rooms. However, other funding sources as outlined below in (2) through (6) can be used either for revitalization or for improvements listed above to the projects.

(2) Rural Development Section 515 Rehabilitation Loan Funds

(3) Rural Development Section 514/516 Off Farm Rehabilitation Loan and Grant Funds

(4) Rural Development Section 538 Guaranteed Rural Rental Housing Program Financing

(5) Rural Development Multi-Family Housing Re-lending Demonstration Program Funds

(6) Third-party Funds in the Form of Loans With Below Market Rates (Below the AFR), Grants, Tax Credits, and Tax Exempt Financing

(7) Owner-provided Capital Contributions in the Form of a Cash Infusion; A Cash Infusion Is Not a Loan

Transfers, subordinations, and consolidations may be approved as part of a MPR transaction in accordance with existing servicing authorities of the Agency as available in 7 CFR part 3560. If a transfer is part of the MPR transaction, the transfer must meet the requirements of 7 CFR part 3560.406 before the MPR transaction is processed.

For the purposes of the MPR, the restructuring transactions will be identified in three categories:

(1) Simple transactions that involve no change in ownership.

(2) Complex transactions which consist of a property transfer to new ownership processed in accordance with 7 CFR 3560.406, or transactions requiring a subordination agreement as a result of third party funds.

(3) Portfolio transactions that are defined as multiple project sale transactions with a common purchaser or multiple MPR transactions with one stay-in owner all within one State closed on or after September 30, 2008. The common purchaser or stay-in owner must have at least one general partner in common.

Each transactional category may utilize any or all restructuring tools. MPR Restructuring tools that may be available to address capital needs are based on the capital needs assessment process and the underwriting feasibility determination.

While all non-deferred Agency debt, either in first lien position or a subordinated lien position must be secured within market value, deferred debt may exceed the market value of the security. Payment of such deferred debt will not be required from normal project operation income, but from excess cash from project operations and the value of the property after all other secured debts are satisfied.

The following lays out the general steps of the MPR application process:

(1) *Pre-application:* Applicants must submit a pre-application described in Section VI. This pre-application process is designed to lessen the cost burden on all applicants including those who may not be eligible or whose proposals may not be feasible.

(2) *Eligible Properties:* Using criteria described below in Section III, USDA will conduct an initial screening for eligibility. As described in Section VIII, USDA will conduct additional eligibility screening later in the selection process.

(3) *Scoring and Ranking:* All eligible, complete and timely-filed pre-applications will be scored, ranked and put in funding categories as discussed in Sections VI and VII.

(4) *Formal Applications:* Top ranked pre-applicants will be invited to submit a formal application. As discussed in Section VIII paragraph (2) of this notice, USDA will require the owner to provide a capital needs assessment in order to determine the proper combination of tools to be offered to the applicant, to perform additional eligibility review, and to underwrite the proposal to determine financial feasibility. Where proposals are found to be ineligible or financially infeasible, owners will be informed and proposals lower in the funding categories will be considered.

(5) *Financial Feasibility:* Using the results of the CNA to help identify the need for resources and applicant provided information regarding anticipated or available third-party financing, the Agency will determine the financial feasibility of each potential transaction, using restructuring tools available either through existing regulatory authorities or specifically authorized through this demonstration program. A project is financially feasible when a property can provide affordable, safe, decent, and sanitary housing for 20 years or the remaining term of any Agency loan whichever ends later, by using the authorities of this program while minimizing the cost to the Agency, and without increasing rents for tenants and farm laborers, except when necessary to meet normal and necessary operating expenses. If the transaction is determined financially feasible by the Agency, the borrower will be offered a restructuring proposal, which will include the requirement that the borrower will execute, for recordation, a restrictive use covenant for a period of 20 years, the remaining term of any existing loans, or the remaining term of any existing restrictive-use provisions, whichever ends later. The restructuring proposal will be established in the form of the MPRCC/Letter of Conditions.

(6) *MPR Agreements:* If the offer is accepted by the applicant, the Agency and applicant will enter into a MPRCC. The applicant must also agree to restrict the property use pursuant to Agency direction when the MPR transaction is closed. Any third-party lender will be required to subordinate to the Agency's restrictive use covenant unless the Agency determines on a case-by-case basis that the lender refuses to subordinate and such refusal will not compromise the purpose of the MPR. The Agency may also request that the applicant sign an agreement that would require the owner to escrow reserve, tax, and insurance payments in accordance with all pertinent current and future Agency regulations. In addition, the Agency may also request that the applicant agree to accept future rent increases based on an Annual Adjustment Factor (AAF). The AAF allows rents to be adjusted by the annual inflation factor as determined by the United States Office of Management and Budget (OMB). The exact AAF will be established in the MPR Agreement.

(7) *General Requirements:* The MPR transactions may be conducted with a stay-in owner (simple or portfolio) or may involve a change in ownership

(complex or portfolio). Any housing or related facilities that are constructed or repaired must meet the Agency design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed, Section 515 multi-family housing and Sections 514/516 off farm labor housing must be managed in accordance with 7 CFR part 3560. Tenant eligibility will be limited to persons who qualify as an eligible household under Agency regulations or who are eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as U. S. Department of Housing and Urban Development (HUD) Section 8 assistance or Low Income Housing Tax Credit (LIHTC) Assistance. Additional tenant eligibility requirements are contained in 7 CFR section 3560.152.

(8) *Voluntary Community Market Rent Demonstration* (available for Section 515 properties only): In conjunction with this demonstration, Rural Development announces the opportunity for all successful Section 515 applicants to participate on a voluntary basis in a viability test of a 30 percent limitation on tenant rents, as proposed in Section 544(b)(7) of Saving America's Rural Housing Act of 2006, H.R. 5039, for post-restructured properties. Owners of properties in the Section 515 restructuring program may elect to participate in the ''community market rent'' demonstration which will allow an owner to set a rent above the approved basic rent for any unit not currently occupied by a tenant receiving Rural Development rental assistance. Eligible tenants for these units must have adjusted annual incomes sufficient to allow them to pay the community market rent using less than 30 percent of their adjusted income. Tenants would be allowed to occupy without paying overage, additional sums that would otherwise be required to bring their rent payment up to 30 percent of income. With Rural Development's consent, up to 50 percent of the difference between the basic rent and the new ''community market rent'' could be retained by the owner as an increased return.

For example, if the basic rent is $350, the owner could create a community market rent at $410, and market the unit to tenants who could pay that rent at less than 30 percent of adjusted income. A percentage of the difference, $60 could be retained by the owner, as negotiated with Rural Development, up to $30.

Prior to implementation of the community market rent demonstrations, Rural Development will issue guidance to successful applicants who have indicated an interest in participating in the demonstration providing further details with respect to the program.

(9) *Increased Return to Owner (RTO) for Stay-in-Owners:* Stay-in-owners are existing borrowers that will retain their property, who contribute cash to fund any hard costs of construction to meet immediate needs identified by the CNA may receive a return on investment on those funds provided the Agency determines an increased return on investment is financially feasible, and it approves such a return in the revitalization plan presented to the borrower as an MPR offer. The Agency also may offer that the return to owner be included in a ''cash flow split'' agreement as outlined in MPRCC/Letter of Conditions. The cash flow split allows 50 percent of excess cash, generated by the owner's fiscal year end, to be split between paying down any outstanding deferred Agency loan balances and 50 percent to be returned to the borrower as an increased return to owner, subject to the provisions of 7 CFR section 3560.68.

II. Award Information

The Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009 (Pub. L. 110–329) (September 30, 2008) (Consolidated Appropriations Act 2009) continued the level of funding and conditions until March 6, 2009, from the Consolidated Appropriations Act, 2008 (Pub. L. 110–161) (December 26, 2007) which appropriated $20,000,000 to Rural Development for the MPR Demonstration Program.

All funding must be approved no later than September 15, 2009, and obligated by the Agency not later than September 22, 2009. If funds available for the MPR are fully used before all pre-applications that have been determined eligible and selected under this NOSA are funded, the unfunded approved properties may receive priority for funding from the next fiscal year's resources available for multi-family housing revitalization if additional funds become available and the selected properties/owners meet any future eligibility criteria.

III. Eligibility Information

Applicants (and the principals associated with each applicant) must meet the following requirements:

(1) Eligibility under 7 CFR 3560.55; however, the requirements described in 7 CFR 3560.55(a)(5) pertaining to required borrower contributions and 7 CFR 3560.55(a)(6) pertaining to required contributions of initial operating capital are waived for all MPR proposals.

(2) For Section 515 multi-family housing projects an average physical vacancy rate over the twelve months preceding the filing of the pre-application of no more than 10 percent for projects of 16 units or more and 15 percent for projects under 16 units unless an exception applies under Section VI paragraph (1)(ii) of this notice. If a project consolidation is involved, the consolidation will remain eligible so long as the average vacancy rate for all the projects involved meets the occupancy standard of this paragraph.

For Sections 514 and 516 off-farm labor housing projects, rather than an average physical vacancy rate as stated above, the property must have positive cash flow for the previous full three years of operation unless an exception applies under Section VI paragraph (1)(ii) of this Notice.

(3) Ownership of and ability to operate the facility after the transaction is completed. (In the event of a transfer, the proposed transferee with an executed purchase agreement or other evidence of site control will be the applicant).

(4) A CNA and Agency financial evaluation must be conducted to ensure that utilization of the restructuring tools of the MPR program is financially feasible and necessary for the revitalization and preservation of the property for affordable housing. Initial eligibility for processing will be determined as of the date of the pre-application filing deadline. The Agency reserves the right to discontinue processing in the event that material changes in the applicant's status occurs any time after the initial determination.

IV. Equal Opportunity and Nondiscrimination Requirements

USDA is an equal opportunity provider, employer, and lender.

(1) Borrowers and applicants will comply with the provisions of 7 CFR section 3560.2.

(2) All housing must meet the accessibility requirements found at 7 CFR section 3560.60(d).

(3) All MPR participants must submit or have on file a valid Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement.''

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, sex, marital status, familial status, religion, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require

alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (Voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (Voice) or (202) 720–6382 (TDD).

The policies and regulations contained in 7 CFR part 1901, subpart E, apply to this program.

The **Federal Register** Notice pertains to announcing the availability of funds and the timeframe to submit applications to participate in a demonstration program to preserve and revitalize existing rural rental housing projects financed by Rural Development under Section 515, Section 514, and Section 516 of the Housing Act of 1949, as amended. This Notice does not have an adverse impact on minority/low-income populations.

V. Authorities Available for MPR

MPR tools will be used in accordance with 7 CFR 3560 and its associated handbooks (available in any Rural Development office). The program will be administered within the resources available to the Agency through Public Law 110–329 for the preservation and revitalization of Sections 514/516 off farm and Section 515 financed properties. In the event that provisions of 7 CFR 3560 conflict with this demonstration program, the provisions of the MPR will take precedence.

VI. Application and Submission Information

(1) The application submission and scoring process will be completed in two phases in order to avoid unnecessary effort and expense on the part of interested borrowers/applicants and to allow additional points for applicants that propose a transfer of a troubled project to an eligible owner.

The first phase is the pre-application process. The applicant must submit a complete pre-application by the deadline date under the **DATES** section of this Notice. The applicant's submission will be classified as ''complete'' when a ''pre-application'' is received by multi-family housing staff for each MPR proposal the applicant wishes to be considered in the demonstration. In the event the MPR proposal involves a project consolidation it will be completed in accordance with 7 CFR 3560.410. One pre-application for the proposed consolidated project is required and must identify each project included in the consolidation. If the MPR proposal involves a portfolio, one pre-application for each project in the portfolio is required and each pre-application must identify each project to be purchased as part of the portfolio. The form to be used for the pre-application is ''MPR Pre-application'' and is attached at the end of this Notice. An electronic version of this form may be found on the Internet at *http://www.rurdev.usda.gov/rd/NOSAs/index.html.*

In order for the pre-application to be considered complete, all applicable information requested on the MPR Pre-application form must be provided.

Additional information that must be provided with the pre-application, when applicable, includes:

(i) A copy of a purchase agreement if a transfer is being considered.

(ii) A current market survey (completed within the previous 12 months of the filing of an MPR application) if the project's occupancy standards cited in Section III (2) above are not met and there is an overwhelming market demand evidenced by waiting lists and a housing shortage confirmed by local housing agencies and realtors. The market survey must show a clear need and demand for the project once a restructuring transaction is completed. The results of the survey of existing or proposed rental or labor housing, including complex name, location, number of units, bedroom mix, family or elderly type, year built, rent charges must be provided as well as the existing vacancy rate of all available rental units in the community, their waiting lists and amenities, and the availability of rental assistance or other subsidies. For proposals where the applicant is requesting LIHTC, the number of LIHTC units and the maximum LIHTC incomes and rents by unit size must be provided. The Rural Development State Director will determine whether or not the proposal has market feasibility based on the data provided by the applicant. Any costs associated with the completion of the market survey will NOT be considered a project expense.

Unless an exception under this section applies, the requirements stated in Section III, paragraph (2) of this notice must be met.

The second phase of the application process will be completed by the Agency based on Agency records and the pre-application information.

All eligible, complete, and timely-filed pre-applications will then be scored and ranked based on points received during this two-phase application process.

Further, the Agency will categorize each MPR proposal as being potentially Simple, Complex, or Portfolio based on the information submitted on the pre-application and in accordance with the category description provided in Section I of this Notice.

(2) Pre-applications can be submitted either electronically using the MPR Pre-application form or in hard copy using the MPR Pre-application form. Applicants are strongly encouraged, but not required, to submit the pre-application electronically. The Agency will record pre-applications received electronically by the actual date and time received in the MPR Web site mail box. Hard copy pre-applications received on or before the deadline date will receive the close of business time of the day received as the receipt time. Assistance for filing electronic and hard copy pre-applications can be obtained from any Rural Development State Office.

The electronic pre-application is stored as an Adobe Acrobat fillable form. The form contains a button labeled ''Submit by Email.'' Clicking on the button will result in an e-mail with an attachment that includes the electronic pre-application form. The form will be sent via e-mail to the Multi-Family Housing Preservation and Direct Loan Division (MPLD) in Washington, DC for consideration. Please click this button only once, as multiple clicks result in multiple filings.

Please Note: If a purchase agreement or market survey is required, these additional documents are to be attached to the resulting e-mail prior to submission.

Pre-application forms and MPR information may be accessed from the Agency's Internet Web site *http://www.rurdev.usda.gov/rhs/mfh/MPR/MPRHome.htm* or obtained by contacting the State Office in the state where the project is located. Hard copy pre-applications and additional materials can be mailed to the attention of Cynthia Foxworth, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division (MPLD), STOP 0782 (Room 1263–S), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Avenue, SW., Washington, DC 20250–0781.

Note: All documents must be received on or before the pre-application closing deadline to be considered complete and timely filed. Pre-applications that do not include a Purchase Agreement for transfer proposals, and/or market surveys for projects that do not meet the occupancy standards of Section III paragraph (2) of this notice, or if applicable, the requirements for the exception in Section VI paragraph (1)(ii) of this notice, will be

considered incomplete and will be returned to the applicant with appeal rights if not submitted by the closing deadline.

VII. Selection Process

Pre-application ranking points will be based on information provided during the submission process and in Agency records. Points will be awarded as follows:

(1) *Contribution of funds from other sources.* Other funds are those discussed in items (2) through (7) of Section I ''Funding Opportunities Description''. Points awarded are to be based on documented written evidence that the funds are committed. The maximum points awarded for this criterion is 25 points. These points will be awarded in the following manner:

(i) Evidence of a commitment of at least $3,000 to $5,000 per unit per property from other sources—15 points, or

(ii) Evidence of a commitment greater than $5,000 per unit per property from other sources—20 points, or

(iii) Evidence of a commitment greater than $5,000 per unit per property from other sources and a binding written commitment by a third party to contribute 25 percent or more of any allowable developer fee to the hard costs of construction—25 points.

(2) *Owner contribution.* The maximum points awarded for this criterion is 15 points. These points will be awarded in the following manner:

(i) *Owner contribution sufficient to pay transaction costs.* (These funds cannot be from project reserve or operating funds or in the form of a loan). Transaction costs are defined as those costs required to complete the transaction and include, but are not limited to, the CNA, legal and closing costs, appraisal costs and filing/recording fees. The minimum contribution required to receive these points is $5,000 per project and will be required to be deposited in the property reserve account prior to closing—5 points.

(ii) *Owner contribution for the hard costs of construction.* (These funds cannot be from project reserve or operating funds or in the form of a loan). Hard costs of construction are defined as a hard asset such as inventory, equipment, property or machinery. Hard costs are itemized on Form RD 1924–13 ''Estimate and Certificate of Actual Cost''. Form RD 1924–13 can be found at *http://www.rurdev.usda.gov/regs/Forms/1924–13.pdf.* The minimum contribution required to receive these points is $1,000 per unit which will be required to be deposited in the property reserve account prior to closing. An increased return to owner may be budgeted and allowed for funds committed in accordance with 7 CFR section 3560.406(d)(14)(ii). 10 points.

(3) *Age of project.* For project consolidation proposals, the project with the earliest operational date will be used in calculating the age of the project. Since the age of the project and the date that the loan was made are directly related to physical needs, a maximum of 25 points will be awarded on the following criteria:

(i) Projects with initial operational dates prior to December 21, 1979—25 points.

(ii) Projects with initial operational dates on or after December 21, 1979, but before December 15, 1989—20 points.

(iii) Projects with initial operational dates on or after December 15, 1989, but before October 1, 1991—15 points.

(4) *Troubled project points.* The Agency may award up to 25 additional points to facilitate the transfer and revitalization of projects the Agency considers as troubled due to an act of nature or where physical and/or financial deterioration or management deficiencies exist. Projects with an Agency classification of ''C'' or ''D'' according to Agency Handbook 2–3560, Chapter 9, Paragraph 9.7 (available at *http://www.rurdev.usda.gov/regs/hblist.html*) will be considered troubled. Projects that are classified ''B'' and do not involve a transfer will also receive consideration. The handbook definition of Agency classification takes precedent over Multifamily Housing Information System (MFIS) status. Points will be awarded in the following manner:

(i) *For Stay-in Owners only:* If the Agency servicing classification is B as a result of a workout plan approved by the Agency prior to January 1, 2009—25 points.

(ii) If the Agency servicing classification is C or D for 24 months or more—20 points.

(iii) If the Agency servicing classification is C or D for less than 24 months—15 points.

(5) *Prior Agency approvals.* In the interest of ensuring timely application processing and underwriting, the Agency will award up to 20 points for properties with CNAs already approved by the Agency. ''Approved'' means either after the initial CNA has been reviewed and approved or after an updated CNA has been reviewed and approved by the Agency. CNAs over 12 months old may not be used for MPR underwriting without an update approved by the Agency. Points will be awarded for:

(i) CNAs approved on or after October 1, 2007 and prior to October 1, 2008—10 points.

(ii) CNAs approved on or after October 1, 2008 but before the publication of the FY 2009 MPR NOSA—20 points.

(6) *Energy generation.* Applicants will be awarded 5 points if the proposal includes the installation of energy generation systems to be funded by a third party. The proposal must include an overview of the energy generation system being proposed. Evidence that an energy generation system has been funded by a third party and that it has a quantifiable positive impact on energy consumption will be required. 5 points.

(7) *Energy conservation.* Applicants will be awarded up to 10 points if the proposal includes a written commitment evidenced by the application to achieve the following objectives which may be verified after rehabilitation or repair of a property:

(i) ENERGY STAR compliance. In general rehabilitation that earns the ENERGY STAR label for residential construction. Units earning the ENERGY STAR label must be independently verified to meet guidelines for energy efficiency as set by the U.S. Environmental Protection Agency. All procedures used in verifying a unit for the ENERGY STAR label must comply with National Home Energy Ratings System (HERS) guidelines. ENERGY STAR guidelines for residential construction apply to single or low-rise multi-family residential buildings. 2 Points.

(ii) More efficient heating, ventilation and air conditioning (HVAC) equipment. The rehabilitated HVAC equipment is more energy efficient than the previous HVAC equipment. 2 Points.

(iii) More efficient windows. The newly installed windows are more energy efficient than the previous windows. 2 Points.

(iv) Additional attic insulation. Additional attic insulation is added to the property. 2 Points.

(v) Using ''green'' or renewable materials. Applicant uses ''green'' or renewable materials in the rehabilitation or repair of the property. 2 Points.

(8) *Tenant service provision.* The Agency will award 5 points for applications that include new services provided by a non-profit organization, which may include a faith-based organization, or by a Government agency. Such services shall be provided at no cost to the project and shall be made available to all tenants. Examples of such services are transportation for the elderly, after-school day care

services or after-school tutoring. 5 Points.

(9) *Consolidation of project operations.* To encourage post-transaction operational cost savings and management efficiencies, the Agency will award 5 points for applications that include at least two properties that will consolidate project budget and management operations and 10 points for applicants that include at least five properties that will consolidate project budget and management operations. Consolidations must meet the requirements of 7 CFR 3560.410.

(10) *Property is located in a Presidentially declared Disaster Area.* Borrowers can determine if they are in a Presidentially declared Disaster Area by checking *http://www.rurdev.usda.gov/rd/disasters.* 10 Points.

Note: For projects within a portfolio transaction or group of consolidated projects within a portfolio transaction, the Agency will calculate the average score for each project and each consolidation project group within the sale or consolidation.

The Agency will total the points awarded to each pre-application received within the timeframes of this Notice and rank each pre-application according to total score. If point totals are equal, the earliest time and date the pre-application was received by the Agency will determine the ranking. In the event pre-applications are still tied, they will be further ranked by giving priority to those properties with the earliest Rural Development operational date.

Eligibility will then be confirmed on the 16 highest-scoring and complete pre-applications per State. If one or more of the 16 highest-scoring pre-applications is determined ineligible, (*i.e.* the applicant is a borrower that is not in good standing with the Agency or has been debarred or suspended by the Agency, etc.) the next highest-scoring pre-application will be confirmed for eligibility.

If one or more of the 16 highest-ranking pre-applications is a portfolio transaction, then eligibility determinations will be conducted on all of the pre-applications associated with the portfolio transaction. Should any of the pre-applications associated with the portfolio transaction be determined ineligible, that pre-application will be dropped, but the overall eligibility of the portfolio transaction will not be affected as long as the requirements in Section I ''Funding Opportunities Description'' are met.

Once ranking has been established, the Agency will conduct a four-step process to select pre-applications for submission of formal applications. This process is needed to assure that the Agency can process the proposed transactions within available staffing resources, develop a representative sampling of revitalization transaction types, assure geographic distribution, and assure an adequate pipeline of transactions to use all available funding.

Step One: The Agency will review the eligible pre-applications nationwide, identify pre-applications as either RRH or FLH projects and then as Simple, Complex, or Portfolio and separate them by State.

Step Two: The Agency will select, for further processing, the nationally top-ranked portfolio sale transactions until a total of $100,000,000 in potential debt deferral is reached. Portfolio transactions will be limited to one per State (either RRH or FLH) and will count as one (1) MPR transaction.

Step Three: The highest ranked RRH complex transactions in each state will be selected for further processing, not to exceed 2 per State. The highest ranked FLH complex transactions in each state will be selected for further processing, not to exceed one (1) per state.

Step Four: Additional projects will be selected from the highest ranked eligible pre-applications involving simple transactions in that state until a total of 5 RRH pre-applications for MPR transactions per state is reached. If a FLH complex transaction has not been selected in Step Three above, one additional FLH project will be selected from the highest ranked eligible pre-applications involving FLH simple transactions, in that state, until a total of 6 pre-applications for MPR transactions per state is reached.

VIII. Processing for Selected Pre-Applications

Those proposals that are ranked and then selected for further processing will be invited to submit a formal application on SF 424 ''Application for Federal Assistance.'' Those pre-applications that are rejected by the Agency will be returned to the applicant and the applicant will be given appeal rights pursuant to 7 CFR section 11. Those proposals that are not selected due to low scores will be retained by the Agency unless they are withdrawn by the applicant. In the event that a pre-application is selected for further processing and the pre-applicant declines, the next highest ranked pre-application of the same transaction type in that state will be selected provided there is no change in the preliminary eligibility of the pre-applicant.

If there are no other pre-applications of the same transaction type, then the next highest-ranked pre-application regardless of transaction type will be selected.

Applications (SF 424s) can be obtained in hard copy by contacting the State Office in the state where the project is located and can be submitted either electronically or in hard copy to the State Office.

If a pre-application is accepted for further processing, the applicant will be expected to submit additional information needed to demonstrate eligibility and feasibility (such as a CNA), consistent with this NOSA and the appropriate sections of 7 CFR section 3560, prior to the issuance of a restructuring offer.

Rural Development will work with pre-applicants selected for further processing in accordance with the following steps:

(1) Based on the feasibility of the type of transaction that will best suit the project and the availability of funds, further eligibility confirmation determinations will be conducted by the designated Multi-Family Housing Revitalization Coordinators assigned by each Rural Development State Director with the assistance of the Multi-Family Housing Preservation and Direct Loan Division.

(2) If one is not already available to the Agency, a CNA will be required and conducted in accordance with the requirements of 7 CFR 3560.103(c), Handbook 3–3560, Chapter 7, ''Transfers of Project Ownership,'' and the CNA Statement of Work together with any non-conflicting amendments (available in any Rural Development State Office.) A CNA is prepared by a qualified independent contractor and is obtained to determine needed repairs and any necessary adjustments to the reserve account for long-term project viability. While the requirements of the CNA are described in the materials referenced above, at a minimum, to be considered acceptable, a CNA must include:

(i) A physical inspection of the site, architectural features, common areas and all electrical and mechanical systems;

(ii) An inspection of a sample of dwelling units;

(iii) Identify repair or replacement needs;

(iv) Provide a cost estimate of the repair and replacement expenses; and

(v) Provide at least a 20-year analysis of the timing and funding for identified needs which includes reasonable assumptions regarding inflation. The cost of the CNA will be considered a

part of the project expense and may be paid from the ''project reserve'' with prior approval of the Agency. The Agency approval for participation in this program will be contingent upon the Agency's final approval of the CNA and concurrence in the scope of work by the owner. The Agency, in its sole discretion, may choose to obtain a CNA, at its expense, if it determines that doing so is in the best interest of the Government.

It is important to note that a CNA may be provided in two general formats. When an owner has received a firm commitment of third party funds sufficient to complete a complete rehabilitation, the CNA may be prepared based on the condition of the property after the rehabilitation is complete. All other CNAs will be completed based on the existing condition of the property.

(3) Loan underwriting will be conducted by the designated Multi-Family Housing Revitalization Coordinator assigned by each Rural Development State Director with the assistance of the Multi-Family Housing Preservation and Direct Loan Division. The feasibility and structure of each revitalization proposal will be determined using this underwriting process and will include a determination of the restructuring tools that will minimize the cost to the Government consistent with the purposes of this NOSA. To help assure a balanced utilization of revitalization tools and the long-term economic viability of revitalized projects, the MPR underwriting guidelines include, but are not limited to the following:

(i) The maximum soft-second loan is limited to no more than $5,000 per unit,

(ii) The total assistance provided from a revitalization grant, revitalization zero percent loan, and/or revitalization soft-second loan is limited to $10,000 per unit,

(iii) The maximum Section 515 loan or Section 514/516 off farm loan and grant is limited to no more than $20,000 per unit, and

(iv) Properties receiving tax credits are expected to have sufficient funding sources and generally will receive debt deferral only.

(4) Properties with more than 75 percent of the units receiving significant subsidy such as Rural Development rental assistance or HUD-funded subsidy will be supplemented with Section 514, 515 and 516 loans and grants before revitalization grants and revitalization soft-second loans are considered.

(5) MPR revitalization grants will be limited to $5,000 per unit.

(6) Any rent increases that may be necessary will not exceed 10 percent in any one year.

(7) The approved MPR transaction will include projected revenue sufficient to cover a 10 percent Operations and Maintenance increase in the second year after the transaction.

(8) Full return to owner will be budgeted pursuant to the Loan Agreement.

(9) Budgeted increases to reserve deposit will not exceed three percent per annum.

(10) The remaining reserve balance at the end of the 20-year analysis period should be at least 2.0 times the average annual needs, including inflation, over the 20-year analysis period.

These guidelines have been developed based on experience in the FY 2005–8 Demonstrations. The Agency believes that these guidelines will be appropriate for typical transactions. However, the Agency reserves the right to re-calculate which MPR demo tools should be used, in the Agency's judgment, if doing so would further the objectives of the MPR and is in the best interest of the Government.

The Agency expects that some of the transactions proposed by selected pre-applicants will prove to be infeasible. The applicant entity may be determined to be ineligible under Section III of this Notice. If a proposed transaction is determined infeasible or the applicant determined ineligible, the Agency will then select the next highest-ranked project for processing regardless of transaction type.

Each MPR offer will be approved by the Revitalization Review Committee chaired by the Deputy Administrator for Multi-Family Housing or an agency-authorized delegate. Approved MPR offers will be presented to applicants who will then have up to 15 calendar days to accept or reject the offer in writing. Offers will expire after 15 days. The Agency will replace expired applications by selecting the next highest-ranked project. Closing of MPR offers will occur within 90 days of acceptance by the applicant unless extended by the Agency.

IX. Funding Restrictions

Applicants will be selected in accordance with selection criteria and the four-step process identified in Section VII of this Notice. Once selected to proceed, the Agency will provide additional guidance to the applicant and request information and documents necessary to complete the underwriting and review process. Since the character of each application may vary substantially depending on the type of transactions proposed, information requirements will be provided as appropriate. Complete project information must be submitted as soon as possible but in no case later than 45 days from the date of Agency notification of the applicant's selection for further processing or September 1, 2009, whichever occurs first. Failure to submit the required information in a timely manner may result in the Agency discontinuing the processing of the request.

Funding under this NOSA will be obligated to selectees that finish the processing steps outlined above first within each of the 3 funding categories described in Section VII of this Notice and that result in a ratio as close as possible to 30 percent portfolio transactions, 50 percent complex transactions, and 20 percent simple transactions.

X. Application Review

A review committee will make recommendations for final decision regarding funding to the appropriate Rural Development State Director based on the selection criteria contained in this NOSA.

XI. Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as a part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Dated: April 15, 2009.

Thomas E. Hannah,

Acting Administrator, Rural Housing Service.

BILLING CODE 3410–XV–P

Multi-Family Housing Revitalization Demonstration Program

MPR Pre-application

Instructions: Please provide the information by entering letters and numbers from left to right. Individuals place last name first, first name, then middle initial. Allow one space between names and do not use symbols like (-), ($), (#), and (,) when entering dollar amounts. Applicants are encouraged, but not required, to submit the pre-application electronically. Please note that electronic submittals are not on a secured website.

The Federal Register Notice pertains to announcing the availability of funds and the timeframe to submit applications to participate in a demonstration program to preserve and revitalize existing rural rental housing projects financed by Rural Development under Section 515, Section 514, and Section 516 of the Housing Act of 1949, as amended. This Notice does not have an adverse impact on minority/low-income populations.

(a) Applicant's name.
__/__

(b) Name of applicant's authorized representative.
__/__

(c) Applicant's address.
Street__/__
Secondary Address __/__/__/__/__/__/__/__/__/__/__/__/__/__/__/__/__/__/__/__
City__/__
State__/__/
Zip Code__/__/__/__/__/__/__/__/__/

(d) Applicant's telephone number.
__/__/__/__/__/__/__/__/__/__/

(e) Email address.
__/__

(f) Primary Project Name __/__

(g) Is this a simple, complex or portfolio transaction? (Check One)

Simple __ Complex __ Portfolio __

If portfolio, what is the portfolio name? ***A separate pre-application must be submitted for each project and each pre-application must have the same "Portfolio Name".***

__/__

(h) Does this proposal involve a consolidation of multiple projects? Yes__/ No__/ (Check One)

- **This proposal involves a consolidation of 2-4 properties. Yes__/ No__ (Check One)**
- **This proposal involves a consolidation of 5 or more properties. Yes__/ No__ (Check One)**

If "yes", be sure to list all properties are listed in (i) below.

(i) Provide the following information for the projects being considered in this pre-application starting with the Primary Project:

Primary Project Borrower ID No.	Project ID No.	Project Name	For Section 515 Only: Vacancy Percentage	Project State	Proj. Type 515/514/516
(1) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____

Projects to be Consolidated with the Primary Project

(2) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____
(3) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____
(4) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____
(5) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____
(6) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____
(7) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____
(8) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____
(9) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____
(10) __/__/__/__/__/__/__/__/__/__/	__/__/__/__/	__/__/__/__/__/__/__/__/__/__/	__/.__/%	____	____

For Section 515 multi-family housing projects: If vacancy percentages for any of the projects listed above that have 16 or more revenue producing units exceed 10.0%, or 15.0% for projects with less than 16 revenue producing units, attach required market survey documentation.

For Section 514/516 off-farm labor housing projects: If cash flow for the previous 3 full years of operation is not positive, attach required market survey documentation.

Year of Operation: _____ Cash Flow: _____
Year of Operation: _____ Cash Flow: _____
Year of Operation: _____ Cash Flow: _____

(j) Are there contributions of other sources of funds? Yes__/ No__ (Check One)
If "yes", check one:

- **Evidence of a commitment of at least $3,000 to $5,000 per unit/per property? Yes__/ No__**
- **Evidence of a commitment greater than $5,000 per unit/per property? Yes__/ No__**
- **Evidence of a commitment greater than $5,000 per unit/per property with a binding written commitment by a third party to contribute 25 percent or more of any allowable developer fee to the hard costs of construction Yes__/ No__**

If "yes", provide the amounts obtained from the following sources:

Source:	Amount:
Tax Credits	__/__/__/__/__/__/__/__/__/__/
3rd Party Loan	__/__/__/__/__/__/__/__/__/__/
3rd Party Grant	__/__/__/__/__/__/__/__/__/__/
Tax Exempt Financing	__/__/__/__/__/__/__/__/__/__/
RD Section 515 Traditional Loan	__/__/__/__/__/__/__/__/__/__/
RD Section 514/516 off farm Traditional Loan/Grant	__/__/__/__/__/__/__/__/__/__/
RD Section 538	__/__/__/__/__/__/__/__/__/__/
RD Re-lending Demonstration Loan	__/__/__/__/__/__/__/__/__/__/
Owner-provided capital contributions	__/__/__/__/__/__/__/__/__/__/
Total Contributions from other sources:	__/__/__/__/__/__/__/__/__/__

(k) Does this proposal include an Owner Contribution of funds to pay transaction costs? (All that apply)

- **$5,000 per project owner contribution sufficient to pay transaction costs. Yes__/ No__ (Check One)** ***(These funds cannot be from project reserves/operating funds/be in the form of a loan. Transaction costs are defined as those costs required to complete the transaction. These include, but are not limited to, the CNA, legal and closing costs, appraisal costs and filing/recording fees. The minimum contribution required is $5,000 per project; these funds will be required to be deposited in the property reserve account prior to closing.)***
- **$1000 per project owner contribution for the hard costs of construction. Yes__/ No__ (Check One)** ***(These funds cannot be from project reserve/operating fund/be in the form of a loan. Hard costs of construction are defined on lines 1-37, page 2, on Form RD 1924-13, "Estimate and Certificate of Actual Cost". Form RD 1924-13 can be found at www.rurdev.usda.gov/regs/Forms/1924-13.pdf. The minimum contribution required is $1,000 per unit which will be required to be deposited in the property reserve account prior to closing. An increased return to owner may be budgeted and allowed for funds committed in accordance with 7 CFR section 3560.406(d)(14)(ii).)***

(l) What is the age of the project? ***(For consolidations, use the project with the earliest operational date).*** **(Check one)**

- **Was initial project operational date(s) prior to December 21, 1979? Yes__ / No__ (Check One)**
- **Was the initial project operational date(s) on or after December 21, 1979; but before December 15, 1989? Yes__ / No__ (Check One)**
- **Was the initial project operational date(s) on or after December 15, 1989; but before October 1, 1991? Yes__ / No__ (Check One)**
  - **If yes, provide the initial operational date of the project: ___/___/____ (mm/dd/yyyy)**

(m) Does this proposed transaction include a transfer of ownership? Yes__/ No__ (Check One)
If "yes", select one of the following categories and attach a copy of the purchase agreement.

- **Has the Agency servicing classification been identified as "C" or "D" for 24 months or more? Yes__/ No__ (Check One)**
- **Has the Agency servicing classification been identified as "C" or "D" for less than 24 months? Yes__/ No__ (Check One)**

If no ***(not involved in a transfer)*****, the following category applies.**

- **For stay-in-owners only, has the Agency servicing classification been identified as "B" as a result of a workout plan approved by the Agency prior to January 1, 2009? Yes__/ No__ (Check One)**

(n) Is there an Agency-approved Capital Needs Assessment? Yes__/ No__ (Check One) If yes, please select from below:

- **Was the CNAs approved on or after October 1, 2007 and prior to October 1, 2008? Yes__/ No__ (Check One)**
- **Was the CNAs approved on or after October 1, 2008 but before the publication of the FY 2009 MPR NOSA? Yes__/ No__ (Check One)**
    - **If "yes", provide the date of the most recent Agency approved CNA: ___/___/____ (mm/dd/yyyy)**

(o) Does this proposal include the installation of energy generation systems to be funded by a third party? ***(The proposal must include an overview of the energy generation system being proposed. Evidence that an energy generation system has been funded by a third party and that it has a quantifiable positive impact on energy consumption will be required.)*** **Yes__/ No__/ (Check One)**

(p) Does this proposal include rehabilitation for Energy Conservation for residential construction? (Select all that apply from below)

- **Does this project meet energy compliance for residential construction? Units earning the ENERGY STAR label must be independently verified to meet guidelines for energy efficiency as set by the U.S. Environmental Protection Agency. All procedures used in verifying a unit for the ENERGY STAR label must comply with National Home Energy Ratings System (HERS) guidelines. ENERGY STAR guidelines for residential construction apply to single or low-rise multi-family residential buildings. Yes__/ No__ (Check One)**
- **Will rehabilitated HVAC equipment be more energy efficient than the previous HVAC equipment? Yes__/ No__ (Check One)**
- **Will the newly installed windows be more energy efficient than the previous windows? Yes__/ No__ (Check One)**
- **Will additional attic insulation be added to the property? Yes__/ No__ (Check One)**
- **Will "green" or renewable materials be used in the rehabilitation or repair of the property? Yes__/ No__ (Check One)**

(q) Does this proposal include new tenant services provided by a non-profit organization or a Government agency that will not use funding generated by project rents? Yes__/ No__/ (Check One)

(r) Is the property(s) located in a Presidentially Declared Disaster Area? ***(Applicants can determine if property(s) is in a Presidentially Declared Disaster Area by checking http://www.rurdev.usda.gov/rd/disasters.*** **Yes__/ No__/ (Check One)**

[FR Doc. E9–9831 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–XV–C

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: International Trade Administration (ITA).

Title: Commercial Service Client Focus Group Discussions.

OMB Control Number: 0625–0254.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 32.

Number of Respondents: 96.

Average Hours per Response: 20.

Needs and Uses: The purpose of the focus group discussions is to gain a better understanding of actions the U.S. Commercial Service can take to improve the export-related services provided to U.S. firms. The CS proposes to modify the previously approved collection. Focus groups previously addressed awareness and branding issues, but CS proposes to revise the questions to address quality improvement issues. In providing these services, CS promotes the goods and services of small and medium-sized U.S. businesses in foreign markets.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy L. Liberante, (202) 395–3647.

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 7845, 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 Wendy Liberante, OMB Desk Officer, FAX number (202) 395–5806 or via the Internet at, *Wendy_L._Liberante@omb.eop.gov.*

Dated: April 23, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–9669 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–FP–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: Minority Business Development Agency (MBDA).

Title: Online Databases: Performance, Phoenix, and Opportunity.

OMB Control Number: 0640–0002.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 10,615.

Average Hours per Response: Performance Database, Varies 1 minute to 1 hour and 45 minutes depending on the type of information required; Phoenix Database, 9 minutes; and Opportunity Database, 15 minutes.

Burden Hours: 4,496.

Needs and Uses: As part of its service delivery programs, MBDA awards cooperative agreements each year. The recipient of each agreement is competitively selected to operate one of the following business centers: (1) Minority Business Enterprise Center (MBEC); (2) Native American Business Enterprise Center (NABEC); or (3) Minority Business Opportunity Center (MBOC) in the geographical service area designated by MBDA under the cooperative agreement. The databases allow MBDA to (1) enter the accomplishments of grant recipients (Performance), (2) enter business profiles of minority business enterprises (MBEs) (Phoenix), and (3) match contract opportunities with qualified MBEs captured in the Phoenix database (Opportunity).

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; Individuals or households; Federal, State, local or Tribal government.

Frequency: On occasion, quarterly, annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

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 7845, 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 Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5806, or *Nicholas_A._Fraser@omb.eop.gov.*

Dated: April 23, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–9675 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Extension of Time Limit for Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (''the Department'') is extending the time limit for the final results of the changed circumstances review of the antidumping duty order on certain hot–rolled carbon steel flat products (''hot–rolled steel'') from Thailand. The period of review is July 1, 2006, through June 30, 2007. This extension is made pursuant to 19 CFR 351.216(e) and 19 CFR 351.302(b).

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot–rolled steel from Thailand. *See Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562 (November 29, 2001) (''*Hot–Rolled Steel Order*''). In November 2004, in the course of the 2003 - 2004 administrative review, Sahaviriya Steel Industries Public Company Limited (''SSI'')

requested revocation of the *Hot–Rolled Steel Order with respect to its sales of subject merchandise. See Certain Hot–Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke and Rescind in Part*, 70 FR 73197 (December 9, 2005).

In its revocation request, SSI agreed to immediate reinstatement in the *Hot–Rolled Steel Order*, so long as any producer or reseller is subject to the order, should the Department determine that SSI ''sold the subject merchandise at less than normal value.'' *See* SSI's November 30, 2004, letter to the Department requesting revocation. On May 17, 2006, the Department revoked the antidumping duty order with respect to SSI after having determined that SSI sold the merchandise at not less than normal value for a period of at least three consecutive years.[1] *See Revocation*.

As the result of an adequate allegation from a domestic interested party in this proceeding (*i.e.*, United States Steel Corporation), the Department, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act''), is now conducting a changed circumstances review to determine whether SSI has resumed dumping hot–rolled steel and whether the antidumping order should be reinstated for hot–rolled steel from Thailand manufactured and exported by SSI. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Hot–Rolled Carbon Steel Flat Products from Thailand*, 73 FR 18766 (April 7, 2008).

''On October 29, 2008, based upon the complexity of the issues presented in this review, we extended the time limit for completion of this changed circumstances review until April 22, 2009. *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 64303 (October 29, 2008) (''*Extension Notice*'').[2]

On December 30, 2008, the Department published the preliminary results of the changed circumstances review and intent to reinstate SSI in the antidumping duty order on hot–rolled steel from Thailand. *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Sahaviriya Steel Industries Public Company Limited in the Antidumping Duty Order*, 73 FR 79809 (December 30, 2008) (''*Preliminary Results*'').[3]

Extension of Time Limits for Final Results

As the Department stated in both the *Extension Notice* and the *Preliminary Results*, the Department intended to issue the final results of this antidumping duty changed circumstances review on hot–rolled steel from Thailand by April 22, 2009. However, it is not practicable to complete the review within this time period. In order to evaluate fairly the issues raised by all interested parties in their respective case and rebuttal briefs, we are extending the time frame for completion of this review. As a result, pursuant to 19 CFR 351.302(b), we are extending the time limit for completion of the review by 15 days. *See Certain Pasta from Italy: Notice of Extension of Final Results of Antidumping Duty Changed Circumstances Review*, 73 FR 46871 (August 12, 2008), and *Polyethylene Terephthalate Film Sheet and Strip from the Republic of Korea: Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 6931 (February 6, 2008). Therefore, the final results are now due no later than May 7, 2009.

This notice is published in accordance with sections 751(b) and 771(i) of the Act.

Dated: April 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–9815 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] The three administrative reviews forming the basis of the revocation are: 1) the May 3, 2001, through October 31, 2002, review, *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 19388 (April 13, 2004); 2) the November 1, 2002, through October 31, 2003, review, *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Rescission of Antidumping Duty Administrative Review*, 69 FR 18349 (April 7, 2004); and 3) the November 1, 2003, through October 31, 2004, review, *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 28659 (May 17, 2006) (''Revocation'')

[2] On December 10, 2008, we issued a notice correcting an error in the Extension Notice. *See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Correction to Notice of Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 75079 (December 10, 2008).

[3] On February 5, 2009, the Department issued a notice correcting an error in the *Preliminary Results. See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Correction to Preliminary Results of Changed Circumstances Review and Intent To Reinstate Sahaviriya Steel Industries Public Company Limited in the Antidumping Duty Order*, 74 FR 6136 (February 5, 2009).

DEPARTMENT OF COMMERCE

International Trade Administration

William S. Middleton VA Hospital, et al., Notice of Consolidated Decision on Applications for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 09–004. Applicant: William S. Middleton Veterans Administration Hospital, Madison, WI 53706. Instrument: Electron Microscope, Model H–760–III. Manufacturer: Hitachi High Technologies Corporation, Japan. Intended Use: See notice at 74 FR 11527, March 18, 2009.

Docket Number: 09–006. Applicant: Bergen County Technical Schools/ Bergen County Academies, Hackensack, NJ 07601. Instrument: Transmission Electron Microscope, Model JEM–2100. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 74 FR 11527, March 18, 2009.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: April 23, 2009.

Christopher Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–9810 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO82

Magnuson–Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the University of Rhode Island/Rhode Island Sea Grant (URI/RISG) contains all of the required information and warrants further consideration. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Atlantic Mackerel, Squid and Butterfish Fishery Management Plans (FMP). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States.

Regulations under the Magnuson–Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 14, 2009.

ADDRESSES: You may submit written comments by any of the following methods:

• Email: *DA9–088@noaa.gov*. Include in the subject line ''Comments on URI/RISG *Loligo* fishery EFP.''

• Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on URI/RISG *Loligo* fishery EFP, DA9–088.''

• Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Aja Peters–Mason, Fishery Management Specialist, 978–281–9195.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted on March 23, 2009, by David Beutel, the Fishery Extension Specialist at URI/RISG. The primary goal of this study is to investigate the effects of an experimental trawl in reducing bycatch of butterfish and scup in the *Loligo* squid fishery. The results of this research could be submitted to the Mid–Atlantic Fishery Management Council to provide information that could be used to enhance the management of the *Loligo* squid fishery.

Two chartered fishing vessels will be used to conduct five one-day fishing trips during the spring (May/June 2009) and five one-day fishing trips in the fall (September/October 2009) in and around Block Island Sound and Rhode Island Sound. On each day of sampling, two vessels will tow side–by–side with one vessel towing the control net and the other the experimental net. Each fishing day will consist of six tows of 45 to 60 minutes duration. Each vessel will have one scientific observer on board.

The researchers will conduct a bottom trawl catch characterization study aboard two commercial fishing vessels targeting *Loligo* squid using a ''side–by–side'' towing method comparing the control net with the experimental net. The control net is a 362 x 12 cm two seam polyethylene balloon net equipped with an 20–cm (8–inch) rockhopper sweep. The experimental net is identical to the control except for the addition of the eighteen foot long rope escape panel with the final two bellies repeated. The rope escape panel will be fitted over the circumference of the original bellies 35.5 meshes down from the wide end of the 8–cm lower belly. This will cause the original 8–cm bellies to act as a funnel. Small canvas flow diverters will be used to maintain the shape of the after bellies, the escape panel, and the funnel. Flow diverters also create small pockets of low pressure which may facilitate the butterfish and scup in finding the route of escape.

For each tow, either all of the butterfish and scup or a subsample consisting of at least 10% of the catch will be weighed and measured for total length (to nearest cm). Total catch size will be determined prior to subsampling. Other expected bycatch includes summer flounder and Atlantic bluefish, which will be weighed and measured.

In addition to harvesting the target species, *Loligo* squid, the applicant expects to incidentally catch butterfish, scup, summer flounder, and bluefish. Because the vessel would be temporarily retaining both target and non–target fish for data collection purposes that it otherwise should not, the vessel requires exemption from minimum fish size and possession restrictions found throughout 50 CFR part 648.

All *Loligo* and other legally–sized fish caught during research would be landed as normal commercial harvest and sold to defray the costs of chartering the collaborating fishing vessels. All other organisms would be discarded as quickly and carefully as practicable following data collection to ensure maximum likelihood of survival.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 24, 2009.

Kristen C. Koch,

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

[FR Doc. E9–9814 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO60

Magnuson–Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notification of a proposal to conduct exempted fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by Coonamessett Farm, which would exempt Atlantic sea scallop (scallop) vessels participating in a modified scallop dredge twine top

(twine top) study from minimum twine top mesh sizes, Closed Area I Access Area (CAI) and Closed Area II Access Area (CAII) scallop vessel trip restrictions, and fish possession restrictions, should be issued for public comment. Although the Assistant Regional Administrator has not made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP), NMFS seeks public comment on the exemptions the EFP is requesting. Further review and consultation may be necessary before a final determination is made.

DATES: Comments must be received on or before May 14, 2009.

ADDRESSES: Comments may be submitted by e–mail to *DA9–039@noaa.gov*. Include in the subject line of the e–mail comment the following document identifier: ''Comments on dredge twine top EFP.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on dredge twine top EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, phone: 978–281–9221, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: Coonamessett Farm submitted this EFP application for research activities that would assess a modified scallop dredge twine top (twine top) designed to reduce finfish bycatch while improving the retention of scallops. The subject EFP would exempt vessels from the following regulations: Ten–inch (25.4–cm) minimum twine top mesh size specified at 50 CFR 648.51(b)(2); CAI and CA II scallop vessel trip restrictions specified at § 648.81(a)(1)(vi) and (b)(1)(v); and exemptions from scallop, Northeast multispecies, monkfish, summer flounder, black sea bass, scup, spiny dogfish, and skate possession restrictions specified throughout 50 CFR part 648.

The applicant states that previous twine top selectivity research found that the aft portion of the twine top is where most scallop escapement occurs, and the forward portion of the twine top is where most finfish escapement occurs. The applicant postulates, that by decreasing the mesh size to 6 inches (15.2 cm) in the aft portion of the twine top while increasing the mesh size to 12 in (30.5 cm) in the forward portion of the twine top, both scallop retention and finfish escapement would increase. The experimental twine top would also have a lower hanging ratio than that of a traditionally hung twine top, with the hypothesis that this may further reduce finfish bycatch.

The applicant states that, to effectively test the modified twine top, field trials must occur in areas of high finfish bycatch such as those found in the scallop Access Areas CAI and CAII. However, the CAI Access Area is closed to scallop fishing for the 2009 fishing year (March 1, 2009—February 28, 2010). The applicant requests up to three 7-day trips between May and June of 2009, in the Access Areas CAI and/or CAII, when the access areas are closed to scallop fishing. On these trips, the applicant would compare identical dredge frames fitted with a standard twine top and a modified twine top. All scallops and finfish caught during these trips would be processed to obtain morphological data and then returned to the sea as soon as possible.

In addition to testing the twine top in CAI and CAII, the applicant requests authorization to test the modified twine top on up to three fishing trips to the Delmarva Scallop Access Area (DELMARVA) and/or Elephant Trunk Access Area (ETAA). Both the DELMARVA and ETAA are open to scallop fishing in the 2009 fishing year.

Exemption from scallop, Northeast multispecies, monkfish, summer flounder, black sea bass, scup, spiny dogfish, and skate possession restrictions would authorize project investigators to temporarily possess finfish for scientific data collection purposes prior to returning all finfish to the sea.

Regulations under the Magnuson–Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

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

Dated: April 24, 2009.

Kristen C. Koch,

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

[FR Doc. E9–9816 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–822

Implementation of the Findings of the WTO Dispute Settlement Panel and Appellate Body in United States - Final Anti–Dumping Measures on Stainless Steel from Mexico: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 31, 2009, the Department of Commerce (the Department) issued a determination regarding the dumping margin calculation in the less–than-fair–value investigation of stainless steel sheet and strip in coils (stainless steel) from Mexico challenged by Mexico before the World Trade Organization (WTO). On April 23, 2009, the U.S. Trade Representative (USTR) instructed the Department to implement in whole this determination under section 129 of the Uruguay Round Agreements Act (URAA). The Department is now implementing this determination.

EFFECTIVE DATE: The effective date of this determination is April 23, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 2008, the Department advised interested parties it was initiating a proceeding under section 129 of the URAA to issue a determination with respect to the investigation of stainless steel from Mexico that would implement findings of the WTO dispute settlement panel in *United States - Final Anti–Dumping Measures on Stainless Steel from Mexico*, WT/DS344/R (December 20, 2007). On January 12, 2009, the Department issued its preliminary results, in which it recalculated the weighted–average dumping margins from the less–than-fair–value investigation of stainless steel from Mexico[1] by applying the calculation

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils*

Continued

methodology described in *Antidumping Proceedings: Calculation of the Weighted–Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006). The Department also invited interested parties to comment on the preliminary results. After receiving comments and rebuttal comments from interested parties, the Department issued its final results for the section 129 determination on March 31, 2009.

Consistent with section 129(b)(3) of the URAA, USTR held consultations with the Department and the appropriate congressional committees with respect to this determination. On April 23, 2009, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, USTR directed the Department to implement in whole this determination.

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) provides that ''notwithstanding any provision of the Tariff Act of 1930,'' within 180 days of a written request from USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. *See* 19 U.S.C. 3538(b)(2). The Statement of Administrative Action accompanying the URAA (SAA), H.R. Doc. No. 103–316, Vol. 1 (1994), reprinted in 1994 U.S.C.C.A.N. 3773 variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination. *See* SAA at 1025 and 1027. After consulting with the Department and the appropriate congressional committees, USTR may direct the Department to implement, in whole or in part, the new determination made under section 129. *See* 19 U.S.C. 3538(b)(4). Pursuant to section 129(c), the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which USTR directs the Department to implement the new determination. *See* 19 U.S.C. 3538(c). The new determination is subject to judicial review separate and apart from judicial review of the Department's original determination. *See* 19 U.S.C. 1516a(a)(2)(B)(vii).

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by interested parties to this proceeding are addressed in the final results of proceeding under section 129 of the URAA. *See* ''Issues and Decision Memorandum for the Final Results of Proceeding Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Stainless Steel from Mexico'' from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated March 31, 2009 (Issues and Decision Memorandum), which is hereby adopted by this notice. The Issues and Decision Memorandum is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce main building and can be accessed directly at http://ia.ita.doc.gov/download/section129/full–129–index.html. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content. A list of the issues addressed in the Issues and Decision Memorandum is appended to this notice.

Final Antidumping Margins

The recalculated margins, unchanged from the preliminary results, are as follows:

Manufacturer/Exporter	Amended Final Determination[2]	Recalculated Weighted-Average Margins
ThyssenKrupp Mexinox S.A. de C.V.[3]	30.85 percent	30.69 percent
All Others	30.85 percent	30.69 percent

[2] *See Amended Final Determination and Order*, 64 FR at 40562.

[3] This company was included in the less-than-fair-value investigation under the name of its predecessor, Mexinox S.A. de C.V. However, the Department subsequently made a formal successor-in-interest finding with respect to this company. *See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 67 FR 48878 (July 26, 2002).

Implementation

On April 23, 2009, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, USTR directed the Department to implement this determination, effective April 23, 2009. Accordingly, we will instruct U.S. Customs and Border Protection (CBP) to change the all–others cash–deposit rate from 30.85 percent *ad valorem* to 30.69 percent *ad valorem*.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: April 23, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Issues Raised in the Issues and Decision Memorandum

Comment 1: Whether the Department Should Recalculate Margins in Eight Administrative Reviews

[FR Doc. E9–9809 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–DS–S

From Mexico, 64 FR 40560 (July 27, 1999) (*Amended Final Determination and Order*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO28

Listing Endangered and Threatened Species: Initiation of Status Review for the Oregon Coast Evolutionarily Significant Unit of Coho Salmon

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

ACTION: Initiation of status review and request for information.

SUMMARY: We, NMFS, initiate a status review under the Endangered Species Act (ESA) for the Oregon Coast coho

salmon (*Oncorhynchus kisutch*) evolutionarily significant unit (ESU). To ensure that the status review is complete and based upon the best available scientific and commercial information, we solicit information regarding the population structure, status and trends, and limiting factors and threats of this coho salmon ESU.

DATES: Information and comments on the subject action must be received by July 28, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–XO28, by any of the following methods:

- Fax: 503–230–5441.
- Mail: Submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. You may hand-deliver written comments to our office during normal business hours at the street address given above.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Garth Griffin, NMFS, Northwest Region, (503) 231–2005; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice published February 11, 2008 (73 FR 7816), we issued a final determination to list the Oregon Coast coho salmon ESU as a threatened species under the ESA, and also issued final protective regulations and designated critical habitat. The current listing of Oregon Coast coho salmon and associated protections will remain in place while we conduct this new review. If we determine that a change in listing status is warranted, such a finding would be proposed in a subsequent **Federal Register** notice, and public comment would be solicited. A thorough review of previous Federal ESA actions related to Oregon Coast coho salmon can be found in 73 FR 7816 through 7817 (February 11, 2008).

ESA Statutory, Regulatory, and Policy Provisions

To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any *distinct population segment* [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' NMFS treats ESUs of Pacific salmon as constituting a DPS, and hence a ''species'' under the ESA (56 FR 58612; November 20, 1991). To qualify as an ESU, a Pacific salmon population must be substantially reproductively isolated from other conspecific populations and represent an important component in the evolutionary legacy of the biological species.

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered in the foreseeable future (sections 3(6) and 3(20), respectively). The statute requires us to determine whether any species is endangered or threatened because of any of five factors: the present or threatened destruction of its habitat, overexploitation, disease or predation, the inadequacy of existing regulatory mechanisms, or any other natural or manmade factors (section 4(a)(1)(A) (E)). We are to make this determination based solely on the best available scientific information after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species. The focus of our evaluation of these five factors is to evaluate whether and to what extent a given factor represents a threat to the future survival of the species. The focus of our consideration of protective efforts is to evaluate whether these efforts substantially have and will continue to address the identified threats and so ameliorate a species' risk of extinction. In making our listing determination, we must consider all factors that may affect the future viability of the species, including whether regulatory and conservation programs are inadequate and allow threats to the species to persist or worsen, or whether these programs are likely to mitigate threats to the species and reduce its extinction risk. The steps we follow in implementing this statutory scheme are to: review the status of the species, analyze the factors listed in section 4(a)(1) of the ESA to identify threats facing the species, assess whether certain protective efforts mitigate these threats, and make our best prediction about the species' future persistence.

The joint NMFS FWS Policy on Evaluating Conservation Efforts (''PECE'' 68 FR 15100; March 28, 2003) provides direction for considering protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness.

Distribution and Life History Coho Salmon

Coho salmon (O. kisutch) are a widespread species of Pacific salmon, occurring in most major river basins around the Pacific Rim from Monterey Bay, California, north to Point Hope, Alaska, through the Aleutians, and from the Anadyr River south to Korea and northern Hokkaido, Japan (Laufle et al., 1986). From central British Columbia south, the majority of coho salmon adults are 3–year-olds, having spent approximately 18 months in fresh water and 18 months in salt water (Gilbert, 1912; Pritchard, 1940; Sandercock, 1991). The primary exceptions to this pattern are ''jacks,'' sexually mature males that return to freshwater to spawn after only 5–7 months in the ocean. However, in southeast and central Alaska, the majority of coho salmon adults are 4–year-olds, having spent an additional year in fresh water before going to sea (Godfrey et al., 1975; Crone and Bond, 1976). The transition zone between predominantly 3–year-old and 4–year-old adults occurs somewhere between central British Columbia and southeast Alaska.

West Coast coho smolts typically leave freshwater in the spring (April to June) and re-enter freshwater when sexually mature from September to November, and spawn from November to December and occasionally into January (Sandercock, 1991). Stocks from British Columbia, Washington, and the Columbia River often have very early (entering rivers in July or August) or late (spawning into March) runs in addition to ''normally'' timed runs.

Information Solicited

ESU Structure and Extinction Risk

To ensure that the updated status review is complete and based on the best available and most recent scientific and commercial data, we solicit information and comments (see **DATES** and **ADDRESSES**) concerning Oregon Coast coho salmon. We solicit pertinent information on the viability of naturally spawned and hatchery populations such as: data on population abundance, recruitment, productivity, escapement, and reproductive success (e.g., spawner-recruit or spawner-spawner survivorship, fecundity, smolt production estimates, and smolt-to-adult ocean survival rates); historical and present data on hatchery fish releases, outmigration, survivorship, returns, straying rates, replacement rates, and reproductive success in the wild; data on age structure and migration patterns of juveniles and adults; meristic, morphometric, and

genetic studies; and information on harvest rates on hatchery and wild fish. Data since our last evaluation (2002) is particularly helpful.

In the February 2008 listing determination for Oregon Coast coho (73 FR 7816), we noted that the principal inquiry in determining if this ESU warrants listing is whether present habitat conditions are sufficient to support a viable ESU, particularly during periods of unfavorable marine conditions and low marine survival, and whether future freshwater habitat conditions are expected to degrade. We concluded that the present and future status of freshwater habitat for the Oregon Coast coho ESU was uncertain. Accordingly, we also seek information on spatial or temporal trends in habitat accessibility, quality, and quantity of freshwater (including overwintering and rearing habitats) habitats within the boundaries of the Oregon Coast coho ESU.

Efforts Being Made to Protect Oregon Coast Coho Salmon

We also encourage all parties to submit information on ongoing efforts to protect and conserve Oregon Coast coho salmon, as well as information on recently implemented or planned activities and their likely impact(s).

References

Copies of the petition and related materials are available on the Internet at *http://www.nwr.noaa.gov*, or upon request (see **ADDRESSES** section above).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 23, 2009.

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL62

Marine Mammal Stock Assessment Reports

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

ACTION: Notice of availability; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). These reports for 2008 are now final and available to the public.

ADDRESSES: Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: *http://www.nmfs.noaa.gov/pr/sars/*. You also may send requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115.Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, e-mail *Tom.Eagle@noaa.gov*; Robyn Angliss, Alaska Fisheries Science Center, 206–526–4032, email *Robyn.Angliss@noaa.gov*; Gordon Waring, Northeast Fisheries Science Center, email *Gordon.Waring@noaa.gov*; or Jim Carretta, Southwest Fisheries Science Center, 858–546–7171, email *Jim.Carretta@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) required NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal level (PBR), estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

As required by the MMPA, NMFS updated SARs for 2008, and the revised reports were made available for public review and comment (73 FR 40299, July 14, 2008). The MMPA also specifies that the comment period on draft SARs must be 90 days. NMFS received comments on the draft SARs and has revised the reports as necessary. The final reports for 2008 are available.

Comments and Responses

NMFS received letters containing comments on the draft 2008 SARs from two Federal agencies (Marine Mammal Commission and Environmental Quality Division, National Park Service), three non-governmental organizations (Center for Biological Diversity, Australians for Animals International, and Hawaii Longline Association), and two individuals. Most letters contained multiple comments.

Unless otherwise noted, comments suggesting editorial or minor clarifying changes were included in the reports. Such editorial comments and responses to them are not included in the summary of comments and responses below. Other comments recommended development of Take Reduction Plans or to initiate or repeat large data collection efforts, such as abundance surveys, observer programs, or other mortality estimates. Comments on actions not related to the SARs (e.g., convening a Take Reduction Team or listing a marine mammal species under the Endangered Species Act (ESA)) are not included below. Many comments recommending additional data collection (e.g., additional abundance surveys or observer programs) have been addressed in previous years. NMFS' resources for surveys, observer programs, or other mortality estimates are fully utilized, and no new large surveys or other programs may be initiated until additional resources are available or until ongoing monitoring or conservation efforts can be terminated so that the resources supporting them can be redirected. Such comments on the 2008 SARs and responses to them may not be included in the summary below because the responses have not changed.

In some cases, NMFS' responses state that comments would be considered for, or incorporated into, future revisions of the SAR rather than being incorporated

into the final 2008 SARs. The delay is due to review of the reports by the regional SRGs. NMFS provides preliminary copies of updated SARs to SRGs prior to release for public review and comment. If a comment on the draft SAR suggests a substantive change to the SAR, NMFS may discuss the comment and prospective change with the SRG at its next meeting prior to incorporating the change.

Comments on National Issues

Comment 1: NMFS should include a ''Habitat Concerns'' section in all SARs.

Response: NMFS disagrees. MMPA section 117(a)(3) requires a discussion of habitat concerns only in certain SARs (' for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat ...''). Accordingly, such discussion is included where habitat effects may have a substantial population effect (one that could cause a decline or impede recovery).

Comment 2: The SARs tend to lag about two years behind the latest data on fishery mortality. In those fisheries where there is 100 percent observer coverage, the data are received in near ''real-time'' and could be incorporated sooner so that management decisions are based upon the latest information.

Response: Although data are produced in near ''real-time'' in some cases, the data must be reviewed for quality assurance purposes prior to use in SARs or supporting management decisions. Fluctuations in estimates of mortality and serious injury tend to be relatively small because NMFS uses 5–year averages in most cases, and the PBR approach was tested and found to be robust for underestimates of mortality and serious injury or the precision of these estimates in meeting performance goals.

Comment 3: Many stocks have ''undetermined'' PBR because abundance estimates are more than eight years old. There is no excuse for failing to update abundance estimates for many of theses stocks. Given the precautionary principles incorporated into the MMPA, any such stocks should be designated as strategic because NMFS cannot conclude that mortality does not exceed PBR.

Response: Funding limitations prevent more frequent surveys for updating abundance estimates. Funding requests have been formulated considering Administration priorities for marine resource conservation and other national needs.

The MMPA includes specific criteria for designating a marine mammals stock as ''strategic.'' These criteria include (1) human-caused mortality and serious injury at levels above PBR, (2) a designation or listing as a depleted, threatened or endangered species or stock, and (3) declining status likely to result in the stock's or species' listing as a threatened or endangered species. NMFS' guidelines for preparing stock assessment reports provide guidance for determining status in situations where insufficient information is available for a comparison of human-caused mortality and serious injury to PBR. The guidelines state, ''If the human-caused mortality is believed to be small relative to the stock size based on the best scientific judgment, the stock could be considered as non-strategic. If human-caused mortality is likely to be significant relative to stock size (e.g., greater than the annual production increment) the stock could be considered as strategic.'' Accordingly, each such situation is addressed individually and considered by NMFS experts and members of the appropriate SRG before a determination is made on the stock's status.

Comment 4: The SARs do a good job of addressing PBR and human-caused mortality and serious injury.

Response: Comment noted.

Comment 5: ''Other Mortality'' sections of the SARs do not comprehensively address projections for many activities (e.g., military and commercial activities, scientific research, climate change, decreases in fish stock size).

Response: The ''Other Mortality'' sections in SARs report only direct human-caused mortality, and the reported levels reflect only the known or estimated levels of mortality and serious injury. The activities included in these sections include only those for which mortality estimates or reports are available.

Comment 6: The reported mean annual takes do not reflect the projected increases in impacts or address preservation or stewardship aspects of many actions that could affect marine mammals.

Response: This comment is correct. The SARs do not report on everything that is known, projected, or suspected about each stock of marine mammals. Rather, the SARs are limited to emphasize the key elements required by MMPA section 117, which form the scientific basis supporting implementation of the regime to govern interactions between marine mammals and commercial fishing operations in MMPA section 118.

Comment 7: The Scientific Committee of the International Whaling Commission should be provided an opportunity to review the SARs and comment on them.

Response: The Scientific Committee has an opportunity to review the SARs during the 90–day public comment period; however, NMFS does not plan to add an additional step in the SAR process by requesting a formal review by the Scientific Committee. Many of the scientists on the U.S. delegation to the Scientific Committee meetings are NMFS staff, and these scientists prepare, provide input to, or review the SARs. In addition, the SARs are prepared by NMFS experts, reviewed by additional experts within NMFS and on regional SRG, and subjected to public review and comment. Furthermore, much of the information contained in the SARs is extracted from the peer-reviewed literature. An additional review step is unnecessary.

Comment 8: NMFS should invest in the development of technologies and methods that will help address questions about population status and habitat use and, therefore, guide management strategies, particularly those aimed at avoiding adverse human effects.

Response: NMFS invests, to the extent appropriations allow, in such technologies and methods.

Comment 9: NMFS should work with other agencies conducting research related to marine mammals for the purposes of coordinating scientific efforts and sharing data and results.

Response: NMFS and other agencies (state and Federal) generally coordinate marine mammal-related research so that efforts are not duplicated and existing information is shared. NMFS reviews surveys conducted by other entities for potential incorporation into SARs and will continue to use the best available information to prepare SARs.

Comment 10: NMFS should work with Federal and state fisheries management agencies and industry to develop a funding strategy that would support more effective observer programs for collecting data on incidental fisheries-related mortality and serious injury of marine mammals.

Response: NMFS established a National Observer Program in 1999 to combine program-specific observer effort for efficiency and to promote sustainable funding for a comprehensive marine resource observer program. The National Observer Program has been working with fishery management agencies and the fishing industry to meet these objectives and will continue to do so. The National Observer Program, in coordination with all six NMFS regions, is completing a National

Bycatch Report to compile species- and fishery-specific bycatch estimates for fish, marine mammals, sea turtles, and sea birds. This initiative will incorporate the development of fishery improvement plans to improve the collection of bycatch data and bycatch estimation methodologies. These improvement plans will also provide a comprehensive assessment of resources required to improve bycatch in U.S. commercial fisheries.

Comment 11: NMFS should develop and implement a systematic and comprehensive approach for incorporating and considering all risk factors, including those that directly affect marine mammals and those that affect habitat, into the SARs.

Response: NMFS disagrees. The description of SARs included in MMPA section 117 indicates that SARs should focus primarily on the information necessary to evaluate the impact of direct human-caused mortality and serious injury. Such information includes abundance and productivity estimates, calculations of PBR, and estimates of human-caused mortality and serious injury by source. In some cases (where other factors may be causing a decline or impeding recovery of strategic stocks), SARs contain a discussion of other factors. Expanding the SARs to include substantially more information on a wide variety of potential risk factors would detract from their main purpose, which is to be a concise summary of the information needed to implement the regime to govern interactions between marine mammals and commercial fishing operations.

Comments on Alaska Regional Reports

Comment 12: Given the observed and projected impacts of sea-ice loss on ice-dependent pinnipeds, NMFS should declare all the ice-dependent seals under its jurisdiction to be strategic stocks.

Response: Observed or projected impact of sea-ice loss is not among the criteria in the MMPA for determining whether or not a stock is strategic. Accordingly, such impacts are not considered in the determination. Also, see response to Comment 3.

Comment 13: The SARs must address the most important threats to a given species. For ice-dependent seals, the Habitat Concerns section should be expanded to include more than a single sentence.

Response: The SARs for ribbon seals, ringed seals, spotted seals, and bearded seals are scheduled to be reviewed, and updated if appropriate, in the 2009 SARs. The Habitat Concerns sections for these stocks will be updated if appropriate. The Habitat Concerns section is optional, not a requirement of the SARs; see response to comment 27.

Comment 14: The draft SAR includes beluga whales in Yakutat as part of the Cook Inlet stock although the ESA listing rule notes the Yakutat belugas are genetically and geographically isolated from Cook Inlet belugas. Given their small population size, Yakutat belugas should be designated a depleted stock.

Response: Although the preamble to a rule promulgated under the ESA states that beluga whales occupying Yakutat Bay are discrete from beluga whales in Cook Inlet (72 FR 62919, October 22, 2008), regulations promulgated under the MMPA (50 CFR 216.15(g)) explicitly include beluga whales occupying Yakutat Bay as part of the depleted Cook Inlet stock. Accordingly, the beluga whales occupying Yakutat Bay are depleted under the MMPA. Designating the beluga whales in Yakutat Bay as a stock separate from those in Cook Inlet would require notice-and-comment rulemaking following a review of the status of these animals in accordance with MMPA section 115.

Comment 15: The abundance estimate for beluga whales, Eastern Chukchi Sea stock, is outdated, and the PBR was changed to ''undetermined''. In three of the past six years, subsistence harvest, which do not include struck-and-loss corrections, has met or exceeded the PBR of 74. Furthermore, the recovery factor of this stock should be reduced from 1.0 to 0.5, which is the appropriate recovery factor for a stock of unknown status. If the proper recover factor were used, the PBR would be 37, which is below annual human-caused mortality for five of the last 6 years. In light of the high level of harvest, combined with the impacts of global warming and increasing oil industry activity in its range, this stock should be considered strategic.

Response: NMFS' guidelines for preparing stock assessment reports provide guidance for determining status in situations where insufficient information is available for a comparison of human-caused mortality and serious injury to PBR. The guidelines state, ''If the human-caused mortality is believed to be small relative to the stock size based on the best scientific judgment, the stock could be considered as non-strategic. If human-caused mortality is likely to be significant relative to stock size (e.g., greater than the annual production increment) the stock could be considered as strategic.'' NMFS scientists have determined that human-caused mortality is likely less than the annual production increment and presented this determination to the Alaska SRG in January 2008 before the SAR was made available for public review and comment. The 5–year mean mortality/serious injury estimate was below the former PBR of 74. Accordingly, the stock retains a status of ''non-strategic''. Also, see response to Comment 3.

Comment 16: NMFS should proceed with formal recognition of 12 stocks of harbor seals in Alaska and proceed with research and management of those stocks as set forth in the MMPA.

Response: NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 16) and 2007 (73 FR 21111, April 18, 2008, Comment 23). As in the past, NMFS continues its commitment to work with its co-managers in the Alaska Native community to evaluate and revise stock structure of harbor seals in Alaska.

Comment 17: Given the approval by the Secretary of the Interior of a plan for oil and gas lease sales in the range of North Pacific right whales, Eastern North Pacific stock, 2007–2012, the SAR should include more than ''recent interest'' in oil and gas exploration and development to reflect the more formal evaluation for leasing.

Response: At this time, previously-proposed lease sales are being reevaluated. Given that there is considerable uncertainty about whether lease sales will occur, it is currently unnecessary to expand on what lease sales may occur within the range of the North Pacific right whale.

Comment 18: The maps and stock descriptions of humpback, fin, and minke whales should be changed to include recent sightings in the Chukchi and Beaufort Seas.

Response: NMFS will review the recent sightings of humpback, fin, minke, and gray whales in the Chukchi and Beaufort Seas, and update the maps and geographic range information in the 2009 SARs accordingly.

Comment 19: NMFS should include the narwhal in its Alaska SARs due to apparent increasing sightings and take authorizations issued for the species.

Response: In accordance with the MMPA, NMFS prepares SARs for species or stocks that occur in waters under U.S. jurisdiction and interprets this requirement to exclude those species or stocks for which there is a remote likelihood of occurring in U.S. waters (e.g., stocks for which only the margins of the range extends into U.S. waters or that enter U.S. waters only during anomalous current or temperature shifts). NMFS is currently

collecting and reviewing available narwhal sightings information and will consider whether a future SAR is appropriate after the review is complete.

Comment 20: The SAR for humpback whales, Central North Pacific stock, must use the recently released data from the Structure of Populations, Levels of Abundance, and Status of Humpbacks (SPLASH) project, which represents the best population data available. The SAR appropriately rejects the abundance estimates based upon 1993 survey data as being outdated; however, it incorrectly states that the PBR is undetermined. The SPLASH data indicate a significant population increase, resulting in more than doubling of the stock's population estimate.

Response: The final SPLASH report was released in May 2008 (Calambokidis et al., 2008), after the draft 2008 SARs were prepared. NMFS will be using the data provided in this report to partially update the draft 2009 SARs and plans a full update of the Pacific humpback whale SARs in 2010.

Comments 21 through 27 refer to the SAR for gray whales, Eastern North Pacific stock.

Comment 21: The SAR for gray whales does not properly consider the findings of Alter et al. (2007). The SAR concludes their analysis is irrelevant because an estimate of the abundance 1100–1600 years ago does not necessarily represent current carrying capacity (K); however, the SAR cites no authority for this conclusion. Wade's (2002) analysis supports the conclusion in Alter et al. (2007) through the inability to reconcile the catch history from the 1800s with the recent time series of abundance data. Uncertainties regarding this stock's long-term response to climate change support a precautionary approach to management, and NMFS should designate the stock as depleted.

Response: As noted in responses to comments on the 2007 SARs (73 FR 21111, April 18, 2008), NMFS considered the findings of Alter et al. (2007), in addition to publications in response to Alter et al. (2007) (e.g., Palsboll et al. 2007) and concluded these findings do not indicate the stock is depleted. Furthermore, the MMPA does not include uncertainties regarding a stock's long-term response to climate change among the criteria within the definition of ''depleted''.

Neither the MMPA nor its legislative history defines K. NMFS interpreted the use of K within the MMPA to mean current carrying capacity in a legislative proposal submitted to Congress after extensive internal and interagency review and two separate opportunities for public review and comment. Accordingly, an abundance of the population more than 1,000 years ago cannot be a reasonable proxy for K.

Comment 22: The draft SAR has not used or reported the best scientific information available. For example, many of the estimates in the SAR are older than those in NMFS' draft Environmental Impact Statement (DEIS) on the Makah's request for a limited waiver of the MMPA's moratorium to allow them to continue their treaty right of hunting for gray whales. NMFS should explain why two different sets of data are presented in these documents.

Response: The abundance estimate of 18,813 reported in the draft 2008 SARs is based on the mean of the 2000/01 and 2001/02 abundance estimates. The abundance estimate of 20,110 reported in the DEIS is based on the results of the 2006/07 census. The draft 2008 SARs were prepared and updated prior to the availability and publication of Rugh et al. (2008), which analyzed the results of the 2006–2007 census of the eastern North Pacific stock of gray whales. This information will be included in the gray whale SAR in a future revision.

Comment 23: The ramifications of calculating a PBR based upon a highly inflated recovery factor and minimum abundance (Nmin) are unknown. The recovery factor for all other large whales is set at 0.1, and that for gray whales is 1.0. NMFS cannot claim the population is healthy. Nmin has not been adjusted to account for the population collapse in 1999 and 2000 in which a third or more of the population was lost.

Response: Most large whale species are listed as ''endangered'' under the ESA and, thus, have been assigned a recovery factor of 0.1 as indicated in NMFS' guidelines for assessment marine mammal stocks. The eastern North Pacific gray whale stock was removed from the list of endangered species in 1994 and is currently within its optimum sustainable population (OSP) (Wade and Perryman 2002; Punt et al. 2004). A major purpose of the recovery factor is to allow a portion of net annual production to be used for recovery to OSP. Because this stock is within its OSP, no recovery is necessary.

Nmin was calculated from an abundance estimate based on surveys after the 1999–2000 stranding event. Therefore, the current value of Nmin incorporates effects of this stranding event.

Comment 24: There is substantial inconsistency among documents produced by NMFS scientists on estimates of K; therefore, the value of K in the draft SAR has no validity.

Response: NMFS has produced documents with a range of estimates for K because NMFS has used alternative models for analyzing data and because new information has become available since the first estimate of K was published. Wade's (2002) analysis included multiple models and identifying the ''best'' model for interpretation of the results. Therefore, the calculation of alternative estimates for K was an integral part of the analytical process, which produced a more robust estimate of K than would occur from using a single model. As new information has been obtained (e.g., additional abundance estimates or revisions to the models used in estimating abundance), the entire data set is re-analyzed using the approaches in Wade (2002). Furthermore, the various estimates of K are in general agreement.

Comment 25: The extent of orca predation on gray whales has been ignored in the draft SAR. Scientists from Monterey and Alaska are documenting mortality rates of up to 30 percent in the gray whale population in some years.

Response: The SARs report a variety of information on marine mammals, including abundance, distribution, trends, and human-induced mortality and serious injury. Some information on threats may be included in certain SARs when the estimated severity of the threat significantly affects the stock's status (e.g., killer whale predation is mentioned in the SAR for the Cook Inlet beluga stock). NMFS is not aware of 30–percent mortality rates of gray whales due to killer whale predation.

Comment 26: There are several key issues for the PBR in the gray whale SAR. These are as follows:

(a) PBR is no substitute for comprehensive assessments;

(b) Maximum sustainable yield is a limit rather than a target;

(c) The value of Nmin is highly dubious;

(d) There is no adequate explanation for setting the recovery factor at 1.0;

(e) The harvest information is not good, as suggested by the inability to reconcile the historical population size to current data;

(f) It is not clear why the PBR is constant when NMFS claims the population is increasing;

(g) No papers explicitly review methodology;

(h) The locations for abundance estimates were changed; and

(i) Calving figures do not show an exploding population.

Response: The subheadings below correspond to the subheadings in the comment:

(a) PBR is not used as a substitute for a comprehensive assessment. Rather, it is included as a requirement of the MMPA;

(b) NMFS agrees, and MSY is not used within the MMPA;

(c) The value of Nmin is based on the best available information on abundance and the variance of the abundance estimates.

(d) A recovery factor of 1.0 is appropriate. See response to Comment 23.

(e) Wade (2002) included an additional variance term in the model to account for potential underestimated harvest during the whaling years; thus, his estimates of population parameters incorporate this uncertainty. NMFS is confident that good information is available for the past 5 years, which is the relevant time period for estimating the effect of current human-caused mortality and serious injury.

(f) The PBR level is updated only when there is new information on abundance available. The abundance estimate used in the SARs in both 2005 (the last time the gray whale SAR was scheduled to be updated) and 2008 both use a mean estimate of the abundance estimates from 2000/01 census and 2001/02 census. Therefore, because the abundance estimated calculated from the mean estimates over these years is the same, the PBR level has not changed.

(g) The methodologies for key parameters in the SARs (e.g., those used for PBR) were described in peer-reviewed literature. The guidelines for assessing marine mammal stocks were subjected to peer and public review three different times (59 FR 40527, August 9, 1995; 62 FR 3005, January 21, 1997; and 69 FR 3005, November 18, 2004). Therefore, NMFS maintains that important methodologies used in SARs have been thoroughly reviewed.

(h) Gray whale shore-based counts were conducted from Yankee Point from 1967/1968 to 1973/1974 and then from Granite Canyon in all subsequent years. The two sites are 3 miles apart, and aerial surveys have shown similar distributions of gray whales relative to shore at these sites. The only other time an alternate site was used for a survey was at the end of the migration in 1997/1998; from 11–24 Feb 1998 counts were made from Point Lobos, 5 miles north of Granite Canyon. This change was necessary because the road to Granite Canyon was washed out in a storm. Besides these minor differences in sites, all within a few miles, NMFS has consistently used the Granite Canyon research station for the past 3 decades.

(i) The population is within its OSP, likely near K. Consequently, the rate of population growth is expected to be low because K represents an equilibrium abundance (when birth and death rates are approximately equal). The SAR reflects published information on calving rates, which indicates the calf production indices (calf estimate/total population estimate) from 1994–2000 were between 1.1 percent and 5.8 percent annually (Perryman et al. 2002), and in 2004 the index was 9 percent (Perryman et al. 2004). Gray whale calf counts from shore stations along the California coast have indicated significant increases in average annual calf counts near San Diego in the mid- to late–1970s compared to the 1950s and 1960s, and near Carmel in the mid–1980s through 2002 compared to late–1960s through 1980 (Shelden et al. 2004). This increase may be related to a trend toward later migrations over the observation period (Rugh et al. 2001, Buckland and Breiwick 2002), or it may be due to an increase in spatial and temporal distribution of calving as the population increased (Shelden et al. 2004).

Comment 27: The Habitat Concerns section should be expanded to a more comprehensive list of factors that could be affecting gray whale habitat (e.g., wave energy projects, terminals for liquid natural gas shipments, oil and gas lease sales, exploration and development, and noise).

Response: Although there are various activities underway or planned that could affect gray whale habitats, none of these factors is likely ''causing a decline or impeding recovery of'' (MMPA section 117(a)(3)). Accordingly, they are not included in the SAR. Also, see response to Comment 1.

Comments on Atlantic Regional Reports

Comment 28: The 2007 and 2008 Atlantic Ocean SARs do not cite potential risks to Kogia species from sonar sound, even though data in the published literature support the concern that military sonar may affect Kogia much like it affects beaked whales, and concern has been expressed about the vulnerability of Kogia to oil and gas industries in the Gulf of Mexico.

Response: The Kogia species reports were not updated in 2008. However, the ''Other Mortality'' discussions in the 2007 reports for the Western North Atlantic stocks of both Kogia species note that potential risks due to anthropogenic noise is of concern. NMFS is also concerned about potential effects of anthropogenic noise of Kogia stocks in the Gulf of Mexico and is reviewing the literature for evidence related to this concern. If appropriate, NMFS will address such concern in future revisions of these SARs.

Comment 29: NMFS needs to better update bottlenose dolphin stock structure in the Gulf of Mexico. Given the difficulty in assigning fisheries-related mortality to the appropriate stock, all such stocks should be designated as strategic stocks.

Response: Research to update stock structure of bottlenose dolphins in the Gulf of Mexico is being conducted on a small scale, and a research plan has been developed to implement more wide-ranging stock structure research as resources become available.

For bottlenose dolphins in the Gulf of Mexico, the 33 Bay, Sound and Estuarine Stocks and the 3 Coastal Stocks are designated as strategic stocks because for each stock, the abundance is unknown and human-related mortality and serious injury has been reported but the levels of such takes are unknown. This is not the case for the Continental Shelf Stock and the Oceanic Stock where for each stock, there are estimates of abundance and fishery-related mortality and serious injury, and for each, fishery-related mortality and serious injury do not exceed PBR.

Comment 30: Atlantic white-sided dolphins should be designated as a strategic stock due to increasing bycatch trends.

Response: Increasing bycatch trends is not a criterion for strategic status according to the MMPA. The bycatch of Atlantic white-sided dolphins exceeded PBR in the 2000 SAR, and, therefore, the stock was strategic in that report. In subsequent reports, including the 2008 report, bycatch levels have been below PBR, and, therefore, Atlantic white-sided dolphins have not been designated as strategic.

Comment 31: Abundance and mortality estimates for short-finned and long-finned pilot whales should be separated based on recent genetic and survey data. These stocks should be designated as strategic stocks. In addition, NMFS should collect sufficient information to determine the abundance, trend, and mortality rates of this stock and determine whether the stock may warrant designation as a depleted stock.

Response: NMFS is currently analyzing data collected between 2004 and 2007 to evaluate the spatial distribution and habitats of short-finned and long-finned pilot whales during the summer months. Based upon preliminary results, it is likely that the abundance estimates of the two species

can be separated to develop specific estimates of PBR for each. However, additional data collection is required to separate the mortality and serious injury estimates for the two stocks associated with pelagic longline and other fisheries. As resources become available, NMFS will continue its work to improve the assessment and understanding of the status of these two species.

Comments on Pacific Regional Reports

Comment 32: Mortality estimates for blue whales should be updated to include recent ship strikes in the Santa Barbara ship channel.

Response: At the time the draft 2008 report was prepared, complete data on 2007 ship strikes were unavailable. The SAR for blue whales for 2009 will be updated to include 2007 ship strike data, and a brief narrative of the NMFS response to the ship strikes will also included.

Comment 33: All SARs for stocks in the range of the Hawaii-based longline fisheries should separate potential interactions with the deep-set fishery from the shallow-set fishery.

Response: In the draft 2008 SAR, all false killer whale interactions were evaluated separately for deep and shallow-set fisheries by NMFS, although some information is presented jointly. Table 1 (footnote 2) in the 2008 SAR indicates that all reported mortalities and serious injuries of false killer whales took place in the deep-set fishery and that no false killer whales were observed killed or injured in the shallow-set fishery. Following the 2009 List of Fisheries, which formally separates deep-set and shallow-set fisheries, the draft 2009 false killer whale SAR will be further modified to discuss and list each fishery separately in both the text and the table.

Comment 34: Significant uncertainties and errors continue in the SAR for false killer whales. The SAR incorrectly identifies false killer whales in the Eastern North Pacific Ocean into three stocks based upon boundaries of Exclusive Economic Zones (EEZ). This incorrect stock structure results in an underestimate of the abundance of false killer whales that interact with the deep-set longline fishery. NMFS must address concerns or acknowledge in the SAR the uncertainties that underlie its conclusions.

Response: NMFS recognizes that all marine mammal stock assessments have elements of uncertainty. NMFS' assessment framework explicitly takes this uncertainty into account. Uncertainty in abundance and mortality/serious injury estimates is reported in terms of a statistical measure, the coefficient of variation (CV). The high CVs reported in the SARs explicitly acknowledge the underlying uncertainties. These uncertainties have already been incorporated into the SAR, as requested by the commenter.

The establishment of EEZ-based stocks is consistent with national, peer-reviewed guidelines for assessing marine mammal stocks of species that occur in U.S. and international waters. The guidelines state, ''For situations where a species with a broad pelagic distribution which extends into international waters experiences mortalities within the U.S. EEZ, PBR calculations should be based on the abundance in the EEZ.≥

The abundance and fishery interaction data presented in the SAR have undergone rigorous scientific peer-review, and have been published in scientific journals and technical reports. The abundance estimate is based on over 5 months of survey effort using methodology that is widely accepted by experts to provide unbiased abundance estimates. During this survey, many sightings of a variety of less conspicuous cetaceans were made. The single false killer whale sighting demonstrates and confirms the rarity of this species in the Hawaiian EEZ. Fishery mortality and serious injury estimates have consistently been reported to be underestimates, not exaggerations, because not all cetaceans can be identified and many of the unidentified cetaceans were reported to be ''false killer whales or short-finned pilot whales''. These unidentified cetaceans have not been included in the assessment calculations. For these reasons, NMFS disagrees that the false killer whale population estimate is underestimated and that the importance of rare interactions with the fishery are exaggerated. The stock assessments are based on the best available, peer-reviewed science and will continue to be refined as new data are analyzed and results become available.

Comments 35 through 37 refer to false killer whales, Hawaii Insular stock or Hawaii Pelagic stock.

Comment 35: The conclusion that insular animals are not taken in the long-line fishery is inappropriate, and the insular stock should be considered strategic. A precautionary approach would place the boundary between the insular and pelagic stocks at 51 nmi (the maximum recorded distance to land for a satellite-tagged insular false killer whale).

Response: The SAR states that NMFS used sightings information and genetics data to show there were at least two separate stocks (insular and pelagic) within the Hawaii EEZ and that the boundary between the two stocks may change as new information became available. The rationale for locating the stock boundary was explained in an administrative report (Chivers et al., 2008. Rationale for the 2008 revision to Hawaiian stock boundaries for false killer whales, Pseudorca crassidens. Administrative Report LJ–08–04.) NMFS recognizes (1) uncertainty in the stock boundary, (2) there is some overlap between the insular and pelagic stocks, and (3) there is potential for the Hawaii-based longline fisheries to interact with the insular stock of false killer whales when the fishery operates within 75 nmi of the main Hawaiian Islands.

However, a strategic designation is defined in the MMPA to indicate that the documented mortality and serious injury exceeds PBR, and no mortality or serious injury of the insular stock in fisheries has been documented. (Also, see response to Comment 3.) Furthermore, the satellite telemetry information on false killer whale movements was not available when the 2008 SARs were drafted and will be incorporated in the 2009 SARs.

NMFS continues to evaluate false killer whale stock boundaries and stock-specific mortality and serious injury as new data become available and are peer-reviewed. NMFS includes such new information into the SARs as appropriate.

Comment 36: New information is available from recently published studies on population trends, persistent pollutants, and telemetry data and should be included in the SAR.

Response: The information identified by the commenter was not yet published or peer-reviewed when the 2008 SARs were drafted. It will be added to the 2009 draft SAR.

Comment 37: As the draft SAR for the insular stock indicates, there is no documented mortality of these whales incidental to shallow-set longline fishing. If, however, such fishing is increased as indicated in a proposed change to the fishery management plan, there is likely to be increased bycatch of insular and pelagic stocks of false killer whales.

Response: The shallow-set fishery has had 100 percent observer coverage since the implementation of new regulations in 2004 and would continue to have 100 percent coverage under the proposed new plan. Incidental mortality and serious injury of false killer whales in this fishery in the future would be recorded by on-board observers and included in future stock assessments.

Dated: April 24, 2009.

David Cottingham,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–9812 Filed 4–28–09; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Energy and Environmental Markets Advisory Committee Meeting

This is to give notice that the Commodity Futures Trading Commission's Energy Markets Advisory Committee will conduct a public meeting on Wednesday, May 13, 2009. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 from 8 a.m. to 12 p.m. The purpose of the meeting is to discuss energy and environmental market issues. The meeting will be chaired by Commissioner Bart Chilton, who is Chairman of the Energy and Environmental Markets Advisory Committee.

The agenda will consist of the following:

(1) Call to Order and Introduction;

(2) Current Market and Regulatory Developments;

(3) Environmental Commodity Markets: The CFTC and a Carbon-Constrained World;

(4) Energy Price Volatility and Consumers;

(5) Discussion of Future Meetings and Topics;

(6) Adjournment.

The meeting is open to the public. Any member of the public who wishes to file a written statement with the committee should mail a copy of the statement to the attention of: Energy Markets Advisory Committee, c/o Commissioner Bart Chilton, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Chilton in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact Commissioner Bart Chilton at 202–418–5060.

Issued by the Commission in Washington, DC, on April 24, 2009.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–9869 Filed 4–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Predominantly Black Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.382A.

DATES:

Applications Available: April 29, 2009.

Deadline for Transmittal of Applications: May 29, 2009.

Deadline for Intergovernmental Review: July 28, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Predominantly Black Institutions (PBIs) Program is to strengthen PBIs to carry out programs in the following areas: Science, technology, engineering, or mathematics (STEM); health education; internationalization or globalization; teacher preparation; or improving educational outcomes of African-American males.

FY 2009 Competition Background: The PBIs Program was originally authorized under Title IV, Part J, Section 499A of the Higher Education Act of 1965 (HEA), as amended by the College Cost Reduction and Access Act (CCRAA) of 2007. The Higher Education Opportunity Act, which reauthorized the Higher Education Act, transferred the PBIs program to Title III, Part F, Section 371 of the HEA.

Program Authority: Title III, Part F, Section 371 of the Higher Education Act of 1965 (HEA), as amended.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,000,000.

Estimated Size of Awards: $600,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* Your institution must be designated as an eligible applicant under Title III of the HEA. The regulations can be found in 34 CFR 607.2 through 607.5. In addition, your institution must:

(a) Have an enrollment of needy students as defined by section 371(c)(3) of the HEA. The term *enrollment of needy students* means the enrollment at an institution of higher education with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(i) In the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(ii) Come from families that receive benefits under a means-tested Federal benefit program (as defined in section 371(c)(5) of the HEA);

(iii) Attended a public or nonprofit private secondary school—

(A) That is in the school district of a local educational agency that was eligible for assistance under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA) for any year during which the student attended such secondary school; and

(B) Which for the purpose of this paragraph and for that year, was determined by the Secretary (after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of the ESEA exceeds 30 percent of the total enrollment of such school; or

(iv) Are first-generation college students (as that term is defined in section 402A(h) of the HEA), and a majority of such first-generation college students are low-income individuals. The term low-income individual has the meaning given that term in section 402A(h) of the HEA.

(b) Have an average educational and general expenditure which is low, per full-time equivalent undergraduate student in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions of higher education that offer similar instruction. The Secretary may waive this requirement, in accordance with section 392(b) of the HEA, in the same manner as the Secretary applies the waiver requirements to grant applicants under section 312(b)(1)(B) of the HEA;

(c) Have an enrollment of undergraduate students—

(i) That is at least 40 percent Black American students;

(ii) That is at least 1,000 undergraduate students;

(iii) Of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals (as that term is defined in section 402A(h) of the HEA) or first generation college students. The term *first generation college student* means—(A) an individual both of whose parents did not complete a baccalaureate degree; or (B) in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree; and

(iv) Of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor's or associate's degree that the institution is licensed to award by the State in which the institution is located;

(d) Is legally authorized to provide, and provides within the State, an educational program for which the institution of higher education awards bachelor's degree; or, in the case of a junior or community college, an associate's degree;

(e) Is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or is, according to such an agency or association, making reasonable progress toward accreditation; and

(f) Is not receiving assistance under Part B of Title III of the HEA.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Blanca Rodriguez, U.S. Department of Education, 1990 K Street, NW., room 6162, Washington, DC 20006–8515. Telephone: (202) 502–7728, or by e-mail: *blanca.rodriguez@ed.gov* or Sara Starke, U.S. Department of Education, 1990 K Street, NW., room 6019, Washington, DC 20006–8515. Telephone: (202) 502–7688, or by e-mail: *sara.starke@ed.gov.*

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 accessible 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 program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] that addresses the selection criteria to no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be singled spaced and will count toward the page limit.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will be rejected.

The page limit does not apply to Part I, the cover sheet SF–424; Part II, the budget section including the narrative budget justification; and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: April 29, 2009.

Deadline for Transmittal of Applications: May 29, 2009.

Applications for grants under this program must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.* For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of 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 either of the persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of 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: July 28, 2009.

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 must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Predominantly Black Institutions Program, CFDA number 84.382A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data

online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesday and 6:00 a.m. on Thursday, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the followings forms: the 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. 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 other than the three files 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.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date. *Application Deadline Date Extension in Case of e-Application Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grant help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement and may submit your application in paper format if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Blanca Rodriguez, U.S. Department of Education, 1990 K Street, NW., room 6162, Washington, DC 20006–8515. FAX: (202) 502–7675.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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 selection criteria for this program are from 34 CFR 75.209(a) and 75.210, and are as follows—

Need for the project (20 points);

Quality of the project design (15 points);

Quality of project services (15 points);

Quality of project personnel (10 points);

Adequacy of resources (5 points);

Quality of the management plan (20 points);

Quality of project evaluation (15 points).

Additional information regarding these criteria is in the application package for this competition.

2. *Review and Selection Process:* Applicants must provide, as an attachment to the application, the documentation the institution relied upon to determine that at least 40 percent of the institution's undergraduate enrollment are Black American students.

Note: The 40 percent requirement applies only to *undergraduate* Black American students and is calculated based upon unduplicated undergraduate enrollment. Instructions for formatting and submitting the verification documentation to e-Application are in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will 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 in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the 524B Grant Performance Report to complete both annual and the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the PBI Program:

(1) The number of full-time degree-seeking undergraduates enrolling at PBIs.

(2) The increase in the persistence rate for students enrolled at PBIs.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Blanca Rodriguez, Teacher and Student Development Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6162, Washington, DC 20006–8515. Telephone: (202) 502–7728, or by e-mail: *blanca.rodriguez@ed.gov* or sara starke, Teacher and Student Development Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6019, Washington, DC 20006–8515. Telephone: (202) 502–7688, or by e-mail: *sara.starke@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of 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.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the function of the Assistant Secretary for Postsecondary Education.

Dated: April 24, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–9876 Filed 4–28–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Title IV, Part I, Section 499 of the Higher Education Act of 1965, as Amended—Competitive Loan Auction Pilot Program

AGENCY: Office of Postsecondary Education, U.S. Department of Education.

ACTION: Notice of cancellation of the auction under the Competitive Loan Auction Pilot Program for the right to originate PLUS loans to new parent borrowers under the Federal Family Education Loan (FFEL) Program.

SUMMARY: Through this notice, the Secretary of Education (the Secretary) announces the cancellation of the auction (Auction) that was scheduled to occur on April 15, 2009 under the Competitive Loan Auction Pilot Program (Auction Program) for the rights to originate PLUS loans to parent borrowers under the FFEL Program.

FOR FURTHER INFORMATION CONTACT: For information about the Auction Program go to *http://www.ed.gov/ope/plus-auction* or contact: Donald Conner, U.S. Department of Education, 1990 K Street, NW., room 8030, Washington, DC 20006. Telephone (202) 502–7818, or by fax to (202) 502–7873. You may also e-mail your questions about the Auction Program to: *donald.conner@ed.gov.*

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 this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 2009, the Secretary announced his intention to conduct, and invited eligible FFEL lenders to participate in, an Auction for the rights to originate PLUS loans to new parent borrowers under the FFEL Program (74 FR 9232). Through the Auction, the Secretary would award the rights to originate PLUS loans to new parent borrowers under the Federal PLUS Program authorized by section 428B of Title IV of the Higher Education Act of 1965, as amended (HEA), for loan periods beginning on or after July 1, 2009 and ending on or before June 30, 2011.

The period for the submission by lenders of pre-qualification requests for the Auction closed on April 1, 2009. In order for the Auction to have been considered successful for any State, at least two lenders must have submitted pre-qualification requests for that State. However, the Department failed to receive two requests for pre-qualification for any State, and for the vast majority of States the Department received no requests. For this reason, the Secretary has determined that the purpose of the Competitive Loan Auction Pilot Program has been frustrated, and he is cancelling the Auction that was scheduled to occur on April 15, 2009. During the 2009–10 and 2010–11 award years, Parent PLUS loans under the FFEL Program may be made by any eligible lender selected by the parent borrower.

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.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: April 24, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–9884 Filed 4–28–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education, FIPSE—Special Focus Competition: The U.S.-Russia Program: Improving Research and Educational Activities in Higher Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116S.

DATES:

Applications Available: April 30, 2009.

Deadline for Transmittal of Applications: June 29, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The U.S.-Russia Program encourages cooperative education programs between institutions of higher education (IHEs) in the Russian Federation and the United States of America. The objective of this program is to provide grants that demonstrate partnerships between Russian and American IHEs that contribute to the development and promotion of educational opportunities between the two nations. The aim is to use the educational content as the vehicle for learning languages, cultural appreciation, sharing knowledge, and forming long-term relationships between the two countries. In the context of the modern international society and a global economy, an understanding of the cultural context plays a vital role in education and training.

Thus, this program is designed to support the formation of educational consortia of American and Russian IHEs to encourage mutual socio-cultural-linguistic cooperation; the joint development of curricula, educational materials, and other types of educational and methodological activities; and related educational student and staff mobility (exchanges).

Russian institutions will apply to The Russian Ministry of Education and Science for funding.

Priority: Under this competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2009, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

Applicants must select one academic discipline as the subject area for their grant proposal in this U.S.-Russia competition. For the year 2009, the Department and the Russian Ministry have jointly decided to make up to three awards, as follows:

(A) Environmental Science Studies—No more than one award.

(B) Biotechnology—No more than one award.

(C) Any discipline, other than (A) and (B)—No more than one award.

Applications are invited from institutions of higher education with the capacity to contribute to a collaborative project in the areas listed with a Russian institution. The consortium partners, through promoting the study of and communication in foreign languages, are expected to increase awareness and understanding of the two cultures, and to strengthen the professional and scholarly ties between the two countries.

The Russian institutions, as part of a U.S.-Russian consortium, will receive separate but equivalent funding from the Russian Ministry of Education and Science.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $400,000.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $133,000.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://e-grants.ed.gov*. To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1– 877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA Number 84.116S.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative [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 [Part III] to the equivalent of no more than 20 typed 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 and 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 one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: April 30, 2009.

Deadline for Transmittal of Applications: June 29, 2009.

Applications for grants under the U.S.-Russia Program: Improving Research and Educational Activities in Higher Education, CFDA Number 84.116S, must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants Web site. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of 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 of 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.

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 specify unallowable costs in 34 CFR part 74. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the U.S.-Russia program: Improving Research and Educational Activities in Higher Education, CFDA Number 84.116S, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is

provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The 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. 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.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement and may submit your application in paper format if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application;

and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Krish Mathur, U.S. Department of Education, 1990 K Street, NW., room 6155, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116S), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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 grant 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

Selection Criteria: The selection criteria for evaluating the applications for this program are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section 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. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department will use the following measures to assess the performance of this program:

(a) The percentage of FIPSE grantees reporting project dissemination to others.

(b) The percentage of FIPSE projects reporting institutionalization on their home campuses.

If funded, you will be asked to collect and report data on these measures in your project's annual performance report (34 CFR 75.590). Applicants are also advised to consider these two measures in conceptualizing the design, implementation, and evaluation of the proposed project because of their importance in the application review process. Collection of data on these measures should be part of the project evaluation plan, along with any measures of progress on goals and objectives that are specific to your project.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Krish Mathur, FIPSE—Fund for the Improvement of Postsecondary Education, 1990 K Street, NW., room 6155, Washington, DC 20006–8544. Telephone: (202) 502–7512 or by e-mail: *krish.mathur@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of 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.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the function of the Assistant Secretary for Postsecondary Education.

Dated: April 24, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–9881 Filed 4–28–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Amended Notice of Intent To Modify the Scope of the Environmental Impact Statement for the Abengoa Biorefinery Project Near Hugoton, KS

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Amended notice of intent.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is providing this Amended Notice of Intent to announce its intent to modify the scope of an ongoing environmental impact statement in which DOE is assessing the potential environmental impacts of a project proposed by Abengoa Bioenergy Biomass of Kansas, LLC (ABBK), to construct and operate a biomass-to-ethanol and energy facility near Hugoton, Kansas (Abengoa Biorefinery Project). DOE issued its original Notice of Intent on Aug. 25, 2008, for the proposed construction and operation of a biomass-to-ethanol and energy facility that was planned to be

integrated with a traditional grain-to-ethanol production facility on the same site.

DATES: The public scoping period begins today, and will end on May 29, 2009. DOE will consider all comments received or postmarked by May 29, 2009. DOE will consider late comments to the extent practicable. DOE will hold a public scoping meeting in Memorial Hall at the Stevens County Courthouse, 200 East 6th St., Hugoton, Kansas 67951–2606, on May 19, 2009, from 6 p.m. to 8 p.m. DOE will give equal weight to written and oral comments.

ADDRESSES: Please direct written comments on the scope of the EIS to Ms. Kristin Kerwin at the U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, Colorado, 80401. You also may contact Ms. Kerwin by telephone at 303–275–4968, by facsimile at 303–275–4790, or by e-mail at *kristin.kerwin@go.doe.gov.* Please label envelopes and the subject line of e-mails with the heading ''Abengoa EIS Scoping Comments.''

FOR FURTHER INFORMATION CONTACT: For information on the proposed project, information on how to comment, or to receive a copy of the Draft EIS when it is issued, contact Ms. Kristin Kerwin by any of the means described above under the **''ADDRESSES''** section.

For further information on the DOE Office of Energy Efficiency and Renewable Energy, Integrated Biorefinery Program, contact: Ms. Valri Lightner, Biomass Program Manager (Acting), U.S. Department of Energy, 1000 Independence Avenue, SW., EE–2E, Washington, DC 20585; telephone: 202–586–0937; facsimile: 202–586–1640; e-mail: *eere_biomass@ee.doe.gov.*

For further information on DOE's Loan Guarantee Program, contact: Mr. Daniel Tobin, Loan Guarantee Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., CF–1.3, Washington, DC 20585; telephone: 202–586–1940; facsimile: 202–586–4052; e-mail: *daniel.tobin@hq.doe.gov.*

For further information on the U.S. Department of Agriculture Rural Business-Cooperative Service Biorefinery Assistance Program contact: Energy Branch, Attention: Biorefinery Assistance Program, 1400 Independence Avenue, SW., Mail Stop 3225, Washington, DC 20250–3225; telephone: 202–720–1400.

For general information regarding the DOE National Environmental Policy Act (NEPA) process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., GC–20, Washington, DC 20585; e-mail *AskNEPA@hq.doe.gov;* telephone 202–586–4600; or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background: In September 2007, DOE granted an initial award to ABBK to advance the conceptual design, initiate the permitting process, and support an environmental review under NEPA for ABBK's proposed biomass-to-ethanol and energy facility near Hugoton, Kansas, pursuant to section 932 of EPAct 2005. DOE requires completion of the design, permitting, and environmental review obligations prior to deciding whether to co-fund the construction and operation phase of the project. The total anticipated cost of this initial work was $37.5 million of which DOE funded 40 percent ($15 million) and ABBK provided 60 percent ($22.5 million). For additional information on section 932 of EPAct 2005 and details regarding DOE's competitive solicitation process for commercial-scale integrated biorefineries, refer to the original NOI, (73 FR 50001 (Aug. 25, 2008)).

In DOE's original NOI, the Department announced its intent to prepare an EIS for the Abengoa Biorefinery Project. DOE indicated that it was proposing to negotiate a second financial assistance agreement for approximately $61 million for the final design, construction, and operation of the biomass-to-ethanol and energy facility. This facility was planned to be integrated with a traditional grain-to-ethanol production facility, and the grain-to-ethanol facility was to be constructed and operated using private funds.

In January 2009, because of economic viability concerns and anticipated market conditions, ABBK notified DOE that it no longer was considering the construction and operation of the traditional grain-to-ethanol facility, and, further, was proposing to modify its biomass-to-ethanol and energy production facility by including a steam-driven turbine to generate electricity that would be supplied to the regional power grid. In addition, ABBK stated its intent to solicit loan guarantees from the DOE Loan Guarantee Program pursuant to Title XVII of EPAct 2005 and from the USDA RBC Biorefinery Assistance Program pursuant to section 9003 of the 2008 Farm Bill.

EPAct 2005 (Title XVII) authorizes the Department to issue loan guarantees to eligible projects that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases,'' and ''employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' ABBK submitted a DOE loan guarantee application on February 26, 2009.

Section 9003 of the 2008 Farm Bill is intended to assist in the development and construction of commercial-scale biorefineries and the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. ABBK has not submitted an application to the USDA RBC Biorefinery Assistance Program for a loan guarantee under section 9003 of the 2008 Farm Bill. After the receipt and review of an application, the RBC may decide to provide a loan guarantee to ABBK. The RBC would only do so if the application is for an eligible project that provides for the development, construction, and retrofitting of commercial biorefineries using eligible technology.

Previous Public Scoping Comments: The Department received 14 scoping comments during the public scoping period that ended on October 9, 2008, and received no comments after that date. Commenters expressed support for the proposed biorefinery project, suggested there would be no adverse environmental impacts from constructing and operating the biorefinery, requested information, or asked that DOE include certain analyses in the EIS. For example, the U.S. Department of Agriculture Natural Resources Conservation Service requested an analysis of the potential impacts from biomass production and harvesting on soils, surface and groundwater quality and quantity, air quality, and upland wildlife habitat. DOE will address these comments, as well as those submitted during the public comment period for this Amended NOI, in the Abengoa Biorefinery EIS.

Proposed Action: DOE is proposing to provide cost-shared Federal funding, only potentially, to issue a loan guarantee for the Abengoa Biorefinery Project. DOE would provide approximately $61 million in Federal funding pursuant to section 932 of EPAct 2005 to ABBK for the final design, construction, and initial operation of a commercial-scale biomass-to-ethanol and energy production facility near Hugoton, Kansas. The total estimated cost (beyond the initial award) for final design, construction, and initial operation of the facility with the new scope is approximately $290 million.

DOE may also provide a loan guarantee pursuant to Title XVII of EPAct 2005.[1]

The biomass-to-ethanol facility would use an enzymatic hydrolysis process for converting biomass feedstocks to ethanol and co-products, and a gasification technology to convert biomass to synthesis gas. The synthesis gas would be used to fire a gas-powered boiler to generate steam that ultimately would be used to produce electricity. Biomass feedstock would be supplied from waste products from the production of crops produced near the facility, and may include sorghum stubble, corn stover, switchgrass, and other opportunity feedstocks that are available.

The estimated biomass usage (dry metric tons per day) and output of ethanol (million gallons per year) for the biomass-to-ethanol facility, the project site features and location, and infrastructure requirements would remain the same as outlined in the original NOI. However, electricity produced by the steam-powered turbine would be sold to Pioneer Electric Cooperative, Inc., for supply to the regional power grid. As discussed in the original NOI, the proposed project would require a new transmission line to bring electricity to the site. The power produced by the steam-powered turbine would be supplied back to the regional power grid via this same new transmission line. The line would run from the proposed project location to the east side of Road 11, then several miles north to the existing substation.

In addition to processing an estimated 400 dry metric tons per day of biomass for the biomass-to-ethanol facility (to produce approximately 12 million gallons per year of denatured ethanol), the synthesis gas production facility would process an estimated 300 dry metric tons per day of biomass, and the electric generation portion of the facility would process and estimated 275 to 700 dry metric tons per day of biomass. The entire facility would process approximately 975 to 1400 dry metric tons per day of biomass.

Alternatives: The Department proposes to analyze the following alternatives in detail in the EIS: (1) The Abengoa Biorefinery Project as proposed by ABBK; (2) the Abengoa Biorefinery Project as proposed by ABBK without supplying electricity to the regional power grid; and (3) the No Action alternative, which assumes that none of the proposed facilities is constructed.

In addition, DOE plans to evaluate ranges of options for implementing the proposed project, including onsite versus offsite storage of feedstock; wet (unprotected or uncovered) versus dry (protected or covered) storage of feedstock; and smaller or larger boiler sizes. DOE will also explore potential mitigation measures that could be implemented for any of the alternatives.

Preliminary Identification of Environmental Issues: One purpose of this Amended NOI is to solicit comments and suggestions for DOE to consider in preparing the EIS. As background for public comment, the Department tentatively has identified the following list of potential environmental issues for analysis. This list identifies resource areas that may be affected by construction and operation of the proposed Abengoa Biorefinery Project and that DOE plans to analyze in the EIS. This list is not intended to be all-inclusive or to imply any predetermination of impacts. DOE welcomes comments on these resource areas and other suggestions on the scope of the EIS.

1. *Water resources:* potential impacts on surface and groundwater resources and water quality, including effects of water usage, wastewater management, and storm water management.

2. *Wetlands:* potential impacts on apparent isolated wetlands at the project site.

3. *Utility and transportation infrastructure:* requirements for delivery of feedstocks and process chemicals to the facility and distribution of products from the facility to the marketplace.

4. *Land use:* changes in land use, including the proposed site and the geographical area that will provide feedstock to the proposed facility.

5. *Local and regional air quality:* changes in air quality.

6. *Cultural resources:* including potential effects on historic and archaeological resources and American Indian tribal resources.

7. *Ecological resources:* terrestrial and aquatic plants and animals including state and Federally-listed threatened and endangered species and other protected resources.

8. *Health and safety:* including construction-related safety and process-related safety associated with handling and management of process chemicals.

9. *Noise:* potential impacts resulting from construction and operation of the proposed plant and from transportation of feedstocks, process materials, and plant byproducts.

10. *Socioeconomics:* potential socioeconomic impacts of plant construction and operation, including effects on public services and infrastructure resulting from the influx of construction personnel and plant operating staff, and environmental justice issues.

11. *Aesthetic and scenic resources:* potential visual effects associated with plant structures and operations.

12. Cumulative impacts that result from the incremental impacts of the proposed plant when added to the other past, present, and reasonably foreseeable future activities. This may include potential impacts resulting from widespread replication of this type of technology, and from traditional grain-to-ethanol production facilities.

13. *Global climate change:* potential greenhouse gas emissions that may result from this project.

Public Scoping Process: Interested agencies, organizations, American Indian tribes, and members of the public are encouraged to submit comments or suggestions concerning the proposed content of the Abengoa Biorefinery EIS, including the range of reasonable alternatives and the potential environmental impacts. DOE invites written and oral comments and suggestions at the public scoping meeting. The public scoping period will be open until May 29, 2009.

Please send written comments to Ms. Kristin Kerwin, as described above under the **"ADDRESSES"** section. The public scoping meeting will be held at the location, date, and time listed in the **"DATES"** and **"ADDRESSES"** sections of this Amended NOI. This meeting will be informal. A presiding officer designated by DOE will establish procedures governing the conduct of the meeting, and DOE will provide an overview of the proposed Abengoa Biorefinery Project. DOE will not conduct the meeting as an evidentiary hearing, and those who choose to make statements will not be cross-examined by other speakers. However, DOE representatives may ask speakers questions to help ensure that DOE understands their comments or suggestions.

For advanced registration to speak at the meeting, please contact Ms. Kristin Kerwin via telephone, mail, fax, or e-mail as listed in the **"ADDRESSES"** section. For those persons who wish to speak but do not register in advance, DOE will provide an opportunity to speak after previously scheduled speakers have spoken, as time allows. To ensure that everyone who wishes to speak has a chance to do so, DOE will allot at least five minutes to each speaker. Persons wishing to speak on behalf of an organization should identify that organization when they request to speak.

[1] The amount requested for the loan guarantee is not being disclosed at this time because it is business sensitive. Moreover, should DOE approve a loan guarantee, that amount may differ from the original request.

DOE will retain a transcript of the public scoping meeting and will make the transcript available to the public for review via the Golden Field Office Online Public Reading Room at: *http://www.eere.energy.gov/golden/Reading_Room.aspx.* DOE will make available additional copies of the public scoping meeting transcripts during business hours at the following location: Stevens County Library, 500 S. Monroe Street, Hugoton, Kansas 67951.

Schedule: DOE expects to issue the Draft EIS in summer 2009 and will announce the availability of the Draft EIS in the **Federal Register** and local media. DOE will consider comments on the Draft EIS in preparing the Final EIS.

Interested parties who do not wish to submit comments at this time, but who would like to receive a copy of the Draft EIS, should contact Kristin Kerwin, as provided in the "**ADDRESSES**" section of this notice.

Other Agency Involvement: The Department has invited the U.S. Department of Agriculture to become a cooperating agency in the preparation of this EIS. DOE anticipates that the U.S. Department of Agriculture Rural Business-Cooperative Service will assist with the Department's review process and adopt the Abengoa Biorefinery EIS, to the extent practicable, to satisfy that agency's NEPA-related requirements and support its decisions under section 9003 of the 2008 Farm Bill.

Issued in Washington, DC, on April 22, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–9716 Filed 4–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: June 23–25, 2009.

ADDRESSES: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW. Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Discuss ways STEAB can support DOE's implementation of the Economic Recovery Act, support commercialization efforts for both energy efficiency and renewable energy, consider potential collaborative activities involving the State Energy Offices, and update members on other routine business matters.

Public Participation: The meeting is open to the public. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the teleconference; reasonable provisions will be made to include requested topic(s) on the agenda. Written statements may be filed with the Board either before or after the meeting. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on April 22, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–9762 Filed 4–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, May 18, 2009, 1 p.m.–5 p.m.

Tuesday, May 19, 2009, 8:30 a.m.–4 p.m.

ADDRESSES: The Mulberry Inn, 601 East Bay Street, Savannah, Georgia 31401.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Monday, May 18, 2009

1 p.m. Combined Committee Session
5 p.m. Adjourn

Tuesday, May 19, 2009

8:30 a.m. Approval of Minutes, Agency Updates, Public Comment Session, Chair and Facilitator Updates, Administrative Committee Report, Strategic and Legacy Management Committee Report, Public Comment Session
12 p.m. Lunch Break
1 p.m. Waste Management Committee Report, Facility Disposition and Site Remediation Committee Report, Nuclear Materials Committee Report, Public Comment Session
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, May 18, 2009.

Public Participation: The EM SSAB, Savannah River Site, 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 Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the

presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html*.

Issued at Washington, DC, on April 21, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–9764 Filed 4–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, May 21, 2009, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Committee Chairs' Comments
- EM SSAB Chairs' Meeting Update
- Presentation: Kentucky Research Consortium for Energy and the Environment
- Public Comments
- Administrative Issues
  - Motions
- Final Comments
- Adjourn

Breaks taken as appropriate.

Public Participation: The EM SSAB, Paducah, 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 Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/meetings.html.*

Issued at Washington, DC, on April 24, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–9776 Filed 4–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension to the Form, DOE–887, ''DOE Customer Surveys.''

DATES: Comments must be filed by June 29, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Alethea Jennings. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*Alethea.Jennings@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0670. Alternatively, Alethea Jennings may be contacted by telephone at 202–586–5879.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Alethea Jennings at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

On September 11, 1993, the President signed Executive Order No. 12862 aimed at ''ensuring [] the Federal Government provides the highest quality service possible to the American people.'' The Order discusses surveys as a means for determining the kinds and qualities of service desired by Federal Government customers and for

determining satisfaction levels for existing services. These voluntary customer surveys will be used to ascertain customer satisfaction with the Department of Energy in terms of services and products. Respondents will be individuals and organizations that are the recipients of the Department's services and products. Previous customer surveys have provided useful information to the Department for assessing how well the Department is delivering its services and products and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis, and are used to satisfy the requirements and the spirit of Executive Order No. 12862.

II. Current Actions

The request to OMB will be for a three-year extension of the expiration date of approval for the Form DOE–887 ''DOE Customer Surveys.'' Examples of previously conducted customer surveys are available upon request. Planned activities in the next three years reflect an increased emphasis on and expansion of these activities, including an increased use of Web-based and electronic means for obtaining customer input.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

As a Potential Respondent to the Request for Information:

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the respondent by the due date?

E. Public reporting burden for this collection is estimated to average .25 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

F. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

H. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information to be Collected:

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

C. Is the information useful at the levels of detail to be collected?

D. For what purpose(s) would the information be used? Be specific.

E. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Executive Order 12,862 § 1, 58 FR 48,257 (Sept. 11, 1993).

Issued in Washington, DC, April 23, 2009.

Stanley R. Freedman,

Acting Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9–9758 Filed 4–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–567–001]

Commission Information Collection Activities (FERC–567); Comment Request; Submitted for OMB Review

April 22, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (73 FR 74163, 12/5/2008) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 28, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira__submission@omb.eop.gov* and include OMB Control No. 1902–0005 as a point of reference. The OMB Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–567–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the FERC submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–567–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: The FERC is requesting comments on the FERC–567,[1] Gas Pipeline Certificates: Annual Reports of System Flow Diagrams. FERC–567 is an existing data collection (OMB Control No. 1902–0005) consisting of a set of filing requirements, as contained in 18 CFR 260.8.

The information from the FERC–567 is used by the Commission staff to obtain accurate data on pipeline facilities and to validate the need for new facilities proposed by pipelines in certificate applications. In modeling a pipeline applicant's system, Commission staff utilizes the FERC–567 data to determine configuration and location of installed pipeline facilities; verify and determine the receipt and delivery points between shippers, producers and pipeline companies; determine the location of receipt and delivery points and emergency interconnections on a pipeline system; determine the location of pipeline segments, laterals and compressor stations on a pipeline system; verify pipeline segment lengths and pipeline diameters; justify the maximum allowable operating pressures and suction and discharge pressures at compressor stations; verify the installed horsepower and volumes compressed at each compressor station; determine the existing shippers and producers currently using each pipeline company; and develop and evaluate alternatives to the proposed facilities as a means to mitigate environmental impact of new pipeline construction.

18 CFR 260.8 requires each major natural gas pipeline with a system delivery capacity exceeding 100,000 Mcf per day to file, to submit by June 1 of each year, diagrams reflecting operating conditions on the pipeline's main transmission system during the previous 12 months ended December 31. These data are physical/engineering data which are not included as part of any other data collection requirement.

Action: The Commission is requesting a three-year extension of the current expiration date, with no change to the existing requirements.[1]

Burden Statement: Annual reporting burden for this collection is estimated as:

FERC data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours[2] (1) × (2) × (3)
FERC–567	94[3]	1.714	81.28	13,095.5

The estimated annual cost burden[2] to respondents is $807,747 (13,095.5 hours/2080 hours per year times $128,297 per year average per employee = $807,747). The estimated cost per respondent is $8,593.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization, rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9709 Filed 4–28–09; 8:45 am]

BILLING CODE 6717–01–P

[1] FERC–567 was formerly known as ''Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity''. The capacity reporting requirements under 18 CFR 284.13 had been inadvertently included under both the FERC–567 and the FERC–549B (''Gas Pipeline Rates: Capacity Information''; OMB Control No. 1902–0169). To correct the inadvertent 'double-counting', the capacity reporting requirements under 18 CFR 284.13 are removed from FERC–567, and remain a part of FERC–549B for the purpose of OMB clearance. FERC–549B is not a subject of this Notice.

[2] The burden and cost figures may not be exact, due to rounding. For these calculations, the number of hours an employee works each year is 2,080, and the average annual salary per employee is estimated to be $128,297.

[3] An estimate of 100 respondents was included in the 60-day notice. That estimate has been updated here, based on the number of filings submitted in 2008.

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed revisions and a three-year extension to the Forms: EIA–851A, ''Domestic Uranium Production Report (Annual),'' EIA–851Q, ''Domestic Uranium Production Report (Quarterly),'' and EIA–858, ''Uranium Marketing Annual Survey.''

DATES: Comments must be filed by June 29, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Mr. Glenn McGrath. To ensure receipt of the comments by the due date, submission by FAX (202–287–1946) or e-mail Mr. McGrath at *glenn.mcgrath@eia.doe.gov* is recommended. The mailing address is Energy Information Administration, CNRD, EI–52, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Alternatively, Mr. Glenn McGrath may be contacted by telephone at 202–586–4325.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Mr. Glenn McGrath at the address listed above. To review the proposed forms and instructions, please visit: *http://www.eia.doe.gov/cneaf/nuclear/page/nuc_survey_auth.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The EIA collects information about the uranium fuel cycle for use by government and private sector analysts. The survey information is disseminated in a variety of electronic products and files. For details on the EIA uranium program, please visit the nuclear page of the EIA Internet site at *http://www.eia.doe.gov/fuelnuclear.html.*

II. Current Actions

The EIA proposes the following changes:

For the EIA–851Q, EIA proposes no changes to the data items.

For the EIA–851A the principal change is the addition of Item 8, Reserves Estimate. This new item collects data on the amount of uranium reserves on U.S properties. This item will also collect location data on the properties that hold uranium along with data that collects how the resource data was determined. Among the properties for which this data will be collected are active and inactive mines and properties that can be developed for uranium production. This change is not expected to change the number of respondents that currently complete the form.

This additional data should provide a better understanding of the amount of uranium reserves at properties that are being actively worked and those that can be developed for uranium production. The reserves will be grouped according to their forward cost classification, which will provide insight on the domestic reserves that can be accessed under different uranium price conditions.

For the EIA–858, the principal change affects Item 2, Total Uranium Inventories. This item is being separated into two parts, A and B. In Item 2, Part A, a new data element, location, is being added to the Domestic-Origin and Foreign-Origin fields to allow for a better understanding of the physical location of the inventory component. Item 2, Part B, Import/Export Balance is being added to determine the amount of an inventory component that has been imported and the amount that has been exported so that a net domestic mass balance can be determined. The benefit of this change is to better understand the material flow, including the size and location of the materials along the uranium processing chain. This data should enable industry observers to more accurately assess the quantity of uranium transfers into, out of, and within the U.S.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposals discussed in Item II. The following guidelines are provided to assist in the preparation of comments. Please indicate the form(s) to which your comments apply.

As a Potential Respondent to the Request for Information

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the due dates?

E. Public reporting burden per response are estimated as follows: EIA–851—5 hours; EIA–851Q—0.75 hours; and EIA–858—18 hours.

F. The agency estimates that the only cost to a respondent is the time to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

H. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

C. Is the information useful at the levels of detail to be collected?

D. For what purpose(s) would the information be used? Be specific.

E. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995, Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), and the DOE Organization Act (42 U.S.C. 7101 *et seq.*).

Issued in Washington, DC: April 23, 2009.

Stanley R. Freedman,

Acting Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9–9761 Filed 4–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Wednesday, April 22, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP02–361–075.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: Gulfstream Natural Gas System, LLC submits FERC Gas Tariff, Original Volume 1 and copies of Second Revised Sheet 8.01a effective 5/1/09.
Filed Date: 04/17/2009.
Accession Number: 20090420–0159.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP03–36–044.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits for filing Forty-Fifth Revised Sheet 9 to its FERC Gas Tariff, First Revised Volume 1, to be effective 4/21/09.
Filed Date: 04/20/2009.
Accession Number: 20090420–0186.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: RP09–3–002.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits Sub. Second Revised Original Sheet 36 et al. to its FERC Gas Tariff, Third Revised Volume 1, to be effective 4/1/09.
Filed Date: 04/17/2009.
Accession Number: 20090420–0162.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP09–295–001.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits First Revised Volume 1 et al. effective 5/18/09.
Filed Date: 04/17/2009.
Accession Number: 20090420–0160.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP09–299–001.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company, Ltd submits Second Revised Volume 2 et al., to be effective 5/18/09.
Filed Date: 04/17/2009.
Accession Number: 20090420–0161.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP09–521–000.
Applicants: B–R Pipeline Company.
Description: B–R Pipeline Company submits First Revised Sheet 1 et al. to FERC Gas Tariff, Original Volume 1.
Filed Date: 04/17/2009.
Accession Number: 20090420–0163.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP09–522–000.
Applicants: USG Pipeline Company.
Description: USG Pipeline Company submits First Revised Sheet 1 et al. to FERC Gas Tariff, Original Volume 1.
Filed Date: 04/17/2009.
Accession Number: 20090420–0164.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP09–523–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits a potentially non-conforming discounted rate agreement under Rate Schedule FTS with BG LNG Services, LLC.
Filed Date: 04/17/2009.
Accession Number: 20090420–0165.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP09–524–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits for acceptance Third Revised Sheet 380J et al. to its FERC Gas Tariff, First Revised Volume 1.
Filed Date: 04/17/2009.
Accession Number: 20090420–0166.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP09–525–000.
Applicants: Hardy Storage Company, LLC.
Description: Hardy Storage Company, LLC submits First Revised Sheet 38 et al. to FERC Gas Tariff, Third Revised Volume 1, to be effective 5/1/09.
Filed Date: 04/17/2009.
Accession Number: 20090420–0167.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 29, 2009.

Docket Numbers: RP09–526–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits for filing First Revised Sheet 4 to its FERC Gas Tariff, Original Volume 1, to be effective 5/20/09.
Filed Date: 04/20/2009.
Accession Number: 20090420–0187.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: RP09–527–000.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company submits for filing Eighteen Revised Sheet 237 to its FERC Gas Tariff, Third Revised Volume 1, to be effective 5/20/09.
Filed Date: 04/20/2009.
Accession Number: 20090420–0188.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: RP09–528–000.
Applicants: East Tennessee Natural Gas Company.
Description: East Tennessee Natural Gas, LLC submits Third Revised Sheet 104 et al. to its FERC Gas Tariff, Third Revised Volume 1, to be effective 5/21/09.
Filed Date: 04/21/2009.
Accession Number: 20090421–0347.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: RP09–529–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits First Revised Sheet 262 et al. to its FERC Gas Tariff, Third Revised Volume 1, to be effective 5/20/09.
Filed Date: 04/20/2009.
Accession Number: 20090421–0346.
Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–9737 Filed 4–28–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 22, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–70–000.

Applicants: Hartwell Energy Limited Partnership, Southern Power Company.

Description: Application of Hartwell Energy Limited Partnership and Southern Power Company for Authorization Under Federal Power Act Section 203.

Filed Date: 04/21/2009.

Accession Number: 20090421–5019.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 12, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2019–022; EL00–105–013.

Applicants: California Independent System Operator Corporation

Description: Settlement Refund Report of California Independent System Operator Corporation.

Filed Date: 04/21/2009.

Accession Number: 20090421–5201.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 12, 2009.

Docket Numbers: ER09–1015–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits First Revised Service Agreement 1682 et al to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 04/20/2009.

Accession Number: 20090420–0183.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Docket Numbers: ER09–1016–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits Thirteenth Revised Sheet 445 et al to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 04/20/2009.

Accession Number: 20090420–0184.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Docket Numbers: ER09–1017–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Original Sheet 1 to FERC Electric Tariff, First Revised Volume 5 Service Agreement 223.

Filed Date: 04/20/2009.

Accession Number: 20090420–0185.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Docket Numbers: ER09–1018–000.

Applicants: Virginia Electric and Power Company.

Description: Dominion Virginia Power submits revised cover sheet to cancel a First Revised Service Agreement 1349 & request waiver of Commission notice etc.

Filed Date: 04/20/2009.

Accession Number: 20090421–0326.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Docket Numbers: ER09–1019–000.

Applicants: Arizona Public Service Company.

Description: Interconnection Agreement between Navopache Electric Cooperative, Inc & Arizona Public Service Company.

Filed Date: 04/20/2009.

Accession Number: 20090421–0325.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Docket Numbers: ER09–1020–000.

Applicants: Panoche Energy Center, LLC.

Description: Application for Market-Based Rate Authority, Related Blanket Waivers and Authoritys, and Submission of Initial Rate Schedule re Panoche Energy Center, LLC under ER09–1020.

Filed Date: 04/20/2009.

Accession Number: 20090421–0324.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–126–001.

Applicants: Mid-Continent Area Power Pool.

Description: Annual Compliance Report of Penalty Assessments and Distributions of Mid-Continent Area Power Pool et. al.

Filed Date: 04/20/2009.

Accession Number: 20090420–5077.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Docket Numbers: OA08–5–004.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Fourth Revised Sheet 176 et al to its FERC Electric Tariff, Fifth Revised Volume 1, pursuant to the Commission's 3/19/09 Order.

Filed Date: 04/20/2009.

Accession Number: 20090421–0337.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Docket Numbers: OA08–96–002.

Applicants: Southern Company Services, Inc.

Description: Annual Report of Penalty Assessments and Distributions of Southern Company Services, Inc.

Filed Date: 04/20/2009.

Accession Number: 20090420–5201.

Comment Date: 5 p.m. Eastern Time on Monday, May 11, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–25–000.

Applicants: Southwest Power Pool, Inc.

Description: Supplement to Application of Southwest Power Pool, Inc.

Filed Date: 04/21/2009.

Accession Number: 20090421–5150.

Comment Date: 5 p.m. Eastern Time on Friday, May 1, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–9739 Filed 4–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combiend Notice of Filings

April 23, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–288–001.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits First Revised Sixty-Ninth Revised Sheet 14 et al to its FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 04/20/2009.

Accession Number: 20090421–0323

Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: RP09–371–001.

Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Company submits additional information re the 3/31/09 Commission issued Order approval of Revised Transportation Retainage Percentage.

Filed Date: 04/20/2009.

Accession Number: 20090421–0322

Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Docket Numbers: RP09–530–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits First Revised Sheet No. 203 et al to FERC Gas Tariff, Fourth Revised Volume No. 1.

Filed Date: 04/21/2009.

Accession Number: 20090422–0123.

Comment Date: 5 p.m. Eastern Time on Monday, May 4, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–9738 Filed 4–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

April 20, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–320–106.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company LP submits a capacity release agreement with Sequent Energy Management, LP.

Filed Date: 04/16/2009.

Accession Number: 20090417–0180.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP00–305–038.

Applicants: CenterPoint Energy-Mississippi River Transmission Corporation.

Description: CenterPoint Energy-Mississippi River Transmission Corporation submits an amended negotiated rate agreement with CenterPoint Energy Services, Inc.

Filed Date: 04/16/2009.

Accession Number: 20090417–0179.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP00–305–039.

Applicants: CenterPoint Energy-Mississippi River Transmission Corporation.

Description: CenterPoint Energy-Mississippi River Transmission Corporation submits an amended negotiated rate agreement with Laclede Energy Resources, Inc.

Filed Date: 04/16/2009.

Accession Number: 20090417–0178.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP09–514–000.
Applicants: Southwest Gas Storage Company.
Description: Southwest Gas Storage Company submits Fourth Revised Sheet No. 2 et al to FERC Gas Tariff, First Revised Volume No. 1.
Filed Date: 04/16/2009.
Accession Number: 20090417–0176.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP09–515–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits Original Sheet No. 2007 et al to FERC Gas Tariff, Third Revised Volume No. 1.
Filed Date: 04/16/2009.
Accession Number: 20090417–0177.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP09–516–000.
Applicants: Trunkline LNG Company, LLC.
Description: Trunkline LNG Company LLC submits Sixth Revised Sheet No. 2 et al. to FERC Gas Tariff, Second Revised Volume No. 1–A.
Filed Date: 04/16/2009.
Accession Number: 20090417–0175.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP09–517–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Panhandle Eastern Pipe Line Company, LP submits an amended negotiated rate agreement with CenterPoint Energy Services, Inc.
Filed Date: 04/16/2009.
Accession Number: 20090417–0181.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP09–518–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits Sixty-Eighth Revised Sheet 7 et al to FERC Gas Tariff, Second Revised Volume 1, to be effective 4/1/09.
Filed Date: 04/16/2009.
Accession Number: 20090417–0182.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP09–519–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC submits Sixth Revised Sheet 2 et al to FERC Gas Tariff, Third Revised Volume 1, to be effective 5/17/09.
Filed Date: 04/16/2009.
Accession Number: 20090417–0183.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Docket Numbers: RP09–520–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Sea Robin Pipeline Company submits First Revised Sheet 2 et al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 5/17/09.
Filed Date: 04/16/2009.
Accession Number: 20090417–0184.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–9736 Filed 4–28–09; 8:45 am]
BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

April 17, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–200–209.
Applicants: CenterPoint Energy Gas Transmission Co.
Description: CenterPoint Energy Gas Transmission Company submits two negotiated rate agreements between CEGT and Chesapeake Energy Marketing, Inc.
Filed Date: 04/07/2009.
Accession Number: 20090408–0244.
Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: RP09–321–001.
Applicants: MarkWest Pioneer, L.L.C.
Description: MarkWest Pioneer, LLC submits First Revised Sheet 5 et al to FERC Gas Tariff, Original Volume 1, to be effective 4/1/09.
Filed Date: 04/15/2009.
Accession Number: 20090416–0009.
Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Docket Numbers: RP09–410–001.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits Substitute First Revised Sheet No 47 et al to FERC Gas Tariff, Fourth Revised Volume No 1.
Filed Date: 04/03/2009.
Accession Number: 20090406–0091.
Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: RP09–510–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company's report of the penalty and daily delivery variance charge (DDVC) revenues for the period November 1, 2007 through October 31, 2008 that have been credited to shippers.
Filed Date: 04/13/2009.
Accession Number: 20090413–5046.
Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Docket Numbers: RP09–511–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits Third Revised Sheet 2708 et al to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 5/15/09.

Filed Date: 04/15/2009.

Accession Number: 20090415–0101.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Docket Numbers: RP09–512–000.

Applicants: Honeoye Storage Corporation.

Description: Petition Of Honeoye Storage Corporation For Confirmation Of Exemption From Part 358 Of The Commission's Regulations Or, In The Alternative, Waiver Of Such Regulations.

Filed Date: 04/14/2009.

Accession Number: 20090414–5172.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Docket Numbers: RP09–513–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Petition for temporary waiver of tariff provision and request for expedited action of Gulf South Pipeline Company, LP.

Filed Date: 04/15/2009.

Accession Number: 20090415–5132.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–9735 Filed 4–28–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR09–7–000]

Frontier Oil and Refining Company, Complainant v. Platte Pipe Line Company, Respondent; Notice of Complaint

April 22, 2009.

Take notice that on April 17, 2009, Frontier Oil and Refining Company (Frontier) filed a complaint against Platte Pipe Line Company (Platte) pursuant to sections 9, 13(1), 1(4), 1(6), 3(1), 15(1), and 16(1) of the Interstate Commerce Act (ICA), 49 U.S.C. 9, 13(1), 1(4), 1(6), 3(1), 15(1), 16(1), 18 CFR 343.2(c)(3), and 18 CFR 385.206, alleging that Platte has failed to implement its prorationing policy as stated in its Supplement No. 13 to Tariff No. 1456, filed with the Commission on November 13, 2007 in Docket No. IS08–39–000, and that Platte's prorationing procedures as applied in March 2009 violate sections 1(4), 1(6), and 3(1) of the ICA.

Frontier certifies that copies of the complaint were served on the contacts for Platte as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 7, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9710 Filed 4–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF09–321–000]

East Bay Municipal Utility District; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

April 22, 2009.

Take notice that on April 3, 2009, East Bay Municipal Utility District filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

The East Bay Municipal Utility District facility is a cogeneration facility.

The Power Generation Station consists of three internal combustion engine/generators, each rated at 2.15 MW capacity for total capacity of 6.45 MW. The dual fuel engines operate primarily on biogas (from anaerobic digestion), however a small amount (<1% total fuel) is used for pre-combustion ignition. This location of the facility is located at 2020 Wake Avenue, Oakland, California.

Pacific Gas & Electric (PG&E) is the electric utility to which the facility interconnects. Generation is used primarily to meet on-site demand for wastewater treatment (distribution generation), however, any surplus is sold to PG&E. The Western Area Power Administration provides supplemental power to the wastewater plant, wheeled via the PG&E distribution system.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making the filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9707 Filed 4–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–993–000]

Lake Cogen, Ltd.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 22, 2009.

This is a supplemental notice in the above-referenced proceeding of Lake Cogen, Ltd.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 12, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9708 Filed 4–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–150–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

April 22, 2009.

Take notice that on April 14, 2009, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street Houston, TX 77002, filed a prior notice request pursuant to Part 157.205 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon by sale CEGT's Line HM–36 located in Ouachita Parish, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, CEGT requests authorization to abandon by sale and transfer to CenterPoint Energy Louisiana Gas (Louisiana Gas), Line HM–36 in its entirety. Line HM–36 is composed of approximately 262 feet of 2-inch diameter steel pipe and is currently operated at 375 psig to deliver gas to a Louisiana Gas distribution system rural extension.

Any questions regarding the application should be directed to Lawrence O. Thomas, Director, Rate & Regulatory, CenterPoint Energy Gas Transmission Company, PO Box 21734 Shreveport, LA 71151, phone: (318) 429–2804, fax: (318) 429–3133, e-mail: *larry.thomas@centerpointenergy.com.*

Any person 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. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file 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. E9–9711 Filed 4–28–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0161; FRL–8410–9]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0161. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. EUP

EPA has issued the following EUP:

82608–EUP–1. Issuance. AgroGreen, Biological Division, Minrav Infrastructures (1993) Ltd., 3 Habossem Str, P.O. Box 153, Ashdod, 77101, Israel, represented by SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192, USA. This EUP allows the use of 85.84 pounds (39. 02 kilograms) of the end-use product BAFI SDN (100%), containing the active ingredient *Bacillus firmus* isolate I–1582 for treating seeds to be planted on 7,478.25 acres of corn, cotton, and soybean to evaluate the control of nematodes. The program is authorized only in the States of Illinois, Indiana, Iowa, Michigan, Mississippi, Missouri, and North Carolina for seed treatments and in Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin for planting treated seeds. Untreated seeds are to be planted as controls on approximately 1,496 acres concurrently with the planting of treated seeds in the specified states. The EUP is effective from April 8, 2009 to April 8, 2011.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 17, 2009.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–9568 Filed 4–28–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8898–9]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will hold a public teleconference on May 15, 2009, from 1 p.m. to 3 p.m. Eastern Standard Time. The meeting is open to the public. For further information regarding the teleconference and background materials, please contact Mark Joyce at the number listed below.

Background: GNEB is a Federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: The purpose of this teleconference is to approve the Good Neighbor Environmental Board's draft advice letter to Nancy Sutley, Chair, Council on Environmental Quality. The Board will also discuss topics for the agenda for the Board's upcoming meeting in El Cajon, CA, on June 10–11, 2009, as well as the Board's Thirteenth Report.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at (202) 564–2130 or e-mail him at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: April 23, 2009.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E9–9833 Filed 4–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0615; FRL–8410–2]

Endosulfan; Petitions Requesting Cancellation of All Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice asks the public to comment on requests from the Natural Resources Defense Council (NRDC) and the Pesticide Action Network North America (PANNA) that EPA cancel all uses of the organochlorine pesticide endosulfan.

DATES: Comments must be received on or before June 29, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0615, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0615. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Melanie Biscoe, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-305-7106; fax number: 703-308-8090; e-mail address: *biscoe.melanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including: environmental, human health, and agricultural advocates; the chemical industry, pesticide users, and members of the public interested in the sale, distribution, or the use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA seeks public comment on petitions from the NRDC and PANNA requesting that EPA cancel all uses of endosulfan. These petitions, available at regulations.gov under docket ID number EPA–HQ–OPP–2008–0615, were submitted on February 19, 2008 in response to EPA's 2007 human health and ecological effects assessment updates for endosulfan (72 FR 64624, November 16, 2007)(FRL–8339–5). The updated assessments, as well as the

2002 endosulfan Reregistration Eligibility Decision (RED), are available in the electronic docket at *http://www.regulations.gov* under docket number EPA–HQ–OPP–2002–0262.

Although the NRDC and PANNA petitions requested both cancellation of uses and revocation of tolerances, this notice is seeking public comment only on the requests to cancel all uses of endosulfan under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136d(b)). EPA issued a separate **Federal Register** notice on August 20, 2008 (73 FR 49194) soliciting public comment on the NRDC and PANNA petitions' requests to revoke all tolerances under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) and codified at 40 CFR 180.182.

The Agency notes that findings from its October 2008 Scientific Advisory Panel (SAP) meeting on Persistent Bioaccumulative Toxicants (PBTs), which were published on January 29, 2009, may be useful for the public in commenting on these petitions seeking cancellation of all uses under FIFRA. Key components of the meeting include review of methods for assessing environmental persistence, bioaccumulation, long-range transport, toxicity, and the role of sediment dynamics on estimating aquatic exposure concentrations for pesticides with varying persistent, bioaccumulative and toxic characteristics. Meeting minutes from the PBT SAP (73 FR 42796, July 23, 2008), are available at *http://www.epa.gov/scipoly/sap/meetings/2008/october/minutes.pdf* and are also in the electronic docket at *http://www.regulations.gov* under docket number EPA–HQ–OPP–2008–0550.

Later in April 2009 the Agency will publish a separate Notice in the **Federal Register** to solicit comments on its recently completed impact assessments on endosulfan, as well as any additional information stakeholders may have on the importance of endosulfan use in agriculture (EPA–HQ–OPP–2002–0262)(FRL–8411–1). The impact assessments evaluate the impacts on growers that could result from various risk management options, such as cancellation of uses and longer Restricted Entry Intervals (REIs). All stakeholders are encouraged to comment on these assessments, submit additional information for the Agency to consider, and provide data with which the Agency can better define the likely impacts. Please see docket number EPA–HQ–OPP–2002–0262 to access documents and submit comments related to the impact assessments and the importance of endosulfan use.

The Agency asks that comments on the NRDC and PANNA petitions' requests to cancel all uses of endosulfan be submitted to docket number EPA–HQ–OPP–2008–0615 within 60 days.

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

This action is being taken under authority of FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3).

List of Subjects

Environmental protection, pesticides, and pests.

Dated: April 10, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–9238 Filed 4–28–09; 8:45 a.m.]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, April 30, 2009 at 9:30 a.m. The meeting will be held at EX-IM Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Resolution presented to Linda M. Conlin, Vice Chairperson and 1st Vice President upon her resignation.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

Kamil P. Cook,

General Counsel.

[FR Doc. E9–9511 Filed 4–28–09; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 6 p.m. on Sunday, April 19, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director Thomas J. Curry (Appointive), seconded by Acting Director John E. Bowman (Office of Thrift Supervision), concurred in by Director John C. Dugan (Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4) and (c)(8), of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4) and (c)(8)).

The meeting was held by means of a telephone conference call.

Dated: April 24, 2009.

Valerie J. Best,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9–9888 Filed 4–27–09; 11:15 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2 p.m. on Thursday, April 23, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director Thomas J. Curry (Appointive), concurred in by Acting Director John E. Bowman (Acting Director, Office of Thrift Supervision), Director John C. Dugan (Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4),

(c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: April 23, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–9706 Filed 4–28–09; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 14, 2009.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. The John M. St. Clair, Jr. Trust, and Kathy D. Samples, as Trustee, both of Irvine, Kentucky; to retain voting shares of Citizens Guaranty Financial Corporation, and thereby indirectly retain voting shares of Citizens Guaranty Bank, both of Irvine, Kentucky.

Board of Governors of the Federal Reserve System, April 24, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–9757 Filed 4–28–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0054]

Federal Acquisition Regulation; Submission for OMB Review; U.S.-Flag Air Carriers Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat (VPR) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning U.S.-Flag Air Carriers Certification. A request for public comments was published in the **Federal Register** at 73 FR 76004, December 15, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 29, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: General Services Administration (GSA) Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and send a copy to the Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0054, U.S.-Flag Air Carriers Certification in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation. The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than a U.S.-flag air carrier.

B. Annual Reporting Burden

Respondents: 150.

Responses Per Respondent: 2.

Annual Responses: 300.

Hours Per Response: 25.

Total Burden Hours: 75.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0054, U.S.-Flag Air Carriers Certification in all correspondence.

Dated: April 22, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–9744 Filed 4–28–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Emergency Care Coordination Center (ECCC)

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response.

ACTION: Notice.

Executive Summary

The Emergency Care Coordination Center (ECCC) is a new strategic entity that is located within the Office of the Assistant Secretary for Preparedness and Response (ASPR) at the Department of Health and Human Services, in fulfillment of Homeland Security Presidential Directive #21 and in response to the following 2006 Institute of Medicine Reports: *Emergency Care for Children, Hospital-Based Emergency Care and Emergency Medical Services: At the Crossroads.* HHS recognizes that the successful delivery of daily emergency care is a necessary foundation for our nation's emergency preparedness efforts. Public health and medical disaster readiness continue to be priorities for the U.S. government (USG). Improving the resiliency, efficiency, effectiveness, and capacity of daily hospital emergency medical care delivery will strengthen the nation's state of readiness for public health emergencies and disasters.

The primary mission of the ECCC is to support the USG's coordination of in-hospital emergency medical care activities and to promote programs and resources that improve the delivery of our nation's daily emergency medical care and emergency behavioral health care. This will be accomplished through various mechanisms, including the promotion of both clinical and systems-based emergency medical care research, dissemination of lessons learned–including those from the care of our men and women wounded in combat–and, finally, the development of partnerships throughout the USG and the emergency care stakeholder community to promote the translation of validated, evidence-based research into daily clinical practice. The ECCC will actively reach out to private sector stakeholders and Federal collaborators across the USG in order to encourage the coordination of emergency medical care efforts throughout existing and future Federal initiatives.

The ECCC, through multi-level Federal collaboration, will create the Council on Emergency Medical Care (CEMC), a coalition comprised of subject-matter experts with representation from organizations across the USG. The CEMC will serve as both a strategic and operational element of the ECCC, providing policy level guidance and facilitating agency involvement. This entity will contribute to the development and advancement of ECCC priorities and will inform the development of joint strategies and cohesive policies across the USG to collaborate and coordinate ongoing efforts to improve the nation's emergency medical care.

The ECCC will work in coordination with the Federal Interagency Committee for Emergency Medical Services (FICEMS). Whereas FICEMS was established to ensure coordination among the Federal agencies involved with state, local, tribal, or regional emergency medical services and 9–1–1 systems, and specifically focuses on issues relating to pre-hospital care, the ECCC is established to address issues relating to in-hospital emergency department care. Together, the ECCC and FICEMS will contribute to an Emergency Care Enterprise (ECE) that will coordinate efforts of the USG throughout the broad spectrum of emergency medical care.

For further information, contact the Emergency Care Coordination Center at *ECCC@hhs.gov*, or visit the Web site at: *http://www.hhs.gov/aspr/opeo/eccc/*

Dated: April 16, 2009.

W. Craig Vanderwagen,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. E9–9719 Filed 4–28–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology

ACTION: Notification of the Establishment of the HIT Policy Committee.

SUMMARY: This notice announces the establishment of the HIT Policy Committee. The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), section 13101, directs the establishment of the HIT Policy Committee. The HIT Policy Committee (also referred to as the ''Committee'') is charged with recommending to the National Coordinator a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed. The HIT Policy Committee is also charged with recommending to the National Coordinator an order of priority for the development, harmonization, and recognition of such standards, specifications, and certification criteria.

FOR FURTHER INFORMATION CONTACT: Judith Sparrow, Office of the National Coordinator for Health Information Technology, e-mail *judy.sparrow@hhs.gov* or 202–205–4528.

SUPPLEMENTARY INFORMATION:

I. Background

The Committee and its staff are governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The Committee shall determine a schedule of meetings following an election of a Chairperson and a Vice Chairperson from among its members.

II. Criteria for Members

The Committee shall be comprised of the following, including a Chair and Vice Chair, and represent a balance among various sectors of the health care system so that no single sector unduly influences the recommendations of the Committee. Committee members shall be appointed in the following manner:

- 3 members shall be appointed by the Secretary of Health and Human Services, 1 of whom shall be appointed to represent the Department of Health and Human Services and 1 of whom shall be a public health official;
- 1 member shall be appointed by the majority leader of the Senate;
- 1 member shall be appointed by the minority leader of the Senate;
- 1 member shall be appointed by the Speaker of the House of Representatives;
- 1 member shall be appointed by the minority leader of the House of Representatives;
- Such other members as shall be appointed by the President as representatives of other relevant Federal agencies;
- 13 members shall be appointed by the Comptroller General of the United States of whom-
  - 3 members shall be advocates for patients or consumers;
  - 2 members shall represent health care providers, one of which shall be a physician;

○ 1 member shall be from a labor organization representing health care workers;

○ 1 member shall have expertise in health information privacy and security;

○ 1 member shall have expertise in improving the health of vulnerable populations;

○ 1 member shall be from the research community;

○ 1 member shall represent health plans or other third-party payers;

○ 1 member shall represent information technology vendors;

○ 1 member shall represent purchasers or employers; and

○ 1 member shall have expertise in health care quality measurement and reporting.

Non-federal members of the Committee shall be Special Government Employees, unless classified as representatives.

III. Copies of the Charter

To obtain a copy of the Committee's charter, submit a written request to the above contact.

Dated: April 23, 2009.

David Blumenthal,

National Coordinator for Health Information Technology, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–9839 Filed 4–24–09; 4:15 pm]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology

ACTION: Notification of the Establishment of the HIT Standards Committee.

SUMMARY: This notice announces the establishment of the HIT Standards Committee. The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), section 13101, directs the establishment of the HIT Standards Committee. The HIT Standards Committee (also referred to as the ''Committee'') is charged with making recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

FOR FURTHER INFORMATION CONTACT: Judith Sparrow, Office of the National Coordinator for Health Information Technology, e-mail *judy.sparrow@hhs.gov* or 202–205–4528.

SUPPLEMENTARY INFORMATION:

I. Background

The Committee and its staff are governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The Committee shall determine a schedule of meetings following an election of a Chairperson and a Vice Chairperson from among its members. An initial meeting of the Committee shall take place not later than 90 days from passage of the ARRA.

II. Criteria for Members

The HIT Standards Committee shall not exceed thirty (30) voting members, including a Chair and Vice Chair, and members are appointed by the Secretary with input from the National Coordinator. Membership of the Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information and shall represent a balance among various sectors of the health care system so that no single sector unduly influences the recommendations of the Committee.

Non-Federal members of the Committee shall be Special Government Employees, unless classified as representatives.

III. Copies of the Charter

To obtain a copy of the Committee's charter, submit a written request to the above contact.

Dated: April 23, 2009.

David Blumenthal,

National Coordinator for Health Information Technology, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–9838 Filed 4–24–09; 4:15 pm]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM)

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of SACATM on June 25–26, 2009, at the Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203. The meeting is open to the public with attendance limited only by the space available. SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM.

DATES: The SACATM meeting will be held on June 25 and 26, 2009. The meeting is scheduled from 8:30 a.m. to 5 p.m. on June 25 and 8:30 a.m. until adjournment on June 26, 2009. All individuals who plan to attend are encouraged to register online at the NTP Web site (*http://ntp.niehs.nih.gov/go/7441*) by June 17, 2009. In order to facilitate planning, persons wishing to make an oral presentation are asked to notify Dr. Lori White, NTP Executive Secretary, via online registration, phone, or e-mail by June 17, 2009 (see **ADDRESSES** below). Written comments should also be received by June 17, 2009, to enable review by SACATM and NIEHS/NTP staff before the meeting.

ADDRESSES: The SACATM meeting will be held at the Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203 [hotel: (703) 528–6000)]. Public comments and other correspondence should be directed to Dr. Lori White (NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709; telephone: 919–541–9834 or e-mail: *whiteld@niehs.nih.gov*). Courier address: NIEHS, 530 Davis Drive, Room 2136, Durham, NC 27713. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY).

Requests should be made at least 7 days in advance of the meeting.

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

Preliminary agenda topics include:

- NICEATM–ICCVAM Update.
- Regulatory Acceptance of ICCVAM–Recommended Alternative Test Methods.
- NRC Report *Recognition and Alleviation of Pain in Laboratory Animals.*
- Implementation of NICEATM–ICCVAM Five-Year Plan.
- Federal Agency Research, Development, Translation, and Validation Activities Relevant to the NICEATM–ICCVAM Five-Year Plan (EPA and USDA).
- Report on second meeting of Independent Peer Review Panel: Evaluation of the Updated Validation Status of New Versions and Applications of the Murine Local Lymph Node Assay: Assessing the Allergic Contact Dermatitis Potential of Chemicals and Products.
- Report on the Independent Scientific Peer Review Panel on Alternative Ocular Safety Testing Methods.
- Update from the Japanese Center for the Validation of Alternative Methods.
- Update from the European Centre for the Evaluation of Alternative Methods.
- Update from Health Canada.

A copy of the preliminary agenda, committee roster, and additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/7441*) or available upon request (see **ADDRESSES** above). Following the SACATM meeting, summary minutes will be prepared and available on the NTP Web site or upon request.

Request for Comments

Both written and oral public input on the agenda topics is invited. Written comments received in response to this notice will be posted on the NTP Web site. Persons submitting written comments should include their name, affiliation (if applicable), and sponsoring organization (if any) with the document. Time is allotted during the meeting for presentation of oral comments and each organization is allowed one time slot per public comment period. At least 7 minutes will be allotted for each speaker, and if time permits, may be extended up to 10 minutes at the discretion of the chair. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked to do so through the online registration form (*http://ntp.niehs.nih.gov/go/7441*) and to send a copy of their statement to Dr. White (see **ADDRESSES** above) by June 17, 2009, to enable review by SACATM, NICEATM–ICCVAM, and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution and to supplement the record.

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the development, scientific validation, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 [42 U.S.C. 285*l*–3] established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found on their Web site (*http://iccvam.niehs.nih.gov*).

SACATM was established in response to the ICCVAM Authorization Act [Section 285*l*–3(d)] and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

Dated: April 22, 2009.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. E9–9845 Filed 4–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-09–0128]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

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 through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Congenital Syphilis (CS) Case Investigation and Report Form (CDC73.126), OMB No. 0920–0128—revision—National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Prevention, (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Reducing congenital syphilis is a national objective in the DHHS Report entitled ''Healthy People 2010 (Vol. I and II)''. Objective 25–9 of the DHHS document states the goal to ''reduce congenital syphilis to 1 new case per 100,000 live births''. In order to meet this national objective, an effective surveillance system for congenital syphilis must be continued to monitor current levels of disease and progress towards the year 2010 objective. The purpose of the revision is to accommodate minor change to the ''Congenital Syphilis (CS) Case Investigation and Report Form'' (CDC73.126). In the proposed revision, the ''reporting city'' and ''resident city'' information blocks in the ''Congenital Syphilis (CS) Case Investigation and Report'' data collection form will be removed because several states have begun to use a 5-digit (rather than 4-digit) FIPS code for city, and CDC data systems cannot accommodate the new codes.

The congenital syphilis data will continue to be used to develop intervention strategies and to evaluate ongoing control efforts. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondents	Name of form	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State and local health departments ..	Congenital Syphilis (CS) Case Investigation and Report.	18	11	20/60	66
Total	.....	18	.....	.....	66

Dated: April 23, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–9772 Filed 4–28–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Strengthening National Capacity in Malaria and Other Infectious Disease Operations Research, Funding Opportunity Announcement (FOA) CK09–003

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time And Date: 12 p.m.–3 p.m., June 11, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Strengthening National Capacity in Malaria and Other Infectious Disease Operations Research, Funding Opportunity Announcement (FOA) CK09–003.''

Contact Person For More Information: Wendy Carr, PhD, CDC, 1600 Clifton Road, NE., Mailstop D60, Atlanta, GA 30333, Telephone: (404) 498–2276.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 17, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–9743 Filed 4–28–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 5, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division Of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892, (301) 496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9863 Filed 4–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, May 14, 2009, 9 a.m. to May 14, 2009, 5 p.m., Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037 which was published in the **Federal Register** on April 17, 2009, 74 FR N17874.

The meeting will be held on June 2, 2009. The time and meeting location

remains the same. The meeting is closed to the public.

Dated: April 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9857 Filed 4–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Mental Health Special Emphasis Panel. SRSP Conflicts.

Date: June 11, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608. 301–402–8152. *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9860 Filed 4–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Dengue Tetravalent Vaccine Containing a Common 30 Nucleotide Deletion in the 3′-UTR of Dengue Types 1,2,3, and 4

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a an exclusive license to practice the following invention as embodied in the following patent applications: (1) E–120–2001/0, Whitehead et al., ''Development of Mutations Useful for Attenuating Dengue Viruses and Chimeric Dengue Viruses'', Brazilian Patent Application PI0209943.8, filed May 22, 2002, (2) E–089–2002/0,1, Whitehead et al., ''Dengue Tetravalent Vaccine Containing a Common 30 Nucleotide Deletion in the 3′-UTR of Dengue Types 1,2,3, and 4, or Antigenic Chimeric Dengue Viruses 1,2,3, and 4'', Brazilian Patent Application PI0309631–9, filed April 25, 2003, and (3) E–139–2006/0, Whitehead et al., ''Development of Dengue Vaccine Components'', Brazilian Patent Application TBA, filed August 15, 2007 to Fundacao Butantan, having a place of business in Sao Paulo, Brazil. The patent rights in this invention have been assigned to the United States of America.

DATE: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before May 14, 2009 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *ps193c@nih.gov;* Telephone: (301) 435–4646; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The global prevalence of dengue has grown dramatically in recent decades. The disease is now endemic in more than 100 countries in Africa, North and South America, the Eastern Mediterranean, Southeast Asia and the Western Pacific. Southeast Asia and the Western Pacific are most seriously affected. Before 1970 only nine countries had experienced Dengue Hemorrhagic Fever (DHF) epidemics, a number that had increased more than four-fold by 1995. WHO currently estimates there may be 50 million cases of dengue infection worldwide every year.

The methods and compositions of this invention provide a means for prevention of dengue infection and dengue hemorrhagic fever (DHF) by immunization with attenuated, immunogenic viral vaccines against dengue. The vaccine is further described in Blaney JE et al., ''Mutations which enhance the replication of dengue virus type 4 and an antigenic chimeric dengue virus type 2/4 vaccine candidate in Vero cells.'' *Vaccine.* 2003 Oct 1;21(27–30):4317–27 and Whitehead SS et al., ''A live, attenuated dengue virus type 1 vaccine candidate with a 30-nucleotide deletion in the 3′ untranslated region is highly attenuated and immunogenic in monkeys.'' *J. Virol.* 2003 Jan;77(2):1653–7.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to live attenuated vaccines against dengue infections in humans. The Licensed Territory may be limited to Brazil.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 23, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–9853 Filed 4–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Treating and Preventing Inflammatory Bowel Disease (IBD) Involving Interleukin-13 (IL–13) and Natural Killer T (NKT) Cells

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in PCT Patent Application No. PCT/US02/18790, filed June 14, 2002, which published as WO 2004/001655 on December 31, 2003, now expired, entitled ''Method of Treating and Preventing Colitis Involving IL–13 and NK–T Cells'' [HHS Ref. No. E–131–2002/0–PCT–01];U.S. Patent Application No. 10/517,898, filed December 13, 2004, which was published as US–2006–0024306 A1 on February 2, 2006, entitled ''A Method of Treating Inflammatory Bowel Disease (IBD)'' [HHS Ref. No. E–131–2002/0–US–02]; European Patent Application No. 02742057.9, filed June 14, 2002, which published as 1552462 on July 13, 2005, entitled ''Method of Treating and Preventing Colitis Involving IL–13 and NK–T Cells'' [HHS Ref. No. E–131–2002/0–EP–08]; Australian Patent Application No. 2002315115, filed June 14, 2002, entitled ''Method of Treating and Preventing Colitis Involving IL–13 and NK–T Cells'' [HHS Ref. No. E–131–2002/0–AU–05]; Japanese Patent Application No. 2004515561, filed June 14, 2002, entitled ''Method of Treating and Preventing Colitis Involving IL–13 and NK–T Cells'' [HHS Ref. No. E–131–2002/0–JP–04]; New Zealand Patent Application No. 537726, filed June 14, 2002, entitled ''Method of Treating and Preventing Colitis Involving IL–13 and NK–T Cells'' [HHS Ref. No. E–131–2002/0–NZ–06]; Hong Kong Patent Application No. 05112119.6, filed June 14, 2002, entitled ''Method of Treating and Preventing Colitis Involving IL–13 and NK–T Cells'' [HHS Ref. No. E–131–2002/0–HK–09]; South African Patent Application No. 2005/00375, filed June 14, 2002, entitled ''Method of Treating and Preventing Colitis Involving IL–13 and NK–T Cells'' [HHS Ref. No. E–131–2002/0–ZA–07]; Canadian Patent Application No. 2489540, filed June 14, 2002, entitled ''Method of Treating and Preventing Colitis Involving IL–13 and NK–T Cells'' [HHS Ref. No. E–131–2002/0–CA–03]; U.S. Provisional Patent Application No. 60/671,624, filed April 15, 2005, now abandoned, entitled ''Treatment and prevention of IBD using Mutant and Chimeric IL–13 Molecules'' [HHS Ref. No. E–003–2005/0–US–01]; PCT Patent Application No. PCT/US06/014393, filed April 14, 2006, now expired, entitled ''Methods of Treating and Preventing Inflammatory Bowel Disease Involving IL–13 and NKT Cells,'' which published as WO 2006/113614 on October 20, 2006 [HHS Ref. No. E–003–2005/0–PCT–02]; European Patent Application No. 06750435.7, filed November 12, 2007, entitled ''Methods of Treating and Preventing Inflammatory Bowel Disease Involving IL–13 and NKT Cells,'' which published as 1877074 on January 16, 2008, [HHS Ref. No. E–003–2005/0–EP–04]; and U.S. Patent Application No. 11/918,711, filed April 14, 2006, entitled ''Treatment and Prevention of Inflammatory Bowel Disease (IBD) Using Mutant and Chimeric IL–13 Molecules'' [HHS Ref. No. E–003–2005/0–US–03] to Innate Immune, Inc. which has an office in Stanford, California, U.S.A. The patent rights in these inventions have been assigned to the United States of America and Brigham and Women's Hospital.

The prospective exclusive license territory may be ''worldwide'', and the field of use may be limited to ''the use of agents that modulate Natural Killer T cell (NKT cell) activity and/or NKT cell number a) by interaction with antigen-presenting cells expressing CD1d family of proteins, and/or b) by interaction with NKT cell receptors that bind to antigen-presenting cells expressing CD1d family of proteins, as therapeutics for the treatment or prevention of inflammatory bowel disease (IBD), including ulcerative colitis and Crohn's disease.''

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 29, 2009 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Suryanarayana (Sury) Vepa, Ph.D., J.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5020; Facsimile: (301) 402–0220; E-mail: *vepas@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The subject technology is directed to methods of treating inflammatory bowel disease (IBD), more specifically Ulcerative Colitis (UC). The inventors of this technology have used a mouse model of experimental colitis (OC) to show that Interleukin (IL)-13, a Th2 cytokine, is a significant pathologic factor in OC and that neutralizing IL–13 in these animals effectively prevents colitis (Immunity (2002) 17, 629–638). The subject technology provides for methods of treating UC by reducing NKT cell activity. This reduction in NKT cell activity can be accomplished by inhibition of the cytokine IL–13 or its receptor, IL–13R, or through modulation of another NKT cell surface receptor, such as the T-cell receptor. The T-cell receptor is activated by the glycoprotein, CD1d, which is expressed on the surface of antigen-presenting cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 23, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–9856 Filed 4–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Request for Comment on Minimum Requirements for Criteria in Grant Applications Under the National All Schedules Prescription Electronic Reporting Act of 2005 (NASPER)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

SUMMARY: This notice is to request comments from interested parties regarding criteria for grants issued under NASPER (42 U.S.C. 280g–3). NASPER establishes a formula grant program for States to establish or improve State controlled substance monitoring systems (''prescription monitoring programs,'' or ''PMPs''). Under NASPER, the Secretary will award grants to qualifying States, defined in the legislation as the 50 States and the District of Columbia (42 U.S.C. 280g–3(i)(8)). This notice is required under NASPER and comments received in response to this notice will be evaluated and as appropriate, included in public announcements for grants under this law.

SAMHSA will be issuing a Request for Applications (RFA) for formula grant awards under the NASPER program in Federal fiscal year (FFY) 2009.

Authority: Section 399O, of the Public Health Service Act, as amended.

DATES: The closing date to submit comments will be May 29, 2009. The Administrator believes that this limited comment period is necessary and justified to comply with the timelines necessary to announce, submit, review and award grants before the end of the fiscal year, September 30, 2009.

ADDRESSES: To assure proper handling of comments, please reference ''Docket No. CSAT 002'' on all written and electronic correspondence. Written comments may be submitted to the Division of Pharmacologic Therapies, Center for Substance Abuse Treatment, 1 Choke Cherry Road, Room 2–1063, Rockville, MD 20857; Attention: DPT **Federal Register** Representative. Alternatively, comments may be submitted directly to SAMHSA by sending an electronic message to *dpt_interimrule@samhsa.hhs.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulation.gov* Web site. SAMHSA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. SAMHSA will not accept any file formats other than those specifically listed here.

Please note that SAMHSA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection Online at *http://www.regulations.gov* and in the SAMHSA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''Personal Identifying Information'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted Online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase *''Confidential Business Information''* in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted Online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the SAMHSA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information'' paragraph.

FOR FURTHER INFORMATION CONTACT: Nicholas Reuter, Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies, SAMHSA, 1 Choke Cherry Road, Room 2–1063, Rockville, MD 20857, (240) 276–2716, e-mail: *Nicholas.Reuter@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National All Schedules Prescription Electronic Reporting Act of 2005, (''NASPER'' Pub. L. 109–60) enacted August 11, 2005, created a formula grant program under the authority of the Secretary for Health and Human Services (''the Secretary'') for State controlled substance monitoring systems (''prescription monitoring programs,'' hereinafter, ''PMPs''). The intent of this new law is to foster the establishment or enhancement of State-administered controlled substance monitoring systems in order to ensure that health care providers and law enforcement officials and other regulatory bodies have access to accurate, timely prescription history information. In addition, the expansion and establishment of prescription monitoring systems has the potential for assisting in the early identification of patients at risk for addiction.

Although NASPER authorized funding, an appropriation for NASPER was not available until March 11, 2009. The Omnibus Spending Act of 2009 appropriated $2 million to SAMHSA for ''prescription monitoring programs (NASPER)'' for fiscal year 2009.

According to the National Alliance of Model State Drug Laws (NAMSDL), as of February 2009, 32 States have operational prescription monitoring programs (PMPs). An additional 6 States have enacted legislation and 5 States have pending legislation to start a PMP. Although there is considerable variation, the programs essentially require that pharmacies, physicians, or both, submit information on prescriptions dispensed for certain controlled substances as mandated by State law. Prescriber and patient information relating to prescriptions issued for controlled stimulants, sedatives/depressants, anxiolytics, narcotics, etc., is transmitted to a central office within each State.

NASPER establishes the authority for a grant program with the Secretary, HHS, wherein a State may submit an application to implement a new controlled substance prescription monitoring system, or to make improvements upon an existing State controlled substance monitoring system. In addition, the legislation includes provisions for standardization that will enable and require the sharing of information between States with programs. The State application for a grant must include measures to prevent unauthorized disclosures. This is important as State PMPs include personal patient health information on both individuals who receive and fill

controlled substance prescriptions and those who have had a controlled substance dispensed to them beyond a 48-hour supply.

To be eligible to receive a grant under NASPER, the State must demonstrate that the State has enacted legislation or regulations to permit the implementation of the State controlled substance monitoring program and the imposition of appropriate penalties for the unauthorized use and disclosure of information maintained in such program. Additional requirements for applications are set forth under 42 U.S.C. 280g–3(c), and include budget cost estimates, interoperability standards, uniform electronic formats, access to information, penalties for unauthorized disclosures and other issues. SAMHSA will issue a formal request for applications in the next several weeks that will specify State application requirements.

II. Request for Comments

Before awarding grants to States under NASPER, the Secretary is required, after consultating with States and other interested parties, to seek public comment on proposed minimum requirements. Under 42 U.S.C. 280g–3(b), the criteria to be used by States relate to the following four purposes:

1. Criteria for security for information handling and for the database maintained by the State under subsection (e) generally including efforts to use appropriate encryption technology or other appropriate technology to protect the security of such information (42 U.S.C. 280g–3(c)(1)(A)(ii));
2. Criteria for availability of information and limitation on access to program personnel (42 U.S.C. 280g–3)(c)(1)(A)(v));
3. Criteria for access to the database, and procedures to ensure that information in the database is accurate (42 U.S.C. 280g–3(c)(1)(A)(vi));
4. Criteria for the use and disclosure of information, including a description of the certification process to be applied to requests for information under subsection (f) (42 U.S.C. 280g–3)(c)(1)(A)(vii)).

A. Consultation With States and Other Interested Parties

Prescription monitoring programs (''PMPs'') have been in place for decades. In addition, the Federal Government has supported the development, enhancement, and expansion of these State programs for several years under the ''Harold Rogers Prescription Drug Monitoring Grant Program,'' which is administered by the Department of Justice, Bureau of Justice Assistance (DOJ/BJA). In fiscal year (FY) 2009, the Harold Rogers Grant Program will operate concurrently with the NASPER grant program. Since FY 2003, BJA has provided training and technical assistance to grantees and to States which are planning to implement a program. BJA training and technical assistance partners have included the National Alliance for Model State Drug Laws, the IJIS Institute, the National Conference of State Legislatures, the Addiction Technology Transfer Center, Brandeis University, and the Alliance of States with Prescription Drug Monitoring Programs.

In developing these proposed minimum standards, SAMHSA has consulted with DOJ/BJA and the Alliance of States with Prescription Drug Monitoring Programs to obtain information about their experience with PMP operating requirements. In addition, SAMHSA has discussed NASPER provisions with individual States with PMPs, and entities such as the Institute of Justice Information Systems, which have provided technical assistance to State PMPs on interstate information sharing. SAMHSA has reviewed the Model State PMP law, the Harold Rogers Grant Program grant solicitations, as well as numerous reports, survey results, and published articles in prepared proposed minimum requirements. While additional time may have permitted a more extensive and formal level of consultation, SAMHSA believes that taken together, the approach outlined above provides a sufficient level of consultation for the minimum requirements proposed for comment in this notice.

B. Proposed Minimum Requirements

Overall, the Administrator's intent in proposing the minimum standards below is to facilitate the stated goals of NASPER—to foster establishment of PMPs that provide timely information to health care providers and others, and, over time, to guide the improvement of PMPs with best practices. In addition, the Administrator strives with these proposed minimum requirements to balance the need to advance PMPs with what States applying for NASPER grants could be realistically expected to achieve in a relatively short period of time.

1. Criteria for security for information handling and for the database maintained by the State under subsection (e) generally including efforts to use appropriate encryption technology or other appropriate technology to protect the security of such information (42 U.S.C. 280g–3(c)(1)(A)(ii));

State PMPs include personal patient health information on both individuals who receive and fill controlled substance prescriptions and those who have had a controlled substance dispensed to them beyond a 48-hour supply. In addition, PMPs need to collect identification information on prescribers and dispensers. Finally, the systems need to collect information that identifies the types and quantities of the prescribed/dispensed substances. The information collection requirements under NASPER are set forth under 42 U.S.C. 280g–3(d)(3)(A).

Information from PMPs must be stored and protected in an electronic manner that, at a minimum, is at least equivalent to the standards set forth in regulations promulgated under section 262 of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191; 110 Stat. 2033). This would include the technical safeguards standards of the HIPAA Security Rule under 45 CFR 164.312. ''Technical safeguards'' is defined at 45 CFR 164.304 as, ''the technology and the policy and procedures for its use that protect electronic protected health information and control access to it.'' These HIPAA security regulations include technical safeguards for access control, audit controls, integrity, person or entity authentication, and transmission security. The access control standards require, at a minimum, unique user identification, and an emergency access procedure, with automatic logoff and encryption/decryption as addressable implementation specifications.

In addition, NASPER does not supersede the requirements of the Federal substance abuse confidentiality law (42 U.S.C. 290dd–2) and regulations under 42 CFR part 2.

The Administrator is proposing as a minimum requirement that PMP databases are stored on separate servers, physically secured with firewall protections. These databases must provide for backup and restore needs in the event of disasters. These back up systems must conform to the same security requirements.

As discussed in more detail below, information from these electronic prescription drug monitoring databases is released to certain entities upon request (solicited), or without request (unsolicited). The transmission of this information must also be secure to prevent inadvertent disclosure. The Administrator understands that many of these releases are conducted by web-based applications. At a minimum, the

Secretary is proposing to require that such web-based releases are encrypted with 128-bit Secure Socket Logic technology.

2. Criteria for availability of information and limitation on access to program personnel (42 U.S.C. 280g–3(c)(1)(A)(v));

For the purposes of organization, the Administrator will address ''criteria for availability of information'' under item four, below. ''Limitation on access to program personnel'' will be interpreted for the purposes of this notice to mean limiting access to individuals within the State PMP program to the PMP database and the PMP data itself.

The Administrator is proposing that each PMP have a ''Master Administrator.'' The master administrator is an individual with the responsibility of controlling and monitoring access to the PMP database itself. This individual has the responsibility for assigning usernames and passwords to those who are granted access to PMP data (both State employees and non-State employees who are certified to receive PMP data notices.) A second key responsibility of the master administrator is the ability to maintain a log that accurately details those who have accessed and received data from the PMP database. The Administrator is proposing that this log requirement would not have to provide ''per record'' detail information. In other words, the master administrator log would need to detail who accessed the system when, but not each record received.

3. Criteria for access to the database, and procedures to ensure that information in the database is accurate (42 U.S.C. 280g–3(c)(1)(A)(vi));

For the purposes of organization, the Administrator will address ''criteria for access to the database'' under sections two and four, and proposed minimum standards here (section 3) relating to procedures to ensure that information in the database is accurate.

Based upon consultations with States and other entities, the Administrator believes that the procedures applied by PMPs to ensure accuracy have evolved over the years. Indeed, electronic PMPs rely on much of the same technology for transmission of prescription drug data as that used by the private and public insurance systems. As such, these electronic data transmission switches have evolved procedures and safeguards to help assure that the information is accurate for reimbursement purposes.

The Administrator proposes for comment the following minimum requirements for accuracy. First, PMPs must adopt the most recent version of the American Society for Automation in Pharmacy (ASAP) standard for electronic prescription formatting. Adoption of the minimum, which the Administrator believes is almost universally in place will help ensure that gross formatting errors in identification numbers, NDC codes, etc., are minimized. In addition, the Administrator is proposing as a minimum requirement that PMPs applying for NASPER grants must have a mechanism for correcting inaccuracies when notified by physicians, pharmacists, patients, and others.

4. Criteria for the use and disclosure of information, including a description of the certification process to be applied to requests for information under subsection (f) (42 U.S.C. 280g–3(c)(1)(A)(vii)).

The intent of this provision is to limit the disclosure of information from a State PMP to that necessary for public health and law enforcement purposes. NASPER envisions two types of disclosures from PMPs—solicited disclosures and unsolicited disclosures.

Solicited Disclosure of Information from PMP. Under 42 U.S.C. 280g–3(f)(1), a State may disclose information from the PMP only in response to a request (''a solicited request'') by five entities: (a) A practitioner (or the agent thereof), (b) any local, State, or Federal law enforcement, narcotics control, licensure, disciplinary, or program authority, (c) the controlled substance monitoring program of another State or group of States with whom the State has established an interoperability agreement, (d) any agent of the Department of Health and Human Services, a State Medicaid program, a State health department, or the Drug Enforcement Administration, and (e) an agent of the State agency or entity of another State that is responsible for the establishment and maintenance of that State's controlled substance monitoring program. The Administrator views solicited requests for information as a two component process. First, the individual or entity requesting information from the PMP must be authorized (''authentication'') to receive the information. Next, the authorized individual or entity must provide a need (''certification'') for the requested information.

The Administrator is proposing minimum authentication and certification requirements for solicited disclosures from PMPs for the five entities listed in NASPER.

(a) A practitioner (or the agent thereof, including pharmacist) must submit a hard copy written, signed, and notarized request to the designated State agency, which in turn, verifies the information before providing a username and password to the practitioner. The request must include the practitioner's name and date of birth, a corresponding DEA registration number, and State medical license number. In soliciting information from the State PMP database, the practitioner must certify that the requested information is for the purpose of providing medical or pharmaceutical treatment or evaluating the need for such treatment to a bona fide current patient. The Administrator envisions that such requests/certifications can be conducted by web-based procedures.

(b) A local, State, or Federal law enforcement, narcotics control, licensure, disciplinary, or program authority must submit a hard copy written signed and notarized request to the designated State agency, which in turn, verifies the information before providing a username and password to the practitioner. The request must include the agency name and the individuals who will be authorized to request access within the agency. The requestor must certify for each disclosure that the requested information is related to an individual investigation or proceeding involving the unlawful diversion or misuse of a schedule II, III, or IV substance, and that such information will further the purpose of the investigation or assist in the proceeding. Such requests shall include an active case number or provide other assurance that the request is pursuant to the law enforcement agency's official duties and responsibilities.

(c) The controlled substance monitoring program of another State or group of States must have an established, signed interoperability agreement in place before interstate patient information sharing (but not anonymous, aggregate data) can proceed. The Administrator notes that there is considerable activity underway between States, including ''pilot studies'' to explore interoperability technical and other issues. As such, at this time the Administrator is proposing that any interoperability agreements that meet the requirements of the individual State PMPs, and the general requirements established by this notice, should be acceptable. This means, for example, that if the ultimate information requestor is a law enforcement entity, each State PMP must meet the authentication and certification requirements proposed under (b), above.

(d) Any agent of the Department of Health and Human Services, a State

Medicaid program, a State health department, or the Drug Enforcement Administration must submit a written request to the State PMP that identifies the summary statistics sought. The requesting Department, program, administration, etc., must certify that the requested information is necessary for research to be conducted by such department, program, or administration, respectively, and the intended purpose of the research is related to a function committed to such department, program, or administration by law that is not investigative in nature.

(e) An agent of the State agency or entity of another State that is responsible for the establishment and maintenance of the State's controlled substance monitoring program must submit a written request on Agency letterhead that identifies the requestor as the person responsible for that State's controlled substance monitoring program. After authentication by the disclosing State PMP, the requesting State certifies that (i) the State has an application approved under this section; and (ii) the requested information is for the purpose of implementing the State's controlled substance monitoring program.

Patients. The Administrator notes that NASPER does not specifically designate disclosures to patients as a category for minimum requirements, perhaps because HIPAA and other patient information access provisions already permit sufficient patient access to their own controlled prescription drug information. The Administrator invites specific comment on this issue.

Unsolicited Disclosures of Information from PMPs. Practitioners and Dispensers. Under 42 U.S.C. 280g–3(f)(2)(A), NASPER requires that ''[I]n consultation with practitioners, dispensers, and other relevant and interested stakeholders, a State receiving a grant under subsection (a) * * * shall establish a program to notify practitioners and dispensers of information that will help identify and prevent the unlawful diversion or misuse of controlled substances * * *.''

The Administrator understands that notifying prescribers and dispensers when PMP activity suggest drug diversion, or identifying individuals who may need substance abuse treatment, is important to reducing substance abuse and reducing illicit distribution of controlled prescription substances. In addition, the Administrator is aware that many States have established ''thresholds'' that trigger such notifications. States have considerable latitude in establishing such programs; and, at a minimum States must establish and articulate the criteria for such thresholds. For example: The threshold for notifying prescribers and dispensers is when an individual has filled five or more controlled substance prescriptions from five different prescribers, or five different dispensers in the State, within a six month period.

Drug Diversion Investigators—Under 42 U.S.C. 280g–3(f)(2)(B) a State PMP ''may, to the extent permitted under State law, notify the appropriate authorities responsible for carrying out drug diversion investigations if the State determines that information in the database maintained by the State under subsection (e) indicates an unlawful diversion or abuse of a controlled substance.''

The Administrator notes that the language in NASPER clearly indicates that the provision for PMP to notify law enforcement officials of potentially criminal violations is voluntary. It is likely that most States with existing PMPs have established procedures and thresholds for these types of unsolicited disclosures. The Administrator understands that minimum required thresholds and procedures would be quantitatively and qualitatively different from those proposed for practitioners and dispensers, above. At this time, the Administrator is not proposing minimum requirements for unsolicited disclosures to drug diversion investigators; however, the Administrator invites comment on this issue.

Eric B. Broderick,

Acting Administrator, Assistant Surgeon General, Substance Abuse and Mental Health Services Administration.

[FR Doc. E9–9854 Filed 4–28–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number 105–A]

Updating the List of Hazardous Drugs for the NIOSH Alert: Additions and Deletions to the NIOSH Hazardous Drug List

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of draft document available for public comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following draft document available for public comment entitled ''Updating the List of Hazardous Drugs for the NIOSH Alert: Additions and Deletions to the NIOSH Hazardous Drug List.'' The document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/review/public/105a/*.

DATES: Comments must be postmarked by June 30, 2009.

ADDRESSES: You may submit comments to *nioshdocket@cdc.gov* or to the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226 or by facsimile (513) 533–8285. Comments should be in Microsoft Word format and should reference NIOSH docket number 105–A. NIOSH includes all comments received without change in the docket, including any personal information provided. After the comment period has closed, comments will be able to be accessed electronically at *http://www.cdc.gov/NIOSH* under the link to the NIOSH docket. As appropriate, NIOSH will post comments with the commenters' names, affiliations and other information, on the Internet.

Background: The ''NIOSH Alert: Preventing Occupational Exposures to Antineoplastic and Other Hazardous Drugs in Health Care Settings'' was published in September 2004 (*http://www.cdc.gov/niosh/docs/2004–165/*). Since that time, approximately 60 new drugs have received FDA approval and approximately 60 drugs have received special warnings (usually black box warnings) based on reported adverse effects in patients. An additional 18 drugs were included from the updated National Institutes of Health (NIH) Hazardous Drug List. From this list of approximately 150 drugs, 62 drugs were determined to have one or more characteristic of a hazardous drug and published for comment in NIOSH docket number 105.

After review by experts, public review and comment, input from stakeholders and review of the scientific literature, NIOSH has proposed a second draft list of hazardous drugs. A number of drugs were removed from the initial proposed list based on comments from the various groups and organizations. The second draft list identifies 24 drugs that fit the NIOSH definition of hazardous drugs. Based on comments received by NIOSH, Bacillus Calmette-Guerin (BCG) will be removed from Appendix A in the 2004

NIOSH Alert on Hazardous Drugs (*http://www.cdc.gov/niosh/docs/2004–165/*) due to potential adverse effects in some patients from cross-contamination.

This guidance document does not have the force and effect of law.

FOR FURTHER INFORMATION CONTACT: Barbara MacKenzie, NIOSH, Robert A. Taft Laboratories, MS–C26, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8132, E-mail: *hazardousdrugs@cdc.gov.*

Reference: http://www.cdc.gov/niosh/docs/2004–102/. Web address for this document: *http://www.cdc.gov/niosh/review/public/105a/.* All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Room 111, Cincinnati, Ohio, 45226, telephone (513) 533–8303.

Dated: April 22, 2009.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E9–9779 Filed 4–28–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form I–312, Designation of Attorney in Fact.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 12, 2009 Vol. 74 No. 28 7072, allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days May 29, 2009. Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Designation of Attorney in Fact.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–312. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The I–312 is the instrument the U.S. Immigration and Customs Enforcement (ICE) uses to provide immigration bond obligors a means to designate an attorney to accept on the obligor's behalf, the return of cash or United States bonds or notes deposited to secure an immigration bond upon the cancellation of the bond or the performance of the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,250 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Joseph M. Gerhart, Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Dated: April 22, 2009.

Lee Shirkey,

Acting Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–9720 Filed 4–28–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: National Interest Waivers; Supplemental Evidence to I–140 and I–485, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30–Day Notice of Information Collection Under Review: National Interest Waivers; Supplemental Evidence to I–140 and I–485; OMB Control No. 1615–0063.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 11, 2009, at 74 FR 6915, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 29, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of

Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0063 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* National Interest Waivers; Supplemental Evidence to I–140 and I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. The supplemental documentation will be used by U.S. Citizenship and Immigration Services to determine eligibility for national interest waiver requests and to finalize the request for adjustment to lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 responses, two responses per respondent, at (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,000 annual burden hours.

If you need a copy of the proposed information requirements, or additional information, please visit the Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Dated: April 24, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–9750 Filed 4–28–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NW35; FEMA Form 528–1, NEFRLS Registration; and FEMA Form 528–2, NEFRLS Search.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the National Emergency Family Registry and Locator System (NEFRLS) established in accordance with Title VI of the Department of Homeland Security Appropriations Act of 2007 to help facilitate the reunification of families displaced due to a major disaster or emergency

DATES: Comments must be submitted on or before June 29, 2009.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to FEMA–POLICY@dhs.gov. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Waddy Gonzalez, Mass Care Team Lead, Individual Assistance Division, Mass Care Unit, at (202) 212–1077 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Post-Katrina Emergency Management Reform Act of 2006, in Title VI of the DHS Appropriations Act of 2007, Public Law 109–295, section 689c, 120 Stat. 1355 at 1451 is the legal basis for FEMA to provide a National Emergency Family Registry and Locator System (NEFRLS) to allow adults (including medical patients) that have been displaced by a Presidentially-declared disaster or emergency to voluntarily register by submitting personal information to be entered into a database that could be used by others to help reunify them with their families.

Collection of Information

Title: National Emergency Family Registry and Locator System (NEFRLS).

Type of Information Collection: New information collection.

OMB Number: 1660–NW35.

Form Titles and Numbers: FEMA Form 528–1, NEFRLS Registration; and FEMA Form 528–2, NEFRLS Search.

Abstract: NEFRLS is a Web-based system. The information collected in the NEFRLS will be used to help facilitate

the reunification of family members that have been displaced due to a major disaster or emergency.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 328,366 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or households.	NEFRLS Registration 800#/FEMA Form 528–1.	42,717	1	.32 (19 minutes)	13,527	$19.81	$267,970
Individuals or households.	NEFRLS Registration Internet/FEMA Form 528–1.	14,239	1	.22 (13 minutes)	3,085	19.81	61,114
Subtotal—Registration.		56,956					
Individuals or households.	NEFRLS Search 800#/FEMA Form 528–2.	194,846	3	.32 (19 minutes)	185,104	19.81	$3,666,910
Individuals or households.	NEFRLS Search Internet/FEMA Form 528–2.	194,846	3	.22 (13 minutes)	126,650	19.81	2,508,937
Subtotal—Search		389,692					
Total		446,648			328,366		6,504,931

Estimated Cost: There are no start-up, operational or other costs associated with this information collection in addition to the burden hour cost noted in the table above.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–9813 Filed 4–28–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form I–395, Affidavit in Lieu of Lost Receipt of Immigration and Customs Enforcement for Collateral Accepted as Security.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 12, 2009 Vol. 74 No. 28, 7072, allowing for a 60 day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until May 29, 2009.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Affidavit in Lieu of Lost Receipt of Immigration and Customs Enforcement for Collateral Accepted as Security.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–395. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. When an individual posts an Immigration Bond in the form of cash, cashier's check, certified check or money order, he or she is issued a Receipt of Immigration Officer—U.S. Bonds or Cash, Accepted as Security on Immigration Bond (Form I–305). If the I–305 is lost the individual is permitted to complete the I–395 stating the reason for the loss of the original I–305.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,250 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Dated: April 22, 2009.

Lee Shirkey,

Acting Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–9725 Filed 4–28–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: E-Verify Non-User Survey and Employee-Employer Survey in Arizona; Emergency Submission to the Office of Management and Budget (OMB) for a New Information Collection; Comment Request

ACTION: 14-Day Notice of Information Collection Under Review: E-Verify Non-User Survey and Employee—Employer Survey in Arizona. OMB Control No. 1615–NEW.

The E-Verify Program is a free employment eligibility confirmation system operated jointly by U.S. Citizenship and Immigration Services (USCIS) and the Social Security Administration. The E-Verify Program allows participating employers to electronically confirm the employment eligibility of newly hired employees to help maintain a stable, legal workforce. USCIS plans to conduct two new surveys so that it can gather important information relating to the E-Verify Program.

U.S. Citizenship and Immigration Services has submitted the following emergency information collection, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). The purpose of this notice is to allow 14 days for public comments. Comments are encouraged and will be accepted for 14 days until May 13, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add ''E-Verify Survey'' in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Emergency request for a new information collection.

(2) *Title of the Form/Collection:* E-Verify Non-User Survey and Employee-Employer Survey in Arizona.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on these surveys will be used to evaluate the E-Verify Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Web survey of non-users 2,250 respondents × .333 (20 minutes) per response. Arizona interview with employers 100 respondents × 2 hours per response. Arizona interview with employees 450 respondents × 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,399 annual burden hours.

If you need a copy of the proposed information collection instrument, or need additional information, please visit: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Dated: April 27, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–9915 Filed 4–28–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–15]

Notice of Proposed Information Collection: Comment Request; FHA-Insured Mortgage Loan Servicing of Payments, Prepayments, Terminations, Assumptions and Transfers

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2419 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: FHA-Insured Mortgage Loan Servicing of Payments, Prepayments, Terminations, Assumptions and Transfers.

OMB Control Number, if applicable: 2502–New.

Description of the need for the information and proposed use: FHA insurance is an important source of mortgage credit for low- and moderate-income borrowers and their neighborhoods. It is essential that FHA maintain a healthy mortgage insurance fund through premiums charged the borrower by FHA along with Federal budget receipts generated from those premiums to support HUD's goals. Providing policy and guidance to the single family housing mortgage industry regarding changes in FHA's program is essential to protect the fund. The OMB information requests referred to below provide HUD's policy and guidance. This information collection request for OMB review seeks to combine the requirements of three existing OMB collections under this collection. The OMB collections are as follows; OMB collections 2502–0036 ''Request for Credit Approval of Substitute Mortgagor'', 2502–0094 ''Assistance Payment Contract—Notice of Termination, Suspension, or Reinstatement''.

Agency form numbers, if applicable: HUD–27050–A, Mortgage Insurance Termination, HUD–092210.1, Approval of Purchaser and Release of Seller, HUD–92080, Mortgage Record Change.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 833,250, the number of respondents is 223, the number of responses is 43,895,000, the frequency of response is on occasion, and the burden hour per response is from 15 minutes to 3 hours depending upon the activity.

Status of the proposed information collection: This is new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 17, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–9694 Filed 4–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5297–N–02]

Notice of Proposed Information Collection: Comment Request; Applicant/Recipient Disclosure/Update Report—HUD 2880

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Athena R. Jones, Deputy Assistant General Counsel, Ethics Law Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 2130, Washington, DC 20410–0500, telephone (202) 708–3815 (this is not a toll-free number). This form can be viewed or accessed at *http://www.hud.gov/utilities/intercept.cfm?/offices/adm/hudclips/forms/files/2880.pdf.*

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Applicant/Recipient Disclosure/Update Report.

OMB Control Number, if applicable: 2510–0011.

Description of the need for the information and proposed use: Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) requires the Department to ensure greater accountability and integrity in the provision of assistance administered by the Department. One feature of the statute requires certain disclosures by applicants seeking assistance from HUD, assistance from states and units of local government, and other assistance to be used with respect to the activities to be carried out with the assistance. The disclosure includes the financial interests of persons in the activities, and the sources of funds to be made available for the activities, and the proposed uses of the funds.

Each applicant that submits an application for assistance, within the jurisdiction of the HUD, to a state or to a unit of general local government for a specific project or activity must disclose this information whenever the dollar threshold is met. This information must be kept updated during the application review process and while the assistance is being provided.

Agency form numbers, if applicable: HUD 2880.

Members of affected public: Applicants for HUD competitively funded assistance.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The form, HUD 2880, must be submitted as part of an applicant's application for competitively funded assistance.

Number of respondents	Burden hours	Frequency of response	Total burden hours
16,900	2.0	1.2	40,560

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Camille Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. E9–9680 Filed 4–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5299–N–01]

Request for Recommendations Regarding Administrative and Procedural Changes To Expedite the Approval of Applications for FHA-Insured Multifamily Mortgages Involving Low-Income Housing Tax Credits or Tax-Exempt Bonds

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice, pursuant to statute, solicits recommendations from stakeholders in HUD's insured multifamily projects, as well as interested members of the public, on administrative and procedural changes that HUD should adopt to expedite approval of multifamily housing projects involving low-income housing tax credits or tax-exempt bonds under the jurisdiction of HUD. In addition to soliciting, generally, recommendations on expediting the approval process of multifamily housing projects, HUD is soliciting recommendations on specific topics as stated in this notice.

DATES: *Comment Due Date:* June 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eric Stevenson, Deputy Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6152, Washington, DC 20410, Telephone 202–708–1142; e-mail: *Eric.Stevenson@hud.gov.* Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Background: Title VIII, subtitle B of the Housing and Economic Development Recovery Act of 2008 (HERA), (Pub. L. 110–289, approved

July 30, 2008), which is cited as the ''Housing Tax Credit Coordination Act of 2008,'' increases HUD's ability to facilitate and coordinate the use of low income housing tax credits or tax-exempt bonds with multifamily projects that receive FHA assistance.

Section 2832 of HERA requires that HUD implement ''administrative and procedural'' changes to expedite the approval of assistance for certain multifamily assisted housing projects for which HUD approval is required. The multifamily housing projects covered by this section include projects for which HUD provides assistance in conjunction with low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) or tax-exempt housing bonds, and public or assisted housing projects for transactions, in conjunction with any low-income housing tax credits or tax-exempt bonds, involving the preservation or rehabilitation of the project.

Section 2832(c) of HERA directs HUD to solicit recommendations from project owners and sponsors, investors and stakeholders in housing tax credits, state and local housing finance agencies, public housing agencies, tenant advocates, and other stakeholders in multifamily housing projects that will be receiving the benefit of low income housing tax credits or tax-exempt bonds, regarding administrative and procedural changes that could be implemented to expedite the approval of applications for HUD insured mortgages for such projects. The category of assisted multifamily housing projects to which this notice applies also includes, in addition to projects applying for FHA mortgage insurance, projects that will no longer have FHA insured mortgages, but which request to continue to retain the benefits of interest reduction payments under Section 236 of the National Housing Act (12 U.S.C. 1715z–1), with LIHTC or tax-exempt bond financing. This notice seeking comment from stakeholders and other interested members of the public is issued in response to the direction in section 2832 of HERA to solicit recommendations on the multifamily housing approval process.

In addition to soliciting recommendations, generally, on administrative and procedural changes that HUD should adopt to expedite and facilitate its approval of multifamily housing projects, HUD specifically solicits public comment on the following areas:

(A) Improving the efficiency of approval procedures;

(B) Simplifying approval requirements,

(C) Establishing time deadlines or target deadlines for required approvals;

(D) Modifying division of approval authority between field and national offices;

(E) Improving outreach to project sponsors regarding information that is required to be submitted for such approvals;

(F) Requesting additional funding for increasing staff, if necessary; and

(G) Any other actions which would expedite approvals.

Those stakeholders and interested members of the public who wish to comment on these or related topics should submit their comments as provided in the **ADDRESSES** section of this notice.

Dated: April 17, 2009.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–9677 Filed 4–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5200–FA–12]

Announcement of Funding Awards for the Indian Community Development Block Grant Program for Fiscal Year 2008

AGENCY: Office of Native American Programs, Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2008 (FY 2008) Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this year's award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the ICDBG Program awards, contact the Area Office of Native American Programs (ONAP) serving your area or Deborah M. Lalancette, Office of Native American Programs, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone (303) 675–1600. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY 2008 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on May 12, 2008, (73 FR 27047). Applications were scored and selected for funding based on the selection criteria in that notice and Area ONAP geographic jurisdictional competitions.

The amount appropriated in FY 2008 to fund the ICDBG was $62,000,000. $3,960,000 of this amount was retained to fund imminent threat grants in FY2008. In addition, a total of $3,332,433 in carryover funds from prior years was also available. The allocations for the Area ONAP geographic jurisdictions, including carryover, are as follows:

Eastern/Woodlands	$8,129,890
Southern Plains	12,832,443
Northern Plains	9,038,717
Southwest	21,432,835
Northwest	3,257,000
Alaska	6,681,548
Total	61,372,433

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 83 awards made under the various regional competitions in Appendix A to this document.

Dated: April 9, 2009.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

FY 2008 ICDBG AWARDS

Name of applicant	Amount funded	Activity funded	Project description
Absentee-Shawnee Tribe of Oklahoma, Scott Miller, Governor, 2025 S. Gordon Cooper Dr., Shawnee, OK 74801, (405) 275–4030.	$596,500	Public Facility—Infrastructure ..	Construct water tower, drill water well and lay connecting water and sewer lines to IHS Medical Facility.
Ak-Chin Indian Community, Delia Carlyle, Chairman, 42507 W. Peters and Nall Rd., Maricopa, AZ 85239, (520) 568–1000.	605,000	Public Facility—Community, Center.	Construction of solar array.
Akiachak Native Community, George Peter, President, P.O. Box 70, Akiachak, AK 99551, (907) 825–4626.	600,000	Public Facility—Community Center.	Construct ANC Head Start building.
Aleknagik Traditional Council, Wassillie Ilutsik, President, P.O. Box 115, Aleknagik, AK 99555, (907) 842–2080.	600,000	Housing—New Construction ...	Construct 6 homes.
Arctic Village, Margorie Gemmill, Chief, P.O. Box 22069, Arctic Village, AK 99722, (907) 587–5523.	335,000	Housing—New Construction ...	Construct 2 homes.
Bear River Band of Rohnerville Rancheria, Leonard Bowman, Tribal Chairperson, 27 Bear River Dr., Loleta, CA 95551, (707) 733–1900.	605,000	Housing—New Construction ...	Construct 4 new single family modular housing units.
Bishop Paiute Tribe, Bruce Klein, Grant Writer, 50 Tu Su Lane, Bishop, CA 93514, (760) 873–3584.	605,000	Public Facility—Infrastructure ..	Water system reconstruction.
Cherokee Nation, Chadwick Smith, Principal Chief, P.O. Box 948, Tahlequah, OK 74465, (918) 456–0671.	800,000	Public Facility—Infrastructure and Public Service Project.	Water line installation—20 miles and youth projects.
Chickasaw Nation, Jenny Trett, Chief Financial Administrator, P.O. Box 1548, Ada, OK 74821, (580) 436–7274.	800,000	Public Facility—Community Center.	Construct Science and Technology Academy.
Chilkoot Indian Association, Gregory Stuckey, Tribal Administrator, P.O. Box 490, Haines, AK 99827, (907) 766–2323.	600,000	Housing Rehabilitation	Rehabilitate 30 homes for energy efficiency and 25 homes for health and safety.
Chippewa Cree Tribe, John Houle, Tribal Chairperson, P.O. Box 544, Box Elder, MT 59521, (406) 395–5705.	900,000	Housing—New Construction ...	Construct 9 ADA disabled/elderly units for low-income residents.
Choctaw Nation of Oklahoma, Gregory Pyle, Chief, P. O. Drawer 1210, Durant, OK 74702, (580) 924–8280.	800,000	Economic Development	Construct Idabel Travel Plaza.
Citizen Potawatomi Nation, John Barrett, Tribal Chairman, 1601 S. Gordon Cooper Dr., Shawnee, OK 74801, (405) 275–3121.	800,000	Public Facility—Community Center.	Construct health systems professional services annex.
Cocopah Indian Tribe, Dr. Michael Reed, PhD, Chief Executive Officer, County 15th Street & Avenue G, Somerton, AZ 85350, (928) 627–8863.	605,000	Housing Rehabilitation	Rehabilitate 12 rental units.
Coeur D'Alene Tribe, J. Allen, Tribal Chairman, P.O. Box 408, Plummer, ID 83851, (208) 686–1800.	500,000	Public Facilities—Infrastructure	Develop infrastructure for a planned 20 unit housing development.
Confederated Salish and, Kootenai Tribes, James Steele, Jr., Tribal Council Chairman, P.O. Box 278, Pablo, MT 59855, (406) 675–2700.	952,717	Public Facilities— Special Needs.	Expand a transitional living center.
Confederated Tribes of the Siletz Indians, Brenda Bremner, General, Manager 201 SE Swan Avenue Siletz, OR 97380, (541) 444–2532.	500,000	Public Facilities—Infrastructure	Develop infrastructure improvements for a planned 10 unit housing development.
Confederated Tribes of the Grand Ronde Community of Oregon, Cheryle Kennedy, Tribal, Council Chairwoman, 9615 Grand Ronde Road, Grand Ronde, OR 97347, (503) 879–2304.	500,000	Public Facilities—Infrastructure	Design, construct and equip a 1,898 sq. ft. addition to the dental wing of the Tribe's current Health Center.
Crow Tribe of Indians, Carl Venne, Tribal Chairman, P.O. Box 159, Crow Agency, MT 59022, (406) 638–3715.	1,100,000	Housing Rehabilitation and Public Facilities—Infrastructure.	Rehabilitate 25 homes and improve water and wastewater infrastructure.
Delaware Nation-Western, Rochelle Jurado, Interim Executive Director, P.O. Box 825, Anadarko, OK 73005, (405) 247–2448.	238,225	Housing Rehabilitation	Rehabilitate. 30 single family homes.
Eastern Band of Cherokee Indians of North Carolina, Michell Hicks, Principal Chief, P.O. Box 455, Cherokee, NC 28719, (828) 497–7002.	447,187	Public Facility—Infrastructure ..	Sewer line upgrade.

FY 2008 ICDBG AWARDS—Continued

Name of applicant	Amount funded	Activity funded	Project description
Eastern Shawnee Tribe of Oklahoma, Sherry Rackliff, Consultant, 127 West Oneida, Seneca, MO 64865, (918) 914–1121.	800,000	Public Facility—Community Center.	Construct Wellness Center.
Eastern Shoshone Tribe, Willie Noseep, Council Member, P.O. Box 538, Fort Washakie, WY 82514, (307) 332–3532.	1,100,000	Public Facilities— Infrastructure and Public Facilities—Community Center.	Expand a multi-purpose community center and install sewer line extension.
Grand Portage Reservation Tribal Council, Norm Deschampe, Tribal Chairman, P.O. Box 428, Grand Portage, MN 55605, (218) 475–2844.	600,000	Public Facility—Community Center.	Construct Grand Portage Headstart and Daycare Center Project.
Gulkana Village Council, Roy Ewan, President, 210 D Street, Gulkana, AK 99586, (907) 822–4545.	600,000	Housing—New Construction	Construct 3 homes.
Hannahville Indian Community, Kenneth Meshigaud, Tribal Chairperson, N14911 Hannahville B1 Rd., Wilson, MI 49896, (906) 466–2932.	600,000	Public Facility—Infrastructure ..	Develop Deer Ridge Subdivision Infrastructure.
Ho-Chunk Nation, Wilfrid Cleveland, President, W9814 Airport Rd., Black River Falls, WI 54615, (715) 284–7762.	600,000	Public Facility—Community Center.	Construct Children's Learning Village—Montessori Childcare Development Project.
Hualapai Indian Tribe, Wilford Whatoname Sr., Chairman, P.O. Box 179, Peach Springs, AZ 86434, (928) 769–2216.	825,000	Public Facility—Special Needs	Construct health programs building.
Iipay Nation of Santa Ysabel, Johnny Hernandez, Tribal Chairman, P.O, Box 130, Santa Ysabel, CA 92070, (760) 765–0845.	605,000	Housing—New Construction ...	Construct 5 new homeownership units.
Keeweenaw Bay Indian Community, Warren Swartz, Jr., President, 16429 Beartown Rd., Baraga MI 49908, (906) 353–6623.	600,000	Public Facility—Community Center.	Construct early childhood education center.
Lac Courte Oreilles Band of Lake Superior Chippewa, Louis Taylor, Tribal Chairman, 13394 W. Trepania Rd., Hayward, WI 54843, (715) 634–8934.	600,000	Public Facility—Infrastructure ..	Williams Infrastructure Development.
Lac du Flambeau Band of Lake Superior Chippewa, Victoria A. Doud, Tribal President, P.O. Box 67, Lac du Flambeau, WI 54538, (715) 588–3300.	600,000	Public Facility—Community Center.	Construct Lac du Flambeau Natural Resource Green Complex.
Laguna Housing Development, William Sommers, Executive Director, P.O. Box 178, Laguna, NM 87026, (505) 552–6430.	825,000	Housing Rehabilitation	Rehabilitate 52 scattered site homes.
Leech Lake Band of Ojibwe, Arthur LaRose, Chairman, 115 Sixth St. NW, Suite E, Cass Lake, MN 56633, (218) 335–8200.	600,000	Public Facility—Community Center.	Modernization of the community facilities building.
Los Coyotes Band of Cahuilla and Cupeno Indians, Diane McHenry, Grant Writer, P.O. Box 189, Warner Springs, CA 92086, (760) 432–6667.	605,000	Housing—New Construction	Construct 5 new/manufactured housing units.
Lower Brule Sioux Tribe, Michael Jandreau, Tribal Chairman, 187 Oyate Circle, Lower Brule, SD 57548, (605) 473–5561.	900,000	Housing Rehabilitation	Rehabilitate 29 homes.
Lower Elwha Klallam Tribe, Frances Charles, Tribal Chairwoman, 2851 Lower Elwha Rd., Port Angeles, WA 98363, (360) 452–8471.	257,000	Public Facilities—Infrastructure	Design and construct the infrastructure portion of a 7,500 square foot Head Start Facility.
Manzanita Band of Mission Indians, Honorable Leroy J. Elliott, Tribal Chairman, P.O. Box 1302, 6 Old Mine Road, Boulevard, CA 91905, (619) 766–4930.	605,000	Housing Rehabilitation	Rehabilitation of 19 homeowner units.
Mechoopda Indian Tribe of Chico Rancheria, Ryan Heath Browning, Executive Director, 125 Mission Ranch Blvd., Chico, CA 95926, (530) 343–4048.	442,285	New Housing Acquisition	Acquisition of 4-plex apartment building for low-income rental units.
Menominee Indian Tribe of Wisconsin, Lisa Waukau, Chairman, P.O. Box 910, Keshena, WI 54135, (715) 799–5113.	600,000	Housing Rehabilitation	Develop MITW Wood Stove Project.
Mescalero Apache Housing Authority, Timothy Horan, Executive Director, P.O. Box 227, Mescalero, NM 88340, (575) 464–9221.	825,000	Housing Rehabilitation	Rehabilitate 23 rental and homeownership units on scattered sites.
Metlakatla Indian Community Housing Authority, Karl Cook, Chairman, P.O. Box 8, Metlakatla, AK 99926, (907) 886–6500.	600,000	Public Facilities—Infrastructure	Sewer and water installation for housing.

FY 2008 ICDBG AWARDS—Continued

Name of applicant	Amount funded	Activity funded	Project description
Miami Tribe of Oklahoma, Thomas Gamble, Chief, P.O. Box 1326, Miami, OK 74355, (918) 542–1445.	799,008	Housing Rehabilitation	Rehabilitate 21 homes to be energy efficient for low to moderate income families.
Mississippi Band of Choctaw Indians, Beasley Denson, Miko (Tribal Chief), P.O. Box 6010, Choctaw, MS 39350, (601) 656–1501.	600,000	Housing Rehabilitation	Rehabilitation of housing units occupied by elderly, handicapped and low to moderate income families.
Nambe Pueblo Housing Entity, Christine A. Brock, Executive Director, P.O. Box 3456, Santa Fe, NM 87501, (505) 455–0158.	605,000	Public Facilities—Infrastructure	Develop infrastructure for Public Facilities (Buffalo Range Subdivision).
Native Village of Gakona, Darin Gene, President, 101 School Road, Gakona, AK 99586, (907) 822–5777.	600,000	Housing—New Construction	Construct 3 affordable homes.
Navajo Nation, Patrick Dalgai, Field Supervisor, P.O. Box 2365, Window Rock, AZ 86515, (928) 871–6539.	5,500,000	Public Facilities—Infrastructure	Construct Powerline Extensions: Tsaile/Wheatfields; Tolani Lake/Leupp; Shonto; Rock Point; Kaibeto; Indian Wells—Wood Chop Mesa; Garnet Ridge Phase III; Dennehotso; Oljato—Douglas Mess—Phase IV; Kinlichee—South/Phase I; Inscription House; Chinile.
Nikolski IRA Council, Arnold Dushkin, President, P.O. Box 105, Nikolski, AK 99638, (907) 576–2225.	586,548	Housing Rehabilitation	Rehabilitate 12 homes for drainage/foundation and 16 homes for septic upgrade.
Native Village of Noatak, Joseph Luther, President, P.O. Box 89, Noatak, AK 99761, (907) 485–2172.	600,000	Housing Rehabilitation	Rehabilitate 15–20 homes for energy efficiency, health and safety.
Noorvik Native Community, Wilbur Howarth, President, P.O. Box 209, Noorvik, AK 99763, (907) 636–2144.	600,000	Housing Rehabilitation	Rehabilitate 15–20 homes for energy efficiency, health and safety.
North Fork Rancheria of Mono Indians of California, Clarissa Joseph, Administrative Assistant, P.O. Box 929, North Fork, CA 93643, (559) 877–7360.	480,050	Housing—New Construction ...	Construction of energy efficient housing for elderly.
Northern Cheyenne, Tribal Housing Authority, Lafe Haugen, Executive Director, P.O. Box 327, Lame Deer, MT 59043, (406) 477–6419.	900,000	Housing Rehabilitation	Rehabilitate 29 homes.
Nottawaseppi Huron Band of Potawatomi, Laura Spur, Tribal Chairperson, 2221 1½ Mile Rd., Fulton, MI 49052, (269) 729–5151.	482,703	Public Facility—Infrastructure ..	Construction of privately owned utilities.
Ohkay Owingeh Housing Authority, Tomasita Duran, Executive Director, P.O. Box 1059, Ohkay Owingeh, NM 87566, (505) 852–0189.	605,000	Housing Rehabilitation	Rehabilitate 10 historic units (Pueblos).
Ottawa Tribe of Oklahoma, John Ballard, Chief, 13 S. 69A, Miami, OK 74354, (918) 540–1536.	800,000	Housing Rehabilitation	Rehabilitate 21 single family homes.
Pascua Yaqui Peter Yucupicio, Chairman, 7474 S. Camino de Oeste, Tucson, AZ 85757, (520) 883–5010.	2,200,000	Public Facility—Community Center.	Community Park (Pascua Yaqui Pueblo Park).
Pawnee Nation of Oklahoma, George Howell, President, P.O. Box 470, Pawnee, OK 74058, (918) 762–8104.	800,000	Public Facility—Community Center.	Construct cultural learning center and renovation project.
Ponca Tribe of Indians of Oklahoma, Earl Howe III, Chairman, 20 White Eagle Dr., Ponca City, OK 74601, (580) 762–8104.	799,949	Public Facility—Community Center.	Ponca Tribal Clinic improvement project.
Pueblo of Isleta, J. Robert Benavides, Governor, P.O. Box 1270, Bosque Farms, NM 87022, (505) 869–3111.	825,000	Public Facility—Special Needs	Construct educational complex.
Pueblo of San Felipe, Ronald Tenorio, Governor, P.O. Box 4339, San Felipe Pueblo, NM 87001, (505) 867–3381.	825,000	Housing Rehabilitation	Rehabilitate 17 single family units.
Quapaw Tribe of Oklahoma, Donna Mercer, Tribal Administrator, 5681 S. 630 Road, Quapaw, OK 74363, (918) 542–1853.	799,443	Public Facility—Community Center.	Construct tribal EMS ambulance services facility.
Quechan Tribally Designated Housing Entity, Tad Zavodsky, Tenant Relations Officer, 1860 West Sapphire Lane, Winterhaven, CA 92283, (760) 572–0243.	825,000	Public Facilities—Infrastructure	Road and sidewalk improvements for 42 unit housing subdivision.
Quileute Housing Authority, Brook Kristovich, Executive Director, P.O. Box 159, LaPush, WA 98350, (360) 374–9719.	500,000	Housing—New Construction ...	Construct 4 handicap accessible 3-bedroom homes on the Quileute Reservation.

FY 2008 ICDBG AWARDS—Continued

Name of applicant	Amount funded	Activity funded	Project description
Rosebud Sioux Tribe, Rodney Bordeaux, Tribal President, P.O. Box 430, Rosebud, SD 57570, (605) 747–2381.	1,100,000	Public Facilities—Infrastructure	Construct a new wastewater lagoon system.
Santee Sioux Housing Authority, Warren Mackey, Housing Authority Director, 207 His Red Nation, Niobrara, NE 68760, (402) 857–2656.	286,000	Public Facilities—Community Center.	Construct a new office facility.
Sault Ste. Marie Tribe of Chippewa Indians of Michigan, Darwin J. McCoy, Chairman, 523 Ashmun St., Sault Ste. Marie, MI 49783, (906) 635–6050.	600,000	Housing Rehabilitation and Public Facility—Infrastructure.	Housing Rehabilitation—Sault Ste Marie and water line replacement—St. Ignace.
Scotts Valley Band of Pomo Indians, Joel Larson, Housing Authority Director, 301 Industrial Avenue, Lakeport, CA 95453, (707) 263–4220.	600,500	Homeownership—Homebuyer Assistance.	Homeownership Down Payment Assistance for 5 families.
Seneca-Cayuga Tribe, Flora Elmore, Government Specialist, P.O. Box 1283, Miami, OK 74355, (866) 787–5452.	799,317	Public Facility—Community Center.	Construction of a substance abuse treatment center.
Shawnee Tribe, Ronald Sparkman, Chairman, 29 South Highway 69A, Miami, OK 74355, (918) 542–2441.	800,000	Housing Rehabilitation	Rehabilitate 23 low and moderate income single family homes.
Shoalwater Bay Indian Tribe, Charlene Nelson, Tribal Chairperson, P.O. Box 130, Tokeland, WA 98590, (360) 267–8168.	500,000	Economic Development	Design and construct a 2,400 square foot Gas Station and Convenience Store.
Skokomish Indian Tribe, John Pavel, Tribal Chairman, North 80 Tribal Center Rd., Shelton, WA 98584, (360) 426–4232.	500,000	Housing Rehabilitation	Rehabilitate 55 existing housing units owned and operated by the Skokomish Tribe's housing department.
Smith River Rancheria, Mr. Russ Crabtree, Tribal Administrator, 140 Rowdy Creek Road, Smith River, CA 95567, (707) 487–9255.	605,000	Public Facility—Infrastructure ..	Water and Sewer Line Extensions for housing units.
St. Regis Band of Mohawk Indians of New York, Barbara Lazore, Tribal Chief, 412 State Route 37, Akwesasne, NY 13655, (518) 358–2272.	600,000	Public Facility—Infrastructure ..	Phase I—Sewer Expansion.
Susanville Indian Rancheria, Stacy Dixon, Tribal Chairman, 745 Joaquin Street, Susanville, CA 96130, (530) 257–6264.	605,000	Public Facility—Community Center.	Build wellness/fitness center project.
United Keetoowah Band of Cherokee Indians, George Wickliffe, Chief, P.O. Box 746, Tahlequah, OK 74465, (918) 431–1818.	800,000	Public Facility—Community Center.	Expansion of community services center.
Utah Paiute Housing Authority, Jessie Laggis, Executive Director, 665 North, 100 East Cedar City, UT 84720, (435) 586–1122.	900,000	Housing Rehabilitation	Rehabilitate 22 homes.
Ute Mountain Ute Tribe, Ernest House, Sr., Tribal Chairman, P.O. Box 52, Towaoc, CO 81334, (970) 565–3751.	900,000	Public Facility—Infrastructure ..	Construct a wastewater lagoon treatment facility.
Village of Venetie, Ernest Erick, 1st Chief, P.O. Box 81119, Venetie, AK 99781, (907) 849–8212.	360,000	Housing—New Construction	Construct 2 homes.
White Earth Band Reservation Tribal Council, Michael Triplett, Planner, 26246 Crane Rd., White Earth, MN 56591, (218) 983–3285.	600,000	Public Facility—Community Center.	Health Building Renovation.
Wichita & Affiliated Tribes, Gary McAdams, Tribal President, P.O. Box 729, Anadarko, OK 73005, (405) 247–2425.	800,000	Economic Development	Construct Wichita Travel Plaza.
Wyandotte Nation, Ronald Kaiser, Planning Director, 64700 E. Highway 60, Wyandotte, OK 74370\(918) 678–2297.	800,000	Public Facility—Community Center.	Construct community facility multi-purpose wellness center.
Yakutat Tlingit Tribe, Victoria Demmert, President, P.O. Box 418, Yakutat, AK 99689, (907) 780–3158.	600,000	Public Facility—Community Center.	Construct community senior center.
Yerington Paiute Tribe, Lee Shaw, Development Coordinator, 171 Campbell Lane, Yerington, NV 89447, (775) 463–2225.	605,000	Public Facility—Infrastructure ..	Build infrastructure to support 8 new units of housing.

[FR Doc. E9–9682 Filed 4–28–09; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5316–N–01]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Julie A. Shaffer, Acting Secretary to the Mortgagee Review Board, 451 Seventh Street, SW., Room B–133 (Portals 200), Washington, DC 20410–8000; telephone: (215) 861–7216. A Telecommunications Device for Hearing- and Speech-Impaired Individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, approved December 15, 1989), requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board (Board). In compliance with the requirements of Section 202(c)(5), this notice advises of administrative actions that have been taken by the Board from November 8, 2007 to March 12, 2009.

I. Settlement Agreements, Civil Money Penalties, Withdrawal of FHA Approval, Suspensions, Probations, Reinstatement and Reprimand

1. AAA Worldwide Financial Company, Addison, TX [Docket No. 07–7023–MR]

Action: Settlement Agreement signed March 4, 2009. Without admitting liability or fault, AAA Worldwide Financial Company (AAA) agreed to: Pay HUD $115,000; buy-down two HUD/FHA-insured mortgages totaling $19,982; indemnify HUD/FHA for losses up to $20,144 on three loans; and indemnify HUD/FHA for any losses which have been or may be incurred on five other loans, if they were in default, or go into default from the endorsement date of each loan, through and up to five years from the effective date of the settlement agreement.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which AAA: Failed to implement a Quality Control Plan in compliance with HUD/FHA requirements; failed to separate Up-Front Mortgage Insurance Premium (UFMIP) funds from operating funds, and failed to remit UFMIP to HUD/FHA within ten calendar days of the later of closing or disbursement; failed to submit loans for endorsement in a timely manner and falsely certified that loans were current when submitted for endorsement; failed to ensure that the maximum mortgage amount was properly calculated resulting in over-insured mortgages; failed to properly verify the source of funds for the earnest money deposits, gift funds and/or adequacy of funds for the cash requirements; failed to ensure Construction-Permanent Mortgage Program requirements were met; and allowed non-employees to originate and process HUD/FHA loans.

2. Academy Mortgage, LLC, Catonsville, MD [Docket No. 07–7039–MR]

Action: Settlement Agreement signed March 12, 2009. Without admitting liability or fault, Academy Mortgage, LLC, (Academy) agreed to pay HUD a civil money penalty in the amount of $18,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Academy: Permitted non-approved brokers to originate Home Equity Conversion Mortgage (HECM) loans in violation of HUD/FHA requirements; and failed to comply with HUD/FHA housing counseling referral requirements during the origination of HECM loans.

3. Birmingham Bancorp Mortgage Corporation, West Bloomfield, MI [Docket No. 08–8017–MR]

Action: Settlement Agreement signed August 20, 2008. Without admitting liability or fault, Birmingham Bancorp Mortgage Corporation (Birmingham) agreed to pay HUD $3,000 in administrative payment.

Cause: The Board took this action based on the following violation of HUD/FHA requirements in which Birmingham: Failed to verify the borrower's income from child support by providing a copy of the mortgagor's divorce decree and evidence of her receipt of payment of child support for the most recent twelve-month period.

4. BSM Financial, LP, dba Banksource Mortgage, Allen, TX [Docket No. 05–5047–MR]

Action: In a letter dated January 16, 2009, the Board permanently withdrew BSM Financial, LP's (BSM), HUD/FHA approval.

Cause: The Board took this action because BSM breached the settlement agreement entered into with the Department on October 4, 2006, by failing to remit its first installment payment.

5. Colban Funding, Inc., Endwell, NY [Docket No. 04–4587–MR]

Action: Settlement Agreement signed December 14, 2007. The Board reinstated Colban Funding, Inc.'s (Colban) HUD/FHA approval (the Board terminated Colban's HUD/FHA approval on October 18, 2005). Colban agreed to pay HUD a civil money penalty in the amount of $15,000; and to indemnify HUD/FHA for its loss on one HUD/FHA-insured loan in the amount of $54,900.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Colban: Failed to identify an approved loan correspondent's participation in one loan; used verification documents faxed from a third party; failed to analyze a prior sale adequately; failed to include installment debts that were nearing payment in full; failed to verify the source of a downpayment adequately; and failed to reconcile inaccuracies between HUD–1 Settlement Statement loan closing in nine cases.

6. Colony Mortgage Corporation, Fairview Park, OH [Docket No. 06–6032–MR]

Action: Settlement Agreement signed January 23, 2008. Without admitting liability or fault, Colony Mortgage Corporation (Colony) agreed to resolve the Board matter by: Paying HUD $214,000, consisting of an administrative payment in the amount of $12,000 and reimbursement of losses to HUD in the amount of $202,000 on five HUD/FHA-insured loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Colony: Failed to ensure the borrowers met the minimum credit requirements and/or their credit was properly verified; and failed to verify income and/or stability of income properly.

7. Curry Mortgage Connection, LLC, Arlington, TX [Docket No. 09–9555–MR]

Action: In a letter dated January 9, 2009, the Board withdrew Curry

Mortgage Connection, LLC's, (Curry), HUD/FHA approval for one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Curry: Failed to submit the Executed Title II Yearly Verification Report; and failed to submit an acceptable audited financial statement(s) and supplementary reports through the Lender Assessment Sub-system (LASS).

8. Epix Funding Group, Inc., Brandon, FL [Docket No. 08–8031–MR]

Action: Settlement Agreement signed January 12, 2009. Epix Funding Group, Inc., (Epix) agreed to pay HUD a civil money penalty in the amount of $3,500. The Board also put Epix on six months probation.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Epix: Used false and misleading advertisements on its corporate Webpage when it inappropriately displayed the official HUD seal, the FHA acronym, and advertised for the recruitment and establishment of prohibited branch arrangements.

9. Fidelity Home Mortgage Corporation, Baltimore, MD [Docket No. 08–8102–MR]

Action: In a letter dated October 8, 2008, the Board suspended Fidelity Home Mortgage Corporation's (Fidelity) HUD/FHA approval, pending further action by the Board.

Cause: The Board took this action Fidelity violated HUD/FHA by permitting indicted individuals to participate in HUD/FHA programs as an officer, partner, director, and/or principal, of Fidelity.

10. First Community Bank, Corpus Christi, TX [Docket No. 08–8074–MR]

Action: Settlement Agreement signed on November 21, 2008. Without admitting liability or fault, First Community Bank (First Community) agreed to make an administrative payment to HUD in the amount of $22,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which First Community: Hired and retained as a bank branch manager, an individual debarred by HUD; and submitted annual re-verification reports to HUD for 2007 and 2008, each containing a false certification stating First Community conformed to all HUD/FHA regulations necessary to maintain its HUD/FHA approval.

11. First Rate Capital Corporation, dba Axis Mortgage, Melville, NY [Docket No. 08–8030–MR]

Action: In a letter dated December 30, 2008, the Board placed First Rate Capital Corporation, dba, Axis Mortgage (First Rate), on 6 months probation, and imposed a civil money penalty in the amount of $3,500.

Cause: The Board took this action based on the following violation of HUD/FHA requirements in which First Rate: Used misrepresentative advertising when it used the HUD logo/seal on its business solicitations; and recruited for prohibited HUD/FHA branch arrangements.

12. Five Star Partnership, LLC, dba Five Star Mortgage, Henderson, NV [Docket No. 08–8044–MR and HUDALJ 09–F–026–MR–6]

Action: Settlement Agreement signed February 13, 2009. Five Star Partnership, LLC, dba Five Star Mortgage, (Five Star) agreed to pay HUD a civil money penalty in the amount of $15,000. On November 14, 2008, the Board issued a letter of reprimand to Five Star.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Five Star: Submitted a false certification to HUD when it submitted its Yearly Verification Report for 2008; failed to comply with the condition for obtaining and/or maintaining HUD/FHA approval; violated the agreement, set forth in its application for approval, that it would comply with HUD/FHA regulations and requirements.

13. Gatewood Mortgage Corporation, Houston, TX [Docket No. 07–7040–MR]

Action: In a letter dated January 16, 2009, the Board permanently withdrew Gatewood Mortgage Corporation's (Gatewood) HUD/FHA approval. The Board also imposed a civil money penalty in the amount of $492,500. Gatewood's FHA approval was suspended by the Board on November 15, 2007, pending the results of a Quality Assurance Review that was in progress.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Gatewood: Failed to comply with a condition of approval set forth on its FHA-approval application by submitting false information with respect to the ownership and officers of Gatewood; violated HUD/FHA eligibility requirements by employing and retaining a debarred individual as an officer, director, principal and/or employee of the mortgagee; submitted false information in connection with multiple business change notifications to HUD, an annual re-verification dated December 18, 2006, and an initial HUD/FHA approval application; submitted financial statements to HUD that were falsified and were not audited by a licensed certified public accountant for the fiscal years 2004, 2005 and 2006; violated HUD mortgagee employee and staffing requirements; permitted third parties to originate HUD/FHA insured mortgage loans and submitted false certifications on the HUD/VA Addendum to the URLA, Form HUD–92900–A; used the identity of individuals without their knowledge; and failed to properly document and/or provide sufficient documentation in connection with the source of funds required for closing.

14. Guardian Nationwide Mortgage, Inc., Dallas, TX [Docket No. 07–7004–MR]

Action: Settlement Agreement signed December 14, 2007. Without admitting liability or fault, Guardian Nationwide Mortgage, Inc., (Guardian) agreed to pay HUD a civil money penalty in the amount of $31,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the origination of HUD/FHA-insured loans in which Guardian: Failed to implement a Quality Control Plan in compliance with HUD/FHA requirements; allowed credit reports and other loan qualification documents to be handled and/or transmitted by or through the hands of a third party in violation of HUD/FHA requirements; and failed to report fraud discovered during a quality control review.

15. Hogar Mortgage and Financial Services, Inc., dba Colamerica, Montvale, NJ [Docket No. 08–8081–MR]

Action: In a letter dated January 16, 2009, the Board withdrew Hogar Mortgage and Financial Services', Inc., dba Colamerica (Hogar) HUD/FHA approval for five years, and imposed civil money penalty of $151,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Hogar: Failed to resolve discrepancies and conflicting information when originating loans and/or obtaining mortgage insurance; failed to document the source and adequacy of funds for the downpayment, closing costs and/or cash reserves; and failed to implement a Quality Control Plan in compliance with HUD/FHA requirements.

16. Ideal Mortgage Bankers, Ltd., dba Lend America, Lending Key, Melville, NY [Docket No. 08–8032–MR]

Action: In a letter dated December 30, 2008, the Board placed Ideal Mortgage Bankers, dba Lend America, Lending Key (Ideal), on 6 month probation and imposed a civil money penalty in the amount of $6,500.

Cause: The Board took this action based on Ideal's violation of HUD/FHA requirements in which Ideal used misrepresentative advertising on a form designed to simulate an official Federal Government document.

17. McCue Mortgage Company, New Britain, CT [Docket No. 08–8018–MR]

Action: Settlement Agreement signed August 19, 2008. Without admitting liability or fault, McCue Mortgage Company (McCue) agreed to pay an administrative payment in the amount of $1,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which McCue: Failed to perform a mortgage credit analysis on the non-purchasing spouse who was added to the title and signed the mortgage security instrument at loan closing; and failed to ensure the loan closed in the same manner it was underwritten.

18. Mission Mortgage Corporation, Miramar, FL [Docket No. 07–7016–MR]

Action: In a letter dated November 19, 2007, the Board withdrew Mission Mortgage Corporation's (Mission), HUD/FHA approval for five years, and imposed a civil money penalty of $12,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in the servicing of HUD/FHA-insured loans in which Mission: Failed to implement a Quality Control Plan in accordance with HUD/FHA requirements; and submitted false documentation or failed to verify the borrower's source and/or adequacy of funds for the closing costs.

19. Moneytree Mortgage Company, Lombard, IL [Docket No. 09–9328–MR]

Action: Settlement Agreement signed January 15, 2009. Without admitting liability or fault, Moneytree Mortgage Company (Moneytree) agreed to pay HUD an administrative payment in the amount of $1,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Moneytree: Failed to submit an acceptable audited financial statement(s) and supplementary reports because Moneytree did not meet the net worth requirements.

20. Mortgage Investors Corporation, St. Petersburg, FL [Docket No. 07–7022–MR]

Action: Settlement Agreement signed August 24, 2008. Without admitting liability or fault, Mortgage Investors Corporation (Mortgage Investors) agreed to waive insurance benefits or indemnify HUD for any losses that have been or may be incurred from or in relation to 22 HUD/FHA-insured mortgages noted in the settlement agreement, including those that are in default or that go into default, for a period of 5 years from the endorsement date for each loan. The total amount due HUD for the indemnifications as of the effective date was $45,363. Mortgage Investors also agreed to make an administrative payment to HUD in the amount of $78,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Mortgage Investors: Failed to implement a Quality Control Plan in accordance with HUD/FHA requirements; and improperly originated streamline refinance loans to borrowers whose mortgages were delinquent at the time of refinancing.

21. North Shore Financial, Inc., East Meadow, NY [Docket No. 09–9424–MR]

Action: In a letter dated January 15, 2009, the Board suspended North Shore Financial, Inc's. (North Shore) HUD/FHA approval, pending further action by the Board.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which North Shore: Retained, as owner and president, an individual who had been indicted for bank fraud in connection with mortgage loan originations; executed and submitted to HUD the Title II Yearly Verification Report that contained a false certification that none of North Shore's officers, principals, or owners were currently involved in a proceeding and/or investigation that could result, or has resulted in a criminal conviction; violated HUD/FHA's advertisement restrictions by sending multiple email solicitations stating that non-HUD/FHA approved lenders could use North Shore's HUD/FHA approval.

22. Orchid Island TRS, LLC, Paramus, NJ [Docket No. 09–9078–MR]

Action: In a letter dated January 16, 2009, the Board withdrew Orchid Island TRS, LLC's (Orchid Island) HUD/FHA approval for one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Orchid Island failed to submit: The annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS.

23. Prime Financial Group, Inc., Birmingham Farms, MI [Docket No. 09–9423–MR]

Action: In a letter dated January 15, 2009, the Board suspended Prime Financial Group, Inc.'s (Prime) HUD/FHA approval, pending further action by the Board.

Cause: The Board took this action based on the following violation of HUD/FHA requirements in which Prime: Breached the settlement agreement entered into with the Department on November 21, 2008, by failing to remit its first installment payment.

24. R & G Mortgage Corporation, Hato Rey, PR [HUD ALJ No. 07–052–MR and OGC Case No. 07–7033–MRT]

Action: Settlement Agreement signed May 15, 2008. Without admitting liability or fault, R&G Mortgage Corporation (R&G) agreed to pay HUD a civil money penalty in the amount of $10,000. R&G also agreed to submit its audited financial statements for fiscal years 2005, 2006, 2007 and 2008 according to the extended schedule outlined in the settlement agreement, and if R&G fails to submit to HUD/FHA any audited financial statement according to the schedule, R&G agreed to pay the Department $2,000 per month, or portion of a month, per audited financial statement until the statement is filed. Further, R&G agreed to submit a management certification of its financial condition for fiscal years 2007 and 2008 by the dates stated in the settlement agreement.

Cause: The Board took this action based on the following violation of HUD/FHA requirements in which R&G: Failed to submit acceptable audited annual financial statements within the required time period.

25. U.S. Bank NA (Multifamily), Minneapolis, MN [Docket No. 09–9441–MR]

Action: Settlement Agreement signed December 5, 2008. Without admitting liability or fault, U.S. Bank NA (US Bank) agreed to pay HUD $52,500.

Cause: The Board took this action based on the following violation of HUD/FHA requirements in which US Bank: Failed to comply with

requirements regarding assignment of the mortgage.

26. Vega Financial, Inc., Las Vegas, NV [Docket No. 08–8043–MR]

Action: Settlement Agreement signed August 24, 2008. Without admitting liability or fault, Vega Financial, Inc. (Vega) agreed to make an administrative payment to the HUD in amount of $10,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Vega: Submitted false certification to HUD/FHA when it submitted its FHA loan correspondent application; and violated the eligibility requirement prohibiting mortgagees' officers and principals from engaging in business practices that demonstrate irresponsibility when its president and sole owner failed to notify HUD's Office of Lender Activities that HUD had brought two administrative proceedings against him.

27. Wells Fargo Bank, N.A., Des Moines, IA [Docket No. 07–7014–MR]

Action: Settlement Agreement signed April 4, 2008. Without admitting liability or fault, Wells Fargo Bank, N.A. (Wells Fargo) agreed to pay HUD an administrative payment in the amount of $13,000.

Cause: The Board took this action based on the following violation of HUD/FHA requirements in which Wells Fargo: Allowed a debarred person to participate in a HUD/FHA mortgage insurance program.

28. Westar Mortgage Corporation, Albuquerque, NM [Docket No. 07–7029–MR]

Action: Settlement Agreement signed August 24, 2008. Without admitting liability or fault, Westar Mortgage Corporation (Westar) agreed to: make a payment to HUD in the amount of $50,000; refund $28,790 in interim construction fees to borrowers, and provide proof to HUD that fees were refunded; and indemnify HUD for any losses which have been or may be incurred on one loan stated in the settlement agreement.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which Westar: Failed to implement a Quality Control Plan in compliance with HUD/FHA requirements and failed to perform quality control review in 41 early defaults; charged unallowable fees; failed to obtain new construction documents required for loan eligibility; failed to properly verify, document, and/or calculate income; failed to ensure the mortgagor met the minimum credit requirements; failed to reconcile discrepancies found in the appraisal documents used to determine loan eligibility; failed to meet the requirements for late endorsement; failed to ensure that the maximum mortgage amount was properly calculated resulting in over-insured mortgages; failed to ensure Construction-Permanent Mortgage Program requirements were met; and allowed documents used to verify credit and income to pass through the hands of interested third parties, and allowed a non-employee to originate a HUD/FHA insured loan.

29. WR Starkey Mortgage, LLC, Plano, TX [Docket No. 07–7015–MR]

Action: Settlement Agreement signed April 4, 2008. Without admitting liability or fault, WR Starkey Mortgage, LLC (WR Starkey) agreed to waive all insurance benefits or indemnify HUD for any losses that have been or may be incurred from or in relation to seven HUD/FHA-insured mortgages listed in the settlement agreement, including those that are in default or that go into default, for a period of five years from the endorsement date for each loan. The total amount of the indemnification as of the effective date was $229,404.73. WR Starkey also agreed to make an administrative payment to HUD in the amount of $144,431.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which WR Starkey: Understated proposed housing payments in qualifying borrowers for new construction loans; approved two borrowers who had delinquent federal debts; closed loans in excess of the maximum allowable amounts resulting in over-insured mortgages; failed to ensure that Construction-Permanent Mortgage Program requirements were met; and allowed documentation used in the processing and/or underwriting of loans to pass through, be handled, and/or transmitted by an interested third party to the transaction.

30. WCS Lending, LLC, Boca Raton, FL [Docket No. 08–8040–MR]

Action: In a letter dated October 14, 2008, the Board placed WCS Lending, LLC (WCS Lending) on six months probation. Pursuant to the terms of the probation, WCS Lending was required to provide HUD, every 90 days, copies of all advertising that WCS Lending employed during the probationary term, including mail solicitations and electronic advertisements. The Board also imposed a civil money penalty on WCS Lending in the amount of $3,500.

Cause: The Board took this action based on the following violation of HUD/FHA requirements in which WCS Lending: Used misrepresentative advertising in soliciting the participation of non-FHA-approved mortgage brokers in the origination of HUD/FHA loans.

II. Lenders that Failed To Meet Requirements for Annual Recertification of HUD/FHA Approval.

A. Board Letters Issued January 9, 2009

Action: The Board issued a letter to each of the lenders listed below, withdrawing their HUD/FHA approval for one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which:

1. Alliance Mortgage Banking Corporation, Levittown, NY [Docket No. 09–9564–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

2. Allstate Residential Mortgage, Plymouth, MN [Docket No. 09–9025–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

3. American Benefit Mortgage, Inc., Aliso Viejo, CA [Docket No. 09–9182–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

4. Amerimortgage Bankers, LLC, Miami, FL [Docket No. 09–9026–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

5. Amtrust Mortgage Corporation, Atlanta, GA [Docket No. 09–9565–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

6. Asset Mortgage of Hawaii, LLC, Honolulu, HI [Docket No. 09–9006–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

7. Bankers Financial Mortgage Group, Ltd. [Docket No. 09–9162–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report;

and an acceptable audited financial statement(s) and supplementary reports through LASS;

8. Bonterra Mortgage Services, Inc., Indian Trail, NC [Docket No. 09–9024–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

9. Bray Mortgage, LLC, Grand Junction, CO [Docket No. 09–9083–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

10. Capitol Mortgage Associates, Inc., Springfield, IL [Docket No. 09–9165 MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

11. Capital Pacific Mortgage Company, Modesto, CA [Docket No. 09–9566–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

12. Castle Mortgage Corporation, Uniontown, OH [Docket No. 09–9075–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

13. C & G Financial Services, Upland, CA [Docket No. 09–9284–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

14. Citizen First Financial, Inc., Tucker, GA [Docket No. 09–9192–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

15. Collins Financial Group, Inc., Lake City, FL [Docket No. 09–9029–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

16. Community Home Equities Corporation, Hillside, NJ [Docket No. 09–9126–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report and an acceptable audited financial statement(s) and supplementary reports through LASS;

17. Consumer Financial Counseling, Ltd, Dublin, OH [Docket No. 9567–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

18. CSI Residential Lending, Inc., Colleyville, TX [Docket No. 09–9230–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

19. Custom Mortgage, LLC, Eagle, ID [Docket No. 09–9072–MR]—Failed to submit the annual recertification fee; Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

20. DFW Funding Solutions Dallas, LLC, Dallas, TX [Docket No. 09–9568–MR]—Failed to submit the annual recertification fee; an Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports into LASS;

21. Financial Funding Services, Inc, Coral Gables, FL [Docket No. 09–9569–MR]—Failed to submit the annual recertification fee; the Executed title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

22. First Choice Lenders Nationwide, LLC, Highland Village, TX [Docket No. 9570–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

23. Flower Bank, FSB, Chicago, IL [Docket No. 09–9113–MR]—Failed to submit the annual recertification fee; and the Executed Yearly Verification Report;

24. Focus Capital Group, Roanoke, IN [Docket No. 09–9034–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

25. FRMC Financial, Inc., dba First Republic Mortgage Company, Annapolis, MD [Docket No. 09–9028–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

26. Gibraltar Mortgage, LLC, Jacksonville, FL [Docket No. 09–9088–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

27. Goodwill Mortgage Services, LLC, Hartford, CT [Docket No. 09–9571–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

28. Green Acres Mortgage, Inc., Spring Lake Park, MN [Docket No. 09–9114–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

29. Greenway Lending Group, LLC, Washington, DC [Docket No. 09–9572–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

30. Guardian Loan Company of Massapequa, Inc., Clifton Park, NY [Docket No. 09–9573–MR]—Failed to submit the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

31. Hamlin Mortgage Company, Rochester Hills, MI [Docket No. 09–9574–MR]—Failed to submit the annual recertification fee; Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

32. Heartland Home Finance, Inc., Downers Grove, IL [Docket No. 09–9224–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

33. Homestead Mortgage Company, LLC, Columbus, OH [Docket No. 09–9015–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

34. Hoosier Mortgage Trust, LLC, Anderson, IN [Docket No. 09–9023–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

35. I/C Home Mortgage Services, Albuquerque, NM [Docket No. 09–9016–MR] –Failed to submit an acceptable audited financial statement (s) and supplementary reports through LASS;

36. IFG Mortgage, LLC, Coral Gables, FL [Docket No. 09–9008–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

37. Infinity Residential Funding, Inc, Dallas TX [Docket No. 09–9575]—Failed

to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

38. Island Creek Mortgage Corporation, Pawtucket, RI [Docket No. 09–9576–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

39. Legacy Home Mortgage, Inc., Palos Heights, IL [Docket No. 09–9017–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

40. Lending Hand Mortgage, Inc., Green Bay, WI [Docket No. 09–9153–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

41. L. S. Mortgage Solutions, Inc., Kingwood, TX [Docket No. 09–9577–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

42. Loan Center of California, Inc., Suisun City, CA [Docket No. 09–9578–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

43. Lownhome Financial Holdings, Inc. San Jose, CA [Docket No. 09–9579–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

44. Luxury Financial Group, Inc., Broomfield, CO [Docket No. 09–9164–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

45. Mile High Banks, N.A., Denver, CO [Docket No. 09–9086–MR]—Failed to submit the annual recertification fee; and the Executed Yearly Verification Report;

46. Mortgage Plus Financial Corporation, Minneapolis, MN [Docket No. 09–9010–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

47. New Horizons Mortgage Company, LLC [Docket No. 09–9185–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

48. Pacific Community Mortgage, Inc., Anaheim, CA [Docket No. 09–9580–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

49. Pacific Crest Mortgage Corporation, Cathedral City, CA [Docket No. 09–9121–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

50. Pacifica Direct, LLC, Encino, CA [Docket No. 09–9234–MR]—Failed to submit the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

51. Pacifica West Financial, LLC, Carlsbad, CA [Docket No. 09–9082–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

52. Penn Federal Savings Bank, Newark, NJ—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

53. Prime Cap Financial, LLC, Henderson, NV [Docket No. 09–9020–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports into LASS;

54. RC Lending, LLC., Plano, TX [Docket No. 09–9096–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

55. Regency Mortgage Corporation, Salt Lake City, UT [Docket No. 09–9103–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

56. S and L Capital Group, Inc., Sarasota, FL [Docket No. 09–9063–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

57. SFG Bancorp, dba Piggybank Home Loans, Pleasanton, CA [Docket No. 09–9232–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

58. Schreiber Financial Group, Ltd., Naperville, IL [Docket No. 09–9047–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report and an acceptable audited financial statement(s) and supplementary reports through LASS;

59. Secure Bankers Mortgage Company, Van Nuys, CA [Docket No. 09–9584–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

60. Shasta Financial Services, Inc., Elk Grove, CA [Docket No. 09–9583–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

61. Southstar Funding, LLC, Atlanta, GA [Docket No. 09–9585–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

62. Stirling Mortgage Corporation, Salt Lake City, UT [Docket No. 09–9007–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

63. STS Capital Holding, Inc., Tampa, FL [Docket No. 09–9180–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

64. Superior Mortgage Corporation, South Hill, VA [Docket No. 09–9252–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

65. Swan Investment International, Covina, CA [Docket No. 09–9586–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

66. The Loan Office, Inc., Fort Lauderdale, FL [Docket No. 09–09–9587–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

67. Thumb Butte Mortgage, Inc., Prescott, AZ [Docket No. 09–9227–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

68. Titan Capital Funding, Inc., Midvale, UT [Docket No. 09–9588–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an

acceptable audited financial statement(s) and supplementary reports through LASS;

69. Trendstar Mortgage, LLC, Camp Springs, MD [Docket No. 09–9149–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

70. United Capital, Inc., Knoxville, TN [Docket No. 09–9151–MR]—Failed to submit the annual recertification fee; and the Executed Yearly Verification Report; and

71. Virgin Islands Community Bank, Christiansted, VI [Docket No. 09–9287–MR]—Failed to submit the annual recertification fee; and the Executed Yearly Verification Report.

B. Board Letter Issued January 16, 2009

1. Lakeview Mortgage Corporation, Chicago, IL [Docket No. 09–9317–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS.

III. Lenders Who Failed To Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board issued a letter to each of the lenders listed below withdrawing their FHA approval for one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which:

A. Board Letters Issued January 9, 2009

1. Balboa Reinsurance Company, Simi Valley, CA [Docket No. 09–9219–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

2. Bank Reale, Pasco, WA [Docket No. 09–9213–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

3. Common Cents Mortgage, Inc. [Docket No. 09–9036–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

4. *Cooperative De Ahorro Y Credito Caribe, Guayanilla, PR [Docket No. 09–9085–MR]*—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

5. First State Bank & Trust, Caruthersville, MO [Docket No. 09–9159–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

6. Harper & Associates, Inc., Cabot, AR [Docket No. 09–9014–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

7. Infinity Lending Group, Tustin, CA [Docket No. 09–9220–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

8. Key Mortgage Corporation, Coeur D Alene, ID [Docket No. 09–9051–MR]—Failed to submit the annual recertification fee; the Executed Title II Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

9. Level 1 Mortgage, LLC, Littleton, CO [Docket No. 09–9011–MR]—Failed to submit the annual recertification fee; the Executed Title Yearly Verification Report and an acceptable audited financial statement(s) and supplementary reports through LASS;

10. Paramount Residential Mortgage Group, Inc., Corona, CA [Docket No. 09–9043–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

11. New Horizon RE, Inc. dba JL Mortgage, Columbia, SC [Docket No. 09–9009–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

12. San Diego Loans, dba SDLoans.com, San Diego, CA [Docket No. 09–9022–MR]—Failed to submit the annual recertification fee; the executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS;

13. Sun National Bank, Vineland, NJ [Docket No. 09–9091–MR]—Failed to submit the annual recertification fee; and the Executed Yearly Verification Report;

14. The Bank of Fayetteville, Fayetteville, AR [Docket No. 9246–MR]—Failed to submit the annual recertification fee; and the Executed Title II Yearly Verification Report;

15. The Residential Mortgage Group, Inc., Wakefield, MA [Docket No. 09–9152–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

16. TLP Funding, Calabasa, CA [Docket No. 09–9228–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

17. Viva Advisor Group, Inc., Cincinnati, OH [Docket No. 09–9202–MR]—Failed to submit the annual recertification fee; the Executed Yearly Verification Report; and an acceptable audited financial statement(s) and supplementary reports through LASS; and

18. West Union Bank, West Union, WV [Docket No. 09–9064–MR]—Failed to submit the annual recertification fee; and the Executed Yearly Verification Report.

B. Board Letters Issued January 16, 2009

Action: The Board issued a letter to each of the lenders listed below withdrawing their HUD/FHA approval for one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in which:

1. B & T Mortgage, Inc, Glendale, AZ [Docket No. 09–9211–MR]—Failed to submit the annual recertification fee; and the Executed Yearly Verification Report;

2. Citibank NA, New York, NY [Docket No. 09–9294–MR]—Failed to submit the annual recertification fee; and the Executed Yearly Verification Report;

3. Corstar Financial, Inc., Phoenix, AZ [Docket No. 09–9386–MR]—Failed to submit an acceptable audited financial statement(s) and supplementary reports through LASS;

4. EAI Financial Group, Inc., Plymouth, MA [Docket No. 09–9331–MR]—Failed to submit the Statement on Auditing Standards 29 opinion on the Financial Data Template; and the type of audit opinion issued was a qualified opinion: scope limitation—imposed by management;

5. Eastern Financial Home Loans, Corporation, Hialeah, FL [Docket No. 09–9279–MR]— Failed to submit the annual recertification fee, and the Executed Yearly Verification Report; and

6. First National Bank Pine City, Pine City, MN [Docket No. 09–9235–MR]—Failed to submit the annual recertification fee, and the Executed Yearly Verification Report.

Dated: April 3, 2009.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–9731 Filed 4–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2009–N0080; 60120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written comments on this request for a permit must be received by May 29, 2009.

ADDRESSES: Submit written data or comments to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal indentifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Document Availability

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail (see **ADDRESSES**) or by telephone at 303–236–4256. All comments we receive from individuals become part of the official public record.

Applications

The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Michael Savage, Savage and Savage, Louisville, Colorado, TE–051718. The applicant requests a renewed permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Thomas Ryon, Ottertail Environmental, Wheat Ridge, Colorado, TE–081867. The applicant requests a renewed permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: John Chapo, Lincoln Children's Zoo, Lincoln, Nebraska, TE–210754. The applicant requests a permit to take Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Dennis Wenger, Frontier Corporation, Providence, Utah, TE–211051. The applicant requests a permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: April 15, 2009.

Noreen E. Walsh,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E9–9715 Filed 4–28–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Quarry Visitor Center, Record of Decision, Dinosaur National Monument, UT

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on 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 the Record of Decision for the Quarry Visitor Center, Dinosaur National Monument, Utah. On September 2, 2008, the Regional Director, Intermountain Region, approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on March 27, 2008. 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 Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding of no impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Mary Risser, 4545 E. Highway 40, Dinosaur, CO 81610–9724 (970) 374–3001, *Mary_Risser@nps.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov/DINO.*

Dated: March 13, 2009.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E9–9787 Filed 4–28–09; 8:45 am]

BILLING CODE 4312–CR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement (EIS) on Recreational and Subsistence Use of ORVs in the Nabesna District of Wrangell-St. Elias National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice supplements the National Park Service (NPS) Notice of Intent to Prepare an Environmental Impact Statement on Recreational Use of Off-Road Vehicles Along Nine Trails in the Nabesna Area of Wrangell-St. Elias National Park and Preserve published in **Federal Register**, Vol. 72, No. 245 on Friday, December 21, 2007. The NPS intends to expand the scope of the EIS to include the use of Off-Road Vehicles (ORVs) for subsistence purposes.

The NPS is preparing an EIS on the use of ORVs in the Nabesna area of Wrangell-St. Elias National Park and Preserve. The purpose of the EIS is to evaluate a range of alternatives for managing recreational and subsistence

off-road vehicle use including use on the following trails: Caribou Creek, Lost Creek, Trail Creek, Reeve Field, Boomerang Lake, Soda Lake, Suslota Lake, Copper Lake and Tanada Lake. The EIS will be used to guide the management of all ORV use.

In addition to the No Action alternative, the EIS will evaluate a proposed action that would authorize recreational ORV use on trails that can be maintained to a standard that minimizes resource impacts. Other alternatives include authorizing recreational ORV use on all nine trails without trail improvement, not authorizing recreational ORV use on any trails, and authorizing recreational ORV use on improved trails in the preserve but not the park. Public input is sought on this range of alternatives. In all action alternatives, subsistence ORV use would be monitored and measures taken to mitigate resource impacts.

Scoping: This notice extends the scoping period for this EIS and solicits comments. The NPS requests input from the public including local rural residents and residents of the park's twenty-three resident zone communities who engage in subsistence activities within the park.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Comments should be received on or before June 29, 2009. Electronic comments may be submitted to the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/WRST*. Written comments also may be mailed or faxed to the address and phone number provided below.

FOR FURTHER INFORMATION CONTACT: Meg Jensen, Park Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Telephone (907) 822–5234, Fax (907) 822–7259.

SUPPLEMENTARY INFORMATION: The December 21, 2007 Notice of Intent for the project was followed by scoping which included five public meetings in March and April of 2008. The meetings were held in Anchorage, Fairbanks, Tok, Slana, and Glennallen, Alaska. Scoping also included meetings with the Wrangell-St. Elias Park Subsistence Resource Commission, the Southcentral Alaska Federal Subsistence Regional Advisory Council, Ahtna Inc., and the villages of Mentasta and Chistochina. The public scoping process and the comments received were summarized in a scoping report posted on the park's Web site and on the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/WRST*.

Based on comments received from the public, NPS developed a set of draft alternatives. An alternative package was sent out for public review and comment in December 2008. NPS received over 30 comments, nine of which requested that NPS consider reasonable regulation of subsistence ORV use within a range of alternatives.

Public meetings will be held after the release of the Draft EIS, tentatively scheduled for Spring 2010. Public meetings will be held in Anchorage, Fairbanks, Tok, Glennallen, and Slana, Alaska. When public meetings have been scheduled, the dates, times, and locations will be announced in local newspapers and posted on the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/WRST*.

Dated: March 25, 2009.

Sue E. Masica,

Regional Director, Alaska Region.

[FR Doc. E9–9783 Filed 4–28–09; 8:45 am]

BILLING CODE 4312–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN00000.L18200000.XZ0000]

Notice of Public Meeting: Northeast California Resource Advisory Council and Subcommittee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The RAC Resource Management Plan Implementation Subcommittee will meet Tuesday, May 19, 2009, at 10 a.m. at the BLM Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA. The meeting is open to the public. The full RAC will meet Thursday and Friday, June 4–5, 2009, at the BLM Alturas Field Office, 708 West 12th St., Alturas, CA. On June 4, the council meets at 10 a.m. for a field tour of public lands managed by the Alturas Field Office. Members of the public are welcome; they must provide their own transportation and lunch. On June 5, the meeting begins at 8 a.m. and is open to the public. Public comments will be heard at 11 a.m.

FOR FURTHER INFORMATION CONTACT: Tim Burke, BLM Alturas Field Office manager, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and the northwest corner of Nevada. The May 19 subcommittee meeting will focus on implementation of resource management plans for the Alturas, Eagle Lake and Surprise field offices. At the June 4–5 full RAC meeting agenda topics include a report from the subcommittee, a status report on the Wild Horse and Burro Program, a summary of northeast California projects using federal stimulus funds, an update on proposed wind energy projects, a status report on the Sage Steppe Ecosystem Restoration Strategy, and an update on planning for the Modoc Line. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: April 20, 2009.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E9–9796 Filed 4–28–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000–L10200000.DD0000; HAG 9–0174]

Meeting Notice for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District.

ACTION: Meeting notice for the John Day/Snake Resource Advisory Council.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (JDSRAC) will meet as indicated below:

- *Dates:* The John Day/Snake Resource Advisory Council (JDSRAC) Field Trip will begin at 9:30 p.m. PDT on May 27, 2009.

The JDSRAC meeting will begin 8 a.m. PDT on May 28, 2009.

- *Effect:* On the field trip the JDSRAC members will view first hand issues that pertain to the Baker BLM RMP alternatives development. At the meeting the JDSRAC will conduct its regular business of keeping member representatives informed about Federal actions.
- *Address:* On May 27th and May 28th, the JDSRAC members will meet at the Geiser Grand Hotel, 1996 Main Street, Baker City, Oregon 97814

SUPPLEMENTARY INFORMATION: A field trip is scheduled for May 27, 2009, to view resource issues as they pertain to the Baker Resource Management Plan on BLM lands near Baker City, Oregon.

The business meeting will take place on May 28, 2009, at the Geiser Grand Hotel, 1996 Main Street, Baker City, Oregon, from 8 a.m. to 4 p.m. The meeting may include such topics as Wallowa-Whitman Draft Weed EIS for Invasive Plant Projects—RAC Letter, Climate Change Letter, update of the Wallowa-Whitman Travel Management Plan, Baker RMP—Timeline for RAC Involvement, Public Lands Protection Act, Sub-Committee Reports, Restoration of the Lower Snake River, and other matters as may reasonably come before the council. The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 1 p.m. on May 28, 2009. Those who verbally address the JDSRAC are asked to provide a *written* statement of their comments or presentation. Unless otherwise approved by the JDSRAC Chair, the public comment period will last no longer than 15 minutes, and each speaker may address the JDSRAC for a maximum of five minutes. If reasonable accommodation is required, please contact the BLM's Vale District at (541) 473–6213 as soon as possible.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Specialist, 100 Oregon Street, Vale, OR 97918, (541) 473–6218 or e-mail *mark_wilkening@blm.gov.*

Dated: April 21, 2009.

David R. Henderson,

District Manager, Vale District Office.

[FR Doc. E9–9777 Filed 4–28–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000–L10200000.DD0000; HAG 9–0175]

Notice of Public Meeting, National Historic Oregon Trail Interpretive Center Advisory Board

AGENCY: Bureau of Land Management (BLM), Vale District.

ACTION: Meeting Notice for the National Historic Oregon Trail Interpretive Center (NHOTIC) Advisory Board.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) National Historic Oregon Trail Interpretive Center Advisory Board will meet as indicated below:

DATES: The meeting will begin at 9 a.m. (Pacific Daylight Time) on May 15, 2009.

ADDRESSES: The meeting will take place at the National Historic Oregon Trail Interpretive Center, 22267 Highway 86, Baker City, Oregon.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Officer, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218.

SUPPLEMENTARY INFORMATION: At the NHOTIC Advisory Board meeting, we will welcome members, review the strategic plan, review the marketing plan, get an update from the Center Manager, and consider other matters that may reasonably come before the Advisory Board. The meeting is open to the public. The meeting will take place from 9 a.m. to 12:05 p.m. Pacific Daylight Time (PDT). Public comment is scheduled from 11:05 a.m. to 11:20 a.m. PDT, May 15, 2009. For a copy of the information to be distributed to the Council members, please submit a written request to the Vale District Office 10 days prior to the meeting.

Dated: April 21, 2009.

David R. Henderson,

District Manager, Vale District Office.

[FR Doc. E9–9766 Filed 4–28–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Termination of Preparation of an Environmental Impact Statement for the Harriet Tubman Special Resource Study

AGENCY: National Park Service, Department of the Interior.

ACTION: Termination of preparation of an Environmental Impact Statement.

SUMMARY: This notice announces the termination of the process to develop an Environmental Impact Statement (EIS) for the Harriet Tubman Special Resource Study (SRS). The SRS was undertaken at the direction of Congress in Public Law 106–516 to evaluate sites related to Harriet Tubman for potential inclusion in the national park system. The study area includes parts of Maryland and New York. A Notice of Intent to Prepare an EIS was published in the **Federal Register** on February 7, 2003.

Initial formal public scoping took place through spring 2004, followed by continuous informal consultation with stakeholders, agency officials, and the interested public. From June through September 2008, NPS held stakeholder and public meetings and took comments on the preliminary alternatives.

Scoping revealed no issues or controversy, nor the potential for significant environmental impacts. Therefore, it was determined that an Environmental Assessment (EA) would suffice to address National Environmental Policy Act requirements for this study.

The Harriet Tubman Special Resource Study and Environmental Assessment was made available for public review starting 11/19/2008 with the comment period ending 12/19/2008. The study report can be viewed at the NPS Planning, Environment and Public Comment (PEPC) Web site at: *http://parkplanning.nps.gov/* or through the study Web site, *http://www.HarrietTubmanStudy.org.*

FOR FURTHER INFORMATION CONTACT: Terrence Moore, Chief of Planning and Special Studies, National Park Service,

Northeast Region, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. E9–9781 Filed 4–28–09; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–503]

Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel From the Dominican Republic

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Pursuant to section 404(d) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (19 U.S.C. 4112(d)), and pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) has instituted investigation No. 332–503, *Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic,* for the purpose of submitting annual reports on the effectiveness of the program and recommendations for improvements.

DATES:

October 30, 2009: Deadline for filing requests to appear at the public hearing.

November 3, 2009: Deadline for filing pre-hearing briefs and statements.

November 18, 2009: Public hearing.

November 30, 2009: Deadline for filing post-hearing briefs and statements.

February 24, 2010: Deadline for all other written submissions.

July 28, 2010: Transmittal of first report to House Committee on Ways and Means and Senate Committee on Finance.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project Leader Laura Rodriguez (202–205–3499 or *laura.rodriguez@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Section 404 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (DR–CAFTA Act) requires the Secretary of Commerce to establish an Earned Import Allowance Program (EIAP) and directs the Commission to conduct annual reviews of the program for the purpose of evaluating its effectiveness and making recommendations for improvements. Section 404 of the DR–CAFTA Act was added by section 2 of Public Law 110–436, ''An Act to extend the Andean Trade Preference Act, and for other purposes.'' It authorizes certain apparel articles wholly assembled in an eligible country to enter the United States free of duty if accompanied by a certificate that shows evidence of the purchase of certain U.S. fabric. The term ''eligible country'' is defined to mean the Dominican Republic. More specifically, the program allows producers (in the Dominican Republic) that purchase a certain quantity of qualifying U.S. fabric for use in the production of certain bottoms of cotton in the Dominican Republic to receive a credit that can be used to ship a certain quantity of eligible apparel using third country fabrics from the Dominican Republic to the United States duty free. Section 404(d) directs the Commission to conduct an annual review of the program for the purpose of evaluating the effectiveness of the program and making recommendations for improvements. The Commission is required to submit its reports to the House Committee on Ways and Means and the Senate Committee on Finance. The statute provides that the program will be in effect for the 10-year period beginning on the date on which the President certifies to the committees that sections A, B, C, and D of the Annex to Presidential Proclamation 8213 (December 20, 2007) have taken effect. The Commission expects to submit its first report to the committees by July 28, 2010.

The Commission has also instituted this investigation pursuant to section 332(g) of the Tariff Act of 1930 to facilitate docketing of submissions and also to facilitate public access to Commission records through the Commission's EDIS electronic records system.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC beginning at 9:30 a.m. on November 18, 2009. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., October 30, 2009, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., November 3, 2009; and all post-hearing briefs and statements responding to matters raised at the hearing should be filed not later than 5:15 p.m., November 30, 2009. If, as of the close of business on October 30, 2009, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after October 30, 2009, to determine whether the hearing will be held.

Submissions: All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary and must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic

Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000). Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission anticipates that the reports it sends to the committees in this investigation will be made available to the public in their entirety. Consequently, the reports that the Commission sends to the committees will not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing its report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: April 23, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–9705 Filed 4–28–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–7]

Certain Passenger Vehicle and Light Truck Tires From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a hearing.

SUMMARY: Following receipt of a petition filed on April 20, 2009, on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, the Commission instituted investigation No. TA–421–7 under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) to determine whether new pneumatic tires, of rubber, from China, of a kind used on motor cars (except racing cars) and on-the-highway light trucks, vans, and sport utility vehicles, provided for in subheadings 4011.10.10, 4011.10.50, 4011.20.10, and 4011.20.50 of the Harmonized Tariff Schedule of the United States (HTS), are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.[1]

DATES: Not later than seven days following the publication of this notice in the **Federal Register**: Deadline for filing entries of appearance.

May 26, 2009: Deadline for filing request to appear at the public hearing.

May 28, 2009: Deadline for filing prehearing briefs.

June 2–3, 2009: Public hearing.

June 8, 2009: Deadline for filing posthearing briefs.

June 16, 2009: Deadline for submitting final comments on market disruption.

June 19, 2009: Transmittal of Commission determination on market disruption to the President and the U.S. Trade Representative.

June 24, 2009: Deadline for submitting final comments on remedy.

July 9, 2009: Transmittal of Commission report to the President and the U.S. Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), or Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Confidential business information (CBI).—Any submissions that contain confidential business information must also conform with the requirements of sections 201.6 and 206.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.6 and 206.8). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information and except as provided for below, will be made available for inspection by interested parties.

Limited disclosure of CBI.—Pursuant to section 206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under an Administrative Protective Order (APO) issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO. In addition, the Commission may include CBI in the report it sends to the President and to the U.S. Trade Representative.

Hearing.—The Commission has scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on June 2, 2009, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary on or before May 26, 2009. All persons desiring to appear at the hearing and make oral

[1] The HTS subheadings are provided for convenience and customs purposes; the written description of the product under investigation is dispositive.

presentations should attend a prehearing conference to be held at 9:30 a.m. on May 28, 2009 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is May 28, 2009. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is June 8, 2009. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of market disruption or threat thereof and/or remedy on or before June 8, 2009. Parties may submit final comments on market disruption on or before June 16, 2009 and on remedy on or before June 24, 2009. Final comments shall contain no more than ten (10) double-spaced and single-sided pages of textual material. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy.—No separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing or posthearing briefs or other written submissions.

Authority: This investigation is being conducted under the authority of section 421 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

Issued: April 24, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–9760 Filed 4–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on March 10, 2009, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II.

Drug	Schedule
Coca Leaves (9040)	II
Raw Opium (9600)	II
Poppy Straw (9650)	II
Concentrate of Poppy Straw (9670)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substance intermediates for sale to its customers.

As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9778 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations § 1301.34(a), this is notice that on February 20, 2009, Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to import products for research experimentation or clinical use and analytical testing.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 29, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 USC § 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9782 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2), authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations § 1301.34(a), this is notice that on March 10, 2009, Almac Clinical Services Inc. (ACSI), 2661 Audubon Road, Audubon, Pennsylvania 19403, has made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Oxycodone (9143)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 29, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745–46), all applicants for registration to import the basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9780 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated January 30, 2009, and published in the **Federal Register** on February 6, 2009 (74 FR 6309), Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Mallinckrodt Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9789 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 22, 2008, and published in the Federal Register on December 31, 2008 (73 FR 80431), Norac Inc., 405 S. Motor Avenue, P.O. Box 577, Azusa, California 91702–3232, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the listed controlled substance in bulk for formulation into the pharmaceutical controlled substance Marinol® for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Norac Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Norac Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9795 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 22, 2008, and published in the **Federal Register** on December 31, 2008 (73 FR 80431), Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, has made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Thebaine (9333)	II
Noroxymorphone (9668)	II

The company plans to import analytical reference standards for distribution to its customers for research purposes.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Johnson Matthey Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9791 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated January 9, 2009, and published in the **Federal Register** on January 21, 2009 (74 FR 3642), Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Thebaine (9333), a basic class of controlled substance listed in schedule II.

The company plans to import analytical reference standards for distribution to its customers for research purposes.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco Inc. to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9788 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 5, 2009, and published in the **Federal Register** on February 11, 2009 (74 FR 6920), Roche Diagnostics Operations Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Cocaine (9041)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import the listed controlled substances for the manufacture of diagnostic products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Roche Diagnostics Operations Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Operations Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9784 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated January 14, 2009, and published in the **Federal Register** on January 22, 2009 (74 FR 4054), ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the Phenylacetone to manufacture Amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of ISP Freetown Fine Chemicals to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated ISP Freetown Fine Chemicals to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9785 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 22, 2008, and published in the **Federal Register** on December 31, 2008 (73 FR 80432), Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Johnson Matthey Inc., to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9794 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 25, 2009, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2009.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9806 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 10, 2009, Penick Corporation, 33 Industrial Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II

Drug	Schedule
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers for further manufacture or to manufacture pharmaceutical dosage forms.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2009.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9803 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 11, 2009, Siemens Healthcare Diagnostics Inc., Attn: RA, 100 GBC Drive, Mail Stop 514, Newark, Delaware 19702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II

The company plans to produce the listed controlled substances in bulk to be used in the manufacture of reagents and drug calibrator/controls which are DEA exempt products.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2009.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9802 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 6, 2009, Archimica, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Lisdexamfetamine (1205), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2009.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9801 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 2, 2009, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2009.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9800 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 11, 2009, AMRI Rensselaer, Inc., 33 Riverside

Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Dextropropoxyphene, bulk (non-dosage form) (9273).	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2009.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9799 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 22, 2008, Norac Inc., 405 S. Motor Avenue, P.O. Box 577, Azusa, California 91702–3232, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Methamphetamine (1105), a basic class of controlled substance listed in schedule II.

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such a substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2009.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9804 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 20, 2009, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 29, 2009.

Dated: April 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–9807 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Bob's Pharmacy and Diabetic Supplies; Revocation of Registration

On August 15, 2008, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Bob's Pharmacy and Diabetic Supplies (Respondent), of Winter Haven, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, FB0181216, as a retail pharmacy, and the denial of any pending application to renew or modify its registration, on the ground that Respondent has committed acts which render its ''continued registration inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 824(a)(4)).

The Show Cause Order alleged that Respondent was ''knowingly engaging in a scheme to distribute controlled substances based on * * * prescriptions that [were] issued for other than legitimate medical purpose and by physicians acting outside [of] the usual course of professional practice, in violation of * * * Federal and State law.'' *Id.* (citing 21 CFR 1306.04; *United Prescriptions Servs., Inc.,* 72 FR 50397 (2007)). More specifically, the Show Cause Order alleged that Respondent was ''dispensing controlled substances into states in which it is not licensed to do so,'' and that it was ''aiding physicians in the unauthorized practice of medicine in those states that require physicians to be licensed by the state before prescribing controlled substances to state residents.'' *Id.* at 2 (citing *United,* 72 FR 50407–08). The Show Cause Order also alleged that Respondent had ''dispensed large quantities of controlled substances based on prescriptions purportedly written by Sheila Soman, M.D., a physician who was not authorized by DEA to prescribe controlled substances.'' *Id.* Based on the above, I further found that there was a ''substantial likelihood that [Respondent

would] continue to divert large quantities of controlled substances,'' and concluded that Respondent's continued registration during the pendency of the proceeding ''would constitute an imminent danger to the public health and safety.'' *Id.* I therefore ordered that Respondent's registration be immediately suspended.[1] *Id.*

On August 20, 2008, a DEA Investigator personally served the Order on Respondent. Since that time neither Respondent, nor anyone purporting to represent it, has requested a hearing. Because more than thirty days have elapsed since Respondent was served with the Order, and Respondent has not requested a hearing, I conclude that Respondent has waived its right to a hearing. 21 CFR 1301.43(d). I therefore enter this Decision and Final Order based on relevant material contained in the investigative file and make the following findings. *Id.* 1301.43(e).

Findings

Respondent is the holder of DEA Certificate of Registration, FB0181216, which authorizes it to dispense, as a retail pharmacy, controlled substances in schedules II through V, at the registered location of 2860 Highway 17 N., Winter Haven, Florida 33881. Respondent was first registered with the Agency on or about March 14, 2007; its registration does not expire until July 31, 2009. Respondent is owned by Mr. Robert L. Grable.

In August 2007, a DEA Investigator (DI) obtained a report which indicated that between April 15 and June 28, 2007, Respondent had purchased 767,900 dosage units of drugs containing hydrocodone, a controlled substance highly popular with drug abusers. Moreover, between June 28 and September 12, 2007, Respondent ordered a further 258,000 dosage units of hydrocodone from just one of its suppliers. Subsequent reports further showed that between April 25 and December 28, 2007, Respondent had purchased 2.3 million dosage units of drugs containing hydrocodone, or approximately 287,000 dosage units per month. By way of contrast, I have previously found that the national average purchase of combination hydrocodone drugs by retail pharmacies is approximately 6,000 dosage units. *See Southwood Pharmaceuticals, Inc.,* 71 FR 36487, 36490 (2007).

On January 10, 2008, the DEA Nashville Diversion Group received a letter from the compliance officer for Top Rx, Inc., a registered distributor. The letter indicated that Respondent had applied to become a customer of Top Rx and had completed a questionnaire on which it indicated that it did not dispense controlled substances through the internet. Top Rx's compliance office determined, however, that Respondent may have been affiliated with a Web site which provided illegal prescriptions for controlled substances.

Approximately a week later, the DI received information from the New York Diversion Group that Respondent had ordered 700 grams of pure hydrocodone powder (a schedule II controlled substance) from another distributor. Finally, in a December 27, 2007 letter, a third distributor identified Respondent as having placed excessive orders.

On June 27, 2008, two DIs visited Respondent. During the visit, the DIs obtained prescriptions which had been issued by two physicians (one based in Tampa, Florida; the other based in Deridder, Louisiana) which had been issued to persons throughout the United States, and which were dispensed by Respondent. Ninety-seven percent of the prescriptions were for schedule III controlled substances containing hydrocodone and were typically for ninety tablets; some of the remaining prescriptions were for alprazolam, a schedule IV controlled substance.

On August 20, 2008, an Administrative Inspection Warrant was served on Respondent. Pursuant to the search, the DIs obtained numerous prescription records. According to the sworn declaration of a DI who reviewed the records, between May 3, 2007, and the date that the warrant was executed, Respondent had filled in excess of 38,000 prescriptions for controlled substances, the great majority of which were for schedule III drugs containing hydrocodone.

The DI found that Respondent had filled more than 6,000 prescriptions issued by Dr. Celeste Lujan, who was authorized to practice medicine and prescribe controlled substances only in Louisiana and Texas. According to the DI, most of the prescriptions were issued to persons who resided in States where Dr. Lujan was not authorized to practice medicine including Alaska, Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, Wisconsin, West Virginia, and Wyoming.

The DI further found that between January 1 and August 18, 2008, Respondent filled more than 3,000 prescriptions which were written under the DEA registration issued to Dr. Sheila Soman of New York, NY. Dr. Soman had, however, previously voluntarily surrendered her registration; on December 17, 2007, the Agency retired her registration.

Discussion

Section 304(a) of the Controlled Substance Act provides that ''[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In determining the public interest, the Act directs that the Attorney General consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Finally, where the Government has made out its *prima facie* case, the burden shifts to the Respondent to show why its continued registration would be consistent with the public interest. *See, e.g., Theodore Neujahr,* 65 FR 5680, 5682 (2000); *Service Pharmacy, Inc.,* 61 FR 10791, 10795 (1996).

[1] The Show Cause Order also informed Respondent of its right to request a hearing on the allegations; the date, time, and place of the hearings; its right to submit a written statement in lieu of a hearing; and the consequences if it failed to request a hearing. Show Cause Order at 2.

In this case, having considered all of the factors, I conclude that the Government's evidence with respect to factors two and four establishes a *prima facie* case that Respondent's continued registration is ''inconsistent with the public interest.'' 21 U.S.C. 823(f). Accordingly, Respondent's registration will be revoked and any pending applications for renewal of its registration will be denied.

Factor Two—Respondent's Experience in Dispensing Controlled Substances

Under DEA's regulation, a prescription for a controlled substance is unlawful unless it has been ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). The regulation further provides that while ''[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, * * * a *corresponding responsibility rests with the pharmacist who fills the prescription.'' Id.* (emphasis added). Continuing, the regulation states that ''the person knowingly filling such a purported prescription, as well as the person issuing it, [is] subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.*

DEA has long interpreted this provision ''as prohibiting a pharmacist from filling a prescription for a controlled substance when he either 'knows or has reason to know that the prescription was not written for a legitimate medical purpose.' '' *Medicine Shoppe-Jonesborough,* 73 FR 363, 381 (2008) (quoting *Medic-Aid Pharmacy,* 55 FR 30043, 30044 (1990)), *aff'd Medicine Shoppe-Jonesborough* v. *DEA,* 2008 WL 4899525 (6th Cir. 2008); *see also Frank's Corner Pharmacy,* 60 FR 17574, 17576 (1995); *Ralph J. Bertolino,* 55 FR 4729, 4730 (1990); *United States* v. *Seelig,* 622 F.2d 207, 213 (6th Cir. 1980). This Agency has further held that ''[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.'' *Bertolino,* 55 FR at 4730 (citations omitted).[2]

In *United Prescription Services, Inc.,* I further held that ''[a] physician who engages in the unauthorized practice of medicine is not a 'practitioner acting in the usual course of * * * professional practice.' '' 21 CFR 1306.04(a). This rule derives from the text of the CSA, which defines ''[t]he term 'practitioner' [to] mean[ ] a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance.'' 21 U.S.C. 802(21). *See also* 21 U.S.C. 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As the Supreme Court has explained: ''In the case of a physician [the CSA] contemplates that *he is authorized by the State to practice medicine* and to dispense drugs in connection with his professional practice.'' *United States* v. *Moore,* 423 U.S. 122, 140–41 (1975) (emphasis added). A controlled-substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is therefore unlawful under the CSA. *Cf.* 21 CFR 1306.03(a)(1) (''A prescription for a controlled substance may be issued only by an individual practitioner who is * * * [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession[.]'').

Respondent had ample reason to know that the prescriptions issued by Dr. Lujan were unlawful under both Federal and state law. As the California Court of Appeal has noted: The ''proscription of the unlicensed practice of medicine is neither an obscure nor an unusual state prohibition of which ignorance can reasonably be claimed, and certainly not by persons * * * who are licensed health care providers. Nor can such persons reasonably claim ignorance of the fact that authorization of a prescription pharmaceutical constitutes the practice of medicine.'' *Hageseth* v. *Superior Court*, 59 Cal. Rptr. 3d 385, 403 (Ct. App. 2007);[3] *see* Cal. Bus. & Prof. Code § 2052 (prohibiting unlicensed practice of medicine); Cal. Health & Safety Code § 11352(a) (prohibiting furnishing a controlled substance ''unless upon the written prescription of a physician * * * licensed to practice in this state''). *See also e.g.*, Ala. Code § 34–24–501(a) (defining practice of medicine across state lines); *id.* § 34–24–502(a) (requiring special purpose license to practice medicine across state lines); Ga. Code Ann. § 43–34.31.1(a) (defining practice of medicine to include electronic prescribing by ''[a] person who is physically located in another state'' and requiring Georgia license); 225 Ill. Comp. Stat. Ann. § 60/3 (licensure requirement); *id.* § 60/3.5 (prohibiting unlicensed practice); *id.* § 60/49 (listing acts constituting holding oneself out to the public as a physician); *id.* § 60/49.5 (requiring persons engaged in telemedicine to hold Illinois license); N.H. Rev. Stat. § 329:1 (defining practice of medicine); *id.* § 329:24 (unlicensed practice).

As I have previously explained, an entity which voluntary engages in commerce by shipping controlled substances to persons located in other States is properly charged with knowledge of the laws regarding both the practice of medicine and pharmacy in those States. *United*, 72 FR at 50408. In short, given that Dr. Lujan was licensed to practice medicine and prescribe in only Louisiana and Texas, and yet was prescribing to persons who did not reside in those States and lived hundreds of—and in many instances more than a thousand—miles away, Respondent had ample reason to know that the prescriptions were unlawful under both the CSA and the laws of numerous States. *See id.* at 50409.

Moreover, under DEA regulations, a prescription for a controlled substance can be issued only by a practitioner who holds a registration with the Agency. 21 CFR 1306.03(a) (''A prescription for a controlled substance may be issued only by an individual practitioner who is * * * registered.'').[4] Respondent thus also violated the CSA when it filled more than 3,000 prescriptions which were purportedly issued by Dr. Soman, a physician who had previously voluntarily surrendered her registration.

[2] The Supreme Court has recently explained that ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135 (1975)).

[3] In *Hageseth*, the California Court of Appeal upheld the State's jurisdiction to criminally prosecute an out-of-state physician, who prescribed a drug to a California resident over the internet, for the unauthorized practice of medicine.

Moreover, the Medical Board of California has issued numerous Citation Orders to out-of-state physicians for internet prescribing to state residents. *See, e.g., Citation Order Harry Hoff* (June 17, 2003); *Citation Order Carlos Gustavo Levy* (Nov. 30, 2001). It has also issued press releases announcing its position on the issuance of prescriptions by physicians who do not hold a California license. *See* Medical Board of California, *Record Fines Issued by Medical Board to Physicians in Internet Prescribing Cases* (News Release, Feb. 10, 2003) (available at *http://www.mbc.ca.gov/NR_2003_02–10_Internetdrugs.htm*).

[4] It is unclear whether the prescriptions issued under Dr. Soman's expired registration were actually issued by her. What is clear is that no prescription could be lawfully issued (or filled) under her registration number.

As the foregoing demonstrates, Respondent's experience in dispensing controlled substances is characterized by its repeated and flagrant violations of the CSA and state laws. Indeed, within less than one month of obtaining its registration, Respondent proceeded to purchase hundreds of thousands of dosage units of hydrocodone, quantities which exceeded by nearly fifty times the average purchase of this drug by legitimate pharmacies. As this evidence shows, Respondent was engaged in a criminal scheme to divert controlled substances.

I therefore hold that Respondent's continued registration is ''inconsistent with the public interest'' and that its registration should be revoked. 21 U.S.C. 823(f). For the same reasons that I ordered the immediate suspension of Respondent's registration, I further hold that this Order shall be effective immediately.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, FB0181216, issued to Bob's Pharmacy and Diabetic Supplies be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This Order is effective immediately.

Dated: April 3, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–9797 Filed 4–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration Submission for OMB Emergency Review: Revision of OMB Control No. 1205–0342, Petition and Investigative Forms To Assess Group Eligibility for Trade Adjustment Assistance, Comment Request

April 24, 2009.

The Department of Labor (DOL) has submitted the following information collection request (ICR), utilizing the Paperwork Reduction Act (PRA) emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval is requested by May 6, 2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.* Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov.* Comments and questions about the ICR listed below should be received by no later than the requested OMB approval date. An additional opportunity to comment on this ICR will also be provided when DOL seeks approval under standard PRA clearance procedures.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title of Collection: Investigative Data Collection Requirements for the Trade Act of 1974 as amended by the Trade and Globalization Adjustment Assistance Act of 2009.

OMB Control Number: 1205–0342.

Affected Public: Individuals or Households; Businesses or other for-profits; and State, Local or Tribal Governments.

Total Estimated Annual Burden Hours: 18,642.

Total Estimated Annual Costs Burden (excluding hourly wage costs: $0.

Description: On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act (ARRA). Section 221 (a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by ARRA (19 U.S.C. 2271), authorizes the Secretary of Labor and the Governor of each State to accept petitions for certification of eligibility to apply for adjustment assistance. ARRA amended Section 222 of the Trade Act of 1974 to provide for new eligibility criteria designed to expand the number of petitioning worker groups assessed as adversely affected by trade and therefore determined eligible to apply for Trade Adjustment Assistance. To solicit the data needed to address the new eligibility criteria, ETA is significantly expanding the petition and investigation forms currently approved under OMB No. 1205–0342.

The Forms ETA–9042 Petition for Trade Adjustment Assistance and its Spanish translation, and ETA–9042a Solicitud De Asistencia Para Ajuste, establish a format that may be used for filing such petitions. The Department's regulations regarding petitions for worker adjustment assistance may be found at 29 CFR 90. Investigative forms designed to assess eligibility are undertaken in accordance with §§ 222, 223 and 249 of the Trade Act of 1974, as amended (19 U.S.C., 2272 and 2273), are used by the Secretary of Labor to certify groups of workers as eligible to apply for worker trade adjustment assistance. The Forms include: ETA–9043a—Business Confidential Data Request Firms that Produce an Article (CDR–A); ETA–9043b—Business Confidential Data Request Firms that Supply a Service (CDR–S); ETA–9043c—Business Confidential Data Request Firms Who Work on a Contractual Basis; ETA–8562a—Business Confidential Customer Survey; ETA–8562a—Business Confidential Customer Survey; ETA–8562a—Business Confidential Customer Survey First Tier Purchases of Articles; ETA–8562a-1—Business Confidential Customer Survey Second Tier Purchases of Articles; ETA–8562b—Business Confidential Customer Survey Services; ETA–8562c—Business Confidential Customer Survey Firms who Work on a Contractual Basis; ETA–8562d—Business Confidential Customer Survey; and ETA–9118—Business Confidential Information Request.

Why are we requesting Emergency Processing? This collection is submitted on an emergency clearance basis because ARRA (Section 1891) mandates the implementation of the new criteria listed in Section 222 of the Trade Act

(19 U.S.C. 2271, 2272, 2273 et seq.), as amended, by May 18, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–9745 Filed 4–28–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Arkansas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for Arkansas.

The following change has occurred since the publication of the last notice regarding Arkansas' EB status:

• The 13-week insured unemployment rate (IUR) for Arkansas for the week ending March 28, 2009, rose to 5.0 percent and exceeded 120 percent of the corresponding average rates in the two prior years. Therefore, effective April 12, 2009, eligible unemployed workers will be able to collect up to an additional 13 weeks of UI benefits.

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB or who wish to inquire about their rights under the program should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 23rd day of April 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–9747 Filed 4–28–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for California

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for California.

The following change has occurred since the publication of the last notice regarding California's EB status:

• California Assembly Bill 23C enacted on March 27, 2009, added a total unemployment rate (TUR) trigger to the State's EB law retroactive to February 1, 2009. As a result, California has retroactively triggered ''on'' to a high unemployment period for weeks of unemployment beginning February 22, 2009, and eligible unemployed workers will be able to collect up to an additional 20 weeks of unemployment insurance benefits.

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)). Persons who believe they may be entitled to EB or who wish to inquire about their rights under the program should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 23rd day of April 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–9746 Filed 4–28–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for the District of Columbia

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for the District of Columbia.

The following change has occurred since the publication of the last notice regarding the District of Columbia's EB status:

• The District of Columbia has modified its law by adding a total unemployment rate (TUR) trigger retroactive to March 15, 2009. As a result, the District of Columbia has retroactively triggered ''on'' to a high unemployment period for the week of unemployment beginning April 5, 2009, and eligible unemployed workers will be able to collect up to an additional 20 weeks of unemployment insurance benefits.

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)). Persons who believe they may be entitled to EB or who wish to inquire about their rights under the program should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce

Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 23rd day of April 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–9748 Filed 4–28–09; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Submission for OMB Review; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–1344 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling Susan G. Daisey, Director, Office of Grant Management, the National Endowment for the Humanities (202–606–8494) or may be requested by e-mail to *sdaisey@neh.gov.* Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: National Endowment for the Humanities.

Title of Proposal: Generic Clearance Authority for the National Endowment for the Humanities.

OMB Number: 3136–0134.

Frequency of Collection: On occasion.

Affected Public: Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH grantees.

Total Respondents: 6,978.

Average Time per Response: Varied according to type of information collection.

Estimated Total Burden Hours: 68,375 hours.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: This submission requests approval from OMB for a three-year extension of NEH's currently approved generic clearance authority for all NEH information collections other than one-time evaluations, questionnaires and surveys. Generic clearance authority would include approval of forms and instructions for application to NEH grant programs, reporting forms for NEH grantees, panelists and reviewers and for program evaluation purposes.

FOR FURTHER INFORMATION CONTACT: Ms. Susan G. Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by e-mail to: *sdaisey@neh.gov.* Telephone: 202–606–8494.

Michael McDonald,

Acting Deputy Chairman, National Endowment for the Humanities.

[FR Doc. E9–9859 Filed 4–28–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9 a.m. to 5 p.m., on Thursday, May 14, 2009.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 2009.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Michael P. McDonald, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E9–9862 Filed 4–28–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending time is approximate):

AccessAbility (application review): May 14, 2009. This meeting, from 2 p.m. to 3:30 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in

confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, *plowitzk@arts.endow.gov,* or call 202/682–5691.

Dated: April 24, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–9741 Filed 4–28–09; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0070]

Status of the Office of Nuclear Reactor Regulation's Implementation of Electronic Operating Reactor Correspondence

The U.S. Nuclear Regulatory Commission (NRC) is issuing this **Federal Register** Notice to inform the public that publicly available correspondence originating from the Office of Nuclear Reactor Regulation, Division of Operating Reactor Licensing (DORL) will be transmitted to addressees and subscribers by a computer-based e-mail distribution system. This change does not affect the availability of official agency records in the NRC's Agencywide Documents Access and Management System (ADAMS), which may be accessed through NRC's Web page *http://www.nrc.gov*.

In order to evaluate the feasibility of electronic distribution, the DORL staff engaged in a pilot program with Exelon Generation Company, LLC (West). The pilot program began July 1, 2007, and ended September 30, 2007. A **Federal Register** Notice announcing the pilot program was issued on June 28, 2007, (72 FR 35520) and another **Federal Register** Notice was issued on February 7, 2008, (73 FR 7328) describing the results of the pilot program.

During the pilot program, the method used for distribution was e-mail. The e-mail contained an electronic link to ADAMS providing direct access to the correspondence. In addition, addressees received an Adobe Acrobat ™ portable document format (PDF) version of the correspondence. One issue identified during the pilot program involved the use of e-mails with a direct link into ADAMS. This approach has inherent limitations. It may take up to 5 business days for a document to become publicly available in ADAMS. Unless action is taken to make the document publicly available sooner or action taken to delay sending the e-mail until the document becomes publicly available, the direct link resulted in the document not being available when the e-mail was received.

Additional steps were taken to obtain stakeholder feedback. In the initial **Federal Register** Notice (72 FR 35520) announcing the pilot program and in a letter dated October 11, 2007, (ADAMS Accession No. ML072820307) the NRC staff requested comments on this initiative. The NRC staff also sent an e-mail on October 24, 2007, (ADAMS Accession No. ML080160089) to those who participated in the pilot program to get their feedback. Comments received (ADAMS Accession No. ML080170254) were overwhelmingly supportive of electronic distribution, generally because of the reduced need for copies and reduced handling costs. A few respondents were concerned with e-mail box overloads and internet service provider file size limits. These concerns have been addressed through the use of administrative controls to control the size of distributed files.

The DORL staff incorporated this feedback in developing the Operating Reactor Correspondence Administration program implementing distribution of DORL generated correspondence through a computer-based e-mail distribution system. The DORL staff now provides the addressee and subscribers with an Adobe Acrobat ™ PDF file of the correspondence. The addressee and subscribers lists receive distributed correspondence documents at the same time. Distribution of correspondence containing safeguards, proprietary or security-related information, or other information that is withheld from public disclosure will not be affected by this initiative.

This initiative was implemented on September 30, 2008. Individuals may subscribe to receive DORL-generated operating reactor correspondence by entering the following URL into their Web browser address bar:

http://www.nrc.gov/public-involve/listserver/plants-by-region.html.

Or through NRC's Web site, *http://www.nrc.gov* as described below:

1. Go to the NRC's public Web site (*http://www.nrc.gov*).

2. Click on the ''Public Meetings & Involvement'' tab.

3. On this page, under the heading ''Information and Meeting Schedules to Help You Participate,'' click on ''Subscribe to E-mail Notices.''

4. On this page, click on the phrase, ''Operating Reactor Correspondence,'' which will take you to the subscription page.

The Operating Reactor Correspondence page also provides the option to subscribe to **Federal Register** Notices for the operating reactors.

Dated at Rockville, Maryland, this 22nd day of April 2009.

For The Nuclear Regulatory Commission.

Cameron Goodwin,

Plant Licensing Branch 3–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–9768 Filed 4–28–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11715]

Montana Disaster # MT–00045 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Montana, dated 04/22/2009.

Incident: Miles City Fire.

Incident Period: 03/23/2009.

Effective Date: 04/22/2009.

EIDL Loan Application Deadline Date: 01/22/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Custer.

Contiguous Counties:

Montana, Carter, Fallon, Garfield, Powder River, Prairie, Rosebud.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 117150.

The State which received an EIDL Declaration # is Montana.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: April 22, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–9752 Filed 4–28–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Rule 17Ac2–2, SEC File No. 270–298, OMB Control No. 3235–0337, Form TA–2, SEC File No. 270–298, OMB Control No. 3235–0337.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ac2–2 and Form TA–2 (OMB Control No. 3235–0337; SEC File No. 270–298).

Rule 17Ac2–2 (17 CFR 240.17Ac2–2) and Form TA–2 under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) require transfer agents to file an annual report of their business activities with the Commission. The amount of time needed to comply with the requirements of Rule 17Ac2–2 and Form TA–2 varies. From the total 598 registered transfer agents, approximately 30 registrants would be required to complete only Questions 1 through 4 and the signature section of amended Form TA–2, which the Commission estimates would take each registrant about 30 minutes, for a total burden of 15 hours (30 × .5 hours). Approximately 111 registrants would be required to answer Questions 1 through 5, 10, and 11 and the signature section, which the Commission estimates would take about 1 hour and 30 minutes, for a total of 166.5 hours (111 × 1.5 hours). The remaining registrants, approximately 457, would be required to complete the entire Form TA–2, which the Commission estimates would take about 6 hours, for a total of 2,742 hours (457 × 6 hours). We estimate that the total burden would be 2,923.5 hours (15 hours + 166.5 hours + 2,742 hours).

We estimate that the total cost of reviewing and entering the information reported on the Forms TA–2 for respondents is $41.50 per hour. The Commission estimates that the total cost would be $121,325.25 annually ($41.50 × 2,923.5).

Rule 17Ac2–2 does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or by sending an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 22, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9671 Filed 4–28–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–10, OMB Control No. 3235–0380, SEC File No. 270–334.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form F–10 (17 CFR 239.40) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that is used by certain Canadian ''substantial issuers'' (those issuers with at least 36 calendar months of reporting history with a securities commission in Canada and a market value of common stock of at least C$360 million and an aggregate market value of common stock held by non-affiliates of at least C$75 million). The purpose of the information collection is to facilitate cross-border offerings by specified Canadian issuers. Form F–10 is a public document and the information provided is mandatory. We estimate that Form F–10 takes 25 hours per response and is filed by 75 respondents. We further estimate that 25% of the 25 hours per response (6.25 hours) is prepared by the issuer for an annual reporting burden of 469 hours (6.25 hours per response × 75 responses).

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO. Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 22, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9672 Filed 4–28–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–9, OMB Control No. 3235–0377, SEC File No. 270–333.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form F–9 (17 CFR 239.39) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that is used to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange, offer and are either non-convertible or not convertible for a period of at least one year from the date of issuance and thereafter are only convertible into a security of another class of the issuer. The purpose of the information collection is to permit verification of compliance with securities law requirements and to assure the public availability and dissemination of such information. The principal function of the Commission's forms and rules under the securities laws' disclosure provisions is to make information available to the investors. Form F–9 is a public document and the information provided is mandatory. We estimate that Form F–9 takes approximately 25 hours per response and it is filed by 18 respondents. We further estimate that 25% of the 25 hours per response (6.25 hours) is prepared by the issuer for an annual reporting burden of 113 hours (6.25 hours per response × 18 responses).

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO. Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 22, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9673 Filed 4–28–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28713]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 23, 2009.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 2009. A copy of each application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 19, 2009, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

BBH U.S. Money Market Portfolio [File No. 811–8842]; BBH Prime Institutional Money Market Fund, Inc. [File No. 811–10073]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On June 11, 2007, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on April 15, 2009.

Applicants' Address: 40 Water St., Boston, MA 02109.

NETS Trust [File No. 811–22140]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 20, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $88,000 incurred in connection with the liquidation were paid by Northern Trust Investments, N.A. (''NTI''), applicant's investment adviser. Applicant has receivables related to expected dividends and foreign tax reclaims totaling $65,000. The receivables are off-set by a liability to NTI, who advanced $65,000 to applicant on the date of the liquidation.

Filing Date: The application was filed on April 13, 2009.

Applicant's Address: 50 South LaSalle St., Chicago, IL 60603.

HealthShares ™, Inc. [File No. 811–21855]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $66,352 incurred in connection with the liquidation were paid by XShares Advisors LLC, applicant's investment adviser.

Filing Date: The application was filed on March 30, 2009.

Applicant's Address: 420 Lexington Ave., Suite 2550, New York, NY 10170.

Goldman Sachs Hedge Fund Partners Registered Fund, LLC [File No. 811–21376]

Summary: Applicant, a closed-end investment company and a feeder fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On February 13, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $18,050 incurred in connection with the liquidation were paid or will be paid by Goldman Sachs Hedge Fund Strategies LLC, the master fund's investment adviser, or an affiliate.

Filing Date: The application was filed on March 23, 2009.

Applicant's Address: One New York Plaza, 39th Floor, New York, NY 10004.

Goldman Sachs Hedge Fund Partners Registered Master Fund, LLC [File No. 811–21721]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 13, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $21,650 incurred in connection with the liquidation were paid or will be paid by

Goldman Sachs Hedge Fund Strategies LLC, applicant's investment adviser, or an affiliate.

Filing Date: The application was filed on March 23, 2009.

Applicant's Address: One New York Plaza, 39th Floor, New York, NY 10004.

Capital One Funds [File No. 811–5536]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 24, 2008, applicant transferred its assets to corresponding series of Fidelity Advisor Series 1, Fidelity Income Fund, Fidelity Colchester Street Trust and Fidelity Fixed Income Trust, based on net asset value. Expenses of $962,000 incurred in connection with the reorganization were paid by applicant's investment adviser, Capital One Asset Management, and its affiliates, and by Fidelity Management & Research Company, the investment adviser to the surviving fund.

Filing Dates: The application was filed on March 11, 2009, and amended on April 16, 2009.

Applicant's Address: 3435 Stelzer Rd., Columbus, OH 43219.

Domini Social Trust [File No. 811–5824]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On November 28, 2008, applicant's sole remaining feeder fund, Domini Social Investment Trust, redeemed its interest in applicant, based on net asset value. Applicant incurred no expenses in connection with its subsequent liquidation.

Filing Dates: The application was filed on February 13, 2009, and amended on April 17, 2009.

Applicant's Address: 536 Broadway, 7th Floor, New York, NY 10012.

Dreyfus California Intermediate Municipal Bond Fund [File No. 811–6610]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 5, 2007, applicant transferred its assets to Dreyfus Premier California Tax Exempt Bond Fund, Inc. (Class Z shares), based on net asset value. Expenses of $30,124 incurred in connection with the reorganization were paid by The Dreyfus Corporation, applicant's investment adviser.

Filing Dates: The application was filed on September 4, 2008, and amended on April 14, 2009.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Aetos Capital Market Neutral Strategies Fund, LLC [File No. 811–21060]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 31, 2008, applicant transferred its assets to Aetos Capital Multi-Strategy Arbitrage Fund, LLC, based on net asset value. Expenses of $200,000 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on December 29, 2008, and amended on April 7, 2009.

Applicant's Address: c/o Aetos Capital, LLC, 875 Third Ave., New York, NY 10022.

New River Funds [File No. 811–21384]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 28, 2008, applicant's New River Core Equity Fund series made a liquidating distribution to its shareholders, based on net asset value. On November 6, 2008, applicant's New River Small Cap Fund series transferred its assets to Southern Sun Small Cap Fund, a series of Northern Lights Fund Trust, based on net asset value. Expenses of $283,338 incurred in connection with the liquidation and reorganization were paid by Third Security, LLC, the former parent of applicant's investment adviser, and SouthernSun Asset Management, Inc., applicant's sub-adviser.

Filing Dates: The application was filed on December 31, 2008, and amended on April 6, 2009.

Applicant's Address: 1881 Grove Ave., Radford, VA 24141.

Evergreen Investment Trust [File No. 811–4154]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about December 22, 1997, applicant transferred its assets to a corresponding series of Evergreen Money Market Trust, based on net asset value. Applicant paid the expenses incurred in connection with the reorganization.

Filing Date: The application was filed on October 2, 2008.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

Mellon Institutional Funds Master Portfolio [File No. 811–7603]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On the last day of the fiscal year for each of applicant's feeder funds (September 19, 2007 for five of the feeder funds and October 25, 2007 for four of the feeder funds), each feeder fund redeemed its interest in applicant's corresponding master fund, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on December 5, 2008 and amended on April 1, 2009.

Applicant's Address: BNY Mellon Financial Center, One Boston Pl., Boston, MA 02108.

U.S. Global Accolade Funds [File No. 811–7662]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 1, 2008, applicant transferred its assets to U.S. Global Investors Funds, based on net asset value. Expenses of $2,932,909 incurred in connection with the reorganization were paid by U.S. Global Investors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on December 4, 2008 and amended on April 1, 2009.

Applicant's Address: 7900 Callaghan Rd., San Antonio, TX 78229.

AllianceBernstein Global Health Care Fund, Inc. [File No. 811–9329]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 2008, applicant transferred its assets to AllianceBernstein Global Thematic Growth Fund, Inc., based on net asset value. Expenses of $227,000 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on February 24, 2009 and amended on March 31, 2009.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Heritage Income Trust [File No. 811–5853]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 10, 2008, applicant transferred its assets to Legg Mason Partners Income Trust, based on net asset value. Expenses of approximately $205,785 incurred in connection with the reorganization were paid by Heritage Asset Management, Inc., applicant's investment adviser, and Legg Mason Partners Fund Advisor, the acquiring fund's investment adviser.

Filing Dates: The application was filed on March 2, 2009, and amended on April 17, 2009.

Applicant's Address: 880 Carillon Parkway, St. Petersburg, FL 33716.

BBH Fund, Inc. [File No. 811–6139]; BBH Trust [File No. 811–3779]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On June 12, 2007, BBH Fund, Inc., a Maryland corporation, and BBH Trust, a Massachusetts business trust, transferred their assets to corresponding series of BBH Trust, a newly-organized Delaware statutory trust, based on net asset value. Expenses of $192,634 incurred in connection with the reorganizations were borne pro rata by the series of each applicant, based on net assets.

Filing Date: The applications were filed on April 15, 2009.

Applicants' Address: 40 Water St., Boston, MA 02109.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9749 Filed 4–28–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a roundtable to discuss short sale price tests and short sale circuit breakers generally and in the context of the Commission's recently proposed amendments to Regulation SHO. The roundtable will be held on May 5, 2009 beginning at 10 a.m.

The Roundtable will take place in the Auditorium of the Commission's headquarters at 100 F Street, NE., Washington, DC. The roundtable will be open to the public with seating on a first-come, first-served basis. Doors will open at 9:30 a.m. Visitors will be subject to security checks.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: April 24, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9879 Filed 4–28–09; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 30, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 30, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: April 23, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9704 Filed 4–28–09; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59815; File No. SR–NYSE–2009–41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rules 15 and 123C Regarding the Operation of Its NYSE Order Imbalance Information Service To Modify the Reference Price at Which the Exchange Reports the Order Imbalance Information and Clarify What Information Is Included and Excluded From the Order Imbalance Information Reports

April 23, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 17, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rules 15 and 123C regarding the operation of its NYSE Order Imbalance Information service to: (1) modify the reference price at which the Exchange reports the Order Imbalance Information; and (2) clarify what information is included and excluded from the Order Imbalance Information reports. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below.

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange LLC (the ''Exchange'') is proposing to amend NYSE Rules 15 and 123C regarding the operation of its NYSE Order Imbalance Information service to: (1) modify the reference price at which the Exchange reports the Order Imbalance Information; and (2) clarify what information is included and excluded from the Order Imbalance Information reports.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).[4]

a. Background

By order dated March 9, 2009 (the ''Approval Order''), the Commission approved a $500 monthly access fee for the Exchange's NYSE Order Imbalance Information service.[5] NYSE Order Imbalance Information is a datafeed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. These orders are subject to execution at the market's opening or closing price, as the case may be, and represent issues that are likely to be of particular trading interest at the opening or closing.

The Exchange distributes information about these imbalances in real-time at specified intervals prior to the opening and closing auctions. As set forth in the Approval Order, the Exchange currently makes order imbalance information available at the following intervals.

For opening Order Imbalance Information:

- Every five minutes between 8:30 a.m. EST and 9 a.m. EST.
- Every one minute between 9 a.m. EST and 9:20 a.m. EST.
- Every 15 seconds between 9:20 a.m. EST and the opening (or 9:35 a.m. EST if the opening is delayed).

For closing Order Imbalance Information:

- Every fifteen seconds between 3:40 p.m. EST and 3:50 p.m. EST.
- Every five seconds between 3:50 p.m. EST and 4 p.m. EST.

Reference Price

The NYSE Order Imbalance Information service that is the subject of the Approval Order uses the last sale price as the reference price for the Order Imbalance Information. In the case of opening order imbalances, this means the last sale price at the end of the prior trading day. For closing order imbalances, the reference price is equal to the last sale price.

Orders Included in NYSE Order Imbalance Information Reports

The NYSE Order Imbalance Information service that is the subject of the Approval Order provides the following information:

(A) In the case of the pre-opening datafeed, all interest eligible to trade in the opening transactions excluding odd-lot orders and the odd-lot portion of partial round-lot orders. Floor broker interest includes all interest except non-displayed reserve interest marked ''Do Not Display'' (''DND''). Customer interest includes all interest except for non-displayed reserve interest. DMM interest is not included in the pre-opening datafeed.

(B) In the case of pre-closing datafeed, all market-on-close orders and limit-on-close orders eligible to participate in the closing transaction. It excludes odd-lot orders, the odd-lot portion of partial round-lot orders, DMM interest and Crowd interest.

b. Proposed Amendments

Reference Price

In order to provide the most accurate imbalance information, the Exchange proposes to modify what constitutes the reference price for the dissemination of the NYSE Order Imbalance Information feed. Prior to the opening transaction, if a pre-opening indication is published pursuant to the provisions of NYSE Rule 15 (''Pre-Opening Indications'') paragraphs (a) and (b), or in the event of a mandatory publication[6] pursuant to NYSE Rule 123D (''Openings and Halts in Trading''), the reference price will no longer be the closing price of the prior trading day.

Previous NYSE closing price	Price change (equal or greater than)
Under $10	1 point.
$10–$99.99	the lesser of 10% or 3 points.
$100 and Over	5 points.

The Exchange proposes to have the reference price equal the last sale (previous closing price) or the price indication published under the Rule 15 or 123D. Therefore, when the Exchange publishes a pre-opening indication in a security pursuant to the provisions of paragraphs (a) and (b) of NYSE Rule 15 or NYSE Rule 123D, the reference price will be determined as follows:

- If the Bid Price from the indication (the lower price) is higher than the last sale, the Reference Price will be the Bid.
- If the Offer Price from the indication (the higher price) is lower than the last sale, the Reference Price will be the Offer.
- If the Last Sale is within the indication range, the Book shall use the Last Sale as the Reference Price.
- If multiple indications have been published, the last indication that the Exchange makes available shall be used as the Reference Price.

Examples

(1) XYZ security closed at a price of $15.00 on April 1, 2009. On April 2, 2009, the Exchange publishes a pre-opening indication for XYZ with a bid price of $16.00 and an offer price of $16.50. The reference price for the NYSE Order Imbalance datafeed in XYZ security on April 2, 2009 will be $16.00.

(2) XYZ security closed at a price of $15.00 on April 1, 2009. On April 2, 2009, the Exchange publishes a pre-opening indication for XYZ with a bid price of $14.00 and an offer price of $14.50. The reference price for XYZ data feed on April 2, 2009 will be $14.50.

(3) XYZ security closed at a price of $15.00 on April 1, 2009. On April 2, 2009, the Exchange publishes pre-opening indication for XYZ with a bid price of $14.99 and an offer price of $15.02. The reference price for XYZ data feed on April 2, 2009 will be $15.00.

In the case of pre-closing imbalances, the NYSE Order Imbalance Information service that is the subject of the Approval Order also uses the last sale price as the reference price for pre-closing Order Imbalance Information that it disseminated pursuant to Exchange Rule 123C (''Market on the Close Policy and Expiration Procedures'').

The Exchange proposes to modify what it uses as the reference price when the last sale price does not fall within the best bid and the best offer on the Exchange at the time that the Exchange

[4] *See* SR–NYSEAmex–2009–13 (to be filed April 17, 2009).

[5] *See* Securities Exchange Act Release No. 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (SR–NYSE–2008–132).

[6] Exchange policy requires the dissemination of an indication in connection with any delayed opening—involving any stock which has not opened (or been quoted) by 10 a.m. In addition, the dissemination of an indication is mandatory for an opening which will result in a significant price change from the previous close: [See table above.]

calculates a closing imbalance for a security,[7] as follows:

- If the last sale price is lower than the Bid price, then the Bid Price will serve as the Reference Price.
- If the last sale price is higher than the Offer price, then the Offer Price will serve as the Reference Price.
- If the last sale price falls within the Exchange's best bid and offer for the security, the last sale price will serve as the Reference Price.

Examples

(1) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of $15.02 and 500 shares offered at a $15.20. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be $15.02.

(2) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of $14.91 and 500 shares offered at a $14.99. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be $14.99.

(3) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of $14.98 and 500 shares offered at a $15.02. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be $15.00.

The Exchange believes that the amendments to the reference price for the publication of the NYSE Order Imbalance Information service will enhance the value of the product by providing the user with a more accurate depiction of the market interest available in the security.

Orders Included in NYSE Pre-Opening Order Imbalance Information Reports

The Exchange proposes to add all DMM s-quote interest eligible for execution in the opening transaction, at no additional charge, to the order information currently included in the pre-opening NYSE Order Imbalance Information Reports. DMM s-quote interest is currently eligible for execution in the opening transaction but is not included in the Order Imbalance Information Report. The Exchange believes that the addition of DMM s-quote interest to the Order Imbalance Information Report will enhance the value of this product by including additional information about the electronic interest eligible to trade at the opening.

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the ''1934 Act'') for this proposed rule change are the requirements under Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal benefits investors by modifying NYSE Order Imbalance Information to provide investors with a more accurate depiction of the market and additional information on the open for a security.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing in order to immediately provide market participants with the most accurate supplemental market information prior to the execution of the opening and closing transactions on the Exchange. The Commission believes such waiver is consistent with the protection of investors and the public interest.[10] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–NYSE–2009–41 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2009–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[7] Currently NYSE securities operating on the 14.0 Technology Release employ the proposed method to determine the reference price.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 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–NYSE–2009–41 and should be submitted on or before May 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9820 Filed 4–28–09; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59814; File No. SR–MSRB–2009–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Voluntary Submission of Continuing Disclosure Documents to Its Upcoming Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA®)

April 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2009, the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change to amend the continuing disclosure service of the MSRB's Electronic Municipal Market Access system (''EMMA'') to accept, and to make publicly available on the Internet, voluntary electronic submissions by issuers, obligated persons and their agents of continuing disclosure documents provided other than in connection with Exchange Act Rule 15c2–12. The MSRB has requested approval of the proposed rule change on or prior to July 1, 2009.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB'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 MSRB 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 MSRB 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 Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009.[3] The EMMA continuing disclosure service will receive electronic submissions of, and will make publicly available on the Internet through the EMMA web portal,[4] continuing disclosure documents and related information from issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2–12. As approved, the EMMA continuing disclosure service will accept submissions of (i) continuing disclosure documents as described in Rule 15c2–12,[5] and (ii) other disclosure documents specified in continuing disclosure undertakings but not specifically described in Rule 15c2–12.

The proposed rule change would amend the EMMA continuing disclosure service to accept submissions of, and to make publicly available through the EMMA web portal, additional categories of continuing disclosure documents voluntarily submitted by issuers, obligated persons and their agents (''voluntary continuing disclosure document''). The proposed rule change would not establish an obligation upon any issuer or obligated person to make a submission of any voluntary continuing disclosure document. Voluntary continuing disclosure documents would be submitted, processed and disseminated in the same manner as provided with respect to disclosures made to the EMMA continuing disclosure service pursuant to continuing disclosure undertakings entered into consistent with Rule 15c2–12. In particular, such submissions would be accepted solely in electronic form as portable document format (PDF) files accompanied by appropriate indexing information.

To facilitate organizing the submissions for easier access by the public, the proposed rule change would establish a number of additional categories in connection with voluntary continuing disclosure documents which the EMMA continuing disclosure service would accept and for which

[3] *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009) (the ''EMMA continuing disclosure service approval''). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2–12 adopted by the Commission. *See* Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2–12). Approval of the proposed rule change on or prior to July 1, 2009 would allow the permanent EMMA continuing disclosure service to accept such voluntary disclosures upon commencement of operations.

[4] The EMMA web portal is accessible at *http://emma.msrb.org.*

[5] Such items consist of: (A) Annual financial information concerning obligated persons; (B) audited financial statements for obligated persons if available and if not included in the annual financial information; (C) notices of the following events, if material: Principal and interest payment delinquencies, non-payment related defaults, unscheduled draws on debt service reserves reflecting financial difficulties, unscheduled draws on credit enhancements reflecting financial difficulties, substitution of credit or liquidity providers or their failure to perform, adverse tax opinions or events affecting the tax-exempt status of the security, modifications to rights of security holders, bond calls, defeasances, release/substitution/sale of property securing repayment of the securities, and rating changes; and (D) notices of failures to provide annual financial information on or before the date specified in the continuing disclosure undertaking.

specific indexing information is to be provided to EMMA during the submission process.[6] These additional or voluntary categories would be applicable both to submissions pursuant to continuing disclosure undertakings of additional disclosure items beyond those items specified under Rule 15c2–12, as previously approved in the EMMA continuing disclosure service approval, and to continuing disclosures submitted voluntarily from time to time at the election of the issuer or obligated person pursuant to this proposed rule change (together categorized as ''Additional/Voluntary Disclosures''). The categories of Additional/Voluntary Disclosure would be as follows:

Other Financial/Operating Data Disclosures

- Quarterly/monthly financial information
- Change in fiscal year/timing of annual disclosure
- Change in accounting standard
- Interim/additional financial information/operating data
- Budget
- Investment/debt/financial policy
- Material provided to rating agency or credit/liquidity provider
- Consultant reports
- Other financial/operating data

Other Event-Based Disclosures

- Amendment to continuing disclosure undertaking
- Change in obligated person
- Notice to investors pursuant to bond documents
- Communication from the Internal Revenue Service
- Tender offer/secondary market purchases
- Bid for auction rate or other securities [7]
- Capital or other financing plan
- Litigation/enforcement action
- Merger/consolidation/reorganization/insolvency/bankruptcy
- Change of trustee, tender agent, remarketing agent, or other on-going party
- Derivative or other similar transaction
- Other event-based disclosures

With respect to the submission process through EMMA, the various categories of continuing disclosure would be organized to differentiate between categories of items specified under Rule 15c2–12 and Additional/Voluntary Disclosures.[8] In most cases, submitters would be able to index a single submitted document into multiple applicable categories, including categories applicable to Rule 15c2–12 disclosures and to Additional/Voluntary Disclosures. Over time, the MSRB may combine two or more categories, may divide any category into two or more new categories or subcategories, or may form additional categories for purposes of indexing documents submitted in the ''other financial/operating data'' or ''other event-based disclosures'' general category as appropriate based on the types of documents received.

The categories of Additional/Voluntary Disclosures would be for the convenience of submitters and users of such documents and do not represent the MSRB's opinion as to the appropriate items of disclosure with respect to any specific municipal security. The availability of such categories would not imply or create an obligation to make any disclosures, and it would not be uncommon for one or many of the categories to be inapplicable to any particular security. Further, the nature of the specific documents submitted for a particular category may vary widely. Only those categories for which submissions have been made for a particular security would be displayed on the EMMA web portal page for such security.[9]

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[10] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The EMMA continuing disclosure service, as amended by the proposed rule change, would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities, and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The inclusion of voluntary continuing disclosure documents in the EMMA continuing disclosure service would further help make information useful for making investment decisions more easily accessible to all participants in the municipal securities market on an equal basis throughout the life of the securities. Broad access to continuing disclosure documents through the EMMA continuing disclosure service should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities. A single centralized and searchable venue for free public access to disclosure information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities and the potential investment risks. Free access to this information—previously generally available, if at all, through paid subscription services or on a per-document fee basis—should reduce transaction costs for dealers and investors.

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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Documents and information provided through the continuing disclosure service would be available to all persons simultaneously. In addition to making the documents and information available for free on the EMMA portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-

[6] These categories reflect types of additional information that issuers or obligated persons have sometimes agreed to provide in their continuing disclosure undertakings beyond those items specified under Rule 15c2–12, as well as categories derived from sources such as existing investor relations websites of municipal issuers, recommended practices published by the Government Finance Officers Association, recommended best practices published by the National Federation of Municipal Analysts and suggestions from the MSRB's investor and issuer advisory groups and other industry participants.

[7] This would include, but not be limited to, any notice pursuant to the SEC no-action letter regarding municipal auction rate securities dated March 14, 2008, *available at http://www.sec.gov/divisions/corpfin/cf-noaction/2008/mars031408.pdf.*

[8] EMMA would not differentiate between an Additional/Voluntary Disclosure made pursuant to a continuing disclosure undertaking and an Additional/Voluntary Disclosure made outside of a continuing disclosure undertaking, and all categories of Additional/Voluntary Disclosures would be available for either type of submission.

[9] Thus, specific Rule 15c2–12 Disclosure and Additional/Voluntary Disclosure category headings would not be displayed on the EMMA web portal for a security or issue if there is no disclosure document available from EMMA for such category.

[10] 15 U.S.C. 78o–4(b)(2)(C).

discriminatory basis without imposing restrictions on subscribers from, or imposing additional charges on subscribers for, re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber. In particular, the MSRB believes that the proposed rule change will make most voluntary continuing disclosure documents available for the first time to a broader group of private information services and, therefore, would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of disclosure information about municipal securities that would be provided through the EMMA continuing disclosure service would justify any potentially negative impact on existing enterprises from the operation of EMMA.

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

Written comments were neither solicited nor received on the proposed rule change. However, in a notice published by the MSRB on January 31, 2008, the MSRB described and sought comment on its plan for implementing a continuing disclosure service that would be integrated into other services to be offered through EMMA (the ''2008 Notice'').[11] In particular, the MSRB stated its plan to institute the continuing disclosure service to accept submissions of continuing disclosure documents pursuant to continuing disclosure undertakings consistent with Rule 15c2–12. In addition to making continuing disclosures available at no cost through the EMMA portal, the MSRB would make such disclosures available through a paid real-time data stream subscription for re-dissemination or other use by subscribers. One commentator asked whether periodic filings other than submissions of annual financial information, such as quarterly or monthly financial results, would be accepted.[12] Another commentator stated that it strongly believed that EMMA should be capable of housing all disclosure documents, extending beyond those specifically required by Rule 15c2–12, and could only support a system that allows access to other pertinent information.[13] The MSRB supports the dissemination of additional continuing disclosures beyond the baseline established by Rule 15c2–12 and is providing for such submission and dissemination in this filing.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–MSRB–2009–04 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MSRB–2009–04. 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 MSRB. 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–MSRB–2009–04 and should be submitted on or before May 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9819 Filed 4–28–09; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* MSRB Notice 2008–05 (January 31, 2008). The comments received on this notice are discussed in SR–MSRB–2008–05 (July 29, 2008). *See also* Securities Exchange Act Release No. 58256 (July 30, 2008) 73 FR 46161 (August 7, 2008) (File No. SR–MSRB–2008–05) (proposing the establishment of the continuing disclosure service of EMMA). Comments relating to voluntary filings of continuing disclosure documents not contemplated under Exchange Act Rule 15c2–12 are discussed herein.

[12] *See* letter from Robert Donovan and Stephen M. Fillebrown, National Association of Health and Education Facilities Finance Authorities, to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated March 3, 2008.

[13] *See* letter from Rob Yolland, Chairman, National Federation of Municipal Analysts, to Mr. Lanza, dated March 10, 2008.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59816; File No. SR–NYSEAmex–2009–13]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rules 15 and 123C Regarding the Operation of Its NYSE Amex Order Imbalance Information Service To Modify the Reference Price at Which the Exchange Reports the Order Imbalance Information and Clarify What Information Is Included and Excluded From the Order Imbalance Information Reports

April 23, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 17,

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

2009, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rules 15 and 123C regarding the operation of its NYSE Amex Order Imbalance Information service to: (1) Modify the reference price at which the Exchange reports the Order Imbalance Information; and (2) clarify what information is included and excluded from the Order Imbalance Information reports. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') is proposing to amend NYSE Amex Equities Rules 15 and 123C regarding the operation of its Order Imbalance Information service to: (1) Modify the reference price at which the Exchange reports the Order Imbalance Information; and (2) clarify what information is included and excluded from the Order Imbalance Information reports.

The Exchange notes that parallel changes are proposed to be made to the rules of the New York Stock Exchange LLC.[4]

a. Background

By Notice dated April 9, 2009, NYSE Amex implemented the NYSE Amex Order Imbalance Information Data Product.[5] NYSE Amex maintains an Order Imbalance Information datafeed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. These orders are subject to execution at the market's opening or closing price, as the case may be, and represent issues that are likely to be of particular trading interest at the opening or closing.

The Exchange distributes information about these imbalances in real-time at specified intervals prior to the opening and closing auctions. The Exchange currently makes order imbalance information available at the following intervals.

For opening Order Imbalance Information:

- Every five minutes between 8:30 a.m. EST and 9 a.m. EST.
- Every one minute between 9 a.m. EST and 9:20 a.m. EST.
- Every 15 seconds between 9:20 a.m. EST and the opening (or 9:35 a.m. EST if the opening is delayed).

For closing Order Imbalance Information:

- Every fifteen seconds between 3:40 p.m. EST and 3:50 p.m. EST.
- Every five seconds between 3:50 p.m. EST and 4 p.m. EST.

Reference Price

The NYSE Amex Order Imbalance Information service currently uses the last sale price as the reference price for the Order Imbalance Information. In the case of opening order imbalances, this means the last sale price at the end of the prior trading day. For closing order imbalances, the reference price is equal to the last sale price.

Orders Included in NYSE Amex Order Imbalance Reports

The NYSE Amex Order Imbalance Information service provides the following information:

(A) In the case of the pre-opening datafeed, all interest eligible to trade in the opening transactions excluding odd-lot orders and the odd-lot portion of partial round-lot orders. Floor broker interest includes all interest except non-displayed reserve interest marked ''Do Not Display'' (''DND''). Customer interest includes all interest except for non-displayed reserve interest. DMM interest is not included in the pre-opening datafeed.

(B) In the case of pre-closing datafeed, all market-on-close orders and limit-on-close orders eligible to participate in the closing transaction. It excludes odd-lot orders, the odd-lot portion of partial round-lot orders, DMM interest and Crowd interest.

b. Proposed Amendments

Reference Price

In order to provide the most accurate imbalance information, the Exchange proposes to modify what constitutes the reference price for the dissemination of the NYSE Amex Order Imbalance Information feed. Prior to the opening transaction, if a pre-opening indication is published pursuant to the provisions of NYSE Amex Equities Rule 15 (''Pre-Opening Indications'') paragraphs (a) and (b), or in the event of a mandatory publication[6] pursuant to NYSE Amex Equities Rule 123D (''Openings and Halts in Trading''), the reference price will no longer be the closing price of the prior trading day.

Previous exchange closing price	Price change (equal or greater than)
Under $10	1 point.
$10–$99.99	the lesser of 10% or 3 points.
$100 and Over	5 points.

The Exchange proposes to have the reference price equal the last sale (previous closing price) or the price indication published under the Rule 15 or 123D. Therefore, when the Exchange publishes a pre-opening indication in a security pursuant to the provisions of paragraphs (a) and (b) of NYSE Amex Equities Rule 15 or NYSE Amex Equities Rule 123D, the reference price will be determined as follows:

- If the Bid Price from the indication (the lower price) is higher than the last sale, the Reference Price will be the Bid.
- If the Offer Price from the indication (the higher price) is lower than the last sale, the Reference Price will be the Offer.
- If the Last Sale is within the indication range, the Book shall use the Last Sale as the Reference Price
- If multiple indications have been published, the last indication that the Exchange makes available shall be used as the Reference Price.

Examples:

(1) XYZ security closed at a price of $15.00 on April 1, 2009. On April 2,

[4] *See* SR–NYSE–2009–41 (to be filed April 17, 2009).

[5] *See* Securities Exchange Act Release No. 59743 (April 9, 2009) (SR–NYSEAmex–2009–11).

[6] Exchange policy requires the dissemination of an indication in connection with any delayed opening—involving any stock which has not opened (or been quoted) by 10 a.m. In addition, the dissemination of an indication is mandatory for an opening which will result in a significant price change from the previous close [See table above].

2009, the Exchange publishes a pre-opening indication for XYZ with a bid price of $16.00 and an offer price of $16.50. The reference price for the NYSE Order Imbalance datafeed in XYZ security on April 2, 2009 will be $16.00.

(2) XYZ security closed at a price of $15.00 on April 1, 2009. On April 2, 2009, the Exchange publishes a pre-opening indication for XYZ with a bid price of $14.00 and an offer price of $14.50. The reference price for XYZ data feed on April 2, 2009 will be $14.50.

(3) XYZ security closed at a price of $15.00 on April 1, 2009. On April 2, 2009, the Exchange publishes pre-opening indication for XYZ with a bid price of $14.99 and an offer price of $15.02. The reference price for XYZ data feed on April 2, 2009 will be $15.00.

In the case of pre-closing imbalances, the NYSE Amex Order Imbalance Information service also uses the last sale price as the reference price for pre-closing Order Imbalance Information that it disseminated pursuant to NYSE Amex Equities Rule 123C (''Market on the Close Policy and Expiration Procedures'').

The Exchange proposes to modify what it uses as the reference price when the last sale price does not fall within the best bid and the best offer on the Exchange at the time that the Exchange calculates a closing imbalance for a security,[7] as follows:

- If the last sale price is lower than the Bid price, then the Bid Price will serve as the Reference Price.
- If the last sale price is higher than the Offer Price, then the Offer Price will serve as the Reference Price.
- If the last sale price falls within the Exchange's best bid and offer for the security, the last sale price will serve as the Reference Price.

Examples:

(1) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of $15.02 and 500 shares offered at a $15.20. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be $15.02.

(2) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of $14.91 and 500 shares offered at a $14.99. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be $14.99.

(3) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of $14.98 and 500 shares offered at a $15.02. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be $15.00.

The Exchange believes that the amendments to the reference price for the publication of the NYSE Amex Order Imbalance Information service will enhance the value of the product by providing the user with a more accurate depiction of the market interest available in the security.

Orders Included in NYSE Amex Pre-Opening Order Imbalance Information Reports

The Exchange proposes to add all DMM s-quote interest eligible for execution in the opening transaction, at no additional charge, to the order information currently included in the pre-opening NYSE Amex Order Imbalance Information Reports. DMM s-quote interest is currently eligible for execution in the opening transaction but is not included in the Order Imbalance Information Report. The Exchange believes that the addition of DMM s-quote interest to the Order Imbalance Information Report will enhance the value of this product by including additional information about the electronic interest eligible to trade at the opening.

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the ''1934 Act'') for this proposed rule change are the requirements under Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal benefits investors by modifying NYSE Amex Order Imbalance Information to provide investors with a more accurate depiction of the market and additional information on the open for a security.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing in order to immediately provide market participants with the most accurate supplemental market information prior to the execution of the opening and closing transactions on the Exchange. The Commission believes such waiver is consistent with the protection of investors and the public interest.[10] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[7] Currently NYSE Amex securities operating on the 14.0 Technology Release employ the proposed method to determine the reference price.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEAmex–2009–13 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEAmex–2009–13. 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 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–NYSEAmex–2009–13 and should be submitted on or before May 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–9818 Filed 4–28–09; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed Alteration to Existing System of Records, New Routine Use, and General Housekeeping Changes

AGENCY: Social Security Administration (SSA).

ACTION: Proposed altered system of records, new routine use, and general housekeeping changes.

SUMMARY: We are issuing public notice of our intent to alter, add a new routine use, and make minor housekeeping changes to an existing system of records in accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11). The affected system of records is the *Administrative Law Judge* (ALJ) *Working File on Claimant Cases (60–0005),* hereinafter referred to as the *ALJ Working File.* The proposed alterations will result in the following changes:

- Expansion of the purpose of the system of records to include the electronic internal working file of the administrative law judges in the hearing offices. This working file is accessed primarily by hearing office personnel viewing documents stored in the Private Section of eView, an electronic interface.
- Inclusion of our data protection routine use that provides for the release of information in the event of an unauthorized release of personally identifiable information. We published this routine use in the **Federal Register** on December 10, 2007 (72 FR 69723); and
- Updates of various cited Federal Government regulations and minor editing, including correcting miscellaneous and stylistic format errors.

The proposed alteration, new routine use, and housekeeping changes are discussed in the **SUPPLEMENTARY INFORMATION** section below. We invite public comments on this proposal.

DATES: We filed a report of the proposed altered system of records and added routine use with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 23, 2009. The proposed altered system of records will become effective on June 1, 2009, unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the Deputy Executive Director, Office of Privacy and 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 I, Office of Privacy and 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. Background and Purpose of the Proposed Alteration and New Routine Use for the ALJ Working File

A. General Background Relating to the Proposed Alteration

Under Titles II and XVI of the Social Security Act, an individual who has received a Federal reviewing official decision, a prototype process determination, or a reconsideration determination on a claim for benefits has a right to a hearing before an ALJ. In the past, hearing offices kept their records in paper form. New technology will allow us to store information electronically and, therefore, we need to update this system of records to reflect the change. As a result, records in this system may be in paper and electronic media formats.

B. Discussion of Proposed Alteration to the ALJ Working File

During the course of adjudicating a claim at the hearing level, ALJs and members of their staffs often create notes and instructions regarding the evidence, testimony, legal theories, merits of the case, and opinions and advice about a case. While there may be both electronic and paper records gathered and maintained in the *ALJ Working File,* this system covers any documents maintained electronically, such as any documents viewed in the Private Section of eView. eView is the interface that allows authorized users to view documents stored electronically. This Private Section is accessible only to authorized SSA staff. Additionally, this proposed alteration provides that any movement of the paper-based records in the ALJ Working File to the new electronic environment does not affect:

—The categories of individuals covered by or categories of records contained in this system;
—The purpose, storage, retrieval, or notification policies; and
—The existing routine uses of information contained in this system.

Maintaining information in the Private Section ensures that the information will not be integrated or intermingled with other information contained in the electronic environment.

Some of the documents are compiled in anticipation of litigation and, thus, may be exempt from the access provisions of the Privacy Act (5 U.S.C. 552a(d)(5)). We review requests for access under the Freedom of Information Act and as described in the Social Security Ruling, *SSR 92–1p: Policy Interpretation Ruling: Request Under the Privacy Act or the Freedom of Information Act for Access to Records and for Disclosure of Material Maintained by the Office of Hearings and Appeals.*

C. Discussion of New Routine Use

As recommended by the President's Identity Theft Task Force, as mandated by the Office of Management and Budget (OMB) in Memorandum M–07–16, and in accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we established a routine use disclosure that 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.'' Such a routine use serves to protect the interests of the people whose information is at risk by allowing the agency to take appropriate steps to facilitate a timely and effective response to a data breach. (For more information, please see: **Federal Register** (Vol. 72, No. 236) Monday, December 10, 2007.)

II. Records Storage Medium and Safeguards for the Information Maintained in the Proposed Altered ALJ Working File System of Records

The proposed altered *ALJ Working File* system of records will maintain information in electronic and paper form. We permit only authorized personnel who have a need for the information in the performance of their official duties to access the information. Security measures include the use of access codes to enter the computer system that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any related records maintained in paper files are kept in locked cabinets or in otherwise secure areas.

III. Effects of the Proposed Alteration and New Routine Use Disclosure to the ALJ Working File System of Records on the Rights of Individuals

A. Discussion Relating to the Proposed Alteration

The proposed alteration to the *ALJ Working File* system of records pertains to our responsibilities in continuing to expand the record storage medium to accommodate increasing demand to maintain records in electronic form. We will adhere to all applicable statutory requirements, including those under the Social Security Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed alteration to these systems will have an unwarranted adverse effect on the rights of individuals.

B. Discussion Relating to the Added Routine Use

The new routine use would serve to protect the interests of persons whose information could be at risk. We would take appropriate steps to facilitate a timely and effective response to a security breach of our data, thereby improving our ability to prevent, minimize, or remedy any harm that may result from a compromise of data maintained in our systems of records. We do not anticipate that the new routine use will have any unwarranted adverse effect on the rights of persons about whom data might be disclosed.

IV. Compatibility of Proposed Routine Use

As mandated by OMB, as recommended by the President's Identity Theft Task Force, and in accordance with the Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and our disclosure regulation (20 CFR part 401), we are permitted to release information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.120 of our regulations provides that we will disclose information required by law. Because OMB has mandated the publication of this routine use, the proposed routine use is appropriate and meets the relevant statutory and regulatory criteria. In addition, disclosures to other agencies, entities, and persons when needed to respond to an unintentional release are compatible with the reasons we collect the information, as helping to prevent and minimize the potential for harm is consistent with taking appropriate steps to protect information entrusted to us. *See* 5 U.S.C. 552a(e)(10).

V. Minor Housekeeping Changes in the Proposed Altered ALJ Working File System of Records

We are doing some minor editing, including correcting miscellaneous stylistic and formatting errors.

Dated: April 23, 2009.

Michael J. Astrue,

Commissioner.

Social Security Administration Notice of Altered System of Records Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER:

60–0005.

SYSTEM NAME:

Administrative Law Judge Working File on Claimant Cases, Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

SSA, ODAR, Local hearing offices. Access Social Security Administration's Internet Web site: *http://www.socialsecurity.gov/foia/bluebook/app_f.htm* for local hearing office address information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants—Title II (Retirement and Survivors Insurance (RSI), and Disability Insurance (DI)); Title XI (claimants subject to Professional Standards Review); Title XVI (Supplemental Security Income (SSI)).

CATEGORIES OF RECORDS IN THE SYSTEM:

We establish these files in the hearing office as a record of actions taken on each particular case. The file may contain copies of various documents such as the Notice of Hearing; Decision on Dismissal; the Exhibit List when one is prepared; a copy of congressional inquiries and responses thereto; as well as copies of post-adjudicative material received and any responses made. Official copies of these materials are placed in claim folders. These files also contain working papers such as notes taken during the hearing by the administrative law judge (ALJ); case analyses prepared by hearing office employees; case file cover sheets; attorney worksheets; working papers of hearing office staff; and other developmental notes and instructional sheets.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205 and 1631(d)(1) of the Social Security Act, as amended.

PURPOSE(S):

We use the records in this system of records to reference the actions we take in a particular case at the hearing level. For example, during the course of adjudicating the claim at the hearing level, ALJs and members of their staffs often construct documents for only internal purposes regarding the evidence, testimony, legal theories, merits of the case, and opinions and advice regarding other factors involved in the case. While there may be both electronic and paper records in the *ALJ Working File,* this system covers any documents that are gathered, maintained, and viewed electronically in the Private Section of eView. eView is the interface that allows authorized users to view documents stored electronically. The Private Section is accessible only to authorized SSA staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Routine use disclosures are as indicated below; however, any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

2. 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 or her official capacity; or

(c) any SSA employee in his or 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, the 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.

3. To IRS, as necessary, for the purpose of auditing SSA's compliance with safeguard provisions of the IRC, as amended.

4. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing 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 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, for the use of those agencies in conducting records management studies.

6. To student volunteers 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.

7. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, if information is necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of SSA facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

8. To the 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 our records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain and store records in this system in paper and in electronic form.

RETRIEVABILITY:

We retrieve records by Social Security number (SSN) or name.

SAFEGUARDS:

We will store the records in the ALJ Working File system of records in electronic media (*e.g.,* computer data systems) and in paper forms. We permit only authorized SSA personnel who have a need for the information in the performance of their official duties to access the information. Security measures include the use of access codes (personal identification number (PIN) and password) to enter our computer systems that house the data.

Additionally, we give all of our employees and our contract employees annual reminders of the need to protect personal information to which they have access for official purposes and remind them of the criminal penalties that apply to unauthorized access to, or disclosure of, personal information. *See* 5 U.S.C. 552a(i)(1).

RETENTION AND DISPOSAL:

We will destroy electronic and paper records by deleting them 2 years after the final action is taken.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Commissioner, Office of Disability Adjudication and Review, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041.

NOTIFICATION PROCEDURES:

A person can determine if this system contains a record about them by writing to the hearing office (access *http://www.socialsecurity.gov/foia/bluebook/app_f.htm* for address information).

Persons can also determine if this system contains a record about them by writing to the system manager(s) at the above address and providing their name, SSN, or other information that may be in the system of records that will identify them. Persons 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, such as voter registration card, etc. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claimed to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that

parallels the information in the record to which notification is being requested. If we determine that the identifying information the person provides by telephone is insufficient, the person will be required to submit a request in writing or in person. If a person requests information by telephone on behalf of another individual, the subject person must be on the telephone with the requesting person and us in the same phone call. We will establish the subject person's identity (his or 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 or her consent to provide information to the requesting person.

Persons requesting notification by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

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)). Some of the documents are compiled in anticipation of litigation and, thus, may be exempt from the access provisions of the Privacy Act (5 U.S.C. 552a(d)(5)).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also 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:

Information in this system is obtained from claimants; their representatives; appropriate members of the public, SSA, and other Federal, State, and local agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E9–9835 Filed 4–28–09; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed Alteration to Existing System of Records, New Routine Use, and General Housekeeping Changes

AGENCY: Social Security Administration (SSA).

ACTION: Proposed altered system of records, new routine use, and general housekeeping changes.

SUMMARY: We are issuing public notice of our intent to alter, add a new routine use, and make minor housekeeping changes to an existing system of records in accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)). The affected system of records is the *Working File of the Appeals Council (60–0004),* hereinafter referred to as the *AC Working File.* The proposed alterations will result in the following changes:

- Expansion of the purpose of the system of records to include the electronic internal working file of the Office of Appellate Operations (OAO) in the Office of Disability Adjudication and Review's (ODAR) Appeals Council. This working file is accessed primarily by OAO personnel viewing documents stored in the Private Section of eView, an electronic interface.
- Inclusion of our data protection routine use that provides for the release of information in the event of an unauthorized release of personally identifiable information. We published this routine use in the **Federal Register** on December 10, 2007 (72 FR 69723); and
- Updates of various cited Federal Government regulations and minor editing, including correcting miscellaneous and stylistic format errors.

The proposed revision, new routine use, and housekeeping changes are discussed in the **SUPPLEMENTARY INFORMATION** section below. We invite public comments on this proposal.

DATES: We filed a report of the proposed altered system of records and added routine use with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 23, 2009. The proposed altered system of records will become effective on June 1, 2009, unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the Deputy Executive Director, Office of Privacy and 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 I, Office of Privacy and 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. Background and Purpose of the Proposed Alteration and New Routine Use for the AC Working File

A. General Background Relating to the Proposed Alteration

Under Titles II and XVI of the Social Security Act, an individual who is dissatisfied with a hearing decision or hearing dismissal may request review by the Appeals Council (AC). The Appeals Council may decide on its own motion to review the action taken in a case. The AC considers requests of extension of time to file civil actions and is also responsible for certain actions on cases in which a civil action already has been filed. These actions include acting on new court cases, conducting supplemental reviews of pending court cases, acting on remand orders from the court, handling appeals on ALJ decisions issued following a court remand, and recommending whether to seek an appeal when a Federal court makes a decision adverse to the Commissioner. The OAO provides professional and technical advice to other agency components and the Department of Justice on civil action cases when requested. In the past, the AC kept their records in paper form. New technology will allow us to store information electronically and, therefore, we need to update this system of records to reflect the change. As a result, records in this system may be in paper and electronic media formats.

B. Discussion of Proposed Alteration to the AC Working File

Members of the AC are assisted by staff who may prepare an analysis and recommendation. When the AC reaches a favorable decision, the records may be used to process attorney fees.

Communications between the members of the Appeals Council and staff include instructions, advice, and opinions on disposing of the matters at issue. The *AC Working File* also may contain advisory opinions and other communications with other components of SSA and staff in the Department of Justice. These writings reflect mental impressions, evaluations, opinions, recommendations, and legal theories.

While there may be both electronic and paper records gathered and maintained in the *AC Working File,* this proposed alteration covers any documents maintained electronically, such as any documents viewed in the Private Section of eView. eView is the interface that allows authorized users to view documents stored electronically. This Private Section is accessible only to authorized SSA staff. Additionally, this proposed alteration provides that any movement of paper-based records in the *AC Working File* to the new electronic environment does not affect:

—The categories of individuals covered by or categories of records contained in this system;
—The purpose, storage, retrieval, or notification policies; and
—The existing routine uses of information contained in this system. Maintaining information in the Private Section ensures that the information will not be integrated or intermingled with other information contained in the electronic environment.

Some of the documents are compiled in anticipation of litigation and, thus, may be exempt from the access provisions of the Privacy Act (5 U.S.C. 552a(d)(5)). We review requests for access under the Freedom of Information Act and as described in the Social Security Ruling *SSR 92–1p: Policy Interpretation Ruling: Request Under The Privacy Act Or The Freedom Of Information Act For Access To Records And For Disclosure Of Material Maintained By The Office Of Hearings And Appeals.*

C. Discussion of New Routine Use

As recommended by the President's Identity Theft Task Force, as mandated by the Office of Management and Budget (OMB) in Memorandum M–07–16, and in accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we established a routine use disclosure that 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.'' Such a routine use serves to protect the interests of the people whose information is at risk by allowing the agency to take appropriate steps to facilitate a timely and effective response to a data breach. (For more information, please see: **Federal Register** (Vol. 72, No. 236) Monday, December 10, 2007.)

II. Records Storage Medium and Safeguards for the Information Maintained in the Proposed Altered AC Working File System of Records

The proposed altered *AC Working File* system of records will maintain information in paper or electronic form. We permit only authorized personnel who have a need for the information in the performance of their official duties to access the information. Security measures include the use of access codes to enter the computer system that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any related records maintained in hardcopy are kept in locked cabinets or in otherwise secure areas.

III. Effects of the Proposed Alteration and New Routine Use Disclosure to the AC Working File System of Records on the Rights of Individuals

A. Discussion Relating to the Proposed Alteration

The proposed alteration to the *AC Working File* system of records pertains to our responsibilities in continuing to expand the record storage medium to accommodate increasing demand to maintain records in electronic form. We will adhere to all applicable statutory requirements, including those under the Social Security Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed revision to these systems will have an unwarranted adverse effect on the rights of individuals.

B. Discussion Relating to the Added Routine Use

The new routine use would serve to protect the interests of persons whose information could be at risk. We would take appropriate steps to facilitate a timely and effective response to a security breach of our data, thereby improving our ability to prevent, minimize, or remedy any harm that may result from a compromise of data maintained in our systems of records. We do not anticipate that the new routine use will have any unwarranted adverse effect on the rights of persons about whom data might be disclosed.

IV. Compatibility of Proposed Routine Use

As mandated by OMB, as recommended by the President's Identity Theft Task Force, and in accordance with the Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and our disclosure regulation (20 CFR part 401), we are permitted to release information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.120 of our regulations provides that we will disclose information required by law. Because OMB has mandated the publication of this routine use, the proposed routine use is appropriate and meets the relevant statutory and regulatory criteria. In addition, disclosures to other agencies, entities, and persons when needed to respond to an unintentional release are compatible with the reasons we collect the information, as helping to prevent and minimize the potential for harm is consistent with taking appropriate steps to protect information entrusted to us. *See* 5 U.S.C. 552a(e)(10).

V. Minor Housekeeping Changes in the Proposed Altered AC Working File System of Records

We are doing some minor editing, including correcting miscellaneous stylistic and formatting errors.

Dated: April 23, 2009.

Michael J. Astrue,

Commissioner.

Social Security Administration Notice of Altered System of Records Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER:

60–0004.

SYSTEM NAME:

Working File of the Appeals Council, Social Security Administration, Office of Disability Adjudication and Review (ODAR).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22241.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants—Title II (Retirement and Survivors Insurance (RSI), and Disability Insurance (DI)); Title XVI (Supplemental Security Income (SSI)); Title XI (claimants subject to Professional Standards Review).

CATEGORIES OF RECORDS IN THE SYSTEM:

This file may contain: communications between the Appeals Council (AC) and staff about analysis and recommendations to the AC; a copy of the administrative law judge (ALJ) decision or dismissal; a copy of the Request for Review of the hearing decision or dismissal; requests to medical support staff for comments and their responses, if not entered into the record; copies of AC actions on the case; notice of denial of request for review; notice of granting review; AC decisions; and copies of transcripts when available. It may also contain advisory opinions and other communications with other components of SSA and staff in the Department of Justice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205 and 1631(d)(1) of the Social Security Act, as amended.

PURPOSE(S):

We use the records in this system of records for members of the AC and their staff to construct documents internally for use in connection with a recommendation to, or action by, the AC in individual cases. While there may be both electronic and paper records in the AC Working File, this system covers any documents that are gathered, maintained, and viewed electronically in the Private Section of eView. eView is the interface that allows authorized users to view documents stored electronically. The Private Section is accessible only to authorized SSA staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Routine use disclosures are as indicated below; however, any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

2. 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 or her official capacity; or

(c) Any SSA employee in his or 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, the 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.

3. To IRS, as necessary, for auditing SSA's compliance with safeguard provisions of the IRC, as amended.

4. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing 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 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, for the use of those agencies in conducting records management studies.

6. To student volunteers 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.

7. To the 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 our records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain and store records in this system in paper and in electronic form.

RETRIEVABILITY:

We retrieve records by claimant name and Social Security number (SSN).

SAFEGUARDS:

We will store the records in the *AC Working File* system of records in electronic media (*e.g.,* computer data systems) and in paper forms. We permit only authorized SSA personnel who have a need for the information in the performance of their official duties to access the information. Security measures include the use of access codes (personal identification number (PIN) and password) to enter our computer systems that house the data.

Additionally, we give all of our employees and our contract employees annual reminders of the need to protect personal information to which they have access for official purposes and remind them of the criminal penalties that apply to unauthorized access to, or disclosure of, personal information. *See* 5 U.S.C. 552a(i)(1).

RETENTION AND DISPOSAL:

After the time in which to appeal a final action of the AC has elapsed, we will destroy the records. If a court affirms an AC decision, we will destroy the records one year after the final court decision. If a court reverses an AC decision, we will destroy the records six months after the final court action.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Commissioner, Office of Disability Adjudication and Review, Social Security Administration, 5107 Leesburg Pike, Falls Church, Va. 22041.

NOTIFICATION PROCEDURES:

Persons can determine if this system contains a record about them by writing to the system manager(s) at the above address and providing their name, SSN, or other information that may be in the system of records that will identify them. Persons 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, such as voter registration card, etc. Persons lacking any identification documents sufficient to establish their identity must certify in writing that they are the person they claimed to be and that they understand that the knowing and willful

request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that parallels the information in the record to which notification is being requested. If we determine that the identifying information the person provides by telephone is insufficient, the person will be required to submit a request in writing or in person. If a person requests information by telephone on behalf of another individual, the subject person must be on the telephone with the requesting person and us in the same phone call. We will establish the subject person's identity (his or 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 or her consent to provide information to the requesting person.

Persons requesting notification submitted by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

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)). Some of the documents are compiled in anticipation of litigation and, thus, may be exempt from the access provisions of the Privacy Act (5 U.S.C. 552a(d)(5)).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also 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:

Information in this system is obtained from claimants; their representatives; appropriate members of the public, SSA, and other Federal, State, and local agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E9–9840 Filed 4–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–2009–0057]

Pipeline Safety: Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collections

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Requests (ICRs) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on ICRs was published in the **Federal Register** on February 20, 2009 (73 FR 7955) under Docket No. PHMSA–2009–0057. Two comments were received. The purpose of this notice is to allow the public an additional 30 days to submit comments on the information collections described below and respond to comments submitted to the 60-day notice.

DATES: Interested persons are invited to submit comments on or before May 29, 2009.

ADDRESSES: Send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite at (202) 366–1319, or by e-mail at *cameron.satterthwaite@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires Federal agencies to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in the pipeline safety regulations, 49 CFR parts 190–199.

PHMSA received two comments on information collection OMB Control No. 2137–0610, entitled ''Pipeline Integrity Management in High Consequence Areas Gas Transmission Pipeline Operators,'' from Southwest Gas Corporation (Southwest) and Paiute Pipeline Company (Paiute). Southwest and Paiute both commented that the burden hour estimate was low and further requested PHMSA to convene a workshop to explore the burden hours estimate, including improvements that could be made. PHMSA will consider these comments and make efforts to pursue methods of addressing Southwest's and Paiute's concerns prior to the next renewal period. However, at this time PHMSA is forwarding this information collection request to OMB as this information collection will expire May 31, 2009.

PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) type of request; (4) abstract of the information collection activity; (5) description of affected public; (6) estimate of total annual reporting and recordkeeping burden; and (7) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity.

PHMSA requests comments on the following information collections:

Title: Pipeline Safety: Response Plans for Onshore Oil Pipelines.

OMB Control Number: 2137–0589.

Type of Request: Renewal of a currently approved information collection.

Abstract: 49 CFR part 194 requires an operator of an onshore oil pipeline facility to prepare and submit an oil spill response plan to PHMSA for review and approval.

Estimated number of respondents: 367.

Estimated annual burden hours: 50,186 hours.

Frequency of collection: On occasion.

Title: Pipeline Safety: Pipeline Integrity Management in High Consequence Areas Gas Transmission Pipeline Operators.

OMB Control Number: 2137–0610.

Type of Request: Renewal of a currently approved information collection.

Abstract: 49 CFR 192.947 requires operators of gas transmission pipelines located in or near high consequence areas to maintain a written integrity management program and records showing compliance with 49 CFR part 192, subpart O. In addition, operators must submit documentation relative to their integrity management program to PHMSA as applicable.

Estimated number of respondents: 721.

Estimated annual burden hours: 1,030,343 hours.

Frequency of collection: On occasion.

Issued in Washington, DC, on April 23, 2009.

John A. Gale,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E9–9775 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
PM—Party to application with modification request.

Issued in Washington, DC, on April 21, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	MODIFICATION TO SPECIAL PERMITS		
14167–M	Trinityrai, Dallas, TX	4	04–30–2009
8723–M	Alaska Pacific Powder, Company, Anchorage, AK	1	04–30–2009
	NEW SPECIAL PERMIT APPLICATIONS		
14689–N	Trinity Industries, Inc., Dallas, TX	2,3	04–30–2009
14733–N	GTM Technologies, Inc., San Francisco, CA	1,3	06–30–2009
14767–N	Commodore Applied Technologies, Inc., Broomfield, CO	4	04–30–2009
14778–N	MetalcraftlSea-Fire Marine Inc., Baltimore, MD	1	05–31–2009
14779–N	Corrosion Companies Inc., Washougal, WA	3	06–30–2009

[FR Doc. E9–9477 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2009–0003]

Notice of Policy Statement for Eligible New Freedom Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is expanding the type of projects it considers to be "beyond the ADA" and thus increase the types of projects eligible for funding under the New Freedom program. Under this interpretation, new and expanded fixed route and demand responsive transit service planned for and designed to meet the needs of individuals with disabilities are eligible projects.

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT: David Schneider, Transportation Program Specialist, Federal Transit Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 493–0175, or e-mail, *David.Schneider@dot.gov*; or Bonnie Graves, Attorney-Advisor, same address, (202) 366–0944 or e-mail, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The New Freedom Program (49 U.S.C. 5317) was established to fund capital and operating expenses that support new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act (ADA), in order to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

When developing guidance for the New Freedom program, FTA initially proposed that "new public transportation services" and "public transportation alternatives beyond those required by the ADA" be considered separate categories of service. (*See* 71 FR 13456, Mar. 15, 2006.) Subsequent to

this notice, FTA received feedback from the Congressional authors of the New Freedom program legislation that projects that do not meet both criteria—new and beyond the ADA—are not eligible for funding. FTA also determined that projects are ''beyond the ADA'' only if they allow a recipient to exceed its obligations under the ADA. For example, because the ADA and its implementing regulations at 49 CFR parts 37 and 38 provide very specific minimum requirements for ADA complementary paratransit service when an agency provides fixed route service, New Freedom funds can be used to expand the scope of ADA complementary paratransit service beyond the minimum requirements stipulated in the ADA regulations at 49 CFR part 37. On the other hand, the ADA does not require that a minimum level of public transit service be provided in any given geographic area. Once service is provided, however, it must be ADA compliant, so FTA determined that projects to establish or expand fixed route or demand responsive service would not result in an agency exceeding its obligations under the ADA, and therefore, would not be eligible for New Freedom funding. This interpretation was conveyed in subsequent **Federal Register** notices on the New Freedom program (71 FR 52610, Sept. 6, 2006, and 72 FR 14851, Mar. 29, 2007) and in the Frequently Asked Questions document on FTA's Web site: *http://www.fta.dot.gov/funding/grants/grants_financing_3549.html.*

Over the course of 2008, grant recipients have expressed concerns that FTA's interpretation of which projects go ''beyond the ADA'' prevents agencies in rural and small urbanized areas with limited public transportation service from using New Freedom funds to provide new fixed route transit or demand response transit service that would be planned for and designed to meet the needs of people with disabilities. Stakeholders argue that these types of projects do go ''beyond the ADA'' because they represent transportation services that are not required under the Act or under the U.S. Department of Transportation (DOT) ADA implementing regulations. Although stakeholders in areas with limited public transportation service can use New Freedom funds to implement new alternatives to public transportation, such as accessible taxis, travel training, and mobility management, many potential recipients have informed FTA that their greatest need is for new fixed route or demand responsive transportation services designed to meet the mobility needs of people with disabilities.

In response to these concerns, FTA published a notice of proposed policy for eligible New Freedom projects in the **Federal Register** (74 FR 4284, Jan. 23, 2009). This notice proposed that new or expanded fixed route service and new or expanded demand response service would be eligible for New Freedom funding provided that:

(1) The service is identified in the locally developed, coordinated public transit-human services transportation plan;

(2) The service is designed to meet the needs of individuals with disabilities;

(3) The service removes barriers to transportation and assists persons with disabilities with transportation;

(4) The service was not operational on August 10, 2005, and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Program (TIP) or the State Transportation Improvement Program (STIP); and

(5) The service is not designed to allow an agency to meet its obligations under the ADA or the DOT ADA implementing regulations at 49 CFR parts 37 and 38.

The proposed policy change retained the pre-existing requirement that services under the program be ''new'' services and adopted the interpretation voiced by transportation providers that transit services other than those that are required to be implemented under the ADA go ''beyond the ADA.'' Interested parties were invited to submit comments on this proposed change during the 30-day comment period, which ended on February 23, 2009.

Comments Received and FTA Response

FTA received comments from 32 entities in response to its January 23, 2009, **Federal Register** notice. Nine State DOT one other state agency, two Metropolitan Planning Organizations, nine public transportation agencies, seven private not-for-profit organizations, one private for-profit organization, and three individuals submitted comments.

Comment: A majority of commenters expressed support for the proposed policy change. These commenters stated that the change would increase the number of projects that could be funded under their state or large urbanized area's New Freedom apportionment and therefore decrease the amount of unobligated funds; that the change would expand mobility and accessibility for people with disabilities; that the change would help local stakeholders better meet the mobility priorities that they had previously identified; and that the change would provide stakeholders with greater flexibility and ensure that New Freedom funds are used more effectively. Some commenters cited specific services that they believed would be valuable to their community and that they believed would be eligible for funding under the proposed change. These comments are consistent with the feedback that prompted FTA to propose the policy change and they influenced our decision to issue a final policy that expanded the types of projects that are eligible for funding under the New Freedom program.

Three commenters expressed opposition to the proposed change. These commenters stated that the change was not consistent with the intent of Congress when it established the New Freedom program, that the policy change would favor public transportation services at the expense of taxi services, and that taxi companies that have already received New Freedom funding may not receive funding in the future should the proposed change be enacted. Commenters also stated that the change runs counter to the New Freedom program's objective of promoting innovative services for people with disabilities, and that FTA should take steps to ensure that fixed route services are fully accessible for people with disabilities before it allows New Freedom funds to be used to expand fixed-route or deviated-route services. One commenter proposed that the policy change only apply to New Freedom program projects occurring in areas with populations under 200,000.

FTA Response: Congress' intentions regarding which activities are eligible to receive New Freedom funding are expressed in 49 U.S.C. 5317(b)(1), which states that ''the Secretary may make grants under this section to a recipient for new public transportation services and public transportation alternatives beyond those required by ADA of 1990 (42 U.S.C. 12101 *et seq.*) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.'' While Congress provided examples of services that meet this provision, the meaning of the statute's reference to services ''beyond those required by the Americans with Disabilities Act'' remains subject to interpretation.

FTA believes that it is in the public interest to broaden its existing interpretation of what services go

''beyond the ADA,'' to include public transportation services designed to meet the needs of people with disabilities other than those that are required under the ADA, as well as public transportation services that allow providers to exceed their obligations under the ADA. These two options are not mutually exclusive. FTA's new interpretation makes additional activities eligible for funding without foreclosing on services that were already eligible under FTA's prior interpretation.

Under the policy change, New Freedom funds can continue to be used to purchase and operate accessible taxis and to provide individuals with disabilities with vouchers to purchase rides on taxi service, and those grant recipients that have previously received funds for taxi service can continue to receive funds. The program's coordinated planning and competitive selection requirements, which are unaffected by this policy change, dictate the process by which specific eligible activities are selected by state and local communities. Participants in the New Freedom program's coordinated public transit human service transportation planning process have discretion to determine whether or not accessible taxis or taxi service for people with disabilities or some other eligible activity best addresses the gaps between existing transportation services and the mobility needs of people with disabilities. Additional information on the coordinated planning process can be found in Chapter V of FTA's New Freedom Circular 9045.1. The policy change does not affect the ability of local stakeholders to select eligible alternatives to traditional public transportation such as mobility management, travel training, or voucher programs. Whether these programs best meet the priorities and needs of people with disabilities is determined through the local coordinated planning process.

Regarding the comment that FTA should take steps to ensure that fixed route services are fully accessible for people with disabilities before it allows New Freedom funds to be used for expand fixed-route or deviated-route services, FTA is committed to ensuring that existing fixed route services comply with the ADA and follow the procedures for effecting compliance established under the DOT regulations at 49 CFR part 27. These regulations, rather than conditioning the New Freedom policy, provide the appropriate mechanisms for addressing non-compliance with the ADA.

Regarding the suggestion that the policy change apply only to areas with populations under 200,000, while most of the concern over the pre-existing policy on eligible activities was expressed by stakeholders residing in small urbanized or non-urbanized areas, FTA's policy change applies to New Freedom activities in all geographic areas. Participants in the coordinated planning processes in all areas can determine whether or not to choose activities that are now eligible under this policy change.

Comment: Several commenters expressed neither support nor opposition to the policy change, but instead posed questions regarding the proposal or requested that FTA clarify the proposal. Seven commenters raised questions or submitted feedback on the proposed policy's requirement that new or expanded fixed route or demand response services be designed to meet the needs of individuals with disabilities in order to be eligible for funding. One commenter asked whether new or expanded fixed route or demand response transit service could serve members of the public in addition to people with disabilities. Two other commenters opposed projects that would provide segregated service for people with disabilities. A fourth commenter asked for guidance and criteria for determining whether a new or expanded service is designed to meet the mobility needs of people with disabilities as opposed to the mobility needs of the public at large. A fifth commenter cautioned that New Freedom funds should not be used to support projects that would serve the public at large and could be funded with general operating funds, and stated that U.S. DOT needs to provide oversight to ensure that services funded under the New Freedom program meet the intent of the law. Another commenter stated that if grantees intend to use the New Freedom funds for general fixed route service, they need to demonstrate in their grant application how the service would provide unique benefits to people with disabilities. Another commenter stated that a fixed route or demand response service should not be eligible for New Freedom funding simply because it provides accessible service for people with disabilities.

FTA response: The final policy reiterates FTA's expectation that new or expanded fixed route and demand response services be open to the general public and that grant recipients refrain from creating new ''silo'' transportation that segregates individuals with disabilities from the public at large. At the same time, in order to ensure that new services provide benefits to people with disabilities, the final policy states that the service must be planned and designed to meet the mobility needs of individuals with disabilities in response to circumstances where existing fixed route and demand response service is unavailable or insufficient. Examples of such services would be a fixed route service that is open to the general public but that is extended to serve a congregate living facility or a workplace serving large numbers of individuals with disabilities, or demand response service that is available to the general public but whose service area coverage or span of service is designed in response to mobility needs expressed by individuals with disabilities.

FTA will presume that a project is planned and designed to meet the mobility needs of individuals with disabilities if the project is identified in the grant applicant's coordinated public transit human services transportation plan. These plans identify the transportation needs of individuals with disabilities, provide strategies for meeting these local needs, and prioritize transportation services for funding and implementation. New Freedom applicants are required to certify that projects were derived from a coordinated plan and reference the page number of the plan that contains information on the projects.

Comment: One commenter raised questions regarding the proposed policy change's definition of ''new'' service, asking at what point in time a project funded with New Freedom projects would no longer be considered ''new.''

FTA response: The definition of a ''new'' project has not changed. Once a New Freedom project has been funded, it remains ''new'' for the duration of the program and can continue to receive New Freedom funds.

Comment: FTA received comments from individuals or organizations on other aspects of the proposed policy change. Two commenters suggested that FTA pursue this change through a rulemaking process, and one commenter requested greater clarification on projects that will be eligible under the new guidance that would not have been available under previous rules and what barriers remain to full implementation of the New Freedom program. One commenter requested FTA review New Freedom applications more closely for genuine involvement of the disability community in the planning process.

FTA response: FTA determined that a rulemaking process was not necessary to change its determination of which projects are eligible under the New Freedom program because the policy does not impose binding obligations on

grant recipients or other parties. This notice provides additional clarification on which projects are eligible under the new guidance, however an analysis of what barriers remain to full implementation of the New Freedom program is beyond the scope of this notice.

Regarding concerns over a lack of involvement of the disability community in the coordinated planning process, FTA requires New Freedom grant applicants to certify that the coordinated plan from which New Freedom projects were derived was developed through a process that includes representatives of public, private, and non-profit transportation and human services providers and participation by members of the public. FTA's New Freedom circular includes guidance on ensuring adequate outreach to allow for participation and on providing explicit consideration and response to public input received during the development of a coordinated plan. However, FTA does not review details of a coordinated plan's public involvement process in advance of making a grant award because doing so could significantly delay the award of New Freedom, JARC, and Section 5310 program funds to recipients and subrecipients. Grant recipients are required to certify that the coordinated planning process' public participation requirements were met, and FTA reviews these certifications during Triennial and State Management Reviews. If recipients cannot document that the requirement was met, then FTA issues a finding of deficiency and the recipient is required to take corrective action.

FTA received several comments regarding the New Freedom program that were not germane to the proposed policy change, including a request that New Freedom funds subsidize capital expenses at a 50/50 rather than an 80/20 Federal local match, and that the New Freedom circular state specifically that the program provides reimbursements to grant recipients. FTA will consider these comments in the context of its ongoing work to provide guidance and technical assistance on the New Freedom program.

Final Policy

New or expanded fixed route service and new or expanded demand response service constitute new public transportation services beyond those required by ADA of 1990 (42 U.S.C. Section 12101 *et seq.*) that assist individuals with disabilities with transportation, and are therefore eligible for funding under the New Freedom program, provided that these services:

(1) Are identified in the grant applicant's coordinated public transit-human services transportation plan;

(2) Are available to the public at large but were planned and designed to meet the mobility needs of individuals with disabilities in response to circumstances where existing fixed route and demand response transportation is unavailable or insufficient to meet the mobility needs of individuals with disabilities.

(3) Were not operational on August 10, 2005, and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Program (TIP) or the State Transportation Improvement Program (STIP); and

(4) Are not designed to allow an agency to meet its obligations under the ADA or the DOT ADA implementing regulations at 49 CFR parts 37 and 38.

Examples of such services would be a fixed route service that is open to the general public but that is extended to serve a congregate living facility or a workplace serving large numbers of individuals with disabilities, or demand response service that is available to the general public but whose service coverage or span of service is designed in response to mobility needs expressed by individuals with disabilities. FTA notes that expanded fixed route service may result in expanded ADA complementary paratransit service; since the ADA complementary paratransit service is required under the ADA, it would not be eligible for New Freedom funding. All new or expanded fixed route and demand responsive services funded under the New Freedom program will be subject to the requirements of the ADA and DOT ADA implementing regulations.

Issued in Washington, DC, this 17th day of April 2009.

Matthew J. Welbes,

Acting Deputy Administrator.

[FR Doc. E9–9774 Filed 4–28–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Public Transportation on Indian Reservations Program; Tribal Transit Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability: Solicitation of Grant Applications for FY 2009 Tribal Transit Program Funds.

SUMMARY: This notice announces the availability of $15 million in funding provided by the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)), a program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Section 3013 (c). This notice is a national solicitation for grant applicants to be selected on a competitive basis, and it includes the grant terms and conditions; grant application procedures; and selection criteria for Fiscal Year (FY) 2009 projects. The Federal Transit Administration (FTA) announced the availability of, and competition for, the FY 2009 American Recovery and Reinvestment Act (ARRA) TTP funding in a separate notice published on March 23, 2009.

ADDRESSES: Applicants may submit applications in one of two ways: (1) Delivering five hard copies to FTA, 1200 New Jersey Avenue, SE., Washington, DC, 20590, Attn: Lorna R. Wilson; (2) sending by e-mail to *fta.tribalprogram@dot.gov.* FTA will not accept applications via facsimile.

DATES: Applicants must submit completed applications by June 29, 2009. FTA will announce grant selections in the **Federal Register** when the competitive selection process is complete.

Applicants should be aware that materials sent through the U.S. Postal Service are subject to significant delays in delivery due to the security screening process. Use of courier or express delivery services is recommended.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Tribal Liaison (Appendix B) for application-specific information. For general program information, contact Lorna R. Wilson, Office of Transit Programs, at (202) 366–2053, e-mail: *Lorna.Wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

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I. Overview

Section 3013 of SAFETEA–LU, [Pub. L. 109–59 (August 10, 2005)] amended 49 U.S.C. 5311(c) by establishing the Public Transportation on Indian Reservations Program (TTP). This program authorizes direct grants ''under such terms and conditions as may be established by the Secretary'' to Indian tribes for any purpose eligible under FTA's Nonurbanized Area Formula Program, 49 U.S.C. 5311 (Section 5311 program). The authorized funding increased from $8 million in FY 2006 to $15 million in FY 2009. The Conference Report that accompanied SAFETEA–LU indicated that the funds set aside for Indian tribes in the TTP are not meant to replace or reduce funds that Indian tribes receive from States through FTA's Nonurbanized Area Formula Program.

II. Background

SAFETEA–LU authorized tribes to be direct recipients of Section 5311 program funds and also created the TTP as a take down off of that program. FTA has funded grants under the TTP since FY 2006. For more information on the program and a list of projects funded using previous years TTP funds, go to: *http://www.fta.dot.gov/funding/grants/grants_financing_3553.html.*

III. Funding Opportunity Description

A. Authorized Funding for FY 2009

TTP funds are to be apportioned for grants to Federally recognized Indian tribes for any purpose eligible under the Section 5311 program. In FY 2009, TTP funds are to be apportioned for grants to Federally recognized Indian tribes for any purpose eligible under the Section 5311 program. In FY 2009, a total of $15,024,797 is available for competitive award. This total includes $24,797 from previously awarded FY 2006 funds that have lapsed and is now made available for reallocation to projects selected through the competitive process announced and described in this notice.

IV. Award Information

The number and size of awards will be determined through a competitive process. Funding is available for start-up services, enhancements or expansion of existing transit services, and for planning studies and operational planning. Planning grants will be limited to $25,000 per applicant. Priority for FY 2009 funding will be given to continuation projects selected in FY 2006–FY 2008 that are in an active status. All tribes seeking FY 2009 funds must submit grant applications to FTA by June 29, 2009. Tribes applying for ARRA TTP funds must abide by the grant application submission deadlines as outlined under the separate ARRA TTP notice.

V. Eligibility Information

A. Eligible Applicants

Eligible applicants include Federally-recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI). To be an eligible recipient, a tribe must have the requisite legal, financial and technical capabilities to receive and administer Federal funds under this program. A tribe may submit a copy of the most up-to-date **Federal Register** notice published by DOI, BIA: Entities Recognized and Eligible to Receive Service from the United States Bureau of Indian Affairs.

B. Eligible Projects

Eligible recipients may use TTP funds for any purpose authorized under the Section 5311 program. This means that grants can be awarded to recipients located in rural and small urban areas with populations under 50,000 not identified as an urbanized area by the Bureau of the Census. The grants may be used for public transportation capital projects, operating costs of equipment and facilities for use in public transportation, planning, and the acquisition of public transportation services, including service agreements with private providers of public transportation services. Under Department of Transportation (DOT) Americans with Disabilities Act of 1990 (ADA) regulations, public fixed route operators are required to provide ADA complementary paratransit service to individuals who can not use the fixed route due to their disability. Coordinated human service transportation that primarily serves elderly persons and persons with disabilities, but that is not restricted from carrying other members of the public, is considered available to the general public if it is marketed as public transportation.

VI. Local Match

No local match is required for this program. However, FTA encourages tribes to leverage the program funds and demonstrate commitment to the project through in-kind contributions and use of other funding sources that are available to support public transportation service.

VII. Terms and Conditions

Section 3013 of SAFETEA–LU amended 49 U.S.C. 5311(c) by authorizing funds for the TTP ''under such terms and conditions as may be established by the Secretary.'' Pursuant to this discretionary statutory authority in SAFETEA–LU, FTA published a **Federal Register** notice dated March 22, 2006 (71 FR 14618), ''Public Transportation on Indian Reservations Program (49 U.S.C. 5311(c)(1)): Notice of Public Meetings, Proposed Grant Program Provisions,'' and proposed certain statutory and regulatory terms and conditions that should apply to grants awarded under the TTP.

FTA received a substantial number of comments from Indian tribes and other groups concerning certain proposed terms and conditions for the TTP. FTA addressed these comments in a **Federal Register** notice dated August 15, 2006 (71 FR 46878) and established appropriate grant requirements for the TTP.

The following terms and conditions apply to the TTP:

1. Common Grant Rule (49 CFR part 18), ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' This is a government-wide requirement that applies to all Federal assistance programs.

2. Civil Rights Act of 1964, as amended (42 U.S.C. 2000d). Unless Indian tribes are specifically exempted from civil rights statutes, compliance with civil rights statutes is required, including compliance with equity in

service. However, Indian tribes will not be required to comply with FTA program-specific guidance for Title VI and Title VII.

3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and ADA requirements in 49 CFR parts 27, 37, and 38. Section 504 is a government-wide requirement that applies to all Federal programs, and the implementing regulations of the ADA apply to public transportation.

4. Drug and Alcohol Testing requirements (49 CFR part 655). FTA will apply this requirement because it addresses a national safety issue for operators of public transportation.

5. National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*). This is a government-wide requirement that applies to all Federal programs.

6. Charter Service and School Bus transportation requirements in 49 CFR parts 604 and 605. The definition of ''public transportation'' in 49 U.S.C. 5302 specifically excludes school bus and charter service.

7. National Transit Database (NTD) Reporting requirement. Title 49 U.S.C. 5335 requires NTD reporting for recipients of Section 5311 funds. The TTP is a Section 5311 program that will provide funds directly to Indian tribes. Therefore, this reporting requirement applies.

8. Bus Testing requirements (49 CFR part 665). To ensure that vehicles acquired under this program will meet adequate safety and operational standards, this requirement will apply.

9. Labor Protections (49 U.S.C. 5333(b)). At the time of the August 15, 2006, Notice, FTA indicated that labor protective arrangements would be required but that FTA would not implement this requirement until the Department of Labor (DOL) revised its procedures to provide a relevant arrangement for tribes. On October 1, 2008, DOL began using a revised special warranty for the Section 5311 program which is appropriate for use with TTP grants. All TTP grants (ARRA and annual) awarded after October 1, 2008, will be subject to the special warranty for labor protective arrangements under the Section 5311 program, which will be incorporated by reference in the grant agreement.

A comprehensive list and description for all of the statutory and regulatory terms and conditions that apply to the TTP are set forth in FTA's Master Agreement for the TTP available on FTA's Web site at: *http://www.fta.dot.gov/17861_18441_ENG_HTML.htm.*

VIII. Guidelines for Preparing Grant Application

FTA will divide the applications into three categories for the purpose of reviewing and selecting projects to be funded:

A. Start ups—applications for funding of new transit service include capital, operating, administration, and planning;

B. Existing transit services—applications for funding of enhancements or expansion of existing transit services include capital, operating, administration, and planning; and

C. Planning—applications for funding include planning studies and operational planning.

The application should provide information on all items for which tribes are requesting funding in FY 2009, and indicate the specific category in which the tribe is applying.

IX. Application Content

The following information must accompany all requests for TTP funding.

Note: FTA encourages a tribe that is applying for TTP funding under both this announcement and the ARRA TTP announcement, published separately, to establish linkages between the two proposals. The project description and budget must clearly indicate activities, for which the tribe seeks ARRA TTP funding and activities proposed to be funded with TTP funds where the success of the project is dependent on receiving both funding sources.

A. Applicant Information

1. Name of Federally recognized tribe and, if appropriate, the specific tribal agency submitting the application.

2. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number if available. (**Note:** If selected, applicant will be required to provide DUNS number prior to grant award).

3. Contact information including: contact name, title, address, fax and phone number, and e-mail address if available.

4. Description of public transportation services including areas currently served by tribe, if any.

5. Name of person(s) authorized to apply on behalf of tribe (signed transmittal letter) must accompany application.

B. Technical, Legal, and Financial Capacity to Implement the Proposed Project

Tribes that cannot demonstrate adequate capacity in technical, legal and financial areas will not be considered for funding. Every application must describe the tribe's technical, legal, and financial capacity to implement the proposed project.

1. *Legal Capacity:* Provide documentation or other evidence to show that the applicant is a Federally recognized tribe. Also, the authorized representative to execute legal agreements with FTA on behalf of the tribe. If applying for capital or operating funds, does the tribe have appropriate Federal or State operating authority?

2. *Technical Capacity:* Give examples of the tribe's management of other Federal projects. What resources does the tribe have to implement a transit project?

3. *Financial Capacity:* Does the tribe have adequate financial systems in place to receive and manage a Federal grant? Describe the tribe's financial systems and controls.

C. Project Information

1. *Budget:* Provide the Federal amount requested for each purpose for which funds are sought and any funding from other sources that will be provided. If applying for a multi-year project (not to exceed 2 years), show annual request for each year by budget line item.

2. *Project Description:* Indicate the category for which funding is requested; i.e., start-ups, enhancements or replacements of existing transit services or planning studies or operational planning grants. Provide a summary description of the proposed project and how it will be implemented (*e.g.,* number and type of vehicles, service area, schedules, type of services, fixed route or demand responsive), route miles (if fixed route), major origins and destinations, population served, and whether the tribe provides the service directly or contracts for services and how will vehicles be maintained.

3. *Project Timeline:* Include significant milestones such as date of contract for purchase of vehicle(s), actual or expected delivery date of vehicles, and service start up dates.

D. Application Evaluation Criteria

Applications for funding of transit services should address the application criteria based on project to be funded (for more detail see section X)

1. Criterion 1: Project Planning and Coordination
2. Criterion 2: Demonstration of Need
3. Criterion 3: Benefits of Project
4. Criterion 4: Financial Commitment and Operating Capacity

Applications for planning grants should address the criteria in section X, C of this notice.

E. Intergovernmental Review

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

F. Funding Restrictions

FTA will consider applications for funding only from eligible recipients for eligible activities (see section V). Due to funding limitations, applicants that are selected for funding may receive less than the amount requested. Current TTP grantees applying for FY 2009 projects must be in an active status to receive additional funding.

X. How Proposals Will Be Evaluated

A. Competitive Selection Process

FTA intends to award $15 million in TTP funding. If a tribe applies for funding both under this announcement (TTP) and under the ARRA announcement, FTA will consider both applications in relationship to each other, as appropriate. FTA encourages applicants to review the evaluation criteria and all other related application information prior to preparation of an application. Applicants may receive technical assistance for application development by contacting their FTA regional Tribal liaison, or the National Rural Transportation Assistance Program (RTAP) office. Contact information for technical assistance can be found in Appendix B and C.

FTA will divide applications into three categories. The three evaluation categories are as follows:

- Start-ups—Applications for funding of new transit service include capital, operating, administration, and planning.
- Existing transit services—Applications for funding of enhancements or expansion of existing transit services include capital, operating, administration, and planning.
- Planning—Applications for planning include funding of transit planning studies and/or operational planning.

Applications will be grouped into their respective category for review and scoring purposes. Applications for planning will be evaluated using a pass/fail system, whereas start-up and existing transit services applications will be scored based on the evaluation criteria described below to determine rank for funding award determination purposes. An applicant can receive up to 25 points for each evaluation criterion, up to a total score of 100.

B. Evaluation Criteria for Start-up and Enhancements to Existing Transit Services

1. Project Planning and Coordination (25 points)

In this section, the applicant should describe how the proposed project was developed and demonstrate that there is a sound basis for the project and that it is ready to implement if funded. Information may vary depending upon whether the tribe has a formal plan that includes transit.

a. Applicants without a formal plan that includes transit are advised to consider and address the following areas:

i. Provide a detailed project description including the proposed service, vehicle and facility needs, and other pertinent characteristics of the proposed service implementation.

ii. Identify existing transportation services available to the tribe and discuss whether the proposed project will provide opportunities to coordinate service with existing transit services, including human service agencies, intercity bus services, or other public transit providers.

iii. Discuss the level of support either by the community and/or tribal government for the proposed project.

iv. Describe the implementation schedule for the proposed project, such as time frame, staffing, and procurement.

b. Applicants with a formal transit plan are advised to consider and address the following areas:

i. Describe the planning document and/or the planning process conducted to identify the proposed project.

ii. Describe how the mobility and client-access needs of tribal human service agencies were considered in the planning process.

iii. Describe what opportunities for public participation were provided in the planning process and how the proposed transit service or existing service has been coordinated with transportation provided for the clients of human service agencies, with intercity bus transportation in the area, or with any other rural public transit providers.

iv. Describe how the proposed service complements rather than duplicates any currently available services.

v. Describe the implementation schedule for the proposed project, including time frame, staffing, procurement, etc.

vi. Describe any other planning or coordination efforts that were not mentioned above.

c. Based on the information provided as discussed in the above section, proposals will be rated on the following:

i. Is there a sound basis for the proposed project?

ii. Is the project ready to implement?

2. Demonstration of Need (25 points)

In this section, the application should demonstrate the transit needs of the tribe and discuss how the proposed transit improvements will address the identified transit needs. Applications may include information such as destinations and services not currently accessible by transit, need for access to jobs or health care, special needs of the elderly and individuals with disabilities, income-based community needs, or other mobility needs.

Based on the information provided, the proposals will be rated on the following:

a. Is there a demonstrated need for the project?

b. How well does the project fulfill the need?

3. Benefits of Project (25 points)

In this section, applications should identify expected project benefits. Possible examples include increased ridership and daily trips, improved service, improved operations and coordination, and economic benefits to the community.

Benefits can be demonstrated by identifying the population of tribal members and non-tribal members in the proposed project service area and estimating the number of daily one-way trips the transit service will provide and or the number of individual riders. There may be many other, less quantifiable, benefits to the tribe and surrounding community from this project. Please document, explain or show the benefits in whatever format is reasonable to present them.

Based on the information provided proposals will be rated based on:

a. Will the project improve transit efficiency or increase ridership?

b. Will the project improve mobility for the tribe?

c. Will the project improve access to important destinations and services?

d. Are there other qualitative benefits?

4. Financial Commitment and Operating Capacity (25 points)

In this section, the application should identify any other funding sources used by the tribe to support existing or proposed transit services, including human service transportation funding, Indian Reservation Roads, or other FTA programs such as Job Access and Reverse Commute (JARC), New Freedom, section 5311, section 5310, or section 5309 Bus and Bus Related Equipment.

For existing services, the application should show how TTP funding will supplement (not duplicate or replace) current funding sources. If the transit system was previously funded under section 5311 through the State's apportionment, describe how requested

TTP funding will expand available services.

Describe any other resources the tribe will contribute to the project, including in-kind contributions, commitments of support from local businesses, donations of land or equipment, and human resources, and describe to what extent the new project or funding for existing service leverages other funding.

The tribe should show its ability to manage programs by demonstrating the existing programs it administers in any area of expertise such as human services. Based upon the information provided, the proposals will be rated on the extent to which the proposal demonstrates that:

a. This project provides new services or complements existing service;

b. TTP funding does not replace existing funding;

c. The tribe has or will provide non-financial support to project;

d. The tribe has demonstrated ability to provide other services or manage other programs; and

e. Project funds are used in coordination with other services for efficient utilization of funds.

C. Proposals for Planning Grants

For planning grants, the application should describe, in no more than three pages, the need for and a general scope of the proposed study.

1. Criteria: Need for Planning Study

Based on the information provided, proposals will be rated pass/fail based on the following:

a. Is the tribe committed to planning for transit?

b. Is the scope of the proposed study for tribal transit?

D. Continuation Projects

If an applicant is proposing a continuation project, using FY 2009 funding, tribes must demonstrate that their project(s) are in an active status to receive additional funding. Along with the criteria listed in Section B, proposals should state that the applicant is a current TTP grantee and provide information on their transit project(s) status including services now being provided and how the new funding will complement the existing service. Please provide any data that would be helpful to project evaluators, i.e., ridership, increased service hours, extended service routes, stops, etc. If you received a planning grant in previous fiscal years, please indicate the status of your planning study and how this project relates to that study.

E. Review and Selection Process

Each application will be screened by a panel of members, including FTA Headquarters and regional staff. Incomplete or non-responsive applications will be disqualified. FTA will make an effort to award grants to as many qualified applicants as possible. FTA will make an effort to award grants to as many qualified applicants as possible. FTA reserves the right to select any capital activities included in either the ARRA TTP and FY 2009 TTP application to receive ARRA TTP or FY 2009 TTP funding, depending on the total demand in response to both announcements.

XI. Award Administration Information

FTA will award grants directly to Federally recognized Indian tribes for the projects selected through this competition. Following publication of the selected recipients, projects, and amounts, FTA regional staff will assist the successful applicants in preparing electronic applications for grant awards. At that time, the tribe will be required to sign the Certification and Assurances contained in Appendix A. The Master Agreement is available on FTA's Web site at *http://www.fta.dot.gov/17861_18441_ENG_HTML.htm.*

FTA will notify all applicants, both those selected for funding and those not selected, when the competitive selection process is complete. Projects selected for funding will be published in a **Federal Register** notice.

XII. Other Information

A. Technical Assistance

Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding procedures for making the required certifications and assurances to FTA before grants are made and will provide assistance in preparing the documentation necessary for the grant award.

B. Certifications and Assurances

Applicants selected for grant awards under the TTP will be required to formally designate, by resolution or other formal tribal action, an authorized representative who will have the authority to execute grant agreements on behalf of the Indian tribe with FTA and who will also have the authority on behalf of the Indian tribe to execute FTA's Annual List of Certifications and Assurances. The Annual List of Certifications and Assurances is attached in Appendix A for informational purposes only

C. Reporting

Title 49 U.S.C. 5335 requires recipients, of Section 5311 program funds including tribes, to report data, as specified in 49 U.S.C. 5311(b)(4) to NTD. Specific procedures and data requirements for tribes are being developed and will be available on the NTD Web site. For technical assistance, contact Lauren Tuzikow at 703–462–5233, e-mail: *Lauren.tuzikow@TSPUSA.com.* For NTD program information, contact Gary DeLorme at 202–366–1652. Annual progress reports and financial status reports will be required of all recipients.

D. Agency Contact(s)

Contact the appropriate FTA regional Tribal Liaison (Appendix B) for application specific information and issues. For general program information, contact Lorna R. Wilson, Office of Transit Programs, at (202) 366–2053, e-mail: *Lorna.Wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

Issued in Washington, DC, this 21 day of April, 2009.

Matthew J. Welbes,

Acting Deputy Administrator.

Appendix A—Federal Fiscal Year 2009 Certifications and Assurances for the Federal Transit Administration Public Transportation on Indian Reservation Program

Federal Fiscal Year 2009 Certifications and Assurances for Federal Transit Administration Assistance Programs

Preface

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2008. Twenty-four (24) Categories of certifications and assurances are listed by numbers 01 through 24 in the TEAM–Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients.'' Category 01 applies to all Applicants. Category 02 applies to all applications for Federal assistance in excess of $100,000. Categories 03 through 24 will apply to and be required for some, but not all, Applicants and projects. FTA's annual certifications and assurances permit the Applicant to select a single certification which can cover all the programs for which it anticipates submitting an application. FTA requests the Applicant to read each certification and assurance carefully and select all certifications and assurances that may apply to the programs for which it expects to seek Federal assistance.

FTA and the Applicant understand and agree that not every provision of these

certifications and assurances will apply to every Applicant or every project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of project and the section of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurances reflect applicable requirements of FTA's enabling legislation currently in effect.

The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the current FTA Master Agreement MA(14) for Federal Fiscal Year 2008 at the FTA Web site *http://www.fta.dot.gov/documents/14–Master.pdf.* The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.

Because many requirements of these certifications and assurances will require the compliance of the subrecipient of an Applicant, we strongly recommend that each Applicant, including a State, that will be implementing projects through one or more subrecipients, secure sufficient documentation from each subrecipient to ensure compliance, not only with these certifications and assurances, but also with the terms of the Grant Agreement or Cooperative Agreement for the project, and the Master Agreement or an alternative Master Agreement for its project, if applicable, incorporated therein by reference. Each Applicant is ultimately responsible for compliance with the provisions of the certifications and assurances applicable to itself or its project irrespective of participation in the project by any subrecipient.

01. Assurances Required for Each Applicant

Each Applicant for FTA assistance must provide all assurances in this Category ''01.'' Except to the extent that FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category ''01.''

A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant ensures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

Except if the Applicant is an Indian tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant ensures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant ensures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance derived from FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant ensures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA. Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant ensures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant ensures that it will submit the required information pertaining to its compliance with these provisions.

(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.

(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.

(6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR 27.9, the Applicant ensures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or

benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant ensures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, et seq., and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq., and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

F. U.S. Office of Management and Budget (OMB) Assurances

Consistent with OMB assurances set forth in SF–424B and SF–424D, the Applicant ensures that, with respect to itself or its project, the Applicant:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.,* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 201 *et seq.,* relating to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.,* relating to nondiscrimination in the sale, rental, or financing of housing; and

(i) Any other nondiscrimination statute(s) that may apply to the project;

(6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.,* which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR 24.4, the Applicant ensures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.,* and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.,* the Copeland ''Anti-Kickback'' Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.,* regarding labor standards for Federally assisted projects;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;

(11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to ensure nondiscrimination during the useful life of the project;

(12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction

site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j–6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) To the extent applicable, will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 et seq., and U.S. DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) To the extent applicable, will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 et seq., and U.S. Department of Agriculture regulations, ''Animal Welfare,'' 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq., OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' Revised, and the most recent applicable OMB A–133 Compliance Supplement provisions for the U.S. DOT; and

(19) To the extent applicable, will comply with all applicable provisions of all other Federal laws, regulations, and directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

22. Tribal Transit Program

Each Applicant for Tribal Transit Program assistance must provide all certifications and assurance set forth below. Except to the extent that FTA determines otherwise in writing, FTA may not award any Federal assistance under the Tribal Transit Program until the Applicant provides these certifications and assurances by selecting Category ''22.''

In accordance with 49 U.S.C. 5311(c)(1) that authorizes the Secretary of Transportation to establish terms and conditions for direct grants to Indian tribal governments, the Applicant certifies and ensures as follows:

A. The Applicant ensures that:

(1) It has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;

(2) It has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) The project equipment and facilities will be adequately maintained; and

(4) Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources.

B. In accordance with 49 CFR 18.36(g)(3)(ii), the Applicant certifies that its procurement system will comply with the requirements of 49 CFR 18.36, or will inform FTA promptly that its procurement system does not comply with 49 CFR 18.36.

C. To the extent applicable to the Applicant or its Project, the Applicant certifies that it will comply with the certifications, assurances, and agreements in Category 08 (Bus Testing), Category 09 (Charter Bus Agreement), Category 10 (School Transportation Agreement), Category 11 (Demand Responsive Service), Category 12 (Alcohol Misuse and Prohibited Drug Use), and Category 14 (National Intelligent Transportation Systems Architecture and Standards) of this document.

D. If its application exceeds $100,000, the Applicant agrees to comply with the certification in Category 02 (Lobbying) of this document.

Appendix B—FTA Regional Offices and Tribal Transit Liaisons

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine, Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Phone: (617) 494–2055, Fax: (617) 494–2865, Regional Tribal Liaison: Judi Molloy.

Region II—New York, New Jersey, Brigid Hynes-Cherin, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, Phone: (212) 668–2170, Fax: (212) 668–2136, Regional Tribal Liaison: Rebecca Reyes-Alicea.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC, Letitia Thompson, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Phone: (215) 656–7100, Fax: (215) 656–7260.

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico, Virgin Islands. Yvette G. Taylor, FTA Regional Administrator, 230 Peachtree St., NW., Suite 800, Atlanta, GA 30303, Tel.: 404–865–5600, Fax: 404–865–5605, Regional Tribal Liaisons: James Garland.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan. Marisol R. Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, Phone: (312) 353–2789, Fax: (312) 886–0351, Regional Tribal Liaisons: William Wheeler, Joyce Taylor.

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma. Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Phone: (817) 978–0550, Fax: (817) 978–0575, Regional Tribal Liaison: Lynn Hayes.

Region VII—Iowa, Nebraska, Kansas, Missouri, Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, Phone: (816) 329–3920, Fax: (816) 329–3921, Regional Tribal Liaisons: Joni Roeseler and Cathy Monroe.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah, Terry Rosapep, FTA Regional Administrator, 12300 West Dakota Avenue, Suite 310, Lakewood, CO 80228–2583, Phone: (720) 963–3300, Fax: (720) 963–3333, Regional Tribal Liaisons: Jennifer Stewart and David Beckhouse.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam, Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 1650, San Francisco, CA 94105–1831, Phone: (415) 744–3133, Fax: (415) 744–2726, Regional Tribal Liaison: Eric Eidlin.

Region X—Washington, Oregon, Idaho, Alaska, Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Phone: (206) 220–7954, Fax: (206) 220–7959, Regional Tribal Liaisons: Bill Ramos and Annette Clothier.

Appendix C—Technical Assistance Contacts

Alaska Tribal Technical Assistance Program, Kim Williams, University of Alaska, Fairbanks, P.O. Box 756720, Fairbanks, AK 99775–6720, (907) 842–2521, (907) 474–5208, williams@nushtel.net, *http://community.uaf.edu/~alaskattac* Service area: Alaska.

National Indian Justice Center, Raquelle Myers, 5250 Aero Drive, Santa Rosa, CA 95403, (707) 579–5507 or (800) 966–0662, (707) 579–9019, *nijc@aol.com, http://www.nijc.org/ttap.html,* Service area: California, Nevada.

Tribal Technical Assistance Program at Colorado State University, Ronald Hall, Rockwell Hall, Room 321, Colorado State University, Fort Collins, CO 80523–1276, (800) 262–7623, (970) 491–3502, *ronald.hall@colostate.edu, http://ttap.colostate.edu/,* Service area: Arizona, Colorado, New Mexico, Utah.

Tribal Technical Assistance Program (TTAP), Bernie D. Alkire, 301–E Dillman Hall, Michigan Technological University, 1400 Townsend Drive, Houghton, MI 49931–1295, (888) 230–0688, (906) 487–1834, *balkire@mtu.edu, http://www.ttap.mtu.edu/.*

Service area: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania.

Northern Plains Tribal Technical Assistance Program, Dennis Trusty, United Tribes Technical College, 3315 University Drive, Bismarck, ND 58504, (701) 255–3285 ext. 1262, (701) 530–0635, *nddennis@hotmail.com, http://www.uttc.edu/forum/ttap/ttap.asp,* Service area: Montana (Eastern), Nebraska (Northern), North Dakota, South Dakota, Wyoming.

Northwest Tribal Technical Assistance Program, Richard A. Rolland, Eastern Washington University, Department of Urban Planning, Public & Health Administration, 216 Isle Hall, Cheney, WA 99004, (800) 583–3187, (509) 359–7485, *rrolland@ewu.edu, http://www.ewu.edu/TTAP/,* Service area: Idaho, Montana, (Western), Oregon, Washington.

Tribal Technical Assistance Program at Oklahoma State University, James Self, Oklahoma State University, 5202 N. Richmond Hills Road, Stillwater, OK 74078–0001, (405) 744–6049, (405) 744–7268, *jim.self@okstate.edu, http://ttap.okstate.edu/,* Service area: Kansas, Nebraska, (Southern), Oklahoma, Texas.

Other Technical Assistance Resources

National RTAP (National Rural Transit Assistance Program), Contact: Nichole Goldsmith, Executive Director, 10 G Street NE., Suite 710, Washington, DC 20002, Telephone: (202) 248–5044, Fax: (202) 289–6539, *http://www.nationalrtap.org.*

Community Transportation Association of America, The Resource Center—800–891–0590, *http://www.ctaa.org/.*

[FR Doc. E9–9773 Filed 4–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Persons and Identification of New Aliases Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of six newly-designated entities, one newly-designated person, and eight additional aliases for a previously-designated entity whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: The designation by the Director of OFAC of the six entities, one person, and eight new aliases identified in this notice pursuant to Executive Order 13382 is effective on April 7, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On April 7, 2009, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated six entities and one individual whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. AMIN INDUSTRIAL COMPLEX (a.k.a. AMIN INDUSTRIAL COMPANY; a.k.a. AMIN INDUSTRIAL

COMPOUND), P.O. Box 91735–549, Mashad, Iran; Amin Industrial Estate, Khalage Rd., Seyedi District, Mashad, Iran; Kaveh Complex, Khalaj Rd., Seyedi St., Mashad, Iran [NPWMD].

2. KAVEH CUTTING TOOLS COMPANY (a.k.a. KAVEH CUTTING TOOLS; a.k.a. KAVEH CUTTING TOOLS COMPLEX; a.k.a. KAVEH CUTTING TOOLS FACTORIES), 3rd Km of Khalaj Road, Seyyedi Street, Mashad, Iran 91638; Km 4 of Khalaj Road, End of Seyedi Street, Mashad, Iran; P.O. Box 91735–549, Mashad, Iran; Khalaj Rd., End of Seyyedi Alley, Mashad, Iran; Moqan St., Pasdaran St., Pasdaran Cross Rd., Tehran, Iran [NPWMD].

3. KHORASAN METALLURGY INDUSTRIES (a.k.a. KHORASAN AMMUNITION AND METALLURGY INDUSTRIES; a.k.a. KHORASAN METALOGY INDUSTRIES; a.k.a. SANAYE METOLOGIE IRAN; a.k.a. THE METALLURGY INDUSTRIES OF KHORASAN), Khalaj Road, End of Seyedi Street, Mashad, Iran; P.O. Box 91735–549, Mashad, Iran [NPWMD].

4. NIRU BATTERY MANUFACTURING COMPANY (a.k.a. NIROU BATTERY MANUFACTURING SABA BATTERY COMPANY; a.k.a. NIRU CO. LTD.; a.k.a. SHERKAT BATTERY SAZI NIRU SAHAMI KHASS; a.k.a. THE NIRU BATTERY COMPANY), End of Pasdaran Avenue, Nobonyad Square, P.O. Box 19575–361, Tehran 16489, Iran; Next to Babee Exp. Way, Nobonyad Sq., P.O. Box 19575–361, Tehran, Iran [NPWMD].

5. SHAHID SAYYADE SHIRAZI INDUSTRIES (a.k.a. SHAHID SAYYAD SHIRAZI INDUSTRIES; a.k.a. SHAHID SAYYED SHIRAZI IND.), Next To Nirou Battery Mfg. Co, Shahid Babaii Expressway, Nobonyad Square, Tehran, Iran; Pasdaran St., P.O. Box 16765, Tehran 1835, Iran; Babaei Highway—Next to Niru M.F.G, Tehran, Iran [NPWMD].

6. YAZD METALLURGY INDUSTRIES (a.k.a. YAZD METALLURGICAL INDUSTRIES; a.k.a. YAZD METALLURGICAL IND'S CO.), Pasdaran Avenue, Next to Telecommunication Industry, Tehran, Iran 16588; Postal Box 89195/878, Yazd, Iran; P.O. Box 89195–678, Yazd, Iran; Km 5 of Taft Road, Yazd, Iran [NPWMD].

7. FANGWEI, LI (a.k.a. LEE, Karl), China; c/o LIMMT ECONOMIC AND TRADE COMPANY, LTD., 2501–2508 Yuexiu Mansion, No. 82 Xinkai Road, Dalian, Liaoning 116011, China; DOB 18 Sep 1972; nationality China (individual) [NPWMD].

In addition, the SDN entry for LIMMT ECONOMIC AND TRADE CO., LTD., designated under E.O. 13382 on June 13, 2006, was amended to add the name of eight additional aliases (AKA's) of LIMMT. The amended entry for LIMMT on the OFAC SDN List now reads as follows:

LIMMT ECONOMIC AND TRADE COMPANY, LTD. (a.k.a. LIMMT (Dalian FTZ) Metallurgy and Minerals Co., Ltd; a.k.a. LIMMT (Dalian FTZ) Minmetals and Metallurgy Co., Ltd.; a.k.a. LIMMT (Dalian) Metallurgy and Minerals Co., Ltd.; a.k.a. Ansi Metallurgy Industry Co. Ltd.; a.k.a. Blue Sky Industry Corporation; a.k.a. Dalian Carbon Co., Ltd.; a.k.a. Dalian Sunny Industry & Trade Co., Ltd.; a.k.a. Liaoning Industry & Trade Co., Ltd.; a.k.a. SC (Dalian) Industry & Trade Co., Ltd.; a.k.a. Sino Metallurgy & Minmetals Industry Co., Ltd.; a.k.a. Wealthy Ocean Enterprises Ltd.), 2501–2508 Yuexiu Mansion, No. 82 Xinkai Road, Dalian, Liaoning 116011, China; No. 10 Zhongshan Road, Dalian, China; No. 100 Zhongshan Road, Dalian, China; No. 08, F25 Yuexiu Mansion, Xigang District, Dalian, China; and all other locations worldwide [NPWMD].

Dated: April 23, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–9771 Filed 4–28–09; 8:45 am]

BILLING CODE 4811–45–P

Federal Register

Wednesday,
April 29, 2009

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 250, 285, and 290

Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 285, and 290

[Docket ID: MMS–2008–OMM–0012]

RIN 1010–AD30

Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; Notice of Availability of the Final Environmental Assessment.

SUMMARY: The MMS is publishing final regulations to establish a program to grant leases, easements, and rights-of-way (ROW) for renewable energy project activities on the Outer Continental Shelf (OCS), as well as certain previously unauthorized activities that involve the alternate use of existing facilities located on the OCS; and to establish the methods for sharing revenues generated by this program with nearby coastal States. These regulations will also ensure the orderly, safe, and environmentally responsible development of renewable energy sources on the OCS.

The MMS prepared a Final Environmental Assessment (EA) analyzing this rule. The EA incorporates by reference the Programmatic Environmental Impact Statement *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007.* The EA was prepared to assess any impacts of this rule. The Final EA is available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm.*

DATES: *Effective Date:* This final rule is effective on June 29, 2009. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of June 29, 2009.

FOR FURTHER INFORMATION CONTACT:

Final rule: Maureen Bornholdt, Program Manager, Office of Alternative Energy Programs, at (703) 787–1300 or *maureen.bornholdt@mms.gov;* or Amy C. White, Regulations and Standards Branch, at (703) 787–1665 or *amy.white@mms.gov.*

Environmental Assessment: James F. Bennett, Chief, Branch of Environmental Assessment, at (703) 787–1660 or *James.F.Bennett@mms.gov.*

SUPPLEMENTARY INFORMATION: The MMS developed this program and final regulations under the authority granted to the Secretary of the Interior (Secretary) by the Energy Policy Act of 2005, which amended the Outer Continental Shelf Lands Act (OCS Lands Act). Under this new authority, the Secretary maintains discretionary authority to issue leases, easements, or ROWs on the OCS for previously unauthorized activities that: (i) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or (ii) use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

Background

Mandate of Energy Policy Act of 2005 (EPAct)

The EPAct amended the OCS Lands Act to authorize the Secretary to issue leases, easements, or ROWs on the OCS for activities that:

(i) Support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium;

(ii) Support transportation of oil or natural gas, excluding shipping activities;

(iii) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

(iv) Use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

This new authority does not apply to activities that are otherwise authorized by law, including those covered by the OCS Lands Act, the EPAct, the Deepwater Port Act of 1974, and the Ocean Thermal Energy Conversion Act of 1980. On March 20, 2006, the Secretary of the Interior delegated to the MMS the new authority that was conferred by the EPAct. Under this authority, MMS will regulate the generation of electricity or other forms of energy from sources other than oil and natural gas on OCS facilities and the transmission on project easements and ROWs issued under this part. The MMS will not regulate sales of electricity or other forms of energy. The MMS will not regulate the transmission of electricity or other forms of energy on State lands.

In addition, the EPAct requires the Secretary to share with nearby coastal States a portion of the revenues received by the Federal Government from authorized renewable energy and alternate use projects on certain areas of the OCS. This final rule implements this mandate and describes the methods MMS will use for identifying what projects are covered by this requirement, determining which States are eligible to receive shares of the revenues, and—if two or more States are eligible to receive revenues from the same project—allocating the appropriate share to each eligible State.

The EPAct included a requirement that the Secretary develop any necessary regulations to implement the new authority. This final rule applies to the activities described in (iii) and (iv) previously (i.e., those relating to production, transportation, or transmission of energy from sources other than oil and gas, and to the use of existing OCS facilities for energy-related or other authorized marine-related purposes). Regulations for activities described in (i) and (ii) previously (i.e., those relating to oil and gas) will be promulgated separately in appropriate parts of the existing MMS oil and gas regulations.

While the MMS is the lead agency for authorizing OCS renewable energy and alternate use activities, we recognize that other Federal agencies have regulatory responsibility in such activities. The new authority does not expressly supersede or modify existing Federal laws, and all activities must comply fully with such laws. For instance, FERC has exclusive jurisdiction to issue licenses for hydrokinetic projects under Part I of the Federal Power Act and issue exemptions from licensing under Section 405 and 408 of the Public Utility Regulatory Policies Act of 1978 for the construction and operation of hydrokinetic projects on the OCS. However, no FERC license or exemption for a hydrokinetic project on the OCS shall be issued before MMS issues a lease, easement, or right-of-way. The MMS possesses the exclusive authority to issue leases, easements, and rights-of-way for renewable energy projects on the OCS.

In addition to providing the authority to issue leases, easements, and ROWs, the EPAct included a requirement that any activity permitted under this authority be ''carried out in a manner that provides for—

(A) Safety;

(B) Protection of the environment;

(C) Prevention of waste;

(D) Conservation of the natural resources of the outer Continental Shelf;

(E) Coordination with relevant Federal agencies;

(F) Protection of national security interests of the United States;

(G) Protection of correlative rights in the outer Continental Shelf;

(H) A fair return to the United States for any lease, easement, or right-of-way under this subsection;

(I) Prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;

(J) Consideration of—

(i) The location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and

(ii) Any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;

(K) Public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this subsection; and

(L) Oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.''

The MMS addresses these items, as appropriate, in this rulemaking.

MMS and Federal Energy Regulatory Commission (FERC) MOU

Until March 2009, regulatory uncertainty existed regarding which Federal agencies had authority to regulate wave and current energy development on the outer Continental Shelf (OCS). Both MMS and the Federal Energy Regulatory Commission (FERC) claimed this authority based on differing interpretations of Part I of the Federal Power Act (FPA) and section 8(p) of OCSLA, as amended by EPAct. However, on March 17, 2009, the Secretary of the Interior and the Acting Chairman of the Federal Energy Regulatory Commission issued a joint statement on the development of renewable energy resources on the OCS. In this joint statement, the Secretary and the Acting Commissioner requested that MMS and FERC staff prepare a Memorandum of Understanding (MOU) to describe the process by which authorizations related to renewable energy resources in offshore waters will be developed.

The MMS and FERC finalized this MOU on April 9, 2009. This agreement clarifies jurisdictional understandings regarding renewable energy projects on the OCS in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. Specifically, the MOU recognizes that (1) MMS has exclusive jurisdiction with regard to the production, transportation, or transmission of energy from non-hydrokinetic alternative energy projects on the OCS, including renewable energy sources such as wind and solar; (2) MMS has exclusive jurisdiction to issue leases, easements, and rights-of-way regarding OCS lands for hydrokinetic projects; and (3) the Commission has exclusive jurisdiction to issue licenses and exemptions for hydrokinetic projects located on the OCS.

Under this new agreement, those entities interested in operating a hydrokinetic project on the OCS must first obtain a lease from MMS. The MMS will issue a public notice to determine whether competitive interest exists in the area, and will proceed with either the competitive or noncompetitive lease issuance process depending on responses received to this public notice. The MMS will conduct the NEPA analysis necessary for the lease issuance and any site assessment activities that will occur on the lease. After an applicant acquires a lease from MMS, FERC may issue a license or exemption for the hydrokinetic project, and conduct any necessary NEPA analysis. After a license is issued, construction and operations of the project may begin as per the terms of the license. To facilitate efficient processing of the lease and license applications, it may be helpful for potential lessees to apprise both MMS and FERC of their interest in hydrokinetic development at the start of the process.

Further, the MOU states that MMS and FERC will work together to the extent practicable to develop policies and regulations with respect to OCS hydrokinetic projects, and coordinate to ensure that hydrokinetic projects meet the public interest, including the adequate protection, mitigation, and enhancement of fish, wildlife, and marine resources and other beneficial public uses. The MOU ensures that the interests of both agencies are adequately represented and that the process of developing renewable energy on the OCS happens efficiently, in an environmentally responsible manner, and with appropriate benefit to the people of the United States.

Importantly, the agreement addresses the issue of potential site-banking by developers on the OCS by eliminating redundant regulatory processes for acquiring use of OCS lands. In addition, by eliminating dual regulatory processes, the agreement addresses the potential for granting conflicting awards of OCS sites to developers by the two agencies. Specifically, FERC has agreed not to issue preliminary permits for hydrokinetic activities on the OCS, and MMS has agreed that FERC will have the primary responsibility to issue licenses for these activities. The Federal Government has effectively eliminated the opportunity for abuse by entities seeking to reserve, block, or acquire for speculative purposes large portions of the OCS. These concerns were raised by many commenters on the REAU rulemaking. The DOI/FERC MOU creates a unified, coherent process for the authorization of hydrokinetic activities on the OCS, ensuring that U.S. resources on the OCS will not be subject to a ''land rush,'' and will be developed in the most efficient manner possible.

Regulatory Process

On December 30, 2005, the MMS issued an Advance Notice of Proposed Rulemaking (ANPR) (70 FR 77345) requesting comments on the program requirements.

The ANPR requested public comments on five major program areas:

(1) Access to OCS lands and resources;

(2) Environmental information, management, and compliance;

(3) Operational activities;

(4) Payments and revenues; and

(5) Coordination and consultation.

The MMS provided a summary of the comments received on the ANPR in the Notice of Proposed Rulemaking (NPR) (73 FR 39376) published on July 9, 2008. The NPR is available on the *Regulations.gov* Web site.

Programmatic Environmental Impact Statement (PEIS) Summary

The MMS prepared a final PEIS in support of the establishment of a program for authorizing renewable energy and alternate use activities on the OCS. The final PEIS examines the potential environmental effects of the program on the OCS and identifies policies and best management practices that may be adopted for the program. The PEIS examined three alternatives, as well as the no action alternative. The three alternatives were: (1) The proposed action which would establish the program; (2) a case-by-case alternative that would evaluate each project individually without the benefit of a comprehensive program; and (3) the preferred alternative, which consisted of a combination of the first two alternatives, thus allowing MMS to review projects during the interim while the program and regulations are being established.

Given the rapidly evolving nature of this nascent industry, the MMS cannot reasonably anticipate and assess the

potential environmental impacts of all of the various technologies and potential OCS locations where these renewable energy and alternate use projects could someday be proposed. Accordingly, this PEIS is focused on renewable energy technologies and areas on the OCS that industry has expressed a potential interest in and ability to develop or evaluate from 2007 to 2014. The PEIS proposed policies and best management practices based on the analyses in the PEIS. As the program evolves and more is learned, the mitigation measures may be modified or new measures developed. Each project developed under this new program will be subject to environmental reviews under the National Environmental Policy Act (NEPA), and each project may have additional project-specific mitigation measures.

A Record of Decision (ROD) was published on January 10, 2008. The preferred alternative was selected as well as interim policies and best management practices that were recommended in the PEIS. The PEIS and ROD are available at: *http://ocsenergy.anl.gov/*.

Environmental Assessment

The MMS prepared a Final EA analyzing this rule. The EA incorporates by reference the PEIS, *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007*. This EA was prepared to assess any impacts of this rule. The Final EA is available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm*.

Notice of Proposed Rulemaking

Summary of Comments

The MMS published a NPR (73 FR 39376) on July 9, 2008. The proposed rule was accompanied by a 60-day public comment period that ended September 8, 2008.

In response to the request for comments, MMS received 280 letters from a range of entities, including, but not limited to, Non-Governmental Organizations, State and local governments, industry, and the general public. A list of commenters is included at the end of the summary. The following table illustrates the segmentation of comment letter submissions received by organization type:

Type	Number Received
State Government	38
Non-Governmental Organizations	37
Oil and Gas Industry	3
Renewable Energy Industry	27
Local Government	7
Congress	4
Tribal Government	1
Federal Government	7
Research Organizations	1
Individuals	155
Total	280

No single issue dominated the comments, which were divergent and wide-ranging. In general, comments were supportive of renewable energy developments on the OCS and reuse of existing OCS facilities. Commenters advised MMS to provide as much certainty as possible in the final rule to support the burgeoning offshore renewable energy industry, while also providing flexibility to allow industry to meet the necessary requirements. The MMS was also urged to advocate for early and consistent stakeholder involvement in both the program and with individual project permitting.

The most common topics addressed by commenters included: Aquaculture, State and local consultation, bonding, confidentiality, alternate-use liability transference, jurisdiction, revenue sharing, and environmental review processes. These topics and others are addressed further in the sections that follow.

Access to OCS Lands and Procedures for Leasing

With regard to timeframes for activities required by the proposed rule, several commenters requested this rule provide clear and defined timelines for MMS's responsibilities. Some suggested that timelines should be set for the issuance of the public notice to determine developer interest. Others suggested that a timeline be set for the comment evaluation period following the deadline for public comments in response to a public notice. Some suggested that a timeline be set for the determination of competitive interest. Other commenters proposed a timeline be set for MMS action on lease-suspension requests.

With regard to jurisdiction, one commenter raised the question about whether MMS has jurisdiction over the cables associated with a renewable energy project even if these cables were used for a nonrenewable energy project at the end of the original lease term.

Some commenters requested that due-diligence requirements be established to ensure that the applicant is financially and technically sound when being considered as a potential leaseholder.

Some comments suggested that additional clarification is needed on a number of elements in the rule, including on what constitutes competitive interest, the ROW and right-of-use and easement (RUE) grant process, and activity cessation and suspension orders and the activities that these orders affect.

A large number of comments related to the process for renewing leases. Some of these comments requested that the renewal process begin earlier, and others asked that while a lease renewal request is pending, the rule make it clear that the lease term will be automatically extended until MMS makes a decision.

Some commenters expressed concern with the concept of lease area contractions, suggesting that MMS could contract leases capriciously. Other commenters suggested MMS should reconsider allowing for the scaling of projects to ensure fairness and ease of market entry. The MMS should also consider additional strategies beyond diligence requirements to ensure that individual developers could not tie up large areas of the OCS, thereby prohibiting other development interests and, potentially, other uses.

Many commenters suggested that MMS should permit lessees of limited leases to have priority consideration when considering a commercial lease application. For instance, if a lessee is already operating on a limited lease in a given area, and that same area is opened up for a commercial lease sale, that lessee should be given priority over other competitors for that lease area.

With regard to the issuance of limited leases for the purpose of research, some commenters supported the idea of having Department of Energy supported research access rights expanded to include State governments and academic institutions.

Several comments urged MMS to consider and establish a multi-factor evaluation process when considering a project proposal in a competitive lease sale.

Environmental Information, Management, and Compliance Programs

Several commenters suggested that the environmental review process proposed by MMS would be overly burdensome and redundant. Some commenters suggested that the NEPA process proposed by MMS goes far beyond what NEPA requires and what other agencies require to implement NEPA in order to demonstrate the extent of environmental impact. Some commenters suggested that the NEPA process is far too cumbersome as set out in the proposed rule. Having the Site Assessment Plan (SAP), Construction and Operations Plan (COP), and lease sale Environmental Impact Statement (EIS) undergo NEPA is burdensome and unnecessary.

With regard to the environmental review process, several comments pertained to the division of cost burden, requesting clarification, or changes to the designation of responsible parties with regard to payment. Some commenters suggested that MMS should allow companies the option of developing the required environmental documents instead of having MMS staff and its contractors develop them for projects.

With regard to the Coastal Zone Management Act (CZMA) review process, several commenters requested clarification on how the process would work. Some commenters suggested that it is unclear in the proposed rule regarding exactly what is required under a noncompetitive lease sale versus a competitive lease sale. Other commenters were unclear on what parts of CZMA applied to these types of lease sales.

Many commenters expressed concern with minimizing the environmental impacts of leases, easements, and ROWs. With regard to cumulative impacts and monitoring, several commenters proposed that projects be closely monitored for their overall impacts on the environment, both beneficial and adverse. Some commenters suggested that the proposed rule did not adequately address the need for consideration of potential impacts on commercial fishing. Other commenters advocated that monitoring activities should not only encompass the proposed project area, but also those areas directly adjacent to projects. Some commenters suggested that the guidelines for monitoring should clarify that States reserve the right to impose additional requirements as needed. The MMS also received comments suggesting that cumulative effects should be required as part of an applicant's SAP, COP, and initial project proposal. The cumulative effects should also be considered as part of the lease-sale evaluation process.

With regard to adaptive management, several commenters proposed that the requirements and process for adaptive management are unclear in the proposed rule and need to be clarified. Some suggested that the lease instrument should be site specific and clearly specify the scope of the adaptive management activities MMS might require. Some comments pointed to the approach employed by the U.S. Fish and Wildlife Service for specifying adaptive management, where the terms and obligations are negotiated upfront. Some suggest that adaptive management should be included as a standard component of the SAP, General Activities Plan (GAP), and COP.

Several commenters advocate that MMS apply categorical exclusions for certain data gathering activities. Some comments suggest that categorical exclusions could apply to most, if not all, resource evaluation activities, the installation of monitoring devices, and activities conducted prior to the approval of plans while on a lease. Some comments point to the policy currently employed by the U.S. Bureau of Land Management (BLM) for granting these exclusions.

Facility Design, Fabrication, and Installation

With regard to facility design and engineering, the majority of comments pertained to the proposed requirement that the lessee use a Certified Verification Agent (CVA). Many commenters suggested that the required use of a CVA is redundant, expensive, and not effective where such design, fabrication, installation, repairs, and modifications are done under the direction of a licensed engineer. Some commenters pointed out that because construction of offshore wind facilities consist of repeated installation of numerous, nearly identical units, requiring the CVA to verify, witness, survey, or check most, if not all, of a wind farm installation is burdensome and unnecessary.

With regard to the engineering and design standards by which offshore renewable energy facilities are aligned, many commenters suggested it was unclear in the proposed rule to what standard(s) the CVA would compare individual projects, as there is no governing body approving such designs, nor does MMS state specific standards in the rule. Some commenters urged MMS to adopt internationally accepted standards wherever possible. Other commenters suggested that MMS consider a phased approach in the facility design, fabrication, and installation requirements, thereby proposing that MMS rely on existing standards while proceeding with the analysis of all standards to determine what modifications might be justified in a second phase of the program. In addition, because there are no set standards or governing body, some commenters proposed that MMS provide training to prospective CVAs to meet the safety requirements that MMS will impose.

Regulation of Operational and Decommissioning Activities

With regard to site-assessment activities, some commenters expressed a desire to have the ability to conduct site-assessment activities before a lease has been issued. Other commenters suggested that the SAP and COP be combined into a single plan, while others recommended that MMS create a categorical exclusion for site-assessment activities.

With regard to information requirements, many commenters requested additional clarification regarding various information requirements under the lease, including

those required during the application phase, within the plans, during the environmental reviews, and during the technical evaluation of a proposed project.

A large number of comments addressed the topic of the proposed notification requirements. Some commenters suggested that the 3-day notification requirement, as explained in subpart H, should be restated to address equipment or failures that pose significant risk to the environment, personnel, or property. Some commenters suggested that the notification requirement may not be appropriate for routine repair work, and would be better suited to emergency repairs only or those that would require environmental documentation. As stated in the proposed rule, the notification requirements are unclear regarding what activities would require notification; because there are a range of activities that could take place, such as changing light bulbs, this provision needs to be better defined.

Several comments addressed the topic of inspections. Some commenters pointed out that renewable energy facilities, like wind farms, will be unmanned and, as such, should not be subject to the same inspection requirements that the oil and gas industry are subject to. Certain commenters suggested that offshore wind turbines be classified as unmanned for safety purposes, as these facilities are unmanned during normal operations. Unscheduled inspections to the actual wind turbines or energy generating facilities would be better served with visits to the 24-hour shoreside monitoring station, where real-time information on the condition and operation of the facility would be available. Some commenters advocated unscheduled inspections should be coordinated with the developer to minimize possible safety risks to the inspector.

A large number of comments pertained to the decommissioning obligations set out in the proposed rule. Some suggested that allowing structures to remain in place at the end of a lease makes more sense than removal, both from a financial perspective and from an environmental perspective. Facility components, such as a turbine foundation, scour protection equipment, and cabling could cause greater harm to the surrounding ecology during and after removal than if left in place. Some commenters suggested that these structures could benefit the local ecology by continuing to serve as artificial reefs. Some comments requested that MMS require CZMA review as part of the decommissioning application. Others advocated having decommissioning requirements be determined on a case-by-case basis in the COP, by considering site-specific characteristics. On the side of those that support removal of all structures, some commenters suggested that the final rule should include a requirement that the development site be returned to the ecological baseline that existed prior to the installation of the energy project. Other commenters suggested that the requirements incorporate a presumption that all facilities, cables, and other obstructions be removed, as submarine cables and other components can pose a long-term obstruction for much of the fishing gear used on the OCS.

Some comments suggested that the specifics of the decommissioning requirements should be modified. Some suggested that the removal of structures to the seabed depth specified in the rule is unnecessary. Some pointed to requirements employed in Europe, where the common removal depth for a wind turbine foundation is no more than 2 meters or 6 feet.

Payments, Royalties, Fees, and Bonds

The majority of comments regarding payments and financial assurance requirements urged MMS to expand the range of financial assurance options available to the lessee, including allowing the use of a third-party guaranty, audited financial statements, power purchase or other sale agreements, insurance, or other alternatives approved by MMS.

Another point raised in a large volume of comments addressed the topic of decommissioning costs. Some commenters suggested MMS should separate financial assurance for decommissioning costs from financial assurance for other regulatory obligations, while others suggested that the rule be crafted in a way that ensured the final bonding costs will remain within reason and are reviewed carefully to cover only the necessary costs. A number of commenters suggested MMS should revise the provisions to provide more cost-effective protection against defaults on decommissioning obligations. Some commenters shared concern regarding MMS's ability to use bonding for cleanup and recovery activities once a lease term has ended. Some commenters suggested the decommissioning obligation under a limited lease, with a meteorological tower cited as an example, should not accrue—at a minimum—until after the development lease is awarded and MMS has approved the plan.

At least one commenter mentioned the uncertainty in the requirements and in the process of granting and overseeing ROWs and RUEs will impact the feasibility for the developer to obtain financing.

With regard to operating fees, many commenters recommended that operating fees under a commercial lease be deferred until the leaseholder is either generating energy or has begun construction on the lease. One suggestion was made to have the operating fees deferred until the CVA approves the COP.

With regard to bidding, some commenters recommended MMS establish minimum bids and allow for the rejection of high bids in certain circumstances.

Some commenters suggested the leasing fees, royalties, and rent in the proposed rule were set too low in light of the value of existing fisheries that could be displaced by renewable energy projects.

Coordination and Consultation

Many commenters urged early and consistent consultation and coordination with relevant State and Federal agencies. A few commenters suggested the establishment of standing inter-agency advisory and planning committees to allow for continuous dialogue with multiple stakeholders during the lease issuance process. Some commenters requested they be specifically mentioned as a consulting entity in the rule.

With regard to State competitions for offshore development, some commenters requested MMS recognize the results of State competitions and grants for renewable energy development offshore their States when considering potential lessees in Federal waters.

With regard to consultation during specific stages in the lease issuance process, some commenters suggested the rule require applicants consult with affected State and local governments during the area identification stage and throughout the remaining SAP and COP review processes. Some suggested MMS work more closely with the Federal Energy Regulatory Commission to avoid duplication in coastal EAs and reviews, while others suggested MMS work just as closely with State agencies during the coastal zone management processes. Other comments from industry suggested that renewable energy developers should also confer with local oil and gas project planners to ensure compatibility. Some commenters advocated that MMS express, in the final rule, a process for MMS to

coordinate with States, tribes, and local governments in adjusting mitigation and monitoring requirements.

A common thread running through the comments on coordination and consultation is the desire to establish and use planning and coordination mechanisms to facilitate appropriate siting of OCS renewable energy activity and to develop meaningful priorities. Some commenters recommended establishing new mechanisms, and others suggested working with existing means. The MMS believes that such approaches may be accommodated under the final rule, and we are committed to reaching out to stakeholders, and local, state, and Federal government agencies as we implement the rule.

We began outreach to officials and organizations at the national, regional, state, and local levels when we began the rulemaking process, and we have received valuable input throughout the process. We have participated in existing regional planning mechanisms, such as the West Coast Governors Agreement and the Northeast Regional Ocean Council, which are working toward properly balanced uses of the ocean through a regionally coordinated approach to relevant issues, including renewable energy development. We recognize and support new efforts, such as the one under way jointly by the States of New York, New Jersey, Delaware, Maryland, and Virginia to convene a Mid-Atlantic Ocean Summit, as well as the U.S. Offshore Wind Collaborative's proposed New England and Mid-Atlantic States Joint Planning Agreement. We also have been working with individual States, localities, and tribes in the implementation of the MMS interim policy on resource assessment and technology testing and hope to build on those efforts in the establishment of joint task forces addressing commercial renewable energy development opportunities as provided under the final rule.

Two States—New Jersey and Rhode Island—are well along in planning efforts that will help to determine appropriate areas of the OCS for development, and MMS has been an active partner with those States. Such efforts—supported by MMS environmental study and technical research initiatives, as well as the Coordinated OCS Mapping Initiative mandated by EPAct—will contribute significantly as MMS implements this final rule.

Section 388 of EPAct 2005 requires that any activity permitted under this authority be carried out in a manner that provides for, among other things, protection of the environment, conservation of the natural resources of the outer continental shelf; coordination with relevant Federal agencies; protection of national security interests of the United States, prevention of interference with reasonable uses and functions of the exclusive economic zone, the high seas, and the territorial seas, and consideration of any other use of the sea or seabed, including, but not limited to fisheries, protection of biodiversity and ecosystem function, sealanes, potential siting of deepwater ports, or navigation. Consistent with this statutory direction, MMS understands that this rule will be applied in conjunction with interagency-led planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS. These activities will include multifaceted spatial planning effort that will incorporate ecosystem based science and stewardship along with socioeconomics, research, and modeling in the context for demands for other ocean uses and functions. It is anticipated that the Council on Environmental Quality will help coordinate this interagency effort, with the National Oceanic and Atmospheric Administration (NOAA) playing a key role, along with MMS. Through this type of coordination and advance planning, we expect to be able to speed the process of developing renewable energy projects in the OCS.

This final rule is designed to be implemented both within the existing federal framework of multi-agency management of ocean activities, as well as to adapt to alternative ocean governance regimes that could be developed in the future. MMS will coordinate closely with all relevant federal and state agencies both on the implementation of this rule, through actualization and operation to termination and decommissioning, as well as on the development of any broader governance structure to address the many competing demands and interests facing our oceans.

The MMS is responsible for ensuring that the decisions made within this comprehensive regulatory structure are supported by environmental analysis, documents, and other decision support resources. We will ensure that environmental analysis for OCS renewable energy proposals is proportional to the scope and scale of each proposal, is effectively tiered to programmatic NEPA documents, and efficiently incorporates other publicly available information by reference. The MMS will ensure timely and efficient coordination of the development and review of environmental documents with all agencies that have jurisdiction or special expertise to provide the decisionmakers. We will ensure that mitigation and monitoring information informs future decisionmaking processes.

Management of renewable energy activities by MMS under this rule is founded on many years of experience in administering OCS energy and mineral programs and will be supported by extensive investigation and information gathering under the MMS Environmental Studies and the Technology Assessment and Research Programs. Both of these programs will play a significant role to ensure the safe and environmentally-responsible use of OCS renewable energy resources. Several initiatives examine real offshore renewable energy activity experiences in Europe that will provide useful information in considering similar activity in U.S. waters as well as opportunities to form close partnerships with and learn from international governments and developers possessing offshore renewable energy expertise. As we implement our regulatory framework to harness these new and exciting ocean renewable energy opportunities, we will draw on partnerships among the Federal, state, and local governments entities to share critical information, and agency expertise, and to foster better communication between different arms of the Federal Government

The MMS believes that all of these efforts and others will be extremely helpful in deciding where and when to pursue development of renewable energy on the OCS. They will help government at all levels to commit resources appropriately and will provide developers with information to facilitate proper and efficient project proposals. Most importantly, MMS coordination and consultation with regional, state, and local planning mechanisms will give those entities that will be most affected by renewable energy activity a proper voice in the development of priorities.

Reuse of Existing Facilities

The vast majority of comments pertaining to alternate use addressed the concern that MMS would authorize mariculture activities on the OCS in the absence of express Federal mariculture legislation (such as the National Offshore Aquaculture Act that has been debated in Congress but never passed). Several commenters argued that MMS did not have the legal authority under subsection 8(p) of the OCS Lands Act to authorize Alternate Use RUEs for

mariculture activities that involved the use of an existing OCS facility.

Several commenters raised concerns regarding the apportionment of decommissioning liability between the holder of the alternate use right-of-use and easement (Alternate Use RUE) and the existing OCS lessee or operator. Most of these commenters argued that the Alternate Use RUE holder should assume liability for decommissioning the existing OCS facility, thereby allowing the existing lessee or operator to shed its decommissioning liabilities for that particular existing structure that is subject to the approved alternate use. Other commenters expressed concern that the alternate use provisions were too general in nature, and did not set forth specific grant terms, payment levels, or financial assurance commitments.

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LIST OF COMMENTERS
(EXCLUDING PRIVATE CITIZENS)

Organization	State	Organization	State
Alabama Department of Environmental Management	AL	National Hydropower Association	DC
Alaska Marine Conservation Council	AK	National Ocean Ind. Association	DC
Alaska Trollers Association	AK	National Park Service (NPS)	DC
Alliance for Affordable Energy	LA	National Park Service (Assateague NPS)	MD
Alliance to Protect Nantucket Sound	MA	Natural Resources Defense Council	NY
American Petroleum Institute)	DC	Nature Conservancy	VA
American Soybean Association	MO	Naval Surface Warfare Center	FL
American Wind Energy Association	US	New Jersey Department of Environmental Protection	NJ
Babcock & Brown	CA	North Carolina Department of Environment and Natural Resources	NC
Bluewater Wind-Member of American Wind Energy Association	NJ	Ocean Conservancy	CA
California Coastal Commission	CA	Ocean Power Technology	NJ
California Department of Fish and Game	CA	Ocean Protection Coalition	CA
California Energy Commission	CA	Ocean Renewable Energy Coalition	DC
California State Lands Commission	CA	Ocean Stewards Institute	HI
Center for Food Safety	DC	Oceans Public Trust Initiative	ME
Clean Energy States Alliance	VT	Offshore Operators Committee	LA
Clean Ocean Action	NJ	Oregon Albacore/Salmon Commission	OR
Clipper Windpower	CA	Oregon Coastal Zone Management Association	OR
Coastal States Organization	DC	Oregon Wave Energy Trust	OR
College of Marine and Earth Studies, University of Delaware	DE	Pacific Gas and Electric Company	CA
Community Environmental Council	CA	Pelamis Wave Power Ltd.	Scotland
Connecticut Department of Environmental Protection	CT	Pew Environmental Group	PA
Conservation Law Foundation	ME	PNGC Power	OR
County of Santa Barbara Planning and Development	CA	Port of Garibaldi	OR
Crab Boat Owners' Association	CA	Principle Power Inc.	WA
Deepwater Wind	NJ	Quinault Indian Nation	WA
Delaware Department of Natural Resources and Environmental Control	DE	Recreational Fishing Alliance	CA
Delaware Public Service Commission; Delaware Energy Office; Delaware Office of Management and Budget; Delaware Controller General	DE	Rhode Island Department of Environmental Management, Division of Fish and Wildlife	RI
EcoRigs	LA	San Francisco Public Utilities Commission	CA
Environmental Defense Center	CA	Southern Alliance for Clean Energy	GA
Federal Energy Regulatory Commission	DC	Southern Company	AL
Fishermen's Energy of New Jersey,	NJ	Southern Oregon Ocean Resource	OR

Organization	State	Organization	State
LLC		Coalition	
Fishermen's Advisory Committee For Tillamook	OR	State Congressmen (Collection of 12)	DC
Florida Department of Environmental Protection	FL	State of Alaska	AK
Florida Power & Light Company	FL	State of California Resources Agency	CA
Food and Water Watch	US	State of Florida (Governor's office)	FL
Gamesa Energy	DC	State of Louisiana (Governor's Office)	LA
Georgia Coastal Management Program	GA	State of Oregon (Governor's Office)	OR
Georgia Wind Working Group	GA	Surety & Fidelity Association of America	DC
Hatch Energy	NY	Surfrider Foundation	CA
Heal the Bay		The Commonwealth of Massachusetts	MA
Hubbs Seaworld Research Institute	CA	Tillamook County, OR	OR
Humane Society of the United States	US	United Fishermen of Alaska	AK
Hydropower Reform Coalition	DC	United Soybean Board	MO
International Association of Geophysical Contractors	TX	U.S. Offshore Wind Collaborative	MA
Lincoln County and the Fishermen Involved in Natural Energy Committee	OR	U.S. Senators and Congressman	DC
Lockheed Martin Corp.	VA	Virginia Coastal Energy Research Consortium	VA
Louisiana Department of Natural Resources	LA	Virginia Department of Environmental Quality	VA
Louisiana Universities Marine Consortium	LA	Washington Department of Fish and Wildlife	WA
Maine State Planning Office	ME	Washington State Department of Natural Resources	WA
Mass Audubon	MA	Washington State Dept. of Ecology	WA
Nantucket Planning and Economic Development Commission	MA	World Wildlife Fund	DC
National Fisheries Institute	VA		

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Overview of the MMS Alternative Energy and Alternate Use Program

To accommodate the regulations to support the Alternative Energy and Alternate Use Program, MMS will add a new part to subchapter B of title 30 of the Code of Federal Regulations (CFR). The new part 285 will be titled *Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf* and will address the requirements of section 388(a) of the EPAct, which amended the OCS Lands Act by adding section 8(p) (43 U.S.C. 1337(p)). In the proposed rule the new part 285 was titled *Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.* We are now using the term ''renewable energy'' instead of alternative energy because it is a more commonly used term and more easily understood by the industry and general public.

Approach to Rulemaking

The MMS developed these regulations to provide a regulatory framework for leasing and managing OCS renewable energy project activities and authorizing activities that involve the alternate use of OCS Lands Act-permitted facilities. These regulations are also intended to encourage orderly, safe, and environmentally responsible development of renewable energy sources on the OCS. The MMS expects that renewable energy projects in the near term will involve the production of electricity from wind, wave, and ocean current. In the future, other types of renewable energy projects may be pursued on the OCS, including solar energy and hydrogen production projects. These regulations were developed to allow for a broad spectrum of renewable energy development, without specific requirements for each type of energy production.

Following the publication of these regulations, MMS will publish a guidance document to support the regulations. This guidance document will provide more details on the program and will describe the type of information that we are looking for in various plan submittals. As we gain experience with renewable energy development on the OCS, we will update our regulations to include energy-resource-specific provisions and incorporate by reference appropriate documents.

This final rule (30 CFR part 285) applies to all aspects of the Alternative Energy and Alternate Use Program except for the procedures applying to appeals of MMS decisions or orders, which are covered in 30 CFR part 290, subpart A. The MMS is revising § 290.2 to clarify our decisions on bids under this program that are exempt from the appeals process at 30 CFR part 290 and are covered under § 285.118(c). This section describes the procedures for a bidder whose high bid was rejected to apply for reconsideration by the Director of MMS (Director) for renewable energy leases, ROW grants, RUE grants, or Alternate Use RUE.

Overview of the Project Development Process

General Overview

Types of Access Rights

The MMS will issue lease access rights for commercial development and site assessment and technology testing. The ROW and RUE grants will be issued for the support of renewable energy activities. The MMS will use a special grant, the Alternate Use RUE, for activities that use an existing facility.

Commercial and Limited Leases

The MMS will issue two types of leases: (1) Commercial or (2) limited. A commercial lease would convey the access and operational rights necessary to produce, sell, and deliver power through spot market transactions or a long-term power purchase agreement. A commercial lease provides the lessee full rights to apply for and receive the authorizations needed to assess, test, and produce renewable energy on a commercial scale over the long term (approximately 30 years). A commercial lease will include the right to a project easement, which will be issued to allow the lessee to install gathering, transmission, and distribution cables to transmit electricity; pipelines to transport other energy products (i.e., hydrogen); and appurtenances on the OCS, as necessary, for the full enjoyment of the lease. The project easement will be issued upon approval of the COP (for commercial leases) or GAP (for limited leases).

A limited lease will convey access and operational rights for activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy product for sale, distribution, or other commercial use exceeding a limit specified in the lease. In a change from the proposed rule, MMS has decided to permit limited leases that generate power during technology testing to sell that power within limits set in the lease instrument. For example, a limited lease could include in its terms and conditions the authorization to sell electricity produced during the testing of experimental ocean current turbine generators of up to 5 megawatts (MW) total installed capacity, thereby allowing the lessee to recoup some of the expenses entailed in its limited lease activities. Limited leases may be issued for site-assessment purposes only or for site assessment and development and testing of new or experimental renewable energy technology. Limited leases will be issued for a short term, 5 years. Under the provisions of these regulations, limited leases may be renewed, but they cannot be converted to commercial leases. If the holder of a limited lease wished to pursue commercial development on the OCS, the leaseholder will need to obtain a new commercial lease through the leasing process, as defined in these regulations.

RUE Grants and ROW Grants

The MMS will issue RUE grants authorizing the use of a designated portion of the OCS to support renewable energy activities on a lease or other approval not issued under this part (e.g., on a State-issued lease).

The MMS will issue ROW grants to allow for the construction and use of a cable or pipeline for the purpose of gathering, transmitting, distributing, or otherwise transporting electricity or other energy product generated or produced from renewable energy not generated on a lease issued under this part. An ROW grant could be used to transport electricity from a State lease to shore or from one State to another State through a transmission line that must cross the Federal OCS. An ROW is not the same as a project easement issued with a renewable energy lease under this part.

Alternate Use RUEs

The MMS will issue an alternate use RUE for the energy- or marine-related use of an existing OCS facility for activities not otherwise authorized by this subchapter or other applicable law. See preamble at subpart J, for more details regarding Alternate Use RUEs.

Obtaining Access Rights

The EPAct requires MMS to award leases, ROW grants, and RUE grants competitively, unless we make a determination of no competitive interest. In conjunction with the competitive leasing process, we will prepare NEPA and other environmental compliance documents. The MMS will put forth a call for interest, designate the lease or grant area, and publish in the **Federal Register** all other notices and calls relating to the sale. If, after putting forth a call for interest, we determine that there is no competitive interest in that particular OCS area, we may proceed in issuing a lease or grant noncompetitively. Whether a company acquires a lease or grant competitively or noncompetitively, it must comply with all MMS lease stipulations or conditions in the grant.

Federal Compliance for the Leasing Process

All activities permitted under this part must comply with all relevant Federal laws, regulations, and statutes, including, but not limited to, the following:

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Responsible Federal Agency/Agencies	Statute/Executive Order (E.O.)	Summary of Pertinent Provisions
Council on Environmental Quality	National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.)	Requires Federal agencies to prepare an EIS to evaluate the potential environmental impacts of any proposed major Federal action that would significantly affect the quality of the human environment, and to consider alternatives to such proposed actions.
U.S. Fish and Wildlife Service (FWS); National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS)	Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)	Requires Federal agencies to consult with the FWS and the NMFS to ensure that proposed Federal actions are not likely to jeopardize the continued existence of any species listed at the Federal level as endangered or threatened, or result in the destruction or adverse modification of critical habitat designated for such species.
FWS (walruses, sea and marine otters, polar bears, manatees and dugongs); NMFS (seals, sea lions, whales, dolphins, and porpoises)	Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407)	Prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States.
NMFS	Magnuson-Stevens Fishery Conservation and Management Act (also known as the Fishery Conservation and Management Act of 1976, as amended by the Sustainable Fisheries Act) (16 U.S.C. 1801 et seq.)	Requires Federal agencies to consult with the NMFS on proposed Federal actions that may adversely affect Essential Fish Habitats that are necessary for spawning, breeding, feeding, or growth to maturity of federally managed fisheries.
U.S. Environmental Protection Agency (EPA); U.S. Army Corps of Engineers (ACOE); NOAA	Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 et seq.)	Prohibits, with certain exceptions, the dumping or transportation for dumping of materials including, but not limited to, dredged material, solid waste, garbage, sewage, sewage sludge, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and other waste into ocean waters without a permit from the EPA. In the case of ocean dumping of dredged material, the ACOE is given permitting authority.
NOAA	National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.)	Prohibits the destruction, loss of, or injury to, any sanctuary resource managed under the law or permit, and requires Federal agency consultation on Federal agency actions, internal or external to national marine sanctuaries, that are likely to destroy, injure, or cause the loss of any sanctuary resource.
FWS	E.O. 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds"	Requires that Federal agencies taking actions likely to negatively affect migratory bird populations enter into Memoranda of

Responsible Federal Agency/Agencies	Statute/Executive Order (E.O.)	Summary of Pertinent Provisions
	(January 10, 2001)	Understanding with the FWS, which, among other things, ensure that environmental reviews mandated by NEPA evaluate the effects of agency actions on migratory birds, with emphasis on species of concern.
NOAA's Office of Ocean and Coastal Resource Management (NOAA OCRM)	CZMA of 1972, as amended (16 U.S.C. 1451 et seq.)	Specifies that coastal States may protect coastal resources and manage coastal development. A State with a coastal zone management program approved by NOAA OCRM can deny or restrict development off its coast if the reasonably foreseeable effects of such development would be inconsistent with the State's coastal zone management program.
EPA; MMS	Clean Air Act, as amended (CAA) (42 U.S.C. 7401 et seq.)	Prohibits Federal agencies from providing financial assistance for, or issuing a license or other approval to, any activity that does not conform to an applicable, approved implementation plan for achieving and maintaining the National Ambient Air Quality Standards (NAAQS). Requires EPA (or an authorized State agency) to issue a permit before construction of any new major stationary source or major modification of a stationary source of air pollution. The permit—called a Prevention of Significant Deterioration (PSD) Permit for stationary sources located in areas that comply with the NAAQS, and a Nonattainment Area Permit in areas that do not comply with the NAAQS—must control emissions in the manner prescribed by EPA regulations to either prevent significant deterioration of air quality (in attainment areas), or contribute to reducing ambient air pollution in accordance with an approved implementation plan (in nonattainment areas). Requires the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process to submit a Risk Management Plan to EPA. In the western portion of the Gulf of Mexico, MMS has authority pursuant to the OCS Lands Act for clean air regulations.
EPA; U.S. Coast Guard (USCG); MMS	Clean Water Act (CWA), Section 311, as amended (33 U.S.C. 1321); E.O. 12777, "Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990"	Prohibits discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the OCS Lands Act, or which may affect natural resources belonging to the United States. Authorizes EPA and the USCG to establish programs for preventing and containing discharges of oil and hazardous substances from nontransportation-related facilities and

Responsible Federal Agency/Agencies	Statute/Executive Order (E.O.)	Summary of Pertinent Provisions
		transportation-related facilities, respectively. Directs the Secretary of the Interior (MMS) to establish requirements for preventing and containing discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports.
USCG	Marking of Obstructions (14 U.S.C. 86)	The Coast Guard may mark for the protection of navigation any sunken vessel or other obstruction existing on the navigable waters or waters above the continental shelf of the U.S. in such manner and for so long as, in his judgment, the needs of maritime navigation require.
EPA	CWA, Sections 402 and 403, as amended (33 U.S.C. 1342 and 1343)	Requires a National Pollutant Discharge Elimination System (NPDES) Permit from EPA (or an authorized State) before discharging any pollutant into territorial waters, the contiguous zone, or the ocean from an industrial point source, a publicly owned treatment works, or a point source composed entirely of storm water.
ACOE; EPA	CWA, Section 404, as amended (33 U.S.C. 1344)	Requires a permit from the ACOE before discharging dredged or fill material into waters of the United States, including wetlands.
USCG	Ports and Waterways Safety Act, as amended (33 U.S.C. 1221 et seq.)	Authorizes the USCG to implement, in waters subject to the jurisdiction of the United States, measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment. Such measures may include but are not limited to: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways.
ACOE	Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 et seq.)	Section 10 (33 U.S.C. 403) delegates to the ACOE the authority to review and regulate certain structures and work that are located in or that affect navigable waters of the United States. The OCS Lands Act extends the jurisdiction of the ACOE, under Section 10, to the seaward limit of Federal jurisdiction.
EPA	Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6901 et seq.)	Requires waste generators to determine whether they generate hazardous waste and, if so, to determine how much hazardous waste they generate and notify the responsible regulatory agency. Requires hazardous waste treatment, storage, and disposal facilities (TSDFs) to demonstrate in their permit applications that design and operating standards established by the EPA (or an authorized State) will be met. Requires hazardous waste TSDFs to obtain permits.
National Park Service (NPS);	National Historic Preservation Act of 1966, as	Requires each Federal agency to consult with the Advisory Council on Historic Preservation and

Responsible Federal Agency/Agencies	Statute/Executive Order (E.O.)	Summary of Pertinent Provisions
Advisory Council on Historic Preservation; State or Tribal Historic Preservation Officer	amended (16 U.S.C. 470-470t); Archaeological and Historical Preservation Act of 1974 (16 U.S.C. 469-469c-2)	the State or Tribal Historic Preservation Officer before allowing a federally licensed activity to proceed in an area where cultural or historic resources might be located; authorizes the Interior Secretary to undertake the salvage of archaeological data that may be lost due to a Federal project.
NPS; Advisory Council on Historic Preservation; State or Tribal Historic Preservation Office	American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); E.O. 13007, "Indian Sacred Sites" (May 24, 1996)	Requires Federal agencies to facilitate Native American access to and ceremonial use of sacred sites on Federal lands, to promote greater protection for the physical integrity of such sites, and to maintain the confidentiality of such sites, where appropriate.
Federal Aviation Administration (FAA)	Federal Aviation Act of 1958 (49 U.S.C. 44718); 14 CFR part 77	Requires that, when construction, alteration, establishment, or expansion of a structure is proposed, adequate public notice be given to the FAA as necessary to promote safety in air commerce and the efficient use and preservation of the navigable airspace.

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National Environmental Policy Act Compliance

The NEPA process helps public officials make decisions based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. It provides the tools to carry out these goals by mandating that every Federal agency prepare an in-depth study of the impacts of "major federal actions significantly affecting the quality of the human environment" and alternatives to those actions, and by requiring that each agency make that information an integral part of its decisions. The NEPA also requires that agencies make a diligent effort to involve the interested and affected public before they make decisions affecting the environment.

The MMS is the lead Federal agency for NEPA compliance for renewable energy and alternate use activities on the OCS. Some of the information we request under this part are in support of other Federal agencies' information requirements associated with compliance with the laws and regulations that they enforce.

Coastal Zone Management Act Compliance

Each coastal State has a federally-approved coastal management plan (CMP). In compliance with CZMA mandates found at section 307(c)(1), when MMS conducts a competitive lease sale for leases or grants under this part, MMS will determine if the sale activity is reasonably likely to affect any land or water use or natural resource of a State's coastal zone. If such effects are reasonably foreseeable, the MMS must submit a consistency determination (CD) to the affected State(s) at least 90 days before the lease sale. This CD will include a detailed description of the proposed activity, its expected coastal effects, and an evaluation of how the proposed activity is consistent with applicable enforceable policies in the State's CMP. If the affected State(s) agree with MMS's determination, MMS may proceed with the competitive sale. If the affected State(s) disagree, MMS will follow the procedures as outlined in 15 CFR part 930, subpart C.

In their CMP, the State lists Federal licenses and permits which are reasonably likely to affect coastal uses or resources and requires a Federal consistency review. Listed activities must be conducted in a manner that is consistent with the enforceable policies of the State's CMP, and the applicant must submit a Federal consistency certification to the State and approving Federal agency. Also, the State may ask the NOAA ORCM for permission to review, for consistency, activities that are not listed in its CMP. If NOAA approves the request, the applicant is required to submit a consistency certification for the unlisted Federal license/permit. In compliance with CZMA mandates, MMS will not issue noncompetitive leases or approve noncompetitive grants or plans under this part if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. Table 1 summarizes the NEPA and CZMA compliance requirements for leases and grants.

Table 1

Activity	MMS Process	NEPA Documentation	Lease or Grant Conditions	CZMA
Leases				
Competitive lease sale.	Conduct competitive lease sale and issue leases.	Covers lease sale area.	Stipulations, mitigation, and conditions established in lease contract.	Covers a Federal agency activity and must comply with 15 CFR part 930, subpart C.
Noncompetitive lease.	Negotiate noncompetitive lease and issue decision on the SAP or GAP.	Covers identified noncompetitive lease area and proposed activities in the SAP or GAP.	Stipulations, conditions, mitigation, and monitoring established in the lease and SAP or GAP.	Covers a nonfederal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D.
Grants				
Competitive ROW grants and RUE grants.	Conduct competitive ROW grant or RUE grant sale and issue grants.	Covers ROW grant- and RUE grant-specific sale area.	Stipulations and conditions established in grant award.	Covers a Federal agency activity and must comply with 15 CFR part 930, subpart C.
Noncompetitive ROW grants and RUE grants.	Negotiate noncompetitive ROW grants or RUE grants and evaluate GAP.	Covers identified noncompetitive grant site and proposed activities in the GAP.	Stipulations, conditions, mitigation, and monitoring established in grant award and GAP.	Covers a nonfederal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D.

Development Process

Developing Leases and Grants

Once a company acquires a lease, ROW grant, or RUE grant, it must submit certain plans to MMS for development of the lease or grant. The various plans serve as a blueprint for site development, construction, operations, and decommissioning. The MMS has specific requirements for each phase of the lease, grant, and plan. The MMS will not allow development without proper plan submission and approval. Site assessment activities on a commercial lease will require the applicant to submit a SAP and receive MMS approval of that plan before beginning those activities. The SAP will undergo the appropriate NEPA reviews and may require either an Environmental Impact Statement (EIS) or an EA. The SAP must demonstrate how you will conduct the proposed activities to comply with relevant Federal statutes such as the CZMA, Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and CWA.

For a commercial lease, after you perform site assessment activities, you will be required to submit and receive MMS approval of a COP before you may begin any development and production activities on your lease. Like the SAP, the COP will undergo the appropriate NEPA reviews and may require either an EIS or an EA. Like the SAP, the COP must also comply with relevant Federal statutes.

For limited leases, ROW grants, and RUE grants, you will be required to submit a GAP, which covers all activities on the lease or the grant including site assessment, development, operations, and decommissioning. Like the SAP and COP, the GAP will undergo the appropriate NEPA reviews and must comply with relevant Federal Statutes.

Revenue Sharing

The new subsection 8(p)(2)(B) of the OCS Lands Act (43 U.S.C. 1337(p)(2)(B)) requires payment to certain coastal States of 27 percent of the revenues received by the Federal Government from any projects under this section that are located wholly or partially within the area extending 3 nautical miles seaward of State submerged lands. (For ease of description, this 3-mile-wide area adjoining State submerged lands will be referred to in this preamble as the "8(g) zone," a term widely used to refer to the identical 3-mile area described in subsection 8(g) of the OCS Lands Act (43 U.S.C. 1337(g)). In addition, when a project extends into the 8(g) zone of at least one State, subsection 8(p) extends eligibility for a share of the revenues to States with a coastline that is located within 15 miles of the geographic center of the project. The Secretary is required to establish a formula by rulemaking that provides for the equitable distribution of payments to eligible States based on the proximity of each State's coastline to the geographic center of the project.

Operations

The regulations that address operations cover environmental management, safety management, inspections, facility assessments, and decommissioning. The regulations on operations are designed to ensure safety and prevent or minimize the likelihood of harm or damage to the marine and coastal environments. The structure of the regulations is based on adaptive management. The company will be required to monitor activities and demonstrate that its performance satisfies specified standards in its approved plans. In addition, the

company will be required to comply with regulations regarding air quality, safety, maintenance and shutdowns, equipment failure, adverse environmental effects, inspections, facility assessments, and incident reporting.

Alternate Use of Existing Facilities

These regulations establish general requirements for how MMS will consider proposals for activities that involve the alternate use of existing OCS facilities. This includes general provisions that explain how we will approve and regulate such alternate use activities on the OCS. We will authorize such activities through the issuance of an Alternate Use RUE.

These regulations explain how applicants can request an Alternate Use RUE; how MMS will decide whether to issue Alternate Use RUEs; how Alternate Use RUEs will be competitively issued (if we determine that competitive interest exists); the terms of such authorizations; required payments to MMS; necessary financial assurance; other administrative issues such as assignment, suspension, and termination; and decommissioning of approved alternate use structures.

In addition to the provisions in subpart J, MMS will make associated revisions to our existing oil and gas decommissioning regulations found in 30 CFR part 250, subpart Q, to clarify the oil and gas platform owner's obligations for decommissioning in the event we approve alternate uses of the platform.

Subpart-by-Subpart Discussion

Part 285—Renewable Energy And Alternate Uses Of Existing Facilities On The Outer Continental Shelf

Subpart A—General Provisions
Subpart B—Issuance of OCS Renewable Energy Leases
Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities
Subpart D—Lease and Grant Administration
Subpart E—Payments and Financial Assurance Requirements
Subpart F—Plans and Information Requirements
Subpart G—Facility Design, Fabrication, and Installation
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs and GAPs
Subpart I—Decommissioning
Subpart J—Rights of Use and Easements for Energy and Marine-Related Activities Using Existing OCS Facilities

Subpart A—General Provisions

Overview

Subpart A establishes MMS's authority and the purpose for the regulations. It also addresses the general requirements that apply to all activities regulated under this part, for example, the qualifications for holding leases, ROW grants, and RUE grants on the OCS, and the appeals process. The definitions for these regulations are also in subpart A.

Approach

The OCS Lands Act requires MMS to ensure that the activities permitted under these regulations are carried out in a manner that provides for safety, protection of the environment, oversight, and enforcement (43 U.S.C. 1337(p)(4)). This subpart lays the foundation for these responsibilities. The responsibilities of the lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant are based on ensuring that projects under these regulations are designed and conducted in a safe and environmentally sound manner.

Departures from the regulations were selected as a way of allowing MMS to maintain flexibility within the program and to be able to adapt to this new and changing industry. Requirements and qualifications for lessees and grant holders are based on section 8 of the OCS Lands Act and are designed to deter nuisance and speculative interference with the leasing process. Appeal rights are modeled after those established for offshore oil and gas operations.

This subpart provides for participation of State and local governments in task forces or other joint planning agreements with MMS. The joint planning provision is modeled after § 281.13 of this subchapter, which pertains to the use of task forces when considering leasing of minerals in the OCS other than oil, gas, and sulphur. We envision that such task forces could be useful and applicable to any phase of the OCS Alternative Energy Program, from preliminary studies and lease sale formulation, through site assessment and construction, to decommissioning. We may invite any affected State Governor or local government executive to join in establishing a task force or other joint planning or coordination agreement if we are considering to offer or issue leases (or grants) under this part. Participation in a task force will give the parties opportunities to contribute to the planning process and access to nonproprietary information. The task force or other such arrangements will be constituted and conducted, as agreed to by the participants, consistent with Federal law and these regulations. The task force may make recommendations and may be requested to conduct or oversee research, studies, or reports. However, MMS is not limited to using just task forces for coordination and consultation. Throughout the lease, grant issuance, and project development processes, MMS will work with affected State, local, and tribal governments and other planning and oversight organizations.

Section-by-Section Discussion of Subpart A

Authority (§ 285.100)

This section restates MMS's authority to issue regulations and oversee access and development on the OCS for renewable energy and alternate use of existing facilities. The authority statement is included to inform the affected public and other interested parties of the basis for establishing these regulations. The authority for these regulations was granted to the Secretary of the Interior in amendments to subsection 8 of the OCS Lands Act (43 U.S.C. 1337), as set forth in section 388(a) of the EPAct (Pub. L. 109–58).

With regard to hydrokinetic projects on the OCS, MMS possesses the exclusive authority to issue leases, easements, and rights-of-way for such projects, but will not duplicate the operational approvals granted by FERC when it issues licenses and exemptions for the construction and operation of hydrokinetic projects on the OCS.

The MMS revised this section from the NPR to state that the Secretary of the Interior delegated to MMS the authority to regulate activities under section 388(a) of the EPAct. These regulations will address activities that: (a) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or (b) use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under the EPAct.

What is the purpose of this part? (§ 285.101)

This section describes MMS's objectives for this rule. Our objectives include: (1) Establishing procedures for issuance of leases, ROW grants, and RUE grants and for administration of operations for activities permitted under this part; (2) informing applicants and third parties of their obligations under this part; and (3) ensuring that these

activities are conducted in a safe and environmentally sound manner, in conformance with applicable laws and regulations, and the terms of the lease or grant. However, this part does not convey access rights for oil, gas, or other minerals.

We did not make any changes to the section.

What are MMS's responsibilities under this part? (§ 285.102)

This section describes MMS's responsibilities, which are derived from section 8(p)(4) of the OCS Lands Act (43 U.S.C. 1337(p)(4)). These responsibilities include ensuring activities are carried out in a manner that provides for:

- Safety;
- Protection of the environment;
- Prevention of waste;
- Conservation of the natural resources of the OCS;
- Coordination with relevant Federal agencies;
- Protection of national security interests of the United States;
- Protection of the rights of other authorized users of the OCS;
- A fair return to the United States;
- Prevention of interference with reasonable uses (as determined by the Secretary or Director) of the exclusive economic zone, the high seas, and the territorial seas;
- Consideration of the location of and any schedule relating to a lease or grant under this part for an area of the OCS, and any other use of the sea or seabed;
- Public notice and comment on any proposal submitted for a lease or grant under this part; and
- Oversight, inspection, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.

To enforce these responsibilities, MMS will require compliance with all applicable laws, regulations, other requirements, the terms of your lease or grant under this part, and approved plans. We will also establish practices and procedures to govern the collection of all payments due to the Federal Government, including any service recovery fees, rents, operating fees, and other fees or payments. We will coordinate and consult with the Governor of any affected State and executive of any affected local government or Indian tribe. As part of coordination and consultation with State and local governments, we may invite any affected State Governor, representative of an affected Indian tribe, and affected local government executive to join a task force or other joint planning or coordination agreement.

Based on comments received on the NPR, we added affected Indian tribes to this section. In addition, we added text in paragraph (a)(5) to emphasize coordination with Federal agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts.

When may MMS prescribe or approve departures from these regulations? (§ 285.103)

This section establishes times when MMS may approve departures from the requirements established in the regulations. We will consider a departure when it is needed to:

- Facilitate the proper development of a lease or grant under this part;
- Conserve natural resources;
- Protect life (including human and wildlife), property, or the marine, coastal, or human environment; or
- Protect sites, structures, or objects of historical or archaeological significance.

A departure must be consistent with subsection 8(p) of the OCS Lands Act and must protect the environment and safety to the same degree as if there was no approved departure from the regulations.

We did not make any changes to the section.

Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS? (§ 285.104)

This section explains that, except as otherwise authorized by law, it is unlawful for any person to construct, operate, or maintain any facility to produce, transport, or support the generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS, except under and in accordance with the terms of a lease, easement, or ROW issued pursuant to the OCS Lands Act. If you intend to construct and operate a hydrokinetic facility on OCS lands, you will first need a lease from MMS and later be required to seek a license from FERC.

It should be noted that with the final rule MMS is clarifying that authorization of geological and geophysical and related site assessment surveys will be the responsibility of the U.S. Army Corps of Engineers. In many instances these types of activities may be verified under the Corps' Nationwide Permit Program. We have revised the regulation at subpart F to remove MMS approval of these types of surveys and the requirement to describe the design of such surveys in relevant plans. Although MMS will not be the permitter for such surveys—either before or after issuance of a lease or grant—we strongly urge that those conducting surveys coordinate with MMS and the Corps to ensure that proposed activities meet both Corps permitting requirements and MMS information requirements described in subpart F relating to lease or grant issuance and plan approval.

We did not make any changes to the section.

What are my responsibilities under this part? (§ 285.105)

This section describes the general responsibilities of a lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant under these regulations. These responsibilities include:

- Designing projects and conducting operations in a safe manner to minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable, and taking measures to prevent the discharge of pollutants, including marine trash and debris;
- Submitting requests, applications, plans, notices, modifications, and supplemental information as required by this part; following up any oral request or notification in writing within 3 business days;
- Complying with the terms and conditions of the applications, plans, notices, and modifications; making payments on time;
- Complying with the Department of the Interior's (DOI) nonprocurement debarment regulations; including the requirement to comply with 2 CFR part 1400 in all contracts and transactions related to a lease or grant under this part; and
- Responding to requests from the Director in a timely manner.

We added measures to prevent the discharge of pollutants, including marine trash and debris, to this section to clarify that adverse effects to the environment include pollutants, trash, and debris. Also, while hydrokinetic projects will entail obligations and responsibilities relating to FERC regulation under licenses and exemptions, the holder of a hydrokinetic lease must comply with all terms and conditions set forth in the MMS-issued lease including MMS' right to access data and information for all activities conducted on leases issued under this part to meet our statutory responsibilities as lessor.

Who can hold a lease or grant under this part? (§ 285.106)

This section details the qualifications of a lessee or grant holder. To qualify for a lease or grant, you must be either a citizen or a national of the United States; an alien lawfully admitted for permanent residence in the United States; a private, public, or municipal corporation organized under the laws of the United States, any of its States or territories, or the District of Columbia; or an association of any of the parties described previously. In addition, you may be excluded from becoming a lessee or grant holder if you are excluded or disqualified from participating in transactions covered by the Federal nonprocurement debarment and suspension system, you have failed to meet or exercise due diligence under any OCS lease or grant, or you remained in violation of the terms and conditions of any lease or grant issued under the OCS Lands Act for a period extending longer than 30 days after MMS directed you to comply.

Based on comments received on the NPR, MMS added a requirement to this section that in order to qualify to become a lessee or a grant holder, the applicant must demonstrate the technical and financial capabilities to construct, operate, maintain, and terminate/decommission projects for which you are requesting authorization. We also deleted § 285.106(b)(4) because it was redundant with § 285.106(b)(2).

The MMS also received comments requesting that we limit ownership of leases and grants to United States citizens and companies. The requirements for lease and grant holders limit ownership to United States citizens, lawfully admitted aliens, and United States companies. Another comment stated that it is not clear if private universities and research institutions are eligible to hold leases or grants under this part. Private universities and research institutions could be qualified to hold leases or grants under these regulations, under paragraph (a)(4), as an ''association''.

In addition, we added Federal agencies to the list of entities qualified to hold a lease. After the proposed rule was published, MMS received inquiries from the U.S. Navy concerning the acquisition of areas of the OCS as set-asides for renewable energy development to meet requirements imposed by the Energy Independence and Security Act of 2007 and EPAct that pertain to improved energy performance in the federal sector. By adding Federal agencies to the qualification list, MMS could issue a lease to the Navy or other Federal agency that would authorize OCS renewable energy development to provide electrical generation for its installations and facilities.

As with hydrokinetic commercial leases issued to private entities, a Federal or state agency holding an MMS lease cannot construct or operate an hydrokinetic project without a FERC-approved license or exemption.

How do I show that I am qualified to be a lessee or grant holder? (§ 285.107)

This section describes the evidence you must submit to MMS to establish qualification to hold a lease, ROW grant, or RUE grant. For an individual, this evidence includes documents that demonstrate citizenship or lawful admittance of permanent residence. For an association, the acceptable evidence includes a certified statement indicating the State in which it is registered and that it is authorized to hold leases and grants on the OCS, or an appropriate reference to statements or records previously submitted to an MMS OCS office. A corporation must submit a statement certified by the corporate Secretary or Assistant Secretary over the corporate seal showing the State in which it was incorporated, and that it is authorized to hold leases and grants on the OCS, or an appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations), and evidence of the authority of the persons signing to bind the corporation. If MMS has qualified you to hold a renewable energy lease, RUE, or ROW in one OCS Region, it is our intent that you will be qualified to hold a renewable energy lease, RUE, or ROW in the other OCS Regions. We will provide more information in the implementation guidance that we intend to issue after the final rule is approved.

Based on comments received on the NPR and to conform with changes made to § 285.106, we added a description of the documentation that you may provide to MMS to demonstrate the technical and financial capabilities to construct, operate, maintain, and terminate/decommission projects for which you are requesting authorization.

We also added some documentation requirements for local, state, and federal entities that are comparable to those for associations and corporations.

When must I notify MMS if an action has been filed alleging that I am insolvent or bankrupt? (§ 285.108)

If any action is filed alleging that a company, operating under these regulations, is insolvent or bankrupt, the company must notify MMS within 3 days of learning of the action.

We did not make any changes to the section.

When must I notify MMS of mergers, name changes, or changes of business form? (§ 285.109)

This section requires you to notify MMS of any merger, name change, or change of business form. This must be done no later than 120 days after either the effective date or the date of filing the change or action with the Secretary of the State in the State of registry. You do not have to request an assignment under §§ 285.408 through 285.411 in these cases.

We did not make any changes to the section.

How do I submit plans, applications, reports, or notices required by this part? (§ 285.110)

You must submit all plans, applications, reports, or notices to MMS at the address provided in this section.

We changed this section, requiring that, unless otherwise noted, applicants must submit one paper copy and one electronic copy of all plans, applications, reports, or notices required by this part.

When and how does MMS charge me processing fees on a case-by-case basis? (§ 285.111)

This section provides that MMS may charge processing fees for applications or requests filed under this part, on a case-by-case basis. The MMS may charge processing fees if the preparation of a document or study is necessary for MMS to evaluate or process an application or request. For example, MMS may charge processing fees for the preparation of a project-specific study, EA, or EIS.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and the Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the Minerals Management Service (MMS) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. An application or request filed under this regulation conveys special benefits to recipients beyond those accruing to the general public and are subject to service fees.

There may be other authorities that MMS may use to recover costs depending on the particular circumstances of the project and the nature of the evaluation or processing needed. Such authorities may include the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1506.5), Public Law 99–591 (title I, section 101), and Public Law 110–161 (division F, title I, section 121).

The MMS intends to recover those costs that we incur following the decision that the document processing will have a unique processing cost. We will not charge for costs that MMS incurred before that decision was made. In cases where we may charge a case-by-case processing fee, we will provide the applicant with a written estimate of the processing costs that may include a standard overhead rate, or the closest estimate we have based on previous work, which is similar in nature. The case-by-case processing fees provided for in this rule relate to the documents that an applicant must submit to satisfy various statutory and regulatory requirements pertaining to actions authorized by this regulation. For example, MMS statutory responsibilities require that we independently review any analysis performed by an outside contractor. This review is necessary before a decision can be rendered on the application. Processing fees charged by MMS will include contract oversight and efforts to review and approve documents prepared by contractors, whether the contractors are paid directly by the applicant or through MMS. The applicant may comment on the proposed fee or request approval to directly pay a contractor for the document, study, or other activity. If warranted, based on information provided, we will re-estimate our reasonable processing costs following the procedure established in this section.

The MMS made several edits to this section. We expanded and clarified this section regarding the following issues: (1) That if a study or other document such as an EA or EIS is not required, MMS will not charge a processing fee at this time, (2) that MMS document review and approval and contract oversight will be recoverable costs, (3) that processing costs will include a standard bureau overhead rate or an estimate that will take projected costs into account, and (4) that payment instructions and terms will be provided in the final cost estimate.

Based on comments, we changed the citation for 43 CFR part 4, subpart J, to just 43 CFR part 4. The 43 CFR part 4, subpart J is ''Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters.'' The 43 CFR part 4 covers all DOI appeals.

Definitions (§ 285.112)

This section provides definitions of terms used throughout the 30 CFR part 285 regulations. Some of the definitions used in this part are definitions that were established in legislation or contained in other regulations (i.e., 30 CFR part 250). For example, the definition of archaeological resource is almost identical to the definition used by MMS for oil and gas operations in the 30 CFR part 250 regulations. This definition mirrors that in the Archaeological Resource Protection Act, and was adopted in response to comments from the Advisory Council on Historic Preservation and the Departmental Consulting Archaeologist on our original rule on archaeology. It is consistent with the definitions in other Federal laws and regulations.

We received comments on various definitions in this section. We revised the following definitions to reflect the comments:

Commercial activities—we added, ''for renewable energy leases and grants,'' to the definition to clarify that this does not apply to alternate use of existing OCS facilities.

Eligible State—we revised this definition to conform with changes we made concerning revenue sharing. We clarified that eligible States must be no more than 15 miles from the geographic center of a qualified project area.

Geographic center of a project—we made minor edits to the definition to conform with the final rule's revenue sharing provisions.

Income—we made minor, grammatical edits to the definition; the original meaning of the term has not changed.

Lease—we changed the definition from an ''authorization'' to an ''agreement authorizing'' the use of a designated portion of the OCS for activities allowed under this part.

Lessee—we clarified the definition.

Natural resources— we made minor edits to the definition.

Person—we added ''Federal agency'' to the definition, since MMS may issue leases, RUEs, or ROWs to another Federal agency.

Project—we clarified the definition.

Project area—we clarified the definition.

Qualified project—this definition was removed because the term is explained in the regulations for revenue sharing.

Qualified project area—this definition was removed because the term is explained in the regulations for revenue sharing.

Revenues—we changed the meaning of revenues to clarify that it does not include administrative fees.

Right-of-use and easement (RUE) grant—we made minor edits to the definition.

Right-of-way (ROW) grant—we made minor edits to the definition.

Significant archeological resource—we made minor edits to the definition.

Site assessment activities—we removed ''physical characterization studies'' and ''baseline collection studies'' as examples of the types of site assessment activities, and we added technology testing as a type of site assessment activity. We added ''involving the installation of bottom-founded facilities,'' since surveys can be performed using an ACOE permit.

You and your—we made minor edits to the definition.

We, us and our—we made minor edits to the definition.

How will data and information obtained by MMS under this part be disclosed to the public? (§ 285.113)

This section describes how MMS will handle data and information submitted to the MMS, including public disclosure and nondisclosure. The MMS will follow the applicable requirements of the Freedom of Information Act (FOIA) (5 U.S.C. 552) and protect data and information to the extent allowed by law. In response to comments we received regarding the protection and release of proprietary data and information, we clarified how we will protect data and information under this part and when MMS will release that data and information.

As set forth in § 285.113, MMS will not release data and information that we have determined to be exempt under exemption 4 of FOIA. However, the passage of time may erode the protections offered by exemption 4 of FOIA. To accommodate for this possibility, MMS has set forth a schedule in this section that we will follow to review such data and information, and any objections by the submitter, to determine whether release at that time would result in substantial competitive harm or disclosure of trade secrets. If MMS determines that the release of such data and information will not result in substantial competitive harm or disclosure of trade secrets, then MMS will release it. If it is determined that release will result in substantial competitive harm or disclosure of trade secrets, then the data and information will not be released at that time, but will be subject to further

review every 3 years thereafter. Nothing in this section is intended to displace or supersede MMS's obligations under 43 CFR part 2.23.

Paperwork Reduction Act Statements—Information Collection (§ 285.114)

These provisions cover Paperwork Reduction Act statements and information collection requirements pertaining to this part. We revised the burden to appropriately reflect the changes due to comments.

Documents Incorporated by Reference (§ 285.115)

This section lists the industry standard documents MMS will incorporate by reference into the 30 CFR part 285 regulations.

We did not make any changes to the section. In the future, we will incorporate new documents after MMS has thoroughly reviewed them and determined that they are needed and appropriate.

Requests for Information on the State of the Offshore Renewable Energy Industry (§ 285.116)

This section allows the MMS Director (1) to request information from industry and other relevant stakeholders (including State and local agencies), as necessary, to evaluate the state of the offshore renewable energy industry, including the identification of potential challenges or obstacles to its continued development, and (2) to require the applicant, lessee, or grant holder to respond to a request in a timely manner. These requests could relate to the identification of environmental, technical, or economic matters that promote or detract from continued development of renewable energy technologies on the OCS. The MMS would use the information received to evaluate potential refinements to the OCS Alternative Energy Program that promote development of the industry in a safe and environmentally responsible manner, and to ensure a fair value for use of the Nation's OCS. The MMS would publish these requests for information in the **Federal Register**.

In response to comments, MMS edited this section to include ''regulatory matters'' as an additional issue that such information requests may entail. We also deleted the last sentence in paragraph (a) of this section.

Reserved Section (§ 285.117)

Section 285.117 is reserved.

What are my appeal rights? (§ 285.118)

This section describes when a decision made by MMS under this part may be appealed and who may appeal. Most decisions made under this part may be appealed according to the regulations found in 30 CFR part 290, subpart A. A bidder whose bid is rejected may apply for reconsideration by the MMS Director. If your lease is issued in order to obtain a FERC license or exemption, you may only appeal those decisions made by MMS under the authority of this subpart.

Based on comments, we changed the citation in § 285.118(b) from 43 CFR 4.21 to 43 CFR part 4, since multiple sections of 43 CFR part 4 apply to appeals.

Subpart B—Issuance of OCS Renewable Energy Leases

Overview for Subpart B

This subpart outlines a process for issuing renewable energy leases, both for commercial production activities and for assessment or technology testing activities. The process will be competitive, unless there is a determination that no competitive interest exists. In addition, this subpart describes how we will determine when to use a competitive process for issuing a renewable energy lease and identifies auction formats and bidding systems and variables that we may use when that determination is affirmative. Finally, this subpart discusses the terms under which we will issue renewable energy leases. To establish a framework, we begin with a discussion of various types of leases that a prospective renewable energy developer may consider.

Types of Leases

Leases will be required for any type of renewable energy activity on the OCS. We will issue two types: (1) Commercial leases and (2) limited leases. Although we also will convey access to areas of the OCS for research under some form of negotiated lease agreement as provided in § 285.238, this discussion of types of leases focuses on the commercial or limited leases that we will issue directly to lessees on a competitive or noncompetitive basis.

A commercial lease will provide the access and operational rights, subject to necessary approvals, to produce, sell, and deliver power on a commercial scale through spot market transactions or a long-term power purchase agreement. A commercial lease will be issued over the long term (i.e., up to approximately 30 years, with possible renewals) and will convey preferential rights to project easements on the OCS for the purpose of installing transmission and distribution systems. A commercial lease will not include a limit on the amount of energy to be produced and sold.

A limited lease will be issued for a shorter term (i.e., up to 5 years, with possible renewals). It will provide the access rights necessary to conduct activities, such as site assessment and technology testing that support production of renewable energy, and may provide the right to produce and sell power within limits set by the terms and conditions of the lease. Limited leases are not intended to authorize long-term or large-scale commercial operations. As provided in the proposed rule, operations on a limited lease may interconnect to electricity or other power distribution systems for testing and information gathering purposes. In response to comments on the proposed rule recommending authorization of the sale of power generated from limited leases to offset site assessment and technology testing expenses, we have changed relevant definitions and text in the final rule to allow limited amounts of electricity to be sold from such leases. Also, since we anticipate only small amounts of power (e.g., 5 MW) to be generated for a relatively short duration (less than 5 years), we do not propose to charge an operating fee for the sale of power from limited leases. We will charge only rentals for limited leases.

In issuing limited leases authorizing use of the OCS for hydrokinetic activity, it will be necessary to coordinate early with the FERC licensing process. For example, if MMS entertains a proposal for a limited lease a determination from FERC will be necessary as to whether an exemption or license is required. Should FERC determine that a license or exemption would not be required for such a proposal, MMS would proceed with the limited lease issuance. However, if FERC determines that a license or exemption would be required, MMS would not proceed with limited lease issuance but would instead proceed with commercial lease issuance.

As originally proposed, a limited lease will not convey any preferential rights to obtain a commercial lease to develop the leased area. Several comments on the proposed rule recommended that limited leases be set up to allow conversion to commercial leases or at least to give the lessee some sort of preference in subsequently pursuing a commercial lease for the same leasehold. Although we have not changed the text of the rule to provide an express commercial right preference, we believe that there will be ways to recognize the limited lessee in the commercial sale process under the final

rule. For example, at the time a limited lease is offered, whether competitively or noncompetitively, MMS will be able to indicate in the lease terms and conditions that acquiring a particular limited lease will give weight to the lessee in any subsequent conveyance of commercial rights. Such details will be established through the leasing process and published in the associated public notices. Also, the level of NEPA analysis for such leases will have to be commensurate with the type and scope of potential activities entailed with the lease rights conveyed. We believe that this approach for limited lessees will be best accommodated under a multiple-factor competitive process, which the rule has been revised to include as an available approach.

The MMS believes that by offering the two types of lease, commercial and limited, the rule provides a developer the flexibility to pursue a lease that will be best suited for its needs. If a developer testing a technology for demonstration purposes is uncertain as to whether full-scale commercial activities will ultimately be conducted on the lease, including long-term sale of power to the grid to generate revenues, then a commercial lease can be obtained instead of a limited lease to assure full and unlimited operational rights to produce, sell, and deliver power. In the event that the demonstration facility is not technically feasible for commercial operations, the lessee is not obligated for the full term of the lease and may relinquish the lease pursuant to § 285.435.

We continue to believe that offshore renewable energy companies generally will prefer to acquire commercial leases rather than limited leases. However, we believe that providing for the issuance of limited leases will give all companies, including smaller entities, an opportunity to pursue renewable energy activities without the commitments and expenses entailed by a long-term commercial lease. Even if the rule provided for limited leases to be issued with a preference for subsequent commercial rights, competition for those competitive rights still will be required under subsection 8(p) of the OCS Lands Act, as amended, and NEPA compliance could require some analysis of a commercial development scenario.

The most important factor for an applicant to consider in deciding whether to pursue a commercial lease or a limited lease is the assured right to full-scale commercial development of the leased site, and such right is included only in a commercial lease under the final rule. Thus, if a renewable energy project applicant is interested in demonstrating a particular renewable energy technology, but is unsure that it will ultimately lead to commercial production, we encourage that applicant to pursue a commercial lease because it reserves the full right to commercially develop the OCS site. Technology testing can be conducted during the site assessment term of a commercial lease. Pursuing a commercial lease will not obligate the lessee to remain on a lease for the full term of the lease. As provided in subpart D, if the lessee no longer intends to commercially develop the leasehold (e.g., results of testing prove unsatisfactory), a commercial lease may be relinquished by the lessee.

Alternatively, if a company obtained a limited lease to initiate technology testing activities and subsequently determined that full-scale commercial development of the OCS area is possible, that company may receive some advantage in pursuing the right to develop that site commercially, for example as a consideration in a multi-factor competitive process, but the issuance of a commercial lease would be subject to the statutory requirements concerning competition. Thus, the subsequent full commercial lease right is not assured to a holder of a limited lease. For these reasons, we anticipate that most project applicants will pursue commercial leases to ensure that all necessary rights for future development are reserved should initial testing activities show that a commercial project could be viable.

The types of leases and the activities authorized are intended to provide for both long-term, large scale commercial production of renewable energy and for short-term, smaller scale activities in support of renewable energy production, such as site assessment and technology testing activities, including the limited sale of power generated.

One commenter recommended providing for issuance of combined limited and commercial leases to facilitate necessary site assessment and authorize such activities in advance of the issuance of commercial rights. We believe such an approach is possible under the rule. It will require a developer to simultaneously request both a limited lease (e.g., for a meteorological tower) and a commercial lease. We anticipate that the limited lease could be processed and issued in a relatively short time (perhaps 6 months), allowing construction and operation of the meteorological tower while the commercial lease is processed over a longer time (1–2 years). Some renewable energy interests, especially wind developers, view such a process as a more timely and efficient approach to leasing and development. We will work with project proponents and stakeholders to pursue this approach if requested, and we plan to describe it in detail in the guidance document we intend to issue after the rule is promulgated.

Issuing Leases

It is the goal of MMS to issue renewable energy leases through a simple and straightforward process and in a fair and equitable manner. The OCS Lands Act requires that leases, easements, and ROWs be issued competitively, unless after publication, MMS determines that there is no competitive interest.

We anticipate that initial leasing of renewable energy sites on the OCS may be driven by unsolicited applications from project proponents, rather than by an MMS-initiated request for interest in an area. A formal Request for Interest will be part of the process for confirming that there is no competitive interest in the area identified in the unsolicited application. The process for the issuance of OCS renewable energy leases when no competitive interest exists is based on the requirements of the OCS Lands Act and is patterned after the existing MMS process for issuing noncompetitive negotiated agreements for the conveyance of OCS sand and gravel.

Any leasing process for OCS renewable energy activity must comply with the applicable requirements of NEPA and other Federal laws. Table 1, which is presented in the discussion titled, *OVERVEW OF THE PROJECT DEVELOPMENT PROCESS*, under the *Federal Compliance for the leasing process*, describes the NEPA requirements for steps in the OCS renewable energy process, including the lease issuance step.

The competitive sale process for renewable energy leases is similar to long-standing Federal and State processes for conveying mineral rights. It provides several opportunities for input from interested and affected parties—notably State and local governments and affected Indian tribes—to develop appropriate lease sale terms and conditions including mitigation measures. The process is outlined in the following sections.

Call for Information and Nominations (Call)

Once MMS decides to initiate a competitive leasing process, which will usually occur following a Request for Interest, the first step in the sale process will be to publish in the **Federal**

Register a Call for Information and Nominations (Call). Comments are due 45 days after the Call. The Call informs the public of the area under consideration for leasing; it solicits comments from all interested parties on areas or subjects that should receive special attention and analysis; it invites potential bidders to indicate areas and levels of interest; and it invites public input regarding possible advantages and disadvantages of potential leasing and development to the region and the Nation.

Along with the Call, MMS will announce how it plans to document compliance with the requirements of NEPA. We believe that at the outset of the OCS Alternative Energy Program, it is likely that an EIS will be required for a competitive lease sale. However, it is possible, especially as the program matures, that less-costly environmental documentation, an EA, may be appropriate.

Area Identification

After the comment period for the Call closes, MMS will use the information received to develop, evaluate, and recommend options for continued environmental analysis and for consideration of leasing. This process step is known as Area Identification, and it determines the geographical area of the proposed action to be analyzed in an ensuing environmental analysis document (e.g., EIS, EA), any alternatives to the proposed action, and mitigation measures and other issues to be analyzed and considered further. The MMS will strive to resolve as many issues as possible at this step to prevent unnecessary conflicts throughout the remainder of the process. Early resolutions of such issues serve to reduce the level of public controversy and help industry and the Federal Government (and ultimately the taxpayer) focus on promising acreage and avoid needless expense.

In identifying the area to be studied in the environmental analysis, consideration is given to the level of industry interest; comments from State and local governments, Federal agencies, affected Indian tribes, environmental groups, and other interested parties; geologic and geophysical information; environmental conditions and effects of development; and other economic and social considerations. At this stage, the area considered for leasing will be more closely identified based on relevant considerations such as use conflicts. Public notice of the area identified usually will be provided with a press release and a fact sheet that includes a map of the proposed sale area.

NEPA Documentation

The MMS will prepare draft environmental documentation that includes, but is not limited to, a description of the lease sale proposal, including the renewable energy resource to be developed and a projection of the site assessment, construction, and generation activities that might occur; reasonable alternatives to the leasing proposal; a description of the existing environment; a detailed analysis of possible effects on the environment, including socioeconomic and cumulative effects; a description of the assumptions on which the analysis is based; potential mitigation measures; any unavoidable adverse environmental effects; the relationship between short-term uses and long-term productivity; any irreversible or irretrievable commitment of resources; and the records of consultation and coordination with others in preparation of the document. This document may also describe the technology assumed or deemed necessary for site assessment and commercial development and operations in the proposed lease sale area. Pertinent published and unpublished investigations from academic and other institutions and organizations and from other Federal and State agencies are reviewed during the preparation of the NEPA document. When the draft is complete, it is made available for public review. In the case of a draft EIS, the document is filed with the EPA and a Notice of Availability is published in the **Federal Register**, providing for a 60-day public comment period.

No sooner than 30 days after publication of a draft EIS, but within the 60-day comment period, one or more public hearings will be held in the vicinity of the proposed lease area for the purpose of receiving comments on the draft EIS. The MMS will announce the time and location in the **Federal Register** at least 30 days before the public hearings.

The comments and data received through the public hearings and the official review process are analyzed along with any newly acquired information and, when appropriate, are incorporated into the final EIS or EA. At this stage, new stipulations or other measures to protect sensitive areas, or biological or other types of resources, may be included after comments from affected States and affected Indian tribes are reviewed. In some cases, new deferral options are developed and incorporated into the final EIS. Under typical circumstances, 3 to 5 months after the public hearing, a final EIS is filed with EPA and a Notice of Availability is published in the **Federal Register**.

Coastal Zone Management Consistency Determination

Concurrent with the preparation of the final EIS or other NEPA documentation, a CZMA consistency review and subsequent Consistency Determination (CD) is completed by MMS relative to each affected State's federally approved coastal zone management plan. Each CD includes a review of each State plan, analyzes the potential impacts of the proposed lease sale in relation to program requirements, and makes an assessment of consistency with the enforceable policies of each State's plan.

Proposed Sale Notice

The Proposed Sale Notice is the public announcement of the terms and conditions of a proposed competitive lease sale, including the proposed provisions of the lease(s) to be issued. Generally, the Proposed Sale Notice will be issued after (1) completion of the final NEPA documentation; (2) preparation of the CD; and, (3) preparation of various in-house analyses of proposed lease sale economic terms and conditions. Information from these completed documents and analyses is consolidated in an executive decision memorandum that summarizes all proposed lease sale issues that may relate to State, local government, and/or affected Indian tribe comments and recommendations; environmental concerns; coastal zone consistency conflicts; economic benefits and costs; operational or legal constraints; multiple-use conflicts; or any other subject of concern. This memorandum also evaluates any prelease mitigation measures that are available or appropriate to resolve conflicts, issues, and concerns. On the basis of this memorandum and all supporting materials, decisions are made on the proposed terms and conditions of the sale. An attempt is made to balance the various economic, social, and environmental factors including those raised by the affected States, local governments, and affected Indian tribes, as well as other Federal agencies and the general public. A Notice of Availability of the Proposed Sale Notice is published in the **Federal Register** approximately 4 to 6 months prior to the proposed sale date. The Notice of Availability informs the public where copies of the actual Proposed Sale Notice may be obtained.

The proposed notice also assists in consultation with affected States, localities, and Indian tribes. Officials will be sent copies of the Proposed Sale Notice along with a letter explaining the rationale for the decisions made in determining the conditions of the proposed sale. The officials will have 60 days to submit comments on the proposed competitive lease sale. These comments will provide a framework for the discussion and resolution of concerns that the affected States, localities, or Indian tribes may have on a particular sale.

Final Sale Notice

After the end of the period for comments on the Proposed Sale Notice, a final decision memorandum will be prepared for the Director. If the Director decides to proceed with the lease sale after consideration of the comments and any other new pertinent information, MMS would issue a Final Sale Notice. The Final Sale Notice would include the date, time, and place of the sale; blocks available for lease; stipulations and other mitigating measures; bidding systems and lease terms; and other pertinent information. The Final Sale Notice is published in the **Federal Register** at least 30 days before the sale date.

Bid Evaluation

After the Final Sale Notice is published in the **Federal Register**, bids submitted by qualified bidders are received by MMS. The bids, including bid deposit if applicable, are checked for technical and legal adequacy as well as financial capability. They are also immediately evaluated to determine if the bidder has complied with all applicable regulations. The MMS reserves the right to reject any or all bids and the right to withdraw an offer to lease an area from the sale.

Issuance of a Lease

When a high bid is deemed acceptable by MMS, the submitter is immediately notified of the decision and is provided a set of official lease forms for execution. The successful bidder must pay within 10 days the remaining 80 percent of the bonus bid and file the required financial assurance. Upon receipt of the required payments and properly executed lease forms, a lease is issued to the successful bidder. Leases usually are effective the first day of the month following the date they are signed by an MMS official. Within 45 days after you receive the lease copies, you must pay the first 6 months rent.

Under the lease, the Federal Government conveys certain exclusive rights to the lessee and reserves other rights to the Government. The lease further spells out requirements for surety bonds, operating fee payments, rent payments, and assignment or other transfers.

Following the competitive process outlined previously, a lease sale for renewable energy activities may be held for one type of activity (e.g., wind) or for various activities (e.g., wind, wave, ocean current, etc.). We will determine the scope of competing renewable energy activities based on responses to initial public notices (Request for Information, Call for Information and Nominations, or other Federal notices) issued during the leasing process, and we will clearly state that scope (e.g., wind, wave, ocean current, etc.) early in that process and the subsequent Proposed and Final Sale Notices. If we decide to limit competition to one type of activity (e.g., ocean current), we will not consider bids for any other type of activity, and the lease will be limited to that activity. If we decide to open competition to more than one type of activity (e.g., wind, wave, ocean current, etc.), we will consider all bids for one or more of those activities, and the lease may authorize one or more of those activities.

Noncompetitive Lease Process

The MMS will first determine competitive interest in processing an unsolicited request in order to decide whether to proceed with leasing under a competitive or noncompetitive process. If we find that there is competitive interest in the lease area, we will proceed with a competitive lease process. If we determine that there is no competitive interest, then we will issue a notice of such determination. This section also states that if MMS processes a proposed lease area on a competitive basis, no unsolicited requests for leasing in that area will be considered for as long as that process is pending. Thus, once an area is subject to a lease sale process, the only way to pursue a lease within that area is through that competitive process until that process concludes. After the process concludes, and if acreage within the area that had been considered for lease remains unleased, unsolicited requests will again be considered for that acreage.

If we determine that there is a competitive interest, we will proceed with a competitive process and will apply your acquisition fee to any bid you submit. If you choose not to bid, we will not refund your acquisition fee. We believe retention of your fee in this case is appropriate in order to discourage all but serious requests and because of the costs associated with processing your original request. If you submit a qualified bid that does not win, we will refund your deposit, including the amount of the acquisition fee.

Paragraph (d) describes how MMS will proceed if it determines there is no competitive interest. Within 60 days after we issue a finding that there is no competitive interest, the prospective lessee must submit either a SAP for a commercial lease or a GAP for a limited lease. We will review the plan and conduct NEPA and other required analyses before simultaneously issuing the lease or grant and approving the SAP or the GAP.

Lease Terms

Provisions relating to the duration of leases are set forth in several sections of this subpart B as well as in subpart D. Sections 285.235 and 285.236 set finite terms for both commercial and limited leases while providing for automatic extensions only if necessary for MMS review and approval of necessary plans. The term depends on the type of lease (commercial or limited) and the award process. For example, a competitive commercial lease would have 3 terms: A 6-month preliminary term, a 5-year site assessment term, and a 25-year operations term. Sections 285.415 through 285.421 discuss suspensions that extend the term of a lease, and §§ 285.425 through 285.429 address lease renewal.

Section-by-Section Discussion for Subpart B

General Lease Information

What rights are granted with a lease issued under this part? (§ 285.200)

We may issue OCS leases for any renewable energy source. Paragraph (a) of this section identifies the types of renewable energy leases that we will make available and describes the rights that come with a lease issued under these regulations. In general, a lease issued under this part conveys the right to install and operate facilities on a designated portion of the OCS for the purpose of conducting commercial (production) activities or limited (noncommercial) activities supporting the production of energy from renewable energy sources. All rights are subject to compliance with requirements to secure approvals of, and then comply with, applicable plans (i.e., SAP, COP, and GAP) that are set forth in subpart F.

Paragraph (a) clarifies that an MMS lessee cannot construct or operate a hydrokinetic project without a FERC-

approved license or exemption. This revision was made to conform with provisions in the April 2009 MOU signed by the Department of the Interior and FERC. Under that MOU, construction and operations of hydrokinetic projects on the OCS cannot commence without a license or exemption from FERC, except in circumstances where FERC has notified MMS that a license or exemption is not required. OCS wind energy projects are not required to obtain a FERC license.

Under paragraph (b) of this section, leases generally include the right to one or more project easements without further competition for the purpose of installing lines through the OCS (i.e., extending to the State/Federal boundary) for gathering, transmission, and distribution of electricity; as well as pipelines for transporting other energy products (i.e., hydrogen); and appurtenances on the OCS as necessary to conduct operations. These may include the OCS segment of cables, pipelines, and other structures necessary to transmit electricity or transport other energy products produced from the OCS to shore. The lessee will apply to MMS for the project easement as part of the COP or GAP. When we approve the proposed plan and project easement, an addendum covering the project easement will be incorporated in the lease. Additional project easements and revisions may be authorized through the plan revision process. One commenter recommended that easements be identified earlier in the process (i.e., in the lease or in the SAP). We believe such an approach would be premature at this stage in the process and impractical, but we will work with applicants and stakeholders as we implement the rule. Also, project easements that run through other leases or grants may be accommodated under the rule, and such situations will be addressed in the implementation guidance we intend to issue after the rule is approved.

Ancillary activities that are not associated with an OCS renewable energy lease (e.g., a transmission line or support structure located in Federal waters to support a project in State waters or a commonly shared line supporting multiple leases) will be permitted and managed as a separate ROW grant or RUE grant under subpart C.

Paragraph (c) of this section provides for phased lease development. The commercial lease framework will accommodate multi-phase project development as is commonly used for onshore utility-scale wind projects (see §§ 285.200(c) and 285.629). The lease applicant must inform us of its intent to develop a project in multiple phases and would need to lease from the outset all of the acreage necessary for the planned full build-out. If the applicant for a commercial lease phases in operations, the applicant must pay rent on the portion of the lease that is not generating electricity and operating fees on the portion of the lease that is generating electricity. We may waive the rent for the acreage on which activities are deferred, as provided by subpart E, on a case-by-case basis for any lease issued under this part. As additional acreage is developed, operating fees would be charged in place of rentals, as appropriate. If the lessee decides not to develop the additional acreage, it may relinquish that acreage, or MMS may contract the lease, as provided in §§ 285.435 and 285.436. Multi-phased project development will have to comply with NEPA, CZMA, and other applicable laws.

We did not make any changes to this section.

How will MMS issue leases? (§ 285.201)

As required by subsection 8(p) of the OCS Lands Act, MMS must issue leases, easements, or ROWs for OCS renewable energy activities on a competitive basis unless we determine after public notice that there is no competitive interest. If we determine that there is competitive interest, we will conduct a fair and open competition process. When we receive an unsolicited request for a lease, we will make a determination if a competitive interest exists by first issuing a public notice of the proposed lease. In the public notice, we may offer additional areas for leasing. After considering the comments received on the notice, as required by the OCS Lands Act, section 8(p), we will issue a determination that there is, or is not, competitive interest in the proposed lease. If two or more project proponents express interest in leasing the same area of the OCS (overlapping partially or completely), we will conclude that competitive interest exists and conduct a competitive lease sale.

We are aware that instances of partially overlapping interests may occur and requested comments on this issue. For example, if proposed Project A entails 10,000 acres for generation of 500 MW and Project B entails 2,000 acres for 100 MW, and there is an overlap of 1,000 acres, we will have to determine whether there is competitive interest in all or part of the acreage requested. The following six alternative approaches for addressing such a situation were offered for comment with the proposed rule.

(1) Offer both the Project A and Project B areas and award a lease for one or the other to the high bidder. If a cash bonus is a bid variable, it could be based on either the total or the amount per acre, and if an operating fee is a bid variable, it could be based on the total or the amount per MW of proposed capacity.

(2) Offer and award a lease through competition for only the overlapping 1,000-acre area and then follow with a noncompetitive lease issuance for the remaining 9,000 acres under Project A and 1,000 acres under Project B.

(3) Offer to lease individual tracts covering the area of interest, designated as legal subdivisions of a standard OCS lease block of 9 square miles. Bidders that value specific tracts most highly could win leases through a simultaneous tract offering, and subsequently propose operations on multiple 1/16 legal subdivisions (a 1/4 1/4 of a lease block) to obtain possible synergies.

(4) Offer the combined Project A and B areas as one lease and award the lease to the high bidder (the winning lessee could then relinquish excess acreage).

(5) Offer standard block sizes or legal subdivisions of those block sizes and allow bidders to ''package'' those blocks in a bidding unit (package bidding). Identify the various features of the auction, e.g., bidder eligibility to compete and to remain active in various rounds, information to be released between rounds, rules for ending the auction, method for choosing the provisional high bidders, restrictions on bidding in subsequent rounds, etc.

(6) Rely on coordination and consultation efforts with State and local governments to identify one preferable project area to be offered and awarded to the high bidder.

The consensus of the comments we received is that all of these approaches are reasonable. Some commenters recommended an additional approach that would give the competing project proponents the opportunity to adjust their areas of interest to eliminate overlapping proposed lease areas. We have not adopted this recommendation due to potential adverse effects on competition.

We also are aware that there will be other instances in which multiple projects could be proposed in the same general area with no actual geographic overlap, but the number of lease tracts may need to be limited based on regional or local needs and concerns. For example, a State or locality may identify a need for a certain amount of renewable energy generation from an OCS source. If the number of

prospective leases proposed for an area greatly exceeded the projected demand, we may limit the number of tracts that could be offered. Such a case could be addressed by proceeding with an intertract competition in which multiple tracts could be offered for lease in the auction formats described in the section-by-section summary (see §§ 285.220 through 285.223), but the number of tracts to be awarded would be limited. Although it would be our preference to use consultation—notably with the affected States and local communities, as well as the applicants—to identify the appropriate tract or set of tracts to be offered for sale, we have decided to preserve the option for conducting intertract competitive auctions. Such an approach is authorized under the rule, so we have not changed the regulatory text.

Generally, we believe that priority should be given to leasing tracts for commercial operations. We may consider only issuing limited leases in areas in which there is no interest in commercial leasing.

Once we make the determination about competitive interest, we will proceed with issuing leases under the appropriate process described in this subpart. The competitive process is set forth in §§ 285.210 through 285.225, and the process for issuing leases when no competition exists is set forth in §§ 285.230 and 285.231. The MMS will prepare an OCS renewable energy lease form and provide or reference such a lease form in a public notice. The approved lease form (or forms) for OCS renewable energy will be developed separately from the rulemaking and in consultation with interested and affected parties. This approach is designed to give us the flexibility to accommodate all possible renewable energy activities and adapt forms as necessary.

What types of leases will MMS issue? (§ 285.202)

This section states that MMS may issue leases for one or more types of activity relating to assessment and production of renewable energy and may issue commercial or limited leases as discussed previously in the overview of this subpart. A single-purpose lease will authorize one type of activity (e.g., wind power generation), whereas a multi-purpose lease will authorize multiple types of activity (e.g., both wind and wave power generation). A lease issued for one type of renewable energy activity will not necessarily preclude subsequent leases for other types of activities in that same area. For example, we may conduct a lease sale for a wind energy project and then conduct a lease sale for a wave energy project in that same area. While the initial lessee in such a case would be restricted to a wind energy project development, we may authorize additional types of OCS renewable energy activities in the same OCS area to the extent that such activities are compatible and do not unreasonably impede the ability of the existing wind energy project to conduct operations. Unless the original lease authorizes more than one type of renewable energy activity, expanding the authorized activities to include other kinds of renewable energy would require the issuance of a new lease or leases. We will not issue access rights for oil, gas, or any other minerals under this part.

We did not make any changes to this section.

With whom will MMS consult before issuance of a lease? (§ 285.203)

As directed by subsections 8(p)(4) and (7) of the OCS Lands Act or by other relevant Federal statutory requirements (e.g., ESA and Magnuson-Stevens Fishery Conservation and Management Act (MSA)), MMS will coordinate and consult with relevant Federal agencies (including the Department of Defense and those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts), the Governor of any State, the executive of any local government that may be affected by a renewable energy lease, and affected Indian tribes. As provided in § 285.102(e), we may invite any Governor of an affected State or government executive of an affected local government to participate in a joint task force or other joint planning or coordination agreement if we are considering offering or issuing leases (or grants). Participation in a task force would give the parties opportunities to contribute to the planning process and access to nonproprietary information. This section has been revised to include affected Indian tribes. In response to comments, we have also revised this section to differentiate between general consultation and coordination under this rule and the consultations with Federal agencies that are mandated by other laws (e.g., ESA).

We urge project proponents that plan to pursue renewable energy activities on the OCS to conduct preliminary outreach early in the process by contacting interested and affected parties about their proposals. We believe that it is particularly important for project proponents that plan to produce and deliver electricity to existing onshore distribution systems to consult with involved States and localities to establish power generation needs and to become aware of pertinent regulatory requirements before pursuing OCS commercial development and production rights. Early communication between project proponents and the States and localities that would be most affected by any project development and that would regulate associated onshore facilities, may ensure that the project will be compatible with and support any renewable portfolio standards, policies on the location of transmission and other support facilities, and any other relevant factors.

What areas are available for leasing consideration? (§ 285.204)

We intend to consider offering for lease any area of the OCS that is appropriately platted, except areas prohibited from leasing. Subsection 8(p)(10) of the OCS Lands Act prohibits renewable energy leasing in any area of the OCS within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument. In administering this program, the Secretary will take into account other uses and may decide not to offer portions of the OCS for leasing under this part or may restrict operations.

The areas we actually make available for renewable energy leasing are likely to be determined through a process that assesses different types of renewable energy resources and potential environmental impacts and other relevant information on a national, regional, or more area-specific basis. The assessment process will include coordination and consultation with Federal, State, and local governments; affected Indian tribes; and other interested and affected parties and may entail the establishment of task forces as discussed previously. The MMS will consider input from the task forces—as well as other national, regional, local, and tribal planning and coordination mechanisms—in determining appropriate siting of renewable energy projects and leasing priorities. Based on such assessments, we have the discretion when making the determination whether to offer areas for leasing. We intend to use our existing system of OCS regions, planning areas, official protraction diagrams, and lease blocks to designate, delineate, and describe areas of the OCS under the OCS Alternative Energy Program.

We did not make any changes to this section.

How will leases be mapped? (§ 285.205)

This section states that MMS will prepare and use necessary leasing maps and official protraction diagrams as it does for mineral leasing on the OCS (e.g., 30 CFR part 256.8)

We did not make any changes to this section.

What is the lease size? (§ 285.206)

We will determine the size for each lease on a case-by-case basis to ensure that it is an appropriate size to accommodate the anticipated activities. The lease size will accommodate buffers or setbacks as necessary. The process for the issuance of all leases will provide public notice of the lease size. We plan to delineate leases by using mapped OCS blocks, portions of such blocks, or aggregations of such blocks. For example, a limited lease supporting a small data gathering or technology testing facility might require only a small part of a 3-mile by 3-mile OCS block. In such a case, the lessee could acquire (or retain after originally acquiring a larger area) an aliquot part as small as a quarter-quarter (i.e., 1/16) of a block. On the other hand, it is likely that a typical commercial-scale renewable energy project would result in the issuance of one lease encompassing several contiguous OCS blocks.

We did not make any changes to this section.

Reserved Sections (§§ 285.207 through 285.209)

Sections 285.207 through 285.209 are reserved.

Competitive Lease Process

How does MMS initiate the competitive leasing process? (§ 285.210)

This section establishes a process for us to solicit proposals to develop the renewable energy potential on the OCS. We may use a general Request for Interest to gauge interest in renewable energy leasing anywhere on the OCS or a specific Request for Interest to assess interest in specific areas after receiving an unsolicited leasing proposal. Any Request for Interest will be published in the **Federal Register**.

Depending on the level and extent of interest and review of comments, we may formulate a nationwide or regional program schedule of lease sales, or we may initiate individual competitive lease sales on a case-by-case basis without an overarching program schedule. Once a determination is made to offer an area(s) for leasing, we would initiate a renewable energy lease sale process.

We did not make any changes to this section.

What is the process for competitive issuance of leases? (§ 285.211)

This section lays out the discrete steps we propose to follow in preparing for and holding a lease auction and issuing leases. These steps include a Call for Information and Nominations (Call), an Area Identification, a Proposed Sale Notice, and a Final Sale Notice as explained in the description of the competitive leasing process presented previously.

We received several comments recommending that we provide for accepting the results of competitive processes conducted by States and utilities to select developers of offshore wind generation projects. Notably, during the time that MMS has been promulgating this rule, the States of Delaware, New Jersey, and Rhode Island have conducted competitive processes and have selected companies to develop wind resources on the OCS. We believe that the pre-existing State processes are relevant to the competitive processes that MMS is required to conduct following approval of this rule. We intend to do so by using a competitive process that considers, among other things, whether a prospective lessee has a power purchase agreement or is the certified winner of a competitive process conducted by an adjacent State. We also may consider a similar approach to recognize the winners of competitions held by States in the future. There is additional discussion of this issue in our explanation of multiple-factor bidding provided in the next section.

In response to a comment pointing out a typographical omission from the proposed rule, we have revised § 285.211(b)(2) to say, ''* * * human, marine, and coastal environments * * *''

We have also added time periods for the steps in the competitive lease issuance process, and we have cited affected Indian tribes in paragraph (b).

What is the process MMS will follow if there is reason to believe that competitors have withdrawn before the Final Sale Notice is issued? (§ 285.212)

This is a new section MMS added in response to comments that we clarify what will happen in the competitive sale process if competitors withdraw. If, before the Final Sale Notice is issued, MMS has reason to believe that competitors have withdrawn and competition no longer exists, we may decide to end the competitive process. We will issue a public notice of Request for Interest and consider comments received to confirm that there is no competitive interest. If, after we have issued the public notice, we determine that there is no competitive interest in the lease area, and one party wishes to acquire a lease, we will discontinue the competitive process and will proceed with the noncompetitive process set forth in §§ 285.231(d) through (i), and the acquisition fee as specified in § 285.502(a) must be submitted with the SAP or GAP. However, if MMS determines that competitive interest in the lease area continues to exist, we will continue with the competitive process set forth in §§ 285.210 through 285.225.

What must I submit in response to a Request for Interest or a Call for Information and Nominations? (§ 285.213)

This section describes the type of information we seek from potential lessees in response to a Request for Interest or a Call. We may issue a broad request for interest to be used as a basis for developing a national or regional schedule of renewable energy lease sales, or we may issue a tract-specific request to be used to determine competitive interest in a particular area that has been proposed for leasing. We will issue a Call as the first step in a competitive lease sale process to elicit information from all interested and affected parties concerning proposed leasing activities and the existing conditions that may affect or be affected by those activities. In all cases—responding to a general or specific Request for Interest or a Call—we will require prospective lessees to submit the same types of information. That information will include: The area of interest for a possible lease; a general description of objectives and the facilities needed to achieve those objectives; a general schedule of proposed activities, including those leading to commercial production or other approved operations; available and pertinent data and information concerning renewable energy resources and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest; devices and infrastructure involved; anticipated power production and likely purchasers; a statement that the proposed activity conforms with State and local energy planning requirements, initiatives or guidance, as appropriate; documentation showing that the applicant is qualified to hold a lease;

and any other information specifically requested in the **Federal Register** notice.

We believe that this information is necessary for MMS in developing leasing schedules, determining competitive interest for unsolicited proposals, and proceeding with renewable energy lease sales. We also believe that such information should be readily available from prospective lessees and that this requirement poses no undue burden. In cases where a prospective lessee has already submitted the required information, we will not require it to be submitted subsequently. For example, if a project proponent responds to a broad or specific Request for Interest for an area that MMS subsequently decides to offer in a lease sale, that project proponent will not have to resubmit information in response to the Call for that sale. Only those that have not previously expressed interest and submitted information will be expected to provide the required information in response to the Call.

In addition to the items listed, we believe that information relating to potential power markets that could be served, and proposed conventional and renewable energy projects that are located onshore and offshore and could serve those markets, is important. Also, environmental, technical, and economic information on similar projects elsewhere in the world that may be relevant to your proposed area(s) may be necessary for our deliberations.

Some comments indicated that this section meant that MMS may require a response to a Request for Information or a Call. Clearly, MMS cannot mandate such responses, but we can specify the information we need from those who opt to respond and participate in the leasing process. We believe the respondents should recognize that it is also in their best interest to submit complete and accurate information about their leasing intentions to enable proper consideration by MMS.

We have made two changes to this section. We added to § 285.213(d) a statement that we will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA. Also, we deleted § 285.213(e) and renumbered subsequent sections because we can expect affected State(s), rather than the prospective lessee, to submit information communicating the State perspective on proposed projects and associated leasing.

What will MMS do with information from the Requests for Information or Calls for Information and Nominations? (§ 285.214)

This section states that we will use the information we receive to identify lease areas, develop options for conducting environmental analysis and adopting lease provisions, and prepare documentation to satisfy relevant Federal requirements, such as NEPA, CZMA, ESA, and MSA.

For purposes of Federal consistency, we will treat renewable energy competitive lease sales as Federal agency activities and follow the requirements of subsection 307(c)(1) of the CZMA. That means we must determine if the effects to any land or water use or natural resource of a State's coastal zone from the competitive lease offering are reasonably foreseeable and comply with the appropriate Federal consistency regulations in 15 CFR part 930, subpart C.

We did not make any changes to this section.

What areas will MMS offer in a lease sale? (§ 285.215)

Under this section, the areas we will offer for lease will be those identified pursuant to § 285.211(b). However, the offered area could be subsequently reduced through the lease sale process. This section also states that no further nominations for a lease sale will be accepted after the Call for Information and Nominations closes. Comments on this provision asked for clarification that such areas will be available for nomination in subsequent nomination and leasing processes. We believe that, as written, this section should be understood to mean that nominations are required to be submitted during the comment period following a Call for a particular lease sale process. After that particular lease sale process concludes, parties may submit unsolicited nominations for areas that were within the scope of that sale, and MMS will give them full consideration under the processes outlined.

We did not make any changes to this section.

What information will MMS publish in the Proposed Sale Notice and Final Sale Notice? (§ 285.216)

We will publish Proposed Sale Notices and Final Sale Notices in the **Federal Register** for each lease sale. Proposed Sale Notices and Final Sale Notices will provide information pertaining to:

- The area offered for leasing;
- Proposed and final lease terms and conditions including lease size, lease term, payment and financial assurance requirements, performance requirements, and site-specific lease stipulations;
- Auction details including bidding procedures and systems, the bid variable and minimum bid, the bid deposit, the place and time for filing bids, and the place, date, and hour for opening bids;
- The official MMS lease form to be used or a reference to that form;
- Bid evaluation criteria we will use and how the criteria will be used in decision-making for awarding a lease;
- Award procedures including how and when we will award leases and how we will handle rejected bids or applications;
- Procedures for appealing the lease issuance decision; and
- Execution of the lease.

The Proposed Sale Notice will invite comments from all interested and affected parties. We expect that the use of such a notice in the process of offering leases for development of OCS renewable energy sources will provide a valuable opportunity for us to consult on the selection of appropriate competitive leasing procedures and the formulation of the details of the leases to be issued. After considering comments on the Proposed Sale Notice, we will revise and publish a Final Sale Notice. The final steps in the leasing process will be conducting the auction and awarding the leases.

We received comments recommending that we should delete the regulatory reference to minimum bids and provide additional guidance as to the bid evaluation criteria MMS might announce and apply. We have decided to retain the regulatory reference. The MMS will set a minimum bid to inform auction participants of the smallest bid amount that could be accepted in a sealed bid auction or to set the level for opening bids in an ascending bid auction. Potential lessees should find this information helpful when making financial preparations prior to participating in an auction. Further, minimum bids can serve as a deterrent to speculative bidding from companies who either are less financially sound than is desirable, do not plan to undertake investments in an expeditious manner, or whose main goal is to make a profit by re-selling the property rights. We will address bid evaluation procedures generally in implementation guidance that we intend to issue after the rule is approved, and we will publish the details of bid evaluation criteria in the sale notices.

We did not make any changes to this section.

Reserved Sections (§§ 285.217 Through 285.219)

Sections 285.217 through 285.219 are reserved.

Competitive Lease Award Process

What auction format may MMS use in a lease sale? (§ 285.220)

This section, as well as the following two sections, describes the auction formats and bidding systems that will be available to MMS for awarding renewable energy leases on a competitive basis. In the proposed rule, we set forth three auction formats: Sealed bidding, ascending bidding, and two-stage bidding. In response to comments, we have added a fourth auction format that considers multiple factors relating to proposed OCS renewable energy projects. This additional format is described in detail in the next section. The concept of package bidding, introduced in § 285.220 and applicable to all the auction formats described in this section, is also detailed in this section.

The sealed bidding format is mandated for oil and gas lease sales by subsection 8(a) of the OCS Lands Act. In contrast, no particular auction format is required for renewable energy lease sales conducted under subsection 8(p) of the OCS Lands Act.

For each auction, we will establish a sale area or sale areas based on information received in response to Request for Interest and Call notices, and establish a bid variable, a minimum acceptable bid, and the criteria for bid acceptance. We will include specific details of the selected auction format in notices published in the **Federal Register** including the Proposed Sale Notice and the Final Sale Notice. The sale notices will include details on the bidding process, such as the auction format, bidder eligibility, bidder deposits, bid variable, minimum bid amounts, bid increments, criteria for ending or continuing the auction, method for determining the provisional winning bidder(s), and bid adequacy considerations. A general description of the four auction formats from which we propose to choose follows.

Sealed Bidding will consist of a single round of bidding and provide for each lease sale participant to submit a single bid by post or email, after which we will publicly announce the high bidder. We will specify in the Call either a cash bonus or an operating fee rate for the bid variable. This auction format is administratively compatible with the application of a ranking and filtering procedure to identify the set of highest bids per tract before MMS decides which of those tracts to lease. This ranking of high bids can serve as a bid adequacy mechanism for determining which high bids to accept. It also has the advantage of creating competition for lease rights across tracts when competition for individual leases is absent. This procedure is known as ''intertract competition.''

Ascending Bidding involves multiple rounds of bidding and provides for participants to submit increasing sequential bids over a specific time period. Again, we will specify either a cash bonus or an operating fee rate for the bid variable. Bids may be submitted orally or electronically (e.g., internet). If bidding activity continues until the deadline, the time period for bidding may be extended if warranted by additional bidding activity.

Two-stage Bidding combines the previous two formats, sealed and ascending bidding. Generally, we will require interested bidders to offer a minimum cash bonus to join the auction. In the most likely process formulation, participants are expected to submit ascending bids (e.g., operating fee rate, cash bonus, etc.) in the first stage until all but two bidders drop out or more than one bidder offers to pay the maximum bid amount specified by MMS. The auction will then move to the second stage, where the remaining participants typically will offer a sealed bid on a bid variable not employed in stage one. However, we reserve the option to conduct the two-stage auction using sealed or ascending bidding in either or both stages, and to select the bid variables in each stage.

Multiple-factor Auction may be employed to rank proposals, resulting in a lease award to the bidder making what MMS perceives is the best offer. Single or multiple financial bid variables may be considered (e.g., rental rate, operating fee, variable cash bonus, or combination). Nonmonetary variables may also be considered including technical merit, timeliness, financing and economics, the environment, public benefits, consistency with State and local needs and requirements, or other factors.

Subject to the bid adequacy requirements referenced in § 285.222, typically the qualified bidder offering the highest cash bonus or the highest fee rate, depending on which deciding bid variable is used, will win the lease. When there are multiple leases, intertract competition could be used to decide which of the high bids to accept under the category of bid adequacy.

We received numerous comments on this section of the rule, many recommending more subjective lease issuance processes. We revised the rule at §§ 285.220 through 285.224, and § 285.501, to accommodate a multiple factor auction format for competitive lease award. A method of assessing multiple factor bids may be employed to rank proposals, resulting in a lease award to the bidder making what MMS perceives is the best offer. Single or multiple financial bid variables may be considered along with nonmonetary variables, such as technical merit, timeliness, financing and economics, the environment, public benefits, consistency with State and local needs and requirements, or other factors. While we have included the multiple factor auction format as an option, we are concerned that this format would not meet the objective under the mandate of subsection 8(p)(3) of the OCS Lands Act (43 U.S.C. 1337(p)(3)), which is to issue renewable energy leases through a simple and straightforward process in a fair and equitable manner. This auction format is likely to be less transparent to the public and more susceptible to favoritism and manipulation by selected parties than other auctioning formats. However, MMS is willing to work with States and other interested organizations to develop a procedure that would meet the OCS Lands Act mandate.

Some entities submitted a preference for sealed bidding rather than ascending bidding. In their view, a single round of bidding is a more equitable process than ascending bidding and is the simplest, most straight forward method. One comment related a sealed bidding auction format as proposed by MMS to procedures for placing a bid in response to a request for proposal (RFP). Another comment explained that, to the extent there is competitive interest, ascending bidding will assure MMS that it is receiving the maximum amount each of the participants is willing to bid for a lease and help satisfy MMS's concerns regarding a ''fair return.'' Other commenters criticized the sealed bid process because of the risk that one of the bidding parties will offer an unnecessarily high bonus bid, depriving that entity of important capital that it will need to develop the lease and potentially other leases. We recognize that under certain conditions, a sealed bid auction may yield better results than an ascending bid auction. It is also true that if different conditions prevail, an ascending auction may maximize the public's expected revenue. The MMS will make a determination regarding the

type of auction to be used based on whether the choice would encourage companies to participate in the auction and result in leasing to developers that have the financial and technical means to successfully develop a renewable energy project. The MMS will review information received in response to a Request for Interest and a Call before announcing a sale design and auction format in a Proposed Sale Notice.

On the issue of package bidding, the general consensus of the comments supported such an approach, although there were some concerns expressed about its complexity. This approach was possible under the rule as proposed, and MMS believes that package bidding should be available under the final rule. Package bidding used in the auction formats described in this section would allow project proponents to identify possible synergies between tracts, then delineate a lease area comprised of those tracts, and bid the value of those tracts based on the development potential of the overall proposed project. Before making the decision to hold an auction that featured the option to submit package bids, MMS would analyze information submitted in response to the competitive lease process given in §§ 285.210 through 285.215 to determine if it was in the public's interest. If utilizing such an approach is beneficial and selected, MMS may choose among different approaches to implement package bidding. For example, a simultaneous ascending auction could be held, where MMS believes that package bidding would provide the best means by which bidders may compete for leases they need for project development. Bidders would submit a bid consisting of multiple lease blocks whereby the bid value would represent the total value of those lease blocks. The determination of winning packages can be made through the application of a software algorithm that maximized the sum of the package bids submitted in successive rounds. As a simpler, alternate approach, a bidder's choice ascending auction could be held in which the high bidder in each round earns the right to choose one tract, or multiple tracts to form a logical development unit, from all tracts offered.

We did not make any changes to this section other than the addition of the multiple-factor auction format.

What bidding systems may MMS use for commercial leases and limited leases? (§ 285.221)

A bidding system is composed of various elements, the most important of which are the bid variable(s) and the payment requirements. The bid variable is generally subject to a minimum bid level and potentially to a reservation price, both established by MMS. The minimum bid level represents the entry level of the bid, i.e., the smallest bid amount that MMS would consider acceptable. Usually the same minimum bid level will be set across certain classes of tracts. The reservation price is a tract-specific measure that represents an estimate of the underlying value of the tract when used for a specific purpose. In cases where sufficient competition is deemed to exist, a reservation price typically will not be needed to ensure that a fair return is obtained in the auction for the individual tract. For a renewable energy lease, we will choose from six different bid systems:

(1) A cash bonus with a constant fee rate (decimal);

(2) A constant operating fee rate with a fixed cash bonus;

(3) A sliding operating fee rate with a fixed cash bonus;

(4) A cash bonus *and* a constant operating fee rate;

(5) A cash bonus *and* a sliding operating fee rate; or

(6) A multiple-factor combination of nonmonetary and monetary factors.

The fee rate in this context is analogous to a royalty rate used in oil and gas leasing. If a cash bonus is the bid variable, the operating fee each year will be based on the formula in subpart E. If the fee rate is the bid variable, the cash bonus will be fixed, and the operating fee will be calculated using the fee rate offered by the winning bidder as a part of the formula in subpart E of this regulation. The two-bid variable systems, cash bonus and operating fee rate, either constant or as a sliding scale, will be used only in a two-stage auction.

The resulting annual operating fee in these two-stage bidding auctions will be derived from the formula established in subpart E of this part which is based, in part, on megawatts of installed capacity and the prevailing market rates for electricity sold in the consuming region targeted by the lease. Values for the formula components, excluding the fee rate when it is used as the bid variable, will be established in the Final Sale Notice or in the final public notice in the case when no competitive interest exists for a proposed lease.

For limited leases, the cash bonus will be the only permissible bid variable. The MMS imposes no operating fee for limited leases because such leases could produce and sell power only within limits set by the terms and conditions of the lease; limited leases will not authorize long-term or large-scale commercial operations. Since we anticipate only small amounts of power (e.g., 5 MW) being generated for relatively short duration (less than 5 years), we do not propose to charge an operating fee for the sale of power from limited leases. We will charge only rentals for limited leases. This also means we will not be using a two-stage auction format for issuing limited leases.

One renewable bidding system that we considered but rejected in the proposed rule is a multiple-factor system. Such a system consists of many different bid variables as factors, both quantitative and qualitative, in determining the winning bid in a competitive process. This is the approach used in Denmark, which has the most developed offshore wind program in the world and issues licenses based on multiple factors (e.g., project design, operator experience, etc.).

However, we received numerous comments recommending that we reconsider the multiple-factor approach, and based on those comments, we revised the rule at §§ 285.220 through 285.224, and § 285.501, to accommodate a multiple-factor auction format for competitive lease award. The multiple-factor auction format may be employed to rank proposals, resulting in a lease award to the bidder making what MMS perceives is the best offer. Single or multiple financial bid variables that may be considered include a rental rate and operating fee, with a fixed or variable cash bonus or a fixed entry fee. Nonmonetary variables may also be considered including technical merit, timeliness, financing and economics, the environment, public benefits, consistency with State and local needs and requirements, or other factors.

Under the multiple-factor auction format, MMS will publish criteria for winning bid determinations in the Final Sale Notice. A panel made up of members selected by MMS, or members from MMS, would assess and rank the proposals. Possibly, a quantitative framework may be devised that would weigh the importance of each factor and provide a rating scheme for bids placed on the factors. Further, it is possible that a negotiation stage may be included in the bid assessment criteria, to be used if it becomes necessary to modify a proposal prior to acceptance. The MMS will coordinate with States and other stakeholders, as appropriate, to establish procedures that are best designed to assure that the winning proposal will result in the selection of the most

worthy offer and provide a fair return to the public.

Multiple factor bidding may be useful if MMS identifies a market failure in a purely monetary auction format. In certain circumstances, nonmonetary factors involving important public policy matters may not be reflected in auctions where a fiscal term measure is applied to determine the winning bidder. Examples of such market failure include situations where public benefits could accrue from innovative research and technology development or situations where public benefits could accrue from the abatement of existing or potential carbon emissions.

In the first example, two or more project proponents want to prove a new project concept using technology that is not available on a commercial scale. The expected value of this type of project is marginal; so the proponents would seek the minimal initial cost of obtaining access rights, perhaps to a level even lower than the cost of obtaining a lease when no competition exists, in order to have more capital for facility expenses. When more than one project proponent indicates an interest in acquiring leases to develop resources in the same area, MMS might hold a multiple-factor auction to encourage the advancement of the technology. The MMS could design the bidding factors specifically for the type of project proposed, giving consideration to the estimated resource potential. It is possible that MMS could give the winning bidder, in a multiple-factor auction, an opportunity to prove the project concept and profitability before requiring payment of a significant share of the cash flow. The Government would take on the role of supporting a promising project concept impeded by financing difficulties for public policy reasons. While MMS originally chose to exclude this option from the proposed rule, comments indicated that this method of lease award may advance the development in wave energy technology, and so it has been added to the auction format regulations in this rule.

In the second example, MMS may choose to use a multiple-factor auction to advance the synchronization of State and Federal regulatory processes that have different but compatible conceptual goals, e.g., a State administered RFP to supply electricity under a power purchase agreement in conjunction with an MMS competitive renewable energy commercial lease offering. This situation may arise when a State announces an RFP for a power purchase agreement that would help a utility company meet growing demand for electricity within its customer base. Proposals would be assessed based on factors such as technical merit, timeliness, financing and economics, the environment and public benefits, or other factors. The RFP could specifically state that consideration in awarding leases would be given to potential emission reduction benefits to the public and could request that bidders submit a lease bonus bid payable to MMS for its preferred site in any proposal to develop an OCS renewable energy project. The lease bonus bid would be one of the multiple factors published in the RFP, to be assessed by the State and MMS jointly to determine the winning proposal. A primary concern would be that the interests of the Federal Government might not coincide with that of the power purchaser and the State, resulting in a bid factor weighting and assessment process that does not lead to a fully satisfactory selection process. In such cases, the proposal receiving the highest ranking may not be the proposal that is the highest valued, thus negatively impacting the return to the United States and the State(s) when revenues are shared. The MMS will coordinate with States and interested organizations to establish procedures that assure competition and a fair return to the United States.

Several commenters expressed concerns about inviting possible sham bidding and speculation, especially with the use of bidding systems based on fee rate as the variable. We understand these concerns and agree that a combination of bonus, rental, and operating fee payments should be balanced in a way that encourages participation by serious project proponents. We will analyze energy market conditions through the competitive lease process, beginning with the analysis of information available after a request for interest is published, and continuing through the Call and the Proposed Sale Notice. We will endeavor to hold auctions that will tend to award leases to bidders who value the tracts the most. We anticipate that renewable energy lease sales will be focused on sites where the resource potential can be assessed with a relatively high level of certainty before the auction. This could allow MMS to set the minimum bid at a level that potential bidders who do not have the financial and technical capability to develop a lease would not be willing to pay. As a result, speculative bidders should not be able to compete effectively for renewable energy leases against legitimate project proponents. However, to provide additional assurance, MMS intends to defer from using bidding systems incorporating the fee rate, as used in the formula found in § 285.506, until the technology for the development of the given renewable energy source has been commercially proven.

What does MMS do with my bid? (§ 285.222)

The MMS will open sealed bids at the place, date, and hour specified in the Final Sale Notice for the sole purpose of publicly announcing and recording the bids. However, we will not accept or reject any bids at that time. We will determine whether to accept a high bid as a winning bid based on the following factors.

With sealed bidding, bid acceptance criteria typically rely on (1) minimum bid levels we establish, with bids above that level being acceptable if there is a sufficient level of competition or if the lease area is not considered to be viable, or (2) assessments of the adequacy of the high bids for a specific lease area in comparison to calculated reservation prices for the property rights that are the object of the bidding. Whereas a minimum bid reflects a publicized level below which bids are not deemed satisfactory or competitive and thus will not be considered, the reservation price reflects an unpublished estimate of the value of the tract, and thus generally the lowest bid level at which we would award the lease. In this context, the term ''reservation price'' could also refer to the lowest operating fee at which we would award the lease, if the operating fee is used as the deciding bid variable. The calculation of the reservation price compensates for insufficient market competition, so if enough competition for the tract materializes, there is less of a need to rely on a reservation price. However, when there is little competition for specific acreage, the reservation price becomes critical if the absence of competition is known to the potential bidder. An additional factor we may consider in calculating the reservation price is the value of other uses of the area that are incompatible with the renewable energy project.

Due to the competitive aspects of the ascending bidding procedure, bid acceptance ordinarily would be less dependent on application of a reservation price and instead would rely solely on the bidding results to ensure receipt of fair market value. The ascending bid framework has been used by the BLM for allocating the property ROWs for wind energy projects. If we conclude that ascending bidding is the preferred auction format for many proposed renewable energy leases, then

sale procedures for ascending auctions could differ substantially from the customary OCS sealed bid model.

With a two-stage auction format, the bid acceptance considerations are the same as those that apply to the format for the final stage that was used (i.e., sealed and/or ascending bidding).

One way to reduce reliance on a calculated reservation price in sealed bidding or two-stage bidding could be to apply the auction format to multiple areas employing intertract competition. Intertract competition may be needed in areas with high industry interest in a number of OCS leases, but where expected demand per tract is limited or constrained. In addition to enhancing competition, the object of intertract competition would be to provide signals through the bids, which serve to assist us in leasing areas providing access to the most valuable sources of energy.

Our goal is to accept or reject all sealed bids within 90 days after the sale date, although we may extend that time if necessary. In the case of ascending bidding, we may be able to determine the winning bidder once we confirm that the high bidder is a qualified bidder. Nevertheless, we reserve the right to reject any and all bids, regardless of the amount offered or bidding system employed. We will send a written notice to each high bidder, accepting or rejecting the bid or informing the bidder of tied high bids.

One comment on this section recommended that a 30-day deadline for acceptance or rejection of the high bid be set for MMS. This commenter and others also recommended revisions to establish meaningful bidder competence requirements. They suggested that the proposed § 285.222(b) be changed to provide that MMS review the high bidders' qualifications as they relate to the bidders capabilities to make productive use of renewable energy leases. This review should take place prior to awarding the lease and should substitute for conducting a bid adequacy review. The commenter further stated that MMS's authority under this section to nullify an auction, because the competitively determined value of a lease falls short of a minimum value that MMS has placed on it, is misguided.

We have decided to establish a bidder competence requirement in § 285.107. To ensure a fair return, MMS intends to rely primarily on area-specific minimum bid levels and auction designs that encourage competitive bids. Where competition clearly prevails, MMS expects to make high bid acceptance and rejection decisions within 30 days following the sale, absent the presence of unusual bidding patterns. This amount of time may be necessary to ensure that MMS has selected the proper allocation of leases to high bidders when (1) package bidding is employed, (2) one or more package bids overlap, and (3) determination of the appropriate set of winning packages requires application of a software algorithm.

The 90-day postsale evaluation period is generally intended to apply in those unusual cases where bid adequacy procedures must be used. Bid adequacy considerations will be used where bidding evidences certain anomalies that indicate anti-competitive, illegal, or unauthorized behavior, where bidding is expected to be sparse, or when bids submitted for a tract are otherwise not a good indicator of true market competition. Legal bids would be bids submitted in compliance with the MMS regulations at 30 CFR part 285 and the Final Sale Notice. Anti-competitive or unauthorized behavior includes any form of collusion, or attempts to manipulate MMS auction rules to obtain an improper advantage over competitors. In cases where there are multiple tracts of interest but few bidders per lease, MMS may choose to employ intertract competition to assess bid adequacy. Under this approach, the high bids would be ranked, and a subset of those high bids would be accepted subject to the bid adequacy conditions that applied. If MMS decides that a tract should undergo evaluation to determine if fair value has been received, or there is a wide variation among bids, a reservation price may be calculated. A wide variation in bidder values could be caused by asymmetric information concerning the resource potential on a tract or tracts, or dissimilar bidding strategies. Bid adequacy would be used if MMS has reasonable confidence in its ability to accurately estimate project value in conjunction with the bids for the project.

Several commenters took issue with our proposed approach to determining and assuring fair return for renewable energy rights. Some commenters stated that our approach misapplies elements of the approach taken to determine fair market value for oil and gas resources. We agree that there are significant differences among the market conditions for oil and gas exploration and development and renewable energy siting and development, but we believe that a competitive lease process is compatible with assuring that the United States receives a fair return for issuance of a renewable energy lease. Conceptually, the MMS renewable energy lease program will be different from an oil and gas lease program due to resource risk considerations. We anticipate that renewable energy lease offerings will be focused on sites where the resource potential can be more accurately assessed before the auction than during typical oil and gas lease offerings. Further, costs to measure renewable energy resource potential are relatively low in comparison to the cost of oil and gas exploratory drilling. While it is not known whether oil and gas accumulations exist on most oil and gas tracts offered in MMS sales, there is a significant amount of OCS renewable energy resource information available to the public. In light of these differences, renewable energy developers should not need to assemble the type of extensive lease portfolios typical of an oil and gas exploration company in order to identify a site suitable for development. As a result, the minimum bid set by MMS could more closely relate to the value of the tract to the project proponent, than, for example, the value to an investor that hoped to re-sell the lease rights on the secondary market. This factor could make it more difficult for speculative bidders to compete effectively for renewable energy leases against legitimate project proponents.

We have made changes to this section relating to the addition of the multiple-factor approach and the rationale for rejecting bids.

What does MMS do if there is a tie for the highest bid? (§ 285.223)

In response to comments objecting to the proposed approach of breaking ties by lot, we have revised the text of § 285.223(a) to authorize an additional round of bidding when more than one bidder on a lease submits the same high bid amount. If the highest bids are tied, we will notify the tied bidders. The winning bidder will be determined from the tied bidders by a final round of ascending or sealed bidding. This section does not apply to bids at the end of stage one of a two-stage bidding format.

One commenter suggested that creditworthiness be considered in breaking ties. We did not adopt this approach because it would introduce unnecessary complexity into the determination of a winner by requiring MMS to establish a measure to differentiate one bidder from another through the analysis of financial information that may not be readily accessible to MMS.

What happens if MMS accepts my bid? (§ 285.224)

This section explains the responsibilities of the successful bidder.

Our acceptance notice will include three copies of the lease to be executed by the bidder. The proposed rule required execution of the lease, payment of the first 6 months' rental, payment of the balance of the winning or fixed bonus, and filing of required financial assurance within 10 business days. Numerous commenters recommended increasing this 10-day timeframe. We believe this timeframe is reasonable for lease execution, payment of the balance of the bonus bid, and filing of financial assurance, and we have retained it for those actions. Also, we may extend this deadline upon request if we find a delay is due to events beyond the control of the successful bidder.

Based on experience with our interim policy for issuing limited leases, and in response to comments on the proposed rule, we have increased to 45 days the timeframe for providing the first 6 months' rental. This will give lessees the opportunity to relinquish unwanted acreage before having to pay a rental that is based on the total amount of acreage under lease. While the rental requirement will be deferred for 45 days, the payment will cover the first 6 months of the lease, beginning on the effective date of the lease.

After three executed copies of the lease are returned to MMS, we will execute the lease on behalf of the United States and send one fully executed copy to the lessee. If the bidder fails to execute the lease or otherwise fulfill requirements, the bidder's deposit will be forfeited, and no lease will be issued.

If, before the lease or grant is executed on behalf of the United States, the offer to the lease is withdrawn or restricted from leasing, we will not issue a lease and will refund the deposit. We reserve this right to rescind a lease offering in situations where new environmental or other concerns about the prospective area, operation, or need for the facility surface after the lease sale. If the awarded lease or grant is executed by an agent acting on behalf of the bidder, the bidder must submit with the executed lease evidence that the agent is authorized to act on behalf of the bidder.

We also made changes to this section to accommodate addition of the multiple-factor approach.

What happens if my bid is rejected, and what are my appeal rights? (§ 285.225)

This section explains what options a bidder has if we reject the apparent high bid. We will provide a written statement of reasons and refund any money deposited with the bid. The bidder may then petition the MMS Director for reconsideration, in writing, within 15 business days of bid rejection. The Director will send the bidder a written response either affirming or reversing the rejection. Denial of a bid reconsideration by the Director is a final agency action. It is not subject to review by the Interior Board of Land Appeals, but is judicially reviewable.

We did not make any changes to this section.

Reserved Sections (§§ 285.226 Through 285.229)

Sections 285.226 through 285.229 are reserved.

Noncompetitive Lease Award Process

May I request a lease if there is no Call? (§ 285.230)

Anyone qualified to hold an OCS lease under § 285.106 may request a renewable energy lease from us at any time, except in areas otherwise proposed for competitive lease offerings or excluded by statute from leasing. Such an unsolicited request for a lease may be submitted to conduct either commercial or noncommercial activities authorized in this part. To be valid, the request must include information equivalent to that required under § 285.213 in response to a Call for Information and Nominations. Specifically, the unsolicited request must contain a depiction of the area requested for lease; a general description of the objectives of the project and the facilities that would be used; a general schedule of proposed activities, including those leading to commercial production or other approved operations; available and pertinent data and information concerning renewable energy resources and environmental conditions in the area of interest; a statement that the proposed activity conforms with State and local energy planning requirements, initiatives, or guidance, if any; and documentation that you are qualified to be a lessee as specified in § 285.107. In response to comments, we have changed § 285.230(e) to refer to a statement rather than certification in order to eliminate any confusion that this provision is alluding to CZMA compliance.

In addition, your request must include an acquisition fee of $0.25 per acre for the area requested as required by § 285.502. This fee is at a level intended to be high enough to discourage speculation but low enough not to inhibit interest, allowing lessees to establish a low ratio of lease acquisition costs to total project costs.

We have revised this section by adding to paragraph (d) a statement that we will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA.

How will MMS process my unsolicited request for a noncompetitive lease? (§ 285.231)

Paragraphs (a), (b), and (c) of this section state that MMS will first determine competitive interest in processing an unsolicited request in order to decide whether to proceed with leasing under a competitive or noncompetitive process. If we find that there is competitive interest in the lease area, we will proceed with a competitive lease process. If we determine that there is no competitive interest, then we will issue a notice of such determination. This section also states that if MMS processes a proposed lease area on a competitive basis, no unsolicited requests for leasing in that area will be considered for as long as that process is pending. Thus, once an area is subject to a lease sale process, the only way to pursue a lease within that area is through that competitive process until that process concludes. After the process concludes, and if acreage within the area that had been considered for lease remains unleased, unsolicited requests will again be considered for that acreage.

If we determine that there is a competitive interest, we will proceed with a competitive process and will apply your acquisition fee to any bid you submit. If you choose not to bid, we will not refund your acquisition fee. We believe retention of your fee in this case is appropriate in order to discourage all but serious requests and because of the costs associated with processing your original request. If you submit a qualified bid that does not win, we will refund your deposit, including the amount of the acquisition fee.

Paragraph (d) describes how MMS will proceed if it determines there is no competitive interest. Within 60 days after we issue a finding that there is no competitive interest, the prospective lessee must submit either a SAP for a commercial lease or a GAP for a limited lease. We will review the plan and conduct NEPA and other required analyses before simultaneously issuing the lease or grant and approving the SAP or the GAP. As explained in the preamble discussion of plans in subpart F, a combined SAP and COP may be submitted for commercial leases. For hydrokinetic projects early coordination with the FERC licensing process will be necessary, but no COP will be required.

Our process for conveying OCS sand and gravel by negotiated noncompetitive lease under Public Law 103–421 is a relevant model for the process for issuing renewable energy leases when no competitive interest exists. The sand and gravel process starts with a request to MMS for a noncompetitive lease. If we determine that the request has potential, we require a NEPA analysis (EIS or EA). We inform the requestor of the type of environmental analysis required and provide an estimated schedule for completing the analysis and making the decision on whether or not to issue a lease. As part of the NEPA analysis, we undertake or participate in endangered species consultations with NOAA and the FWS. We may ask the requestor to fund the NEPA analysis. After the NEPA analysis is completed, we decide whether or not to issue a lease. If the decision is made to issue a lease, the specific terms and conditions (e.g., mitigating measures, size and length of lease) are discussed with the requestor and included in the noncompetitive agreement (lease) that we offer. The requestor must sign that agreement to complete acquisition of the lease.

We will follow the requirements of subsection 307(c)(3)(A) of the CZMA and 15 CFR part 930, subpart D, as shown in Table 1 for noncompetitive lease issuance and SAP or GAP. Under the CZMA and its implementing regulations, an OCS plan is any plan for the exploration or development of, or production from, any area leased under the OCS Lands Act that is submitted to the DOI, which describes in detail Federal license or permit activities. The SAP or GAP cannot qualify as an ''OCS Plan'' under the CZMA implementing regulations for leases issued when no competitive interest exists, because the lease and the SAP or GAP will be processed simultaneously. For leases issued competitively, the SAP or GAP would be submitted and processed after the lease has been issued, and in those instances, the SAP or GAP would be processed as an ''OCS Plan'' (as defined by 15 CFR 930.73), following the requirements of subsection 307(c)(3)(B) of the CZMA and 15 CFR part 930, subpart E.

In response to comments, we have added provisions to this section that address public notification and participation in the noncompetitive leasing process. We also have revised this section by adding procedures and timeframes for executing leases issued noncompetitively that are analogous to those for competitive leases.

May I acquire a lease noncompetitively after responding to a Request for Interest or Call for Information and Nominations under § 285.213? (§ 285.232)

This is a new section that describes the process that MMS will follow to consider issuing a lease noncompetitively, if an area of interest was submitted by only one interested party, in response to the Request for interest or Call. The MMS may inform you that there does not appear to be competitive interest and ask if you wish to proceed with acquiring a lease. If you wish to proceed with acquiring a lease, you must submit your acquisition fee as specified in § 285.502. After receiving the acquisition fee, MMS will follow the process outlined in §§ 285.231(b) through (i).

We added this section in recognition that §§ 285.230 and 285.231 of the proposed rule did not explicitly address situations in which a Request for Interest or Call for Information and Nominations results in no overlapping or otherwise competing indications of interest. The new section clarifies that in such a situation the prospective lessee may pursue the leasing process set forth in § 285.231, leading to either competitive or noncompetitive lease issuance.

Reserved Sections (§§ 285.233 Through 285.234)

Sections 285.233 through 285.234 are reserved.

Commercial and Limited Lease Terms

If I have a commercial lease, how long will my lease remain in effect? (§ 285.235)

This section describes the duration terms for a commercial lease. Commercial leases issued competitively would have three separate phases of lease activity: Preliminary term, site assessment term, and operations term. For commercial leases issued competitively, the preliminary term extends for the initial 6 months during which the lessee must submit a SAP or a combined SAP/COP in accordance with subpart F. If the commercial lease is issued when no competitive interest exists, there is no preliminary term because lease issuance and SAP or SAP/COP approval occur simultaneously. The site assessment term for all commercial leases would begin on the date that we approve the lessee's SAP or SAP/COP and extend for a term of 5 years in most cases to allow the lessee to conduct the approved activities proposed in the SAP. Unless the lessee has submitted a SAP/COP and received MMS approval, the lessee is required to submit a COP, in form and content satisfactory to us, before the end of this 5-year term to keep the lease in effect. A commercial lease would expire at the end of the site assessment term unless the lessee submits a COP, in form and content satisfactory to us, before the end of the 5-year term. The preliminary and site assessment terms are automatically extended as necessary to allow review and approval of plans.

The operations term will follow, beginning on the date that we approve the lessee's COP, and will be for a period of 25 years to allow development, construction, and ultimately commercial production activities. If you submit a COP, your operations term begins on the date we approve it. If you submit a SAP/COP, your operations term begins 5 years after we approve it or when fabrication and installation commence, whichever is earlier. An operations term longer than 25 years could be established if applicable parties determine that such a term is warranted (e.g., the lessee and project proponent negotiate a power purchase agreement with a 30-year term before the lease is issued). While we revised the timing of the operating fee requirement in response to comments (see subpart E), this change does not alter the lease terms that originally were proposed. As provided in subpart D, the operations term may be renewed.

For hydrokinetic commercial leases the COP in the previous discussion would be replaced with a FERC license application. In cases where a combined SAP/license application is submitted, MMS would review, approve, and regulate the SAP activities, and FERC would review, approve, and regulate the license activities. The preliminary and site assessment terms will be the same for all commercial leases, but the operations term for commercial hydrokinetic leases will coincide with the term of the FERC license.

The MMS revised this section to clarify that the term of a lease renewal will be the same as the original term of the lease, unless a longer term is negotiated by applicable parties.

If I have a limited lease, how long will my lease term remain in effect? (§ 285.236)

Limited leases issued competitively will have two phases: Preliminary term and operations term. For limited leases issued competitively, the preliminary term will be the initial 6 months during which the lessee must submit a GAP in accordance with subpart F. If the limited lease is issued when no competitive interest exists, there is no

preliminary term because lease issuance and GAP approval occur simultaneously. The operations term for all limited leases will begin on the date that we approve the GAP and continue for a term of 5 years to allow the lessee to conduct the approved activities proposed in the GAP.

For hydrokinetic activity MMS will only issue limited leases if FERC determines that a license or exemption is not required. If a FERC license or exemption is required, MMS will issue a commercial lease.

We did not make any changes to this section.

What is the effective date of a lease? (§ 285.237)

This section describes how we will determine the effective date of a lease. A lease issued under this part must be dated and become effective on the first day of the month following the date a lease is signed on behalf of the lessor. However, if the lessee submits a written request and we approve, a lease may be dated and become effective on the first day of the month within which it is signed on behalf of the lessor.

Are there any other renewable energy research activities that will be allowed on the OCS? (§ 285.238)

This section describes how renewable energy research activities might be conducted on the OCS. This provision was developed following discussions with Department of Energy (DOE) officials who cited a need for an offshore research area or areas patterned after the European Marine Energy Center, an offshore wave and tidal energy technology testing site in the United Kingdom. This section describes the process for MMS to issue leases, ROWs, and RUEs to Federal agencies and States for testing all types of offshore renewable energy technology, after giving public notice and determining that there is no competitive interest in the area and complying with all relevant Federal statutes (e.g., ESA, NEPA, MSA, etc.). In response to comments from States recommending that they be allowed to establish and manage OCS renewable energy research areas, we have broadened this provision to apply to States and other Federal agencies in addition to DOE.

We believe that such research areas should not preempt potential commercial development and should be only offered to a Federal agency or a State if there is no competitive interest. The purposes, issue process, and terms of this kind of lease or grant may be established by MMS and a Federal agency or a State on a case-by-case basis, or pursuant to a framework established by a Memorandum of Agreement. These leases or grants would not be available to private project proponents seeking to conduct either commercial or noncommercial activities. Leases and grants issued to a Federal agency and a State for research activities are different from the limited leases issued for renewable energy activities through the competitive or noncompetitive process. In further response to comments, we have clarified this section.

When FERC determines that any OCS-sited hydrokinetic research activities will not require a license or exemption, the MMS has the discretion to authorize such research activities under this section. This is consistent with the April 2009 MOU which provides that when FERC has determined that a license or exemption is not required, MMS may authorize hydrokinetic construction and operation activities related to noncommercial projects. It is anticipated that FERC could find hydrokinetic research activities do not require a license or exemption and therefore the lessee must comply with the requirements of § 285.238. However, if FERC determines that a license or exemption is required for a research project, then MMS would not consider that project to be a research activity under this section and would initiate the commercial leasing process.

Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities

Overview

Applicability

Subpart C addresses issuing ROW grants and RUE grants for OCS to support renewable energy activities associated with onshore projects, State leases, or an MMS-issued renewable energy lease. Renewable energy leases include the rights to project easements for cables, pipelines, and other facilities associated with projects on OCS leases as discussed in subparts B and F; so in most cases a ROW grant or RUE grant will not be needed for an OCS renewable energy lease. However, there may be some cases when it makes more sense for an OCS renewable energy leaseholder to receive a ROW grant or RUE grant instead of a project easement. An example of this would be when multiple OCS renewable energy lessees want to share a ROW for a transmission cable or a RUE for a substation. In this case, it may make more sense for the lessees to use an ROW or RUE grant. Additionally, a transmission company may want to request an ROW grant for a transmission cable to support an OCS renewable energy project or multiple projects. It is important to distinguish the grant authority under this part with grant authorities of MMS under other regulations, such as those in 30 CFR part 250. The following two examples are helpful to illustrate the types of activities, not associated with an OCS renewable energy lease, MMS will authorize with a ROW grant or RUE grant issued under subpart C.

Example 1: The MMS will issue a ROW grant under this part for activities involving the placement and maintenance of a transmission cable that crosses the OCS and transmits energy produced from renewable energy resources onshore or in State waters. The proposed Juan de Fuca Cable Project—which will install, on the OCS, a cable several-hundred-miles-long to transport electricity from renewable energy sources in the northwest to the San Francisco area—is a good illustration of an activity requiring a ROW granted under this subpart.

Example 2: The MMS will issue a RUE grant under this part for activities involving the placement and operation of a facility on the OCS that supports a renewable energy project located on State submerged lands.

The provisions include general requirements for ROW grant and RUE grant applicants, as well as application and issuance procedures. These provisions are similar to the provisions for issuing OCS renewable energy leases.

The MMS will not issue ROW grants and RUE grants for installing site assessment facilities (e.g., meteorological towers) on the OCS. If a company intends to install site assessment facilities, it must acquire a lease under this part.

Commenters raised questions concerning the issuance of ROWs for transmission lines that mix electricity generated from renewable energy sources and nonrenewable energy sources. After serious consideration, MMS has decided the following: (1) MMS will authorize renewable energy ROWs for transmission of energy from sources other than oil and gas; (2) MMS will not authorize renewable energy ROWs that solely support the transmission of energy from oil or gas sources; and (3) MMS will consider, on a case-by-case basis, renewable energy ROWs supporting the transmission of energy from oil or gas sources that is combined with energy from sources other than oil or gas, provided that renewable energy generated from sources other than oil and gas is primarily what is being transmitted.

Competitive and Noncompetitive Processes

As required by subsection 8(p) of the OCS Lands Act, MMS must issue ROW grants and RUE grants through a competitive process unless MMS determines after public notice that there is no competitive interest. This subpart provides for public notice of applications for ROW grants and RUE grants to allow potential competitors and other interested and affected parties to comment on proposals and possibly compete for the ROW grants and RUE grants. However, due to the nature of potential operations on ROW grants and RUE grants, as well as the areal requirements involved, it is unlikely that there will be much, if any, competition. It appears that, in most cases, even separate geographically overlapping proposals for ROWs and RUEs will not be mutually exclusive. It is therefore unlikely that MMS will conduct an auction of ROW grants or RUE grants. The noncompetitive process for granting ROWs and RUEs will be similar to the noncompetitive leasing process described in subpart B, except there is no acquisition fee, and a GAP is required in lieu of a SAP.

In the unlikely event that MMS did determine there is competition for a ROW or RUE, we will follow the process outlined in subpart B for competitive issuance of leases, with the ultimate terms and conditions of the grant established in a Final Sale Notice. As noted in the discussions of subparts A and B, we have changed the qualification requirements for lessees and grantees to discourage nuisance indications of interest. Also, in instances where a competitive process for the issuance of an ROW or RUE is pursued, MMS may choose to recognize companies selected by State or utility competitions in developing the terms and conditions of the auction and the grant, as explained in the subpart B discussion. While the rule provides the means necessary to conduct fair and efficient competitions for ROWs and RUEs, we continue to believe it is more likely that we will receive unsolicited proposals that will be processed after a public notice and determination that no competitive interest exists. As explained previously in the discussion of subpart B, because of the competition requirement set forth in section 8(p) of the OCS Lands Act, MMS decided to authorize transportation and other ancillary activities associated with an OCS renewable energy lease through the issuance of a project easement as part of the lease rather than providing for separate grants of ROWs and RUEs.

Data and Information

Subpart C requires the submission of data and information associated with ROW grant and RUE grant proposals. Subpart A discusses how MMS will handle such data and information, including procedures for withholding trade secrets and proprietary information from public disclosure to the extent allowed by law.

Coordination and Consultation

The MMS must coordinate and consult with other Federal, State, and local governments and affected Indian tribes as directed by sections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g., ESA and MSA). As in subpart B, subpart C provides for coordination and consultation with affected Federal agencies, the Governors of affected States, and the executives of affected localities, including possible participation of State and local governments in task forces or other joint planning agreements with MMS.

CZMA Compliance

For purposes of Federal consistency, MMS will treat ROW grants and RUE grants issued through a competitive process as direct Federal agency activities and follow the subsection 307(c)(1) procedures of the CZMA. The MMS will determine if the ROW grant or RUE grant is reasonably likely to affect any land or water use or natural resource of a State's coastal zone and comply with the appropriate Federal consistency regulations under 15 CFR part 930 subpart C.

The MMS will treat ROW grants and RUE grants issued noncompetitively as Federal licenses or permits, which will follow requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930 subpart D. For ROW grants and RUE grants issued noncompetitively, MMS requires the applicant to submit a proposed GAP simultaneously with the application for the ROW or RUE grant. The GAP is a Federal license or permit under current CZMA regulations since it will describe activities and operations proposed to be undertaken in areas of the OCS that are not under a lease; and therefore, does not qualify as an OCS plan (as defined by 15 CFR 930.73).

Areas Available for ROW Grants and RUE Grants

As with OCS renewable energy leases, ROWs and RUEs may be granted on any appropriately platted area not located within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument.

ROW and RUE Sizes

The size of an ROW will encompass 200 feet (61 meters) in width, the full length of the cable, pipeline, or other facilities, and adjacent areas reasonably necessary for accessory facilities, such as power stations for electricity or pumping stations for other energy products (i.e., hydrogen). The size of a RUE grant will be determined by MMS on a case-by-case basis to include the site of facilities, associated structures, and the areal extent of anchors, chains, or other equipment.

ROW and RUE Term

An ROW grant or RUE grant is in effect for as long as it is properly maintained, continues to support the activities for which it was granted, and is used for the purpose for which it was granted, unless otherwise stated on a case-by-case basis. Since ROW grants and RUE grants are tied to specific activities and purposes, MMS believes that, in most cases, it will be appropriate to link their term to those activities and purposes rather than setting specific independent terms. However, MMS may set specific independent terms when appropriate.

Other ROW and RUE Provisions

The ROW grants and RUE grants will be issued on forms approved by MMS and will become effective on the date of the grant or as specified in the grant instrument. Financial assurance and rental requirements are provided in subpart E. Additional provisions relating to the administration of ROW grants and RUE grants are set forth in subpart D.

Section-by-Section Discussion for Subpart C

ROW Grants and RUE Grants

What types of activities are authorized by ROW grants and RUE grants issued under this part? (§ 285.300)

This section explains what ROW grants and RUE grants authorize, which includes activities relating to the production, transportation, or transmission of electricity or energy from any renewable energy resource that is not produced or generated on an OCS renewable energy lease issued under this part. It further clarifies that you do not need a ROW grant or RUE grant for a project easement authorized under subpart B of this part however, there may be cases when a ROW grant or RUE grant is more appropriate than a project.

The MMS changed this section to allow the holder of a ROW grant to install on the OCS cables, pipelines, and associated facilities that involve the transportation or transmission of electricity or other energy product from renewable energy projects both on the OCS and not on the OCS. We made this change to avoid excluding possible beneficial uses of ROW grants for renewable energy projects on the OCS.

Section 285.301 What do ROW grants and RUE grants include?

This section provides a detailed description of ROW grants and RUE grants, including their dimensions, boundaries, and limitations based on factors such as locations of associated and accessory facilities. This does not cover RUE grants issued for the alternate use of existing facilities, which are covered in subpart J of this part.

We did not make any changes to this section.

What are the general requirements for ROW grant and RUE grant holders? (§ 285.302)

This section cites the regulation pertaining to lease and grant holder qualifications in subpart A. It then describes that the rights to be granted with a ROW or a RUE will not prevent the granting of other rights by the United States. Further, other users may be granted the right to use or occupy any part of the ROW grant or RUE grant not actually occupied or required for any necessary operations as long as they do not unreasonably interfere with the activities approved or impede existing operations.

We did not make any changes to this section.

How long will my ROW grant or RUE grant remain in effect? (§ 285.303)

This section states in general terms the duration of ROW grants and RUE grants.

We did not make any changes to this section.

Reserved Section (§ 285.304)

Section § 285.303 is reserved.

Obtaining ROW Grants and RUE Grants

How do I request an ROW grant or RUE grant? (§ 285.305)

This section addresses how to apply for a new or modified ROW grant or RUE grant. A separate application is required for each ROW grant or RUE grant requested. It lists the information the application must contain, including the area requested, objectives, facilities projected to achieve those objectives, a general schedule of proposed activities, and environmental conditions in the area of interest.

We did not make any changes to this section.

What action will MMS take on my request? (§ 285.306)

This section explains how MMS will process requests for ROW grants and RUE grants based on whether or not competitive interest is determined. It cites the competitive process outlined in § 285.308 and describes the noncompetitive process. The noncompetitive ROW grant and RUE grant process is similar to the noncompetitive lease issuance process, requiring a determination of no competitive interest, negotiation of terms and conditions between grantee and grantor, as well as submission and approval of a GAP.

We did not make any changes to this section.

How will MMS determine whether competitive interest exists for ROW grants and RUE grants? (§ 285.307)

This section outlines how MMS will determine whether or not there is competitive interest by publishing a public notice (Request for Interest) of the proposed ROW grant or RUE grant. The public notice will describe the parameters of a project and give potential competitors an opportunity to express their interest. The MMS will make a determination of competitive interest based on comments received in response to the notice. If competitive interest is determined, MMS will initiate the process outlined in § 285.308. If no competitive interest is determined, MMS will follow the process outlined in § 285.306.

We did not make any changes to this section.

How will MMS conduct an auction for ROW grants and RUE grants? (§ 285.308)

This section describes how an auction will be held if MMS determines there is competitive interest for ROW grants and RUE grants. The grant auction process is similar to the auction process for leases.

We did not make any changes to this section.

When will MMS issue a noncompetitive ROW grant or RUE grant? (§ 285.309)

This section describes the circumstances under which MMS will issue a grant. The MMS will issue a grant if we approve your GAP and you accept all terms and conditions of the grant.

We did not make any changes to this section.

What is the effective date of an ROW grant or RUE grant? (§ 285.310)

The effective date of an ROW grant or RUE grant is established by MMS in the ROW grant or RUE grant.

We did not make any changes to this section.

Reserved Sections (§§ 285.311 Through 285.314)

Sections 285.311 through 285.314 are reserved.

Financial Requirements for Row Grants and Rue Grants

What deposits are required for a competitive ROW grant or RUE grant? (§ 285.315)

This section cites the deposit requirements of § 285.501 pertaining to ROW grant and RUE grant auctions, and provides for the return of your deposit when a bid is rejected. It also states that a written statement of reason will be provided if the high bid is rejected.

We did not make any changes to this section.

What payments are required for ROW grants or RUE grants? (§ 285.316)

This section lists the payments required in order for MMS to issue the ROW grant or RUE grant. It states the balance on an accepted high bid and the first year annual rental as specified in § 285.507 (the greater of $5 per acre per year or $450 per year), must be paid before MMS will issue the ROW grant or RUE grant.

We did not make any changes to this section.

Subpart D—Lease and Grant Administration

Overview

Subpart D addresses noncompliance with regulations pertaining to a lease or grant; assignment and designation of operator; and suspension, renewal, termination, relinquishment, and cancellation of leases and grants. We received numerous comments recommending that we prescribe time limits on MMS to complete actions under this subpart. We have declined to add such time limits to the rule, but we will include target timelines for actions under this subpart in the guidance document we intend to issue after the rule is published.

Noncompliance

The requirements that the lessee or grantee must meet to maintain a lease or grant in effect include plan and

reporting requirements (subpart F); payment obligations (subpart E); and procedures for conducting, stopping, and resuming operations or receiving appropriate suspensions from MMS (subpart D). In an instance of noncompliance, MMS may issue a notice of noncompliance that will specifically cite how you failed to comply and will prescribe corrective action. In an instance of noncompliance that poses an imminent threat, MMS may issue a cessation order directing the lessee or grantee to cease an activity or activities. Likewise, failure to take corrective action prescribed in a noncompliance order may lead to the issuance of a cessation order. A cessation order does not lengthen the term of the lease or grant or relieve any payment obligations. Also, noncompliance may lead to the assessment of civil or criminal penalties. The MMS believes the noncompliance provisions, in conjunction with the regulatory requirements, are essential to ensure prompt, efficient, and responsible renewable energy activities on a lease or grant.

Designation of Operator

The provisions governing designation of an operator to perform activities on a lease or grant are patterned after the regulations at 30 CFR 250.143 through 250.146.

Assignment

The provisions governing assignment of leases or grants are patterned after the regulations at 30 CFR 256.62, including assignor and assignee responsibilities, procedures for filing transfers, and the effects of an assignment on a particular lease or grant. The MMS believes such requirements are appropriate for all OCS renewable energy leases and grants.

Suspension

The rule provides for lease or grant suspensions that will lengthen the duration of the lease or grant to allow completion of activities or continuation of operations. Extensions relating to MMS technical and environmental review of required plans will be automatic. The lessee or grant holder could request suspensions for other purposes, and these will be subject to Director approval.

Renewal

The rule provides that a lessee or grantee may request a renewal to conduct activities substantially similar to those that were originally authorized, and MMS, at its sole discretion, may approve such requests. The renewal provisions also provide timeframes and information requirements associated with renewal requests, as well as guidance on making payments and suspending activities while a renewal request is pending. The length of a renewal will be set by MMS on a case-by-case basis. As explained previously in the discussion of lease term provisions in subpart B, MMS retains discretion relating to lease terms and renewals in order to ensure the efficient use of OCS resources.

Termination, Relinquishment, and Cancellation

The MMS may cancel leases or grants for failure to comply with the OCS Lands Act and other applicable laws, regulations, and lease requirements; for fraudulent acquisition; and for a continuing and undiminished threat to marine life, property, natural resources, national security or defense, or the marine, coastal, or human environment. Provisions governing terminations and relinquishments of a lease or parts of a lease are also included.

Section-by-Section Discussion for Subpart D

Noncompliance and Cessation Orders

What happens if I fail to comply with this part? (§ 285.400)

This section states that MMS can take appropriate corrective action if you fail to comply with applicable provisions of Federal law, the regulations in this part, other applicable regulations, or MMS orders. The MMS may issue you a notice of noncompliance if it has determined there has been a violation. A notice of noncompliance will tell you how you failed to comply, and will specify what you must do to correct the noncompliance and when you must act. This section also states that if you do not follow a notice of noncompliance, or any other regulation of this part, MMS may issue a cessation order, cancel your lease or grant, and assess civil penalties. In addition, you may be subject to criminal penalties.

The MMS received a comment requesting that we consider reducing civil penalties for small businesses regulated under this part. If a civil penalty is assessed, the company may submit a request to modify the payment schedule to the Office of Financial Management, within MMS's Mineral Revenue Management program. We will include information on the Small Business Regulatory Enforcement Fairness Act and payment schedules in the guidance document we intend to issue after the rule is published.

We did not make any changes to this section.

When may MMS issue a cessation order? (§ 285.401)

This section specifies that a cessation order may be issued if you fail to comply with any law or regulation under this part. The cessation order will have a timeframe for you to correct the noncompliance and set forth what measures you are required to take in order to resume activities on your lease or grant.

We did not make any changes to this section.

What is the effect of a cessation order? (§ 285.402)

This section gives details of what you must do when you receive a cessation order. You must cease all activities on your lease or grant for the specified period, and you must continue to make all required payments while a cessation order is in effect. A cessation order does not extend the term of your lease or grant for the period you are prohibited from conducting activities. If MMS determines that the circumstances giving rise to the cessation order cannot be resolved within a reasonable time period, your lease or grant may be cancelled. We received a comment recommending that MMS specify lease or grant activities covered by a cessation order and allow other activities to proceed. We prefer the discretion afforded in the rule, which allows us to issue an order to cease all activities, perform necessary reviews, and then decide which, if any, activities will be allowed to proceed. After issuing a cessation order to a lessee or grantee, we will provide instructions as to which activities are authorized to continue.

Another commenter asked that the process for lifting a cessation order be specified in the rule. We believe this is already addressed in the previous section of the rule, which states that a cessation order will indicate the actions that lessees or grantees must take to resume ceased activities.

Reserved Sections (§§ 285.403 Through 285.404)

Sections 285.403 through 285.404 are reserved.

Designation of Operator

How do I designate an operator? (§ 285.405)

Under this section, you must identify the operator in your specific plan (SAP, COP, or GAP) if you intend to designate an operator who is not the lessee or grant holder. Once approved in your plan, the designated operator is

authorized to act on your behalf and authorized to perform activities necessary to fulfill your obligations under laws and regulations in this part. This section requires you to keep MMS informed if there is any change of status with your designated operator. If you are the designated operator, you must comply with all regulations governing those activities and are responsible for any noncompliance. Designation of an operator does not relieve the lessee or grantee of its obligations. We received a comment recommending we provide a timeframe for notification of a change in designated operator rather than requiring one immediately. We have revised paragraph (e) to provide 72 hours for such notification.

Another commenter asked for clarification of the information that must be included in a written change of designated operator. We have revised paragraph (e) to require that written notification be provided on a form approved by MMS that will specify the information required.

Who is responsible for fulfilling lease and grant obligations? (§ 285.406)

When you are not the sole lessee or grantee, you and your co-lessee(s) or co-grantee(s) are jointly and severally responsible for fulfilling your obligations under the lease or grant. If your designated operator fails to fulfill any obligations under this part, MMS may require you or any or all of your co-lessees or co-grantees to fulfill those obligations.

We did not make any changes to this section.

Reserved Section (§ 285.407)

Section 285.407 is reserved.

Lease or Grant Assignment

May I assign my lease or grant interest? (§ 285.408)

Under this section, you can assign all or part of your lease or grant interest. To assign interest, an assignment application must be sent to MMS. The assignment application includes various detailed requirements outlined in this section (*i.e.,* location identification, qualifications, contact information, etc.). The assignment takes effect on the date MMS approves your application. We received a comment requesting clarification on whether mergers and acquisitions will require assignments. We added a statement about mergers, name changes, and changes to business forms to clearly state that you do not need to assign your lease or grant interest in these cases. Another comment asked whether subletting would be possible under the rule. We consider subletting to be synonymous with assigning.

How do I request approval of a lease or grant assignment? (§ 285.409)

This section contains additional details of the assignment requirements.

We did not make any changes to this section.

How does an assignment affect the assignor's liability? (§ 285.410)

You are liable for all obligations that accrued under your lease or grant before MMS approves your assignment. If your assignee fails to perform any obligation, you may be responsible for corrective action.

We did not make any changes to this section.

How does an assignment affect the assignee's liability? (§ 285.411)

The assignee is liable for all obligations once MMS has approved the assignment. The assignee will be responsible to comply with all lease or grant terms and conditions, as well as all applicable regulations.

We did not make any changes to this section.

Reserved Sections (§§ 285.412 Through 285.414)

Sections 285.412 through 285.414 are reserved.

Lease or Grant Suspension

What is a lease or grant suspension? (§ 285.415)

A suspension is an interruption of the term of your lease or grant. You may request, or MMS may order, a suspension. A suspension extends the term of your lease or grant for the length of time the suspension is in effect. Activities may not be conducted on your lease or grant during the period of a suspension unless otherwise directed by MMS.

We did not make any changes to this section.

How do I request a lease or grant suspension? (§ 285.416)

To request a suspension, you must submit a request to MMS containing the details explained in this section.

We did not make any changes to this section.

When may MMS order a suspension? (§ 285.417)

Under this section, MMS may order a suspension to comply with judicial decrees prohibiting some or all activities under your lease or when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, etc. This section also states that if you have a suspension from an imminent threat, you may be required to conduct a site-specific study to resume activities. One commenter stated that the possible requirement to conduct such a study could be interpreted to require automatic preparation of a NEPA or National Historic Preservation Act (NHPA) study. The requirements of NEPA or NHPA would not automatically be invoked if a site-specific study was required to resume activities. The same commenter also requested that the final rule specify the process for review of a site-specific study. We believe that flexibility in our approach to such studies is important and have not added the requested specifications. We will address this issue in the implementation guidance that we intend to issue after the rule is published.

We did not make any changes to this section.

How will MMS issue a suspension? (§ 285.418)

The MMS may initially issue a suspension order orally, but will follow up with a written order. The written explanation will describe the effect of the suspension order on your lease or grant and any associated activities. The order may also include authorization of certain activities during the period of the suspension.

We did not make any changes to this section.

What are my immediate responsibilities if I receive a suspension order? (§ 285.419)

You must take action to comply fully with the terms of a suspension order upon receipt.

We did not make any changes to this section.

What effect does a suspension order have on my payments? (§ 285.420)

You must make all payments on your original term obligations until MMS authorizes/orders the suspension. Once the suspension has been issued, MMS may waive your payments during the suspension period. We received a comment recommending an automatic waiver of payment obligations for a suspension requested by a lessee or grantee, or in the absence of such a waiver, the criteria on which MMS will base decisions about payment obligations under such suspensions. We do not believe that automatic waivers should be granted for a suspension requested by a lessee or grantee because

a suspension may be necessitated by circumstances created or significantly contributed to by the lessee or grantee. It is important that MMS have discretion in deciding the circumstances under which payment obligations will continue under suspensions; therefore, we have not added criteria on which to base such decisions in the text of the rule.

We did not make any changes to this section.

How long will a suspension be in effect? (§ 285.421)

A suspension will be in effect for a period specified by MMS. However, if you request a suspension, MMS will not approve a suspension request longer than 2 years. We received a comment recommending an increase in the maximum suspension period to 5 years. In the interest of avoiding delays in lease development, we have retained the maximum suspension period at 2 years.

We did not make any changes to this section.

Reserved Sections (§§ 285.422 Through 285.424)

Sections 285.422 through 285.424 are reserved.

Lease or Grant Renewal

May I obtain a renewal of my lease or grant before it terminates? (§ 285.425)

The MMS may approve a renewal request to conduct substantially similar activities that were authorized under the original lease or grant. The MMS will not approve a renewal request that involves development of renewable energy not originally authorized in the lease or grant. We received several comments recommending automatic renewals. We have not adopted those recommendations because we are concerned that continuation of inefficient or obsolete operations could result.

We also received a recommendation to adopt the following criteria for considering lease renewals that were offered for comment in the proposed rule:

(1) Design life of existing technology;

(2) Availability and feasibility of new technology;

(3) Environmental and safety record of the lessee;

(4) Operational and financial compliance record of the lessee; and

(5) Competitive interest and fair return considerations.

We have adopted these criteria in § 285.429 along with an additional criterion suggested by the commenter. Application of these criteria will be addressed in the implementation guidance that we plan to issue after the rule is published.

Specific procedures detailing how an entity operating a FERC-licensed hydrokinetic project on an MMS-issued lease may obtain a lease renewal will need to be developed, and will be proposed at a later time. In accordance with the terms of the April 2009 DOI/FERC MOU, the MMS and FERC will work together to establish an efficient process to allow lessees to obtain such renewals.

We did not make any changes to this section.

When must I submit my request for renewal? (§ 285.426)

This section specifies when you must request a renewal. You must submit your request for a renewal no later than 180 days before the termination date of your limited lease or grant, and no later than 2 years before the termination date of the operations term of your commercial lease. We received a comment requesting clarification that a lessee would be allowed to upgrade equipment and apply for a lease renewal much earlier (e.g., 15 years into the lease). This approach is possible under the rule and will be addressed in the guidance document that we intend to issue after the rule is published.

We did not make any changes to this section.

How long is a renewal? (§ 285.427)

The MMS will set the term of a renewal on a case-by-case basis not to exceed the original term of the lease or grant. We received a comment recommending that the renewal term be shorter. Shorter terms are available under the rule. Another commenter called for providing a longer term in particular circumstances. We have revised this section to provide for renewal of a commercial lease for a duration not to exceed the original term or for a longer term negotiated by applicable parties. We have retained the same term for limited leases, and we have clarified that renewed grants will continue indefinitely unless otherwise stated.

What effect does applying for a renewal have on my activities and payments? (§ 285.428)

If you request a renewal, you must continue all payments and may continue to conduct your approved activities until your lease expires, or until we make a determination on your request. We received a comment requesting clarification that a lessee or grantee who has requested a renewal will be able to continue operating after lease or grant termination while the request is pending decision by MMS. We have revised paragraph (a) to make this clarification.

What criteria will MMS consider in deciding whether to renew a lease or grant? (§ 285.429)

As described previously, this section was added to provide criteria that MMS will consider in processing a lease or grant renewal request.

Reserved Sections (§§ 285.430 Through 285.431)

Sections 285.430 through 285.431 are reserved.

Lease or Grant Termination

When does my lease or grant terminate? (§ 285.432)

Your lease or grant terminates upon the expiration of the applicable term, cancellation by the Secretary, or approval of your relinquishment. We received a comment recommending that this section provide for leases continuing while renewal requests are pending. We have revised paragraph (a) to include such a provision.

What must I do after my lease or grant terminates? (§ 285.433)

After your lease or grant terminates, you must make all payments due and perform any other outstanding obligations under the lease or grant (including decommissioning). We have changed the timeframe in subsection (b) to 2 years to conform to our revision of § 285.902(a), which now calls for meeting decommissioning requirements within 2 years following lease or grant termination.

Reserved Section (§ 285.434)

Section 285.434 is reserved.

Lease or Grant Relinquishment

How can I relinquish a lease or a grant or parts of a lease or grant? (§ 285.435)

To surrender a lease or grant, you must submit a relinquishment application to MMS. The application will include the information required in this section such as identifying information and contact information. You are responsible for all payment obligations until the relinquishment is in effect.

We did not make any changes to this section.

Lease or Grant Contraction

Can MMS require lease or grant contraction? (§ 285.436)

The MMS may review your lease or grant area, at intervals no more frequent than every 5 years, to determine whether the lease or grant area is larger than needed to develop the project and manage activities in a manner that is consistent with the provisions of this part. The MMS will notify you of our proposal to contract the lease or grant area and give you the opportunity to present, orally or in writing, information demonstrating that you need the area in question to manage lease activities consistent with these regulations. Prior to taking action to contract the lease or grant area, MMS will issue a decision addressing your contentions that the area is needed. We received several comments expressing concern that MMS might act arbitrarily or overreach in applying this section. We believe this section appropriately safeguards the rights of lessees and grantees by providing notification and opportunity to challenge contraction decisions.

We did not make any changes to this section.

Lease or Grant Cancellation

When can my lease or grant be canceled? (§ 285.437)

The Secretary may cancel your lease or grant if you obtained it fraudulently; if you fail to comply with laws and regulations; if it is required for national security reasons; or if your activities cause serious harm or damage to natural resources, life, property, etc. In the proposed rule, we stated that, in certain circumstances, the Federal Government may provide compensation if your lease is cancelled. Section 285.437(c) in the proposed rule provided that, in the event that we cancelled a lease or grant under (b)(3) or (b)(4) of § 285.437, compensation would be provided as appropriate to the extent funds are authorized and appropriated for such purposes. This provision was removed because the compensation as a result of such a cancellation under paragraphs (b)(3) or (b)(4) of this section would have to be determined on a case-by-case basis. Consequently, the proposed provision provided no guarantees to lessees or grantees and might have created unrealistic expectations.

Two commenters stated that the rule should expressly provide for affected States and Federal agencies to recommend cancellation. We believe that any interested or affected party may approach MMS with a recommendation to cancel a lease or grant under the rule. Another commenter requested that compensation for cancellation be specified in the rule.

We made the changes described previously to this section.

Subpart E—Payments and Financial Assurance Requirements

Overview

This subpart provides the payment structure for renewable energy leases that implements subsection 8(p)(2) of the OCS Lands Act (43 U.S.C. 1337(p)(2)) which directs the Secretary to establish royalties, fees, rents, bonuses, or other payments to ensure a fair return to the United States for any lease, easement, or ROW granted for renewable energy activity on the OCS. This also applies to leases, easements, and rights-of-way issued for FERC-licensed hydrokinetic projects. We intend to ensure a fair return through a combination of payments. In addition to up-front acquisition fees or bonus payments for renewable energy leases, we will charge acreage-based rents for technology assessment activities on limited leases. On commercial leases we will charge acreage-based rents for the pre-development phases of renewable energy production ventures and their ancillary facilities, and a share of revenues from the renewable energy production phase in the form of an operating fee. You can find a detailed summary of how MMS selected our approach to payments in the NPR. For commercial leases issued for FERC-licensed hydrokinetic projects, the operating fee will be determined on a case-by-case basis.

Financial Assurance Requirements

This portion of subpart E is intended to minimize the risk of financial loss to the Federal Government if lessees, operators, and grant holders default in fulfilling their obligations under this rule and other applicable laws or regulations. The final rule will fulfill that purpose in two ways: (1) Through the prequalification of lessees, operators, and grant holders, and (2) by requiring the provision of sufficient financial security to assure that lessee, operator, and grant holder obligations can be fulfilled by a third party in the event of default. The rule anticipates different requirements for ranges of activities for commercial production leases, limited leases, ROW grants, and RUE grants.

The financial assurance portion of the rule is divided into four general areas:

(1) Basic financial assurance requirements for commercial leases;

(2) Financial assurance for limited leases, ROW grants, and RUE grants;

(3) Requirements for financial assurance instruments; and

(4) Changes in financial assurance.

Basic Financial Assurance Requirements for Commercial Leases

The financial assurance requirements for commercial leases ensure the performance of the following lease obligations:

(a) Rents and other payments due the Government over the next 12 months;

(b) Any past due rents and/or other payments;

(c) Other monetary obligations; and

(d) Project decommissioning and lease cleanup.

Before MMS will issue a commercial lease, the prospective lessee must provide either a lease-specific $100,000 bond; alternative financial assurance that the Regional Director determines protects U.S. interests to the same extent as the bond; or evidence that your designated lease operator has provided commensurate financial assurance.

Additional bonds/financial assurance are required before MMS will approve a SAP or a COP. The amount of this additional bond/financial assurance will be determined by MMS and will be based upon the type and number of facilities to be used in your planned activities.

Financial Assurance for Limited Leases, ROW Grants, and RUE Grants

The final rule requires that when you obtain a limited lease, ROW grant, or RUE grant, you must post a lease or grant-specific bond or other approved financial assurance in the amount of $300,000. Unlike commercial leases, further financial assurance is not automatically triggered by applications for activity such as the SAP and the GAP. However, MMS may require you to increase your level of financial assurance as activities progress on your limited lease or grant.

Requirements for Financial Assurance Instruments

This portion of the final rule sets forth the requirements for the financial instrument you use. The financial instrument must be payable to MMS upon demand, on a form approved by MMS, and guarantee compliance with all terms and conditions of the lease or grant. Surety bonds must be issued by a surety listed in the current Department of the Treasury Circular 570.

This portion of the final rule also provides guidance on the types of financial instruments that MMS will accept.

Changes in Financial Assurance

This portion of the final rule sets forth additional financial assurance requirements such as termination or reduction of financial assurance instruments and reduction of required bond amounts. Also included are requirements such as forfeiture of bonds and supplemental bonds.

Revenue Sharing

This portion of the final rule addresses the requirements related to section 8(p)(2)(B) of the OCS Lands Act (43 U.S.C. 1337(p)(2)(B)), which describes how revenues received by the Federal Government as a result of payments from renewable energy projects or alternate uses of existing facilities are to be shared, in some cases, with affected States. Sections 285.540 through 285.543 set forth a process for implementing revenue sharing from renewable energy projects.

We will share 27 percent of revenues from a project that is within 3 miles of State submerged lands with all States within 15 miles of the geographical center of the project. The proportion of revenues to be shared by an eligible State depends on the distance from the geographical center of the qualified project area to the nearest point of the State's coastline. The MMS will base State revenue sharing eligibility and proportionate shares due the eligible States on the objective measure of the lease area active at the end of the fiscal year in which MMS collects the sharable revenue. The configuration of the area on the last day of the fiscal year will be used to determine eligible State payments for that year regardless of when during that year a change may have occurred in the dimensions of the lease or grant. This procedure combines the objective basis for revenue sharing with the need to make adjustments due to changes in project area over the life cycle of a project. The fiscal year-end is an administratively efficient point for establishing revenue shares from all renewable energy projects.

At the time MMS published the NPR, we had not fully resolved whether a State was eligible for revenue sharing if part of the project area is located within 3 nautical miles of the seaward boundary of that coastal State but the nearest point on that State's coastline was more than 15 miles from the geographical center of the qualified project area. Although the proposed regulatory text stipulated that in this scenario such a State would be eligible for revenue sharing, we included a question in the NPR asking whether our interpretation of the statutory language in subsection 388 of the EPAct was reasonable and provided the most equitable distribution of the revenue to coastal States. In response to this question, MMS received one comment requesting clarification on the provisional MMS interpretation that a State farther than 15 miles from the geographic center of the qualified project area would be eligible for revenue sharing.

We have re-examined the statutory language in subsection 388 of the EPAct and have concluded that allowing a State to be eligible for revenue sharing when its nearest coastal point is farther than 15 miles from the geographic center of the project area would not be consistent with the statutory language. Accordingly, we have revised the final rule to reflect a more literal reading of the statute. Therefore, revenues from a project will not be shared with a State if the nearest point on its coastline is not within 15 miles of the geographic center of a qualified project area, even if a portion of the qualified project area is located within 3 nautical miles of that State's seaward boundary.

A project is qualified (its revenues may be shared with States) if the project is located wholly or partially within the area extending 3 nautical miles seaward of State submerged lands. The MMS will determine and announce the project area (for each qualified project) and its geographic center at the time it grants or issues a lease, easement, or ROW on the OCS for the purpose of a specific qualified project. The distance between the closest point on a State's coastline to the geographic center of the qualified project area is the sole determinant of whether or not a State or any State is eligible for sharing the revenues from that qualified project. States having the nearest point along their coastlines within 15 miles of the geographic center of the qualified project area will be eligible for revenue sharing, while those States not satisfying this criterion will not be eligible. Consideration of whether or not a qualified project area extends into a State's 8(g) zone will not be used to determine a State's eligibility for revenue sharing. Location within 3 miles of some State's submerged lands is only relevant to determining if a project is subject to revenue sharing under subsection 388 of the EPAct 2005.

Areas granted for transmission cables and other off-lease infrastructure on project easements will not be considered part of the project area for purposes of determining the geographic center of the project or whether the project is within 3 miles of State submerged lands. However, revenues from project easements will be shared as revenues of the qualified project to which they appertain. Only proximity of a State's coastline to the geographic center of the qualified project area would be a factor in allocating revenues among eligible States, should more than one State be eligible. If a qualified project area changes in size or shape as a result of contraction or modification of the lease or grant, MMS will re-determine the geographic center of the project area to re-determine eligibility and to adjust the allocations among States.

We received a number of comments with respect to disproportionate effects due to activity on a given lease. The MMS considered, but rejected, the option of defining a special project area that differs from the lease area to try to account for situations when proximity might not be a good surrogate for effects that could be compensated by revenue sharing payments. The MMS rejected this idea because the statute requires us to base the allocation formula solely on proximity to the project. To respond to such situations, we will adjust lease acreage as the project evolves, re-determine the geographic center of the project area, identify eligible States, and determine the eligible State proportionate shares in a timely manner.

We received comments indicating that the inverse distance formula does not equitably distribute revenue among eligible States as additional factors other than proximity should be used to determine the impact the lease's project would have on States. However, subsection 388 of the EPAct requires that equitable distribution of revenues among States be determined by a formula that is based on the proximity of the eligible States to the project.

The MMS also received comments recommending that mitigation costs, such as civil penalties for environmental damages, be considered as revenue eligible for distribution as part of State revenue sharing. The rule provides that MMS collect payments in the form of bonuses, acquisition fees, rentals, and operating fees to ensure the receipt of fair value for the acreage that MMS leases to generate power from renewable energy resources on the OCS.

As a commenter suggests, it is possible that the leaseholder or operator may provide a State or other entity compensation for impacts; however any agreement would not be facilitated by the DOI, and the funds would not be subject to revenue sharing. The revenue resulting from these payments under section 8(p)(2)(A) of the OCS Lands Act are the types of receipts that qualify for

State revenue sharing. Other types of revenues, not constituting payment for the use of Federal property, such as the proceeds from forfeiture of a surety bond or other form of financial assurance, cost recovery fees, and civil penalties, are not subject to revenue sharing. The MMS may assess civil penalties as authorized under the OCS Lands Act and referenced in § 285.400(f) of this regulation. However, any civil penalties levied for noncompliance of lease obligations, including civil penalties for environmental damage, are excluded under the State revenue sharing provisions since they are not revenue from payments under section 8(p)(2)(A) of the OCS Lands Act. Accordingly, we have added language to the definition of ''revenues'' in § 285.112 to clarify this distinction between payments that do and do not qualify for State revenue sharing.

As a commenter suggests, it is possible that the leaseholder or operator may provide a State or other entity compensation for impacts; however, any such compensation would not be revenues received by the DOI subject to revenue sharing.

Section-by-Section Discussion for Subpart E

Payments

How do I make payments under this part? (§ 285.500)

This section explains how persons would submit application and filing fees, as well as payments due under the provisions of leases, easements, and ROW grants. Some payments will be made electronically through the Pay.Gov Web site at: *https://www.pay.gov/paygov/*. Other payments will be made directly to the Minerals Revenue Management office in Denver, Colorado. We plan to promulgate subsequent regulations to describe specific payment procedures for the Alternative Energy and Alternate Use Program.

Depending on the method of award we select for issuing a lease or grant, project proponents that seek a lease, easement, or ROW on the OCS for renewable energy activities may be required to submit a bonus or other up-front cash payment for a lease or grant issued competitively, or an acquisition fee for a lease or grant issued noncompetitively. Lessees will pay rent during the preliminary and site assessment terms. During the operations term, after commercial generation begins, commercial leaseholders would pay operating fees or a rent. We are not requiring operating payments for limited leases, easements, and ROW grants because they would not be issued for the purposes of commercial generation. Only rent would be paid by limited leaseholders for each year of a specified lease term, and would be paid by grantees for as long as an easement or ROW is in effect.

We did not make any changes to this section.

What deposits must I submit for a competitively issued lease, ROW grant, or RUE grant? (§ 285.501)

This section provides the deposit requirements for persons submitting a bonus or other cash payments on a competitive lease, ROW grant, or RUE grant. Sealed bids would be offered with a deposit of 20 percent of the bid amount, unless otherwise specified in the Final Sale Notice. Bidders participating in ascending auctions would deposit a cash payment as established in the Final Sale Notice. Procedures for submitting the balance owed on accepted high bids would also be established in the Final Sale Notice. We require a 20 percent deposit on sealed bids submitted in oil and gas sales to assure bids are genuine, but through the lease sale process, we will consider proposals for setting a different deposit requirement for renewable energy lease sales as they are scheduled. Successful bidders that fail to execute the lease within the prescribed time will forfeit their deposits. The MMS is implementing a similar requirement for renewable energy competitive auctions.

We did not make any changes to this section.

What initial payment requirements must I meet to obtain a noncompetitive lease, ROW grant, or RUE grant? (§ 285.502)

Developers may submit unsolicited applications for renewable energy leases. The MMS is required by law to give the public notice of such applications, and determine if other parties are interested in competing for the lease rights. We will require an acquisition fee payment when applying for a noncompetitive lease. We will not require an acquisition fee payment when applying for a noncompetitive ROW grant or RUE grant. In cases where there is no competitive interest, we may issue a lease to the applicant. We set the acquisition fee of $0.25 per acre for noncompetitive leases, unless otherwise set by the Director. For example, an application to lease a single OCS block of 25 square miles in area, or 16,000 acres, would be submitted with an acquisition fee of $4,000. In the event we do not issue a noncompetitive lease to you, we will refund your acquisition fee.

If, after public notice we make the determination that there is competitive interest, a lease or grant sale would be held. If the applicant submits a qualified bid, the acquisition fee would be applied to the applicant's bid for the lease. If the applicant does not bid for or acquire the lease, we would not refund the acquisition fee.

We will not require an acquisition fee payment when applying for a noncompetitive ROW grant or RUE grant.

We did not make any changes to this section.

What are the rent and operating fee requirements for a commercial lease? (§ 285.503)

This section provides a rent rate of $3 per acre per year for a commercial lease, unless we specify a different rate in the Final Sale Notice for leases issued on a competitive basis. When we issue a commercial lease noncompetitively, the elements of the rent and any adjustments to it would be stated in the lease instrument. Rent for the first 6 months, or preliminary term, would be due 45 days after we issue your lease. Rent for the next 12 months and for each subsequent year during the site assessment term would be due at the beginning of the year for the entire lease area until commercial generation begins under an approved COP, which begins the operations term and when the obligation to pay operating fees would begin. We will apply an interest charge to late rent from renewable energy leases as we do to other late payments under 30 CFR 218.54.

We may specify the payment of rent during part, or all, of the operations term, instead of or in addition to operating fees, in the Final Sale Notice for leases issued on a competitive basis. We reserve this right partly to make any adjustments that may be needed in connection with the operating fee structure in § 285.506.

For example, when a lease is developed in phases, both rent and operating fees may be due on different parts of the commercial lease during the same time period. Rent would be paid on portions of the lease not authorized for commercial development, and operating fees could be required for the portion of the lease with commercial operations.

A variety of considerations are behind our baseline $3-per-acre rent value, subject to change in the Final Sale Notice for competitively issued leases. In general, a rent payment serves several purposes. It provides a fair return to the United States for the opportunity cost of precluding other incompatible uses of

the OCS area. Also, it serves as a holding cost that encourages the lessee to expedite development of the project on the area. Under some circumstances, we may determine that charging progressively higher rents over time would be desirable to obtain a fair return and to encourage diligent operations. In those cases, we may adopt a rent rate schedule instead of a constant rent rate.

The baseline commercial renewable energy lease rent rate of $3 per acre is less than ½ of the rental rate of $6.25 per acre for oil and gas leases in shallow waters of the Gulf of Mexico issued in 2007. Rents, as well as operating fees, in these regulations for commercial renewable energy leases are lower than those for other uses of the OCS, such as oil and gas development, in part to encourage industry to invest in offshore renewable energy technology. Another reason for setting lower payment rates is the lower environmental costs of generating electricity with renewable energy, rather than fossil fuels such as oil, gas, and coal, as discussed in the Overview to this part. Since external costs of electricity generated from renewable energy are much lower than external costs of electricity generated from fossil fuels, we provide for relatively lower payments by renewable energy developers to encourage investment.

Based on comments MMS received, we modified this section to require that the payment of the operating fee starts when commercial generation begins, instead of with the approval of the COP.

How are my payments affected if I develop my lease in phases? (§ 285.504)

This is a new section that we added to clarify how developing your lease in phases would affect your payments.

What are the rent and operating fee requirements for a limited lease? (§ 285.505)

This section provides a $3-per-acre per year rent rate for a limited lease, unless a different rate is specified in the Final Sale Notice for leases issued on a competitive basis. When we issue a limited lease noncompetitively, the rent and any adjustments to it would be established in the lease instrument. Rent for the first 6 months will be due when MMS issues the lease. Rent for the next 12 months and for each subsequent year will be due at the beginning of the year for the entire lease area through the end of the lease term. We will apply an interest charge to late rents from renewable energy leases as we apply under 30 CFR 218.54. These rent requirements are equivalent to those on a commercial renewable energy lease during the preliminary and site assessment terms, before commercial generation begins. We also have added a statement that no operating fee will be charged for the authorized sale of power from limited leases.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

What operating fees must I pay on a commercial lease? (§ 285.506)

This section provides that the annual operating fee payments for commercial renewable energy leases will be determined by a formula related to the anticipated, rather than actual, gross value of the electricity generated on the lease. Upon commencement of electricity production for commercial projects under an approved COP, rent payments will cease. We will apply a production charge in the form of a capacity-based operating fee payment. This operating fee will not apply to limited leases because those leases do not allow commercial production of energy. Operating fee payments will be due on a schedule established in the Final Sale Notice and lease. We will also apply an interest charge to late operating fees from renewable energy leases as we do under 30 CFR 218.54. The following is the formula for determining the annual operating fee:

$$F\ (\text{annual operating fee}) = M\ (\text{nameplate capacity}) * H\ (\text{hours per year}) * c\ (\text{capacity factor}) * P\ (\text{power price per unit of production}) * r\ (\text{operating fee rate})$$

The operating fee rate r, like a royalty rate, is one element in the formula. The other elements serve as reasonable and easily observable proxy measures of the output and price related to a specific operation.

Based on the comments that we have received regarding the timing of the operating fee payment, the operating fee rate will be set at 2 percent for each year of the operating term, beginning at the time that the generating facility starts generating electricity commercially, unless we specify otherwise in the Final Sale Notice for competitively issued leases. We may set a time limit as to when the rent payments, following approval of the COP, would cease and the operating fee payment would commence, and/or we may increase the rental fee during this time in order to ensure that the construction and commercial operations specified in the lessee's approved COP are done in a timely manner. For example, we may fix a date of 2 years after the time when the COP would have likely been approved under normal circumstances, when the operating fee would commence regardless of whether the generating facility actually begins producing electricity. Alternatively, we may not set a time limit but rather provide that the rent fee escalate for each year of construction, such that the rent fee rate would be $3/acre/year in the first year after the COP is approved, $6/acre/year in the next year, etc. Any adjustments to the rent fee and/or the inclusion of a fixed date when operating fees would commence will be specified in the Final Sale Notice or the lease. We will establish initial values for the other elements in the formula, such as the power price and capacity factor, in the lease and provide for the periodical revision of the initially selected values based on new information. When we issue a commercial lease noncompetitively, the elements of the operating fee and any adjustments will be set forth in the lease.

Using these payment terms, lease revenues for a commercial lease in any given year would depend on the phase of the project and the relevant prices as designated by MMS for electricity in the State. The lease rent and operating fee payments can be illustrated with the following example for wind energy. An offshore wind lease, issued noncompetitively, on 12,000 acres of the OCS would be required to pay $36,000 annually based on a charge of $3 per acre in rent during the site assessment term under § 285.503. Once we approve the COP and the generating facility begins generating electricity commercially, the operating fees will be payable. For a lease with an installed capacity of 200 MW and an operating capacity factor of 0.38, i.e., 38 percent, the operating fee would be $666,000 annually if the applicable wholesale power price was $50 per megawatt hour. Additionally, if the approved project

plan has easements covering 2,000 acres, an additional $10,000 in rents ($5.00 per acre) would be collected per year under § 285.506.

Although a number of comments we received recommended that a production-based operating fee be used, we were not persuaded with such arguments and did believe a change from the proposed capacity-based operating fee was warranted. During the production phase of a project, a capacity-based operating fee, rather than a production amount or value-based fee, has several advantages. The capacity-based fee avoids detailed audits of production sales accounts and lessens the likelihood of subsequent disagreements and legal challenges.

The MMS believes that there are good reasons for requiring a higher rental rate or operating fee higher during the operating period than the charges imposed during the preliminary and site assessment period. First, a lease with proven resource potential is likely more valuable and should command a higher payment. Second, the lessee will be using the leased area more intensively during the construction work phase. While there is no depletion of a public asset, as there is with oil or gas, they are causing increased disturbances of the seabed.

Prior to holding a lease sale, a high level of uncertainty may exist in the estimation of the amount of energy a given facility may generate based upon the resource potential and technology. In the interest of reducing uncertainty and stimulating investment in renewable energy projects, we may initially use a 2-percent fee rate for commercial renewable energy leases. However, although there is a baseline 2-percent fee rate in the regulation subject to revisions in the Final Sale Notice, we reserve the right to adjust the rate.

For leases issued competitively, a renewable energy lease on the OCS may be issued, depending on the bidding system, with a constant or sliding operating fee rate. However, in response to the number of comments received recommending deferral of more complex bidding system, we will likely use a bidding system that is relatively simple and straightforward for the first lease sales, such as using a cash bonus as the bid variable and setting a constant operating fee rate. If the operating fee rate is constant, it may only vary from one year to the next if MMS approves a request for reduction or waiver.

With a sliding fee rate, the operating fees may automatically change over the life of a lease according to a sliding scale schedule specified in the Final Sale Notice and/or lease. The term sliding in this context applies generally to any change in the operating fee rate over time or other increment. A sliding fee rate may provide for future adjustments based on the analysis of either market data or actual project data. It may also provide that the fee rate used to calculate the operating fee changes in a specific manner at predetermined time intervals. If a sliding operating fee rate is used as a bid variable in an auction, MMS would specify a mathematical function to determine changes to the value of the operating fee over time, and the function variable which would be bid. The sliding operating fee in any year would be the amount derived from this function in conjunction with the operating fee formula.

We received comments expressing concern that MMS would make unilateral adjustments to the components of the operating fee formula, which would result in increased uncertainty for project proponents. Adjustments maybe made to the power price and capacity factor components of the operating fee formula without a reduction or waiver application, as specified in § 285.510. We will specify how the adjustments will be made in the Final Sale Notice and the lease instrument.

Based on the number of comments that we have received recommending the use of the wholesale power price for the State where the transmission makes landfall in the operating fee formula, we have accepted that recommendation and made the appropriate changes in the final rule. The power price component will be adjusted on an annual basis using publicly available information from an independent outside source, the Department of Energy, Energy Information Agency (EIA), to reflect prevailing conditions. However, we retain the authority to adjust that published value to reflect variations by State within a region, as well as current market conditions that may be better captured in the published retail power price. For example, if the published wholesale power price for a State is 2 years old, we may use the retail power price, which may be just a year old, to scale the wholesale power price for that State. We also retain the flexibility to use more timely or disaggregated wholesale power price indices.

We reserve the right to review relevant capacity factor information as it relates to the formula, established in subpart E, and adjust the value used in the operating fee formula accordingly. Upon the completion of the first year of commercial operations on the lease, MMS may adjust the capacity factor (representing a comparison of actual production over a given period of time with the amount of power a facility would have produced if it had run at full capacity) to reflect operating experience during that first production year. The MMS may also retain the initial capacity factor if it is determined to be a reasonable value, and defer an adjustment of the capacity factor to a subsequent year. Thereafter, MMS may adjust the capacity factor no earlier than every 5 years from the most recent year that MMS adjusts the capacity factor. The process by which MMS will adjust the capacity factor, including any calculations, will be specified in the lease instrument. For example, a generating facility may have an initial capacity factor set at 35 percent in the lease, but at the end of the first full year of operations, the actual capacity utilization for the generating facility was 34 percent. The MMS may adjust the capacity factor and lower it to 34 percent for the next 5 years in order to reflect more accurately future production of the generating facility in the annual operating fee formula. Alternatively, if MMS determines that the existing capacity factor is a better representation of future use than was evidenced by actual utilization in year one, then MMS may leave the original capacity factor in place for a number of years, say in this example for 4 years. Following the end of that year, the process is repeated in 5-year intervals thereafter, with MMS choosing whether to keep the existing capacity factor in place, or to rely on experience during the most recent 5-year period.

If MMS chooses to rely on actual experience, it must select the rolling average capacity utilization of the most recent experience between the timing of price adjustment decisions. To facilitate the adjustment of the capacity factor, the lessee will be required to submit to MMS the gross annual generation of electricity by the generating facility on the lease, using the appropriate form provided by EIA to collect the generation information or a form otherwise required by MMS. In either the case of a competitively or noncompetitively issued lease, we may reduce or waive fee rates under the process given in § 285.510.

We would establish operating fees for activities not related to the generation of electricity, such as the generation of hydrogen, on a case-by-case basis through the lease sale process. Operating fees and other payment requirements for activities conducted as an alternate use of an OCS facility, such as an oil and gas platform, previously authorized under the OCS Lands Act,

are explained in subpart J of these regulations.

We would establish operating fees for hydrokinetic activities requiring a FERC license on a case-by-case basis. This would give MMS the flexibility to adjust the operating fee rate for these projects, taking into consideration that hydrokinetic technologies are in a nascent stage of development and that FERC may require payments from the project developer as well.

What rent payments must I pay on a project easement? (§ 285.507)

This section provides an annual rent rate of $5 per acre for project easements, or a minimum of $450 per year, which will be due initially upon approval of the COP or GAP. Subsequent payments will be made on an annual basis, probably in conjunction with payments due under § 285.505, unless we specify otherwise in the lease for the associated commercial project. The width of the area covered by a project easement for a cable or pipeline would be 200 feet. The area covered by an installation, outside of the cable or pipeline corridor, would be limited to the areal extent of anchor chains, other devices, or facilities associated with the installation.

We grant ROW easements for electrical cables and pipelines under the existing oil and gas program, similar to project easements under the Alternative Energy Program. Rent rates for grants issued through the oil and gas program are specified by regulation and provide a precedent. The level of compensation due to the government for grants issued under the oil and gas program is an appropriate analog for uses under the program. Accordingly, we will charge project easement holders a constant rent rate equal to $5 per acre, commencing with our approval of your COP or GAP and continuing until lease termination.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

What rent payments must I pay on ROW grants or RUE grants associated with renewable energy projects? (§ 285.508)

This section provides the rent rates for ROW grant and RUE grants. Rent rates for renewable energy ROWs parallel rents considered fair and reasonable for oil and gas ROWs, and will be due in the amount of $70 per statute mile that a ROW crosses. For sites outside the main corridor, MMS will charge an additional rent of $5 per acre, or a minimum of $450 per year. Likewise, rent rates for a renewable energy RUE parallel those for oil and gas RUEs, and will be charged at an annual rent rate of $5 per acre, or a minimum of $450 per year. The first rent payment will be due when the ROW or RUE request is filed. Subsequent payments must be made on an annual basis, for a 5 year period or for multiples of 5 years. We apply the same interest charge to late rents due on ROW grants or RUE grants for renewable energy projects as we do to late payments from oil and gas ROWs and RUEs under 30 CFR 218.54.

ROW authorizations approved under the oil and gas program are granted for electrical cables and pipelines, and similar requests will also be approved under the Alternative Energy Program. The value of compensation due to the government for ROW grants issued under the oil and gas program, which also appears to be an appropriate analog for renewable energy activities, forms a useful precedent. As discussed in the last paragraph of the preceding section on project easements, the rent requirements for a renewable energy RUE are related to the payment requirements for oil and gas RUEs.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

Who is responsible for submitting lease or grant payments to MMS? (§ 285.509)

For each lease, easement, ROW or RUE, one person, designated as payor, will be responsible for making all payments. All lessees and the payor must maintain auditable records in accordance with regulations in subpart A. We may also issue guidance related to recordkeeping.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

May MMS reduce or waive my lease or grant payments? (§ 285.510)

This section provides that the MMS Director has the authority to reduce or waive a rent or operating fee, including components of the operating fee such as the fee rate or capacity factor, when necessary to encourage continued or additional activities. Applications to modify lease payment terms must include information that demonstrates that continued or additional activity would not be economic without the reductions or waiver requested. No more than 6 years of your operations term will be subject to a full waiver of the operating fee.

It is our intent to use relevant electricity market and operating information to set the initial values for the power price and capacity factor of the operating fee formula, and to revise the same parameters after a lease is issued, as discussed in §§ 285.506(c)(2) and (3). Beyond that mechanism for revising payment requirements, the Director may consider a reduction or waiver of payments. In practice, we anticipate that most requests for reduced payments would involve a reduction in the fee rate of the operating fee formula. The Director may authorize such reductions if an applicant can show that market or operating conditions have changed significantly in a way that reduces project cash flows to uneconomic levels.

We renumbered this section to accommodate a new section, § 285.504. We did not make any other changes to this section.

Reserved Sections (§§ 285.511 Through 285.514)

Sections 285.511 through 285.514 are reserved.

Financial Assurance Requirements for Commercial Leases

What financial assurance must I provide when I obtain my commercial lease? (§ 285.515)

Before MMS will issue a commercial lease, the applicant must provide either a $100,000 basic lease-specific bond or another MMS-approved financial assurance. You may also satisfy this requirement by providing proof that your designated lease operator provided the bond or approved financial assurance.

We changed the word ''security'' to ''financial assurance.'' We did not make any other changes to this section.

What are the financial assurance requirements for each stage of my commercial lease? (§ 285.516)

Minimum financial assurance requirements for each stage of lease development are presented in this section. A $100,000 basic bond or other financial assurance is required at lease issuance. A second bond or pledged financial instrument, in an amount determined by MMS, is due before the MMS will approve your SAP. And a third bond or pledged financial instrument, in an amount determined by MMS, is due before the MMS will approve your COP or before FERC issues a license for a hydrokinetic project.

As the rule was proposed, the COP supplemental bond would cover all obligations on a lease accrued after the approval of the COP, including decommissioning costs. However, based on comments, we modified this provision to add a separate bond

specifically to cover decommissioning costs. Before you install facilities under your approved COP or FERC license, you must provide a decommissioning bond or other approved assurance. The amount of the decommissioning bond will be based on the anticipated decommissioning costs. The MMS may allow you to provide the decommissioning bond in stages, based on the schedule for facility installation. The MMS must approve the schedule for providing this bond.

We made conforming changes throughout this section to reflect FERC's role in regulating hydrokinetic activity.

How will MMS determine the amounts of the supplemental and decommissioning financial assurance requirements associated with commercial leases? (§ 285.517)

The MMS will determine the amount required for each bond by considering projected amounts of rents and other payments due the government over the next 12 months; any past due rents or other payments; and the costs of lease abandonment and cleanup. You may increase an existing bond or use a combination of existing bonds and other approved forms of financial assurance to satisfy your requirements.

We made minor edits to this section, including conforming changes to reflect FERC's role in regulating hydrokinetic activity.

Reserved Sections (§§ 285.518 Through 285.519)

Sections 285.518 through 285.519 are reserved.

Financial Assurance for Limited Leases, ROW Grants, and RUE Grants

What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant? (§ 285.520)

Before MMS will issue a limited lease, ROW grant, or RUE grant, the applicant must provide either a $300,000 basic limited lease or grant-specific bond or another MMS-approved financial assurance. The basic bond for a limited lease or grant is higher than the basic bond on a commercial lease because we anticipate that obligations on a limited lease or grant will begin to accrue sooner, but will not be as extensive as the obligations on a commercial lease. With the commercial lease, we have established periods to reassess the bond amount (i.e., before approving the SAP or the COP). We do not have these automatic reassessments under a limited lease or grant. Also, a limited lease has a short term, only 5 years, and we do not anticipate reassessing the bond amount unless the applicant proposes significant or complex facilities. You may also satisfy this requirement by providing proof that your designated limited lease or grant operator provided the bond or approved financial assurance.

We revised parts of this section to conform with changes we made to bonding requirements in §§ 285.526 through 285.529.

Do my financial assurance requirements change as activities progress on my limited lease or grant? (§ 285.521)

The MMS may require you to provide additional financial assurance as activities on your lease progress to cover projected liabilities of rents and other payments due the government over the next 12 months; any past due rents or other payments; and the costs of lease abandonment and cleanup increase.

We revised paragraph (a)(4) to make it consistent with § 285.517. We also added a new paragraph to add the option for a separate decommissioning bond or other form of financial assurance, as we did with commercial leases.

Reserved Sections (§§ 285.522 Through 285.524)

Sections 285.522 through 285.524 are reserved.

Requirements for Financial Assurance Instruments

What general requirements must a financial assurance instrument meet? (§ 285.525)

All bonds and other forms of financial assurance must be payable to MMS upon demand and be in a form approved by MMS. Your surety bonds must be issued by a certified surety listed in the current Treasury Circular 570. This section also provides instructions on executing your bond and when your surety must notify you and the MMS due to changes in its Treasury certification status, insolvency, or bankruptcy.

We did not make any changes to this section.

What instruments other than a surety bond may I use to meet the financial assurance requirement? (§ 285.526)

You may utilize alternative financial assurance instruments when MMS determines that they protect the interests of the U.S. Government to the same extent as a bond. If using an alternative financial assurance instrument, you must monitor its value and must provide the authority for MMS to sell it and use the proceeds if the MMS determines that you have failed to satisfy any lease obligation.

Based on comments that we received, requesting more financial assurance options, MMS added options for:

- Negotiable U.S. Government, State, and Municipal securities or bonds;
- Investment-grade rated securities; or
- Insurance.

These security instruments must protect MMS to the same extent as a surety bond.

May I demonstrate financial strength and reliability to meet the financial assurance requirement for lease or grant activities? (§ 285.527)

The MMS added a new section to allow you to demonstrate financial strength and reliability, instead of a bond or other form of financial assurance, to meet the financial assurance requirements under this part. This section was added based on comments we received requesting such an option. This section details the requirements for demonstrating financial strength and reliability.

May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities? (§ 285.528)

The MMS added this section to allow use of a third-party guaranty to meet financial assurance requirements. This section was added in response to comments requesting more options to meeting the financial assurance requirements under this part. The section details the requirements for using a third-party guaranty.

Can I use a lease- or grant-specific decommissioning account to meet the financial assurance requirements related to decommissioning? (§ 285.529)

The MMS may authorize you to establish a decommissioning account in a federally insured institution with certain limitations to satisfy that portion of your financial assurance obligation that is for decommissioning. Funds may not be withdrawn without prior MMS approval, and must be pledged to meet your decommissioning and site clearance obligations. This section also discusses how interest paid on the account must be treated and when we may allow the use of Treasury Securities to satisfy the obligation to make payments into the account.

We did not make any changes to the regulatory text of this section; however, we renumbered this section from § 285.527 to § 285.529 to accommodate new sections.

Changes in Financial Assurance

What must I do if my financial assurance lapses? (§ 285.530)

This section discusses the steps you must take if your surety loses Treasury certification, becomes insolvent, or has its charter suspended, or if your approved financial assurance expires. You must promptly notify MMS and provide new financial assurance.

We did not make any edits to this section.

What happens if the value of my financial assurance is reduced? (§ 285.531)

This section requires that additional financial assurance be provided whenever the value of the current assurance falls below the required amount.

We did not make any changes to this section.

What happens if my surety wants to terminate the period of liability of my bond? (§ 285.532)

This section describes the liabilities that accrue during a period of liability and provides requirements that a surety must follow when requesting to terminate the period of liability under its bond.

How does my surety obtain cancellation of my bond? (§ 285.533)

The MMS will release a bond or allow a surety to cancel a bond only when all obligations covered by the bond have been completed satisfactorily or MMS accepts a replacement bond or alternative form of financial assurance that covers the existing liabilities from the period covered by the bond to be cancelled. This section describes when your period of liability ends, when your financial assurance will be released by MMS, and how the MMS may approve a reduction in the amount of your approved financial assurance if portions of your lease obligations have been satisfactorily completed.

We did not make any changes to this section.

When may MMS cancel my bond? (§ 285.534)

This section presents a comprehensive table which displays the different types of bonds required in this subpart, and when the period of liability ends. The table further displays when the bond will be released under a variety of circumstances.

We did not make any changes to this section.

Why might MMS call for forfeiture of my bond? (§ 285.535)

The MMS may call for forfeiture of your bond if you default on any of the conditions under which you accepted your bond or refuse or fail to comply with any term or condition of your lease or grant.

We did not make any changes to this section.

How will I be notified of a call for forfeiture? (§ 285.536)

This section specifies that you and your surety will be notified in writing of the call for forfeiture and will be provided the reasons for the MMS action. The MMS will also advise you and your surety in writing of the actions you must take within 10 days to avoid forfeiture.

We did not make any changes to this section.

How will MMS proceed once my bond or other security is forfeited? (§ 285.537)

This section explains that you and any co-lessee or co-grant holders are jointly and severally liable for the full cost of corrective actions on your lease or grant, even if they exceed the amount collected under your bond. The MMS may take or direct action to recover all costs in excess of the forfeited bonds.

We did not make any changes to this section.

Reserved Sections (§§ 285.538 Through 285.539)

Sections §§ 285.538 through 285.539 are reserved.

Revenue Sharing With States

Sections 285.540 through 285.543 of this rule describes the factors MMS will consider in determining how to equitably distribute revenues among eligible States.

How will MMS equitably distribute revenues to States? (§ 285.540)

This section provides the procedure for calculating the State shares of revenue. To determine each eligible State's share of the 27 percent of the revenues received by the Federal Government for a qualified project, MMS will use the inverse distance formula, based on the shortest distance between State coastlines and the geographic center of the qualified project area. This is the formula used for the same purpose under the Coastal Impact Assistance Program administered by MMS.

We made minor changes to this section to clarify that revenues do not include administrative fees such as service fees and those assessed for civil penalties and forfeiture of bond or other surety obligations.

What is a qualified project for revenue sharing purposes? (§ 285.541)

This is a new section that describes what projects qualify for revenue sharing purposes. A qualified project for the purpose of revenue sharing with eligible coastal States consists of lease acreage that is wholly or partially located within the area extending 3 nautical miles seaward of State submerged lands.

What makes a State eligible for payment of revenues? (§ 285.542)

This is a new section that describes how MMS will determine if a State is eligible for payment of revenues. A State is eligible for payment of revenues if any part of the State's coastline is located within 15 miles of the announced geographic center of the qualified project area. A State is not eligible for revenue sharing if all points on that State's coastline are more than 15 miles from the announced geographic center of the qualified project area. This is the case even if no State's coastline is located within 15 miles from the announced geographic center of the qualified project area, and thus no State would share revenues from the project.

Example of How the Inverse Distance Formula Works (§ 285.543)

This is a revised section that illustrates several examples of how the inverse distance formula works.

Example (a). A qualified project area is located partially within the zone extending 3 miles seaward of State A's submerged lands. The geographic center of the qualified project area is more than 15 miles from the coastline of any State. In this scenario, no State would be eligible for payment of Federal revenues from that qualified project. This is the case because the distance from the geographic center of the qualified project area to the nearest point on each of the States' coastline is greater than 15 miles, which is the only determinant as to whether or not a State is eligible for payment of revenues.

Example (b). A qualified project area is located partially within the zone extending 3 nautical miles seaward of State A's submerged lands. The geographic center of the qualified project area is within 15 miles of State B's coastline, but is farther than 15 miles from State A's coastline. In this scenario, State B would receive the entirety of the 27 percent of revenues to be shared from the project. This is the case because State A's proximity to the

geographic center of the qualified project area is greater than 15 miles, even though the qualified project area is located partially within the zone extending 3 miles seaward of State A's submerged lands. Again, the location of the project area within 3 nautical miles of a State's submerged lands is only used to determine if a project is subject to revenue sharing (i.e., is a qualified project) and is not used to determine any State's eligibility for payment of revenue from a qualified project.

Example (c). A qualified project area is located partially within the zone extending 3 nautical miles seaward of State C's submerged lands. The geographic center of the qualified project area is within 15 miles of both State A's and State B's coastline, but is farther than 15 miles from any other States' coastline, including State C. In this scenario, State A and State B would split the 27 percent of revenues to be shared from the project. The sharing between these two States would be based on their proximity to the geographic center of the qualified project area. To elaborate, assume that the geographic center of the qualified project area lies 12 miles from the closest point on State A's coastline and 4 miles from the closest point on State B's coastline. Pursuant to the inverse distance formula, eligible States with coastlines that are farther from the geographic center of a qualified project area would get proportionally lower revenue shares from the project.

State A's proportion = $[(1/12) \div (1/12 + 1/4)] = 1/4$

State B's proportion = $[(1/4) \div (1/12 + 1/4)] = 3/4$.

Therefore, State B, being three times closer than State A to the center of the qualified project's area, would receive a share that is three times larger than State A's share.

Eligible States share the 27 percent of the total revenues from the qualified project as mandated under the EPAct. Hence, if the qualified project generates $1,000,000 of revenues in a given year, the Federal Government would distribute the States' 27 percent shares as follows, rounded to the nearest whole dollar:

State A's share = $270,000 × 1/4 = $67,500.

State B's share = $270,000 × 3/4 = $202,500.

Subpart F—Plans and Information Requirements

Overview

Subpart F describes the types of plans and information requirements for commercial leases, limited leases, ROW grants, and RUE grants for renewable energy activities. The subpart outlines the timing of submission, content requirements, and necessary MMS approvals for each of the plans. The types of required plans are described in the next section. The lessee, grant holder, or operator must submit the appropriate plan to MMS for review and approval before beginning any activities covered by that plan.

Types of Plans

Three types of plans are required, depending on the type of instrument held and the activity to be conducted:

(1) Site Assessment Plan (SAP),

(2) Construction and Operations Plan (COP), and

(3) General Activities Plan (GAP).

The SAP and the COP will be used for commercial leases, while the GAP will be used for limited leases and grants.

As originally proposed, MMS would not allow a lease or grant holder to conduct *any* activities on the OCS without proper plan submittal and MMS approval. Based on comments received on the proposed rule, MMS has determined that geophysical and geological surveys, hazards surveys, archaeological surveys, and baseline collection studies (e.g., biological) conducted for the purpose of preparing SAPs, COPs, and GAPs may be permitted under the authority of the U.S. Army Corps of Engineers (ACOE). In many instances, these types of activities may be verified under the ACOE's Nationwide Permit program. We have revised the regulation to remove the requirement for MMS approval of these types of surveys and the requirement to describe the survey designs in a SAP, COP, or GAP. Companies may now conduct these surveys pre- or post-lease/grant, subject to ACOE verification under the Nationwide Permit program or other appropriate authorization and other applicable Federal law. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to their conduct to ensure that the activities being proposed meet the conditions of the Nationwide Permits. Certain Nationwide Permits require that an applicant notify the ACOE and receive verification that an activity is covered under a Nationwide Permit prior to start of construction. Applicants will be required to submit the results of their surveys as part of their SAP, COP, or GAP. The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be published after the promulgation of this rule. By making this change, MMS believes that applicants will be able to complete their plans more efficiently. Any construction activities (e.g., installation of a meteorological tower, a meteorological buoy) or the testing of technology devices needs to be proposed in the SAP, COP, or GAP. We have changed the text of the rule to reflect these changes.

Based on comments, we have reduced the number of NEPA and CZMA reviews for a commercial lease issued competitively from three to two by combining the lease sale and site assessment activities into one review. This, in combination with the elimination of MMS approval of surveys (e.g., geophysical, geological, archaeological, and biological), should greatly reduce the review time for commercial leases issued competitively. The MMS will prepare a NEPA document and a consistency determination to cover the lease sale and site assessment activities. The MMS may review the effects of geophysical, geological, archaeological, and biological surveys in the NEPA documentation for the lease sale, as well.

Also based on comments received on the proposed rule, we will now include technology testing as an activity that may be conducted under a SAP or a GAP. We have changed the definition of *site assessment activities* to ''those initial activities conducted to characterize a site on the OCS, such as resource assessment surveys (e.g., meteorological and oceanographic) or technology testing.''

Prior to conducting site assessment activities on a commercial lease, a lessee will be required to submit a SAP. The SAP describes the activities (e.g., installation of meteorological towers, meteorological buoys) a lessee plans to perform for the characterization of their commercial lease, including the project easement, or to test technology devices. The SAP must include data from: (1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys); and (2) baseline environmental surveys (e.g., biological or archaeological surveys). If you propose to construct a facility or combination of facilities, which MMS determines to be complex or significant, you must also comply with the requirements of subpart G.

A COP will be required before a lessee may begin construction and/or operations on a commercial lease, including a project easement. The COP describes the construction, operations, and conceptual decommissioning activities the lessee plans to undertake.

A GAP will be required before a lessee or grantee may begin activities on a limited lease (including a project easement, as applicable) or ROW grant or RUE grant. The GAP describes the site assessment and/or development activities. The GAP must describe: (1) Resources assessment surveys (e.g., meteorological and oceanographic data collection); (2) technology testing; and (3) construction activities, operations, and conceptual decommissioning plans for all planned facilities. The GAP must include the data from: (1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys); (2) baseline environmental surveys (e.g., biological, archaeological, or socioeconomic surveys); and (3) construction activities, operations, and conceptual decommissioning plans for all planned facilities.

The rule requires two plans for a commercial lease (SAP and COP) and one plan (GAP) for limited leases and ROW grants or RUE grants. We chose this approach for a commercial lease because there are two distinct phases for commercial development for renewable energy projects: (1) A site assessment phase, where a lessee may install a meteorological or marine data collection facility to assess renewable energy resources; and (2) a generation of power phase, which includes construction, operations, and decommissioning. As described previously, physical characterization studies (e.g., geological and geophysical surveys, hazard and archaeological surveys) and baseline collection studies (e.g., biological) may be permitted under the ACOE Nationwide Permit program and other applicable Federal law. Therefore, the survey designs will not need to be included in a SAP, COP, or GAP, nor will they need to receive approval from MMS prior to implementation.

Limited leases are limited to resource measurements or technology testing and are not for the commercial generation of power. Therefore, only one phase exists, and only one plan, a GAP, is required for this phase. Having only one plan for one phase allows for a simple process to conduct resource evaluation or technology testing. The same reasoning was used for ROW grants and RUE grants—these grants do not involve commercial power generation activities on the OCS.

Overview of Required Plans

The two plans for commercial development are a SAP and a COP. These plans should clearly describe the general approach to the project and include detailed technical and environmental information. The two-plan approach for commercial activities sets two defined times for conducting NEPA analysis and CZMA reviews. These plans must include all the information needed to conduct appropriate NEPA analysis and for compliance with other Federal laws. Based on comments received on the proposed rule, we have revised the rule to clarify the CZMA reviews for SAPs, COPs, and GAPs. For purposes of Federal consistency, MMS will treat plans (COPs and GAPs) associated with competitively-issued commercial and limited leases as OCS plans which must comply with requirements of CZMA subsection 307(c)(3)(B) and 15 CFR part 930, subpart E. The applicant must submit one copy of their CZMA consistency certification with each plan. The MMS will prepare a consistency determination for a competitive lease sale and site assessment activities.

The MMS will treat SAPs and GAPs associated with noncompetitively-issued commercial and limited leases as Federal licenses and permits which must comply with requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930, subpart D. The applicant will be required to prepare a consistency certification and concurrently submit it to the affected State's CZM agency and MMS along with the proposed SAP or GAP and all supporting information required in 15 CFR part 930, subpart D. The details of the CZMA process are described under ''CZMA Compliance for Plans.'' This approach includes a predictable schedule for development and milestones for plan submittals.

The SAP covers resource, other data gathering activities (e.g., meteorological, oceanographic), and the testing of technology devices that would be conducted to gather information needed to develop the project. The SAP includes the results and data collected from physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys) and baseline environmental surveys (e.g., biological and archaeological surveys) conducted prior to the preparation of the SAP and under the authority of the ACOE and other Federal laws. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to their conduct. Applicants will be required to submit the results of their surveys as part of their SAP, COP, or GAP. The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be issued after the rule is final. The data gathered under the SAP would be used to develop the COP for the project. The site assessment activities may include resource assessment surveys (e.g., meteorological and oceanographic data collection), and the testing of technology devices. Additionally, a SAP may include the construction of simple facilities for data collection, such as meteorological towers. However, if you are constructing a facility or a combination of facilities deemed by MMS to be complex or significant, you must comply with the requirements of subpart G and submit a Safety Management System. The SAP expires when MMS approves the COP. To conduct site assessment type activities after a COP is approved, the applicant would need to include those activities in the COP.

To facilitate development of a commercial lease, an applicant may choose to submit to MMS a COP with the SAP. In this case, the NEPA analysis, CZMA review, and compliance with other relevant laws would be done at one time. If the applicant decides to submit the COP and SAP simultaneously, then sufficient data and information must be submitted with the COP for MMS to conduct needed technical, NEPA, and other required reviews. If new information becomes available after the applicant completes the site assessment activities, then the COP may require revision. Furthermore, MMS may need to conduct additional reviews, including NEPA, CZMA, and other Federal reviews, on any new information.

The COP describes the construction and operations for the project itself, covering all planned facilities, including onshore and support facilities, and all anticipated project easements needed for the project. It also describes the actual activities related to the project including construction, commercial operations, maintenance, and decommissioning. The COP does not need to repeat information that was previously submitted in the SAP, but should reference such material. The COP includes the results of the activities conducted under the SAP. The COP must demonstrate to MMS that the operator has planned and is prepared to conduct the proposed activities in a manner that conforms to their responsibilities under these regulations. It also must demonstrate that the project:

- Will conform to all applicable laws, implementing regulations, lease provisions and stipulations, or conditions of the commercial lease;
- Is safe;
- Does not unreasonably interfere with other uses of the OCS, including

those involved with national security or defense;

- Does not cause undue harm or damage to natural resources, life (including human and wildlife), property, or the marine, coastal, or human environment;
- Does not cause undue harm or damage to sites, structures, or objects of historical or archaeological significance;
- Will use best available and safest technology, will use best management practices, and will employ properly trained personnel.

Limited leases, ROW grants, and RUE grants will require approval of a GAP. The GAP includes components of both the SAP and the COP. However, we expect that limited leases, ROWs, and RUEs would involve less extensive activities than those planned for a commercial lease. The applicant may include multiple scenarios in the GAP to address the potential outcome of the site assessment activities, so that multiple locations would be evaluated as part of the NEPA analysis. If, after evaluating the site, the initially planned location of a facility needs to be relocated, additional NEPA would not be required since alternative locations were evaluated in the NEPA for the GAP.

Site Assessment Plan (SAP)

The SAP describes the activities (e.g., installation of meteorological towers, meteorological buoys) a lessee plans to perform for the characterization of their commercial lease, including testing technology devices. These activities would take place during the site assessment term of a commercial lease. The data obtained during site assessment is used to develop a COP and is included in the COP. The activities proposed in a SAP may include the installation of facilities (including vessels) attached to the sea floor, such as meteorological towers to measure winds, radars to assess avian resources, or marine data collection facilities to measure waves or currents; or the testing of technology devices. The MMS expects that the applicant would conduct physical characterization surveys and baseline environmental surveys prior to the preparation of the SAP, and include the results and supporting data from those surveys in the SAP. Information contained in the SAP must provide sufficient detail for MMS to adequately assess the proposed activities and ensure compliance with NEPA and other relevant Federal laws.

The MMS must approve the SAP before the operator can begin conducting any proposed activities. If MMS approves the SAP, the operator may begin conducting activities, including the installation of facilities. However, if you are constructing a facility or a combination of facilities deemed by MMS to be complex or significant, you must comply with the requirements of subpart G and submit a Safety Management System before construction may begin.

When MMS receives the applicant's COP for technical and environmental review, MMS may extend the site-assessment term during the review period, if necessary. The SAP expires when MMS approves the COP. Therefore, if an applicant anticipates conducting site assessment activities anytime during the COP period, those activities must be described in the COP, and the applicant must receive MMS approval of the COP before conducting the activities.

Subpart F outlines what issues the applicant must address in the SAP such as legal requirements, safety, other uses of the OCS, environmental protection, technology, best management practices, and the use of properly trained personnel. The provisions also outline the information that the applicant must submit with the SAP as well as additional information that must be submitted if the SAP includes activities that require the installation of bottom-founded facilities. The MMS envisions that most such facilities would be relatively simple and temporary. However, if an operator proposes to install a facility that the MMS determines is significant or complex, additional information would be required. If MMS makes such a determination, you must submit a Facility Design Report and a Facility Fabrication and Installation Report, as described in subpart G, and a Safety Management System, as described in subpart H, before any construction may begin. The Facility Design Report provides MMS with a detailed description of the proposed facility or facilities and locations on the OCS. The Fabrication and Installation Report describes the lessee/operator's or grant holder's plans for both the facility's fabrication and installation process. The MMS will review these reports prior to each stage of these operations.

One commenter suggested that applicant preparation and MMS review and approval of the Facility Design Report and Fabrication and Installation Report should proceed in parallel with MMS's preparation of the EIS and review of the COP. The commenter suggested that proceeding in parallel could reduce the overall project development timeline by 4–6 months. The regulations bind the Facility Design Report and the Fabrication and Installation Report to the approved COP. This is necessary to ensure that these two reports cover the activities and facilities as approved. As written, the regulations do not prevent an applicant from submitting the Facility Design Report or the Fabrication and Installation Report with the COP. However, we envision that there will be changes to the COP during its review and that such changes could result in revisions to the Facility Design Report and the Fabrication and Installation Report. If that situation occurs, the applicant would have to revise and resubmit the two required reports. We do not see that submittal of the Facility Design Report and Fabrication and Installation Report with the COP saves much, if any, time leading up to the installation of facilities, but we will not prevent an applicant from doing so.

For commercial leases acquired noncompetitively, you must submit the SAP within 60 days after the MMS determination of no competitive interest. The MMS will not issue the lease until the SAP is approved. If you acquired a commercial lease competitively, you must submit the SAP within 6 months of the date of lease issuance. A commenter raised the concern that these time periods may not provide enough time to conduct the needed assessments and incorporate them into a plan. We believe that the time period is adequate to prepare a SAP. However, if more time is needed, the lessee may request a suspension under § 285.416(c) after acquiring the lease. We will conduct technical and environmental reviews. In this case, the NEPA and CZMA reviews would be completed at the lease sale stage. However, if new information from the SAP submittal showed changes in impacts identified at the lease sale stage, the SAP could be subjected to further environmental review. If the lease was obtained noncompetitively, the applicant will be required to prepare a consistency certification and concurrently submit it to the affected State's CZM agency and MMS along with the proposed SAP or GAP, as well as all supporting information required in 15 CFR part 930, subpart D. After the reviews are complete, MMS would approve, disapprove, or approve with modifications the SAP. Based on comments received on the proposed rule, we have revised the rule to clarify our process for when a State objects to the consistency certification. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been

conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security.

In response to a comment asking how MMS will determine ''affected States'' for CZMA purposes, MMS will coordinate with the appropriate CZMA agencies and consult with regional task forces. The MMS will specify the terms and conditions of the approval, and you must incorporate these into your SAP. If the SAP is approved or approved with modifications, the applicant must conduct all site assessment activities in accordance with the provisions of the approved plan. The MMS may require the applicant to certify compliance with certain of the terms and conditions as identified by the MMS. If MMS does not approve the SAP, we will provide an explanation of our disapproval, and the applicant may modify and resubmit the revised SAP.

One commenter asked us to identify the type of document MMS will issue as its final decision on a SAP or COP. The MMS will issue decision letters for a SAP, COP, and GAP. In addition, where an EIS is prepared, a ROD will be issued. In cases where an EA is prepared, either a Finding of No Significant Impact would be prepared (in addition to the decision letter), or, depending on the outcome of the environmental review, an EIS could be prepared.

One commenter stated that the proposed rule is unclear as to the process available to States or other stakeholders to address and remedy disagreements arising from the content of the SAP, GAP or COP, other than that offered by the comment review process. The commenter stated that this process is particularly important where a ROW easement crosses the State territorial sea. The commenter recommends that MMS develop language to include such a process. The MMS will work closely with affected States and local governments to coordinate and consult on such activities to ensure that related issues and concerns are addressed. For competitive leases, MMS addresses potential impacts from a subsea cable route through State waters in the lease sale, COP, and GAP NEPA documentation. The MMS may consider performing this assessment with an affected State in a joint environmental document. Since MMS's authority is limited to the OCS (outside of State waters), the affected State would have full authority to decide on access issues within State waters.

If you want to conduct activities not directly addressed in the approved SAP, you must provide MMS with a written description of the proposed activities and receive approval from MMS before conducting the activities. We will determine whether the activities are within the scope of the approved SAP or if the SAP needs to be revised. If MMS determines that you must revise the SAP, then MMS must approve the revised SAP before you can conduct the activities.

Construction and Operations Plan (COP)

The COP describes the construction, operations, and conceptual decommissioning plans for the operations term of any project under a commercial lease, including your project easement. Your plan should describe all operations and facilities (onshore and offshore) that would be installed and used to test, gather, transport, transmit, or generate and distribute energy from the lease. The COP should include:

- Nominations of CVAs for MMS approval or request of an exemption, where required;
- Preliminary plans for project design, facility fabrication and installation, and production transportation and transmission;
- Plans for safety management, inspection, maintenance, and monitoring systems; and
- The decommissioning concept.

The rule outlines the process for preparing, submitting, processing, and implementing a COP or a combined SAP/COP. The MMS must approve the COP or the combined SAP/COP before you can construct any facilities for commercial operation.

As with the SAP, the provisions of the rule outline what a COP must contain and demonstrate, as well as how the COP is submitted, processed, and authorized. The MMS may require additional specific information for submittal with the COP, to aid in the appropriate reviews of the project by external agencies and to assist in compliance with all relevant Federal laws and regulations (e.g., NEPA, CZMA, ESA, and MMPA). We may request additional information if the information provided is insufficient. However, the COP does not need to repeat information that was previously submitted in the SAP, but should reference such material.

For commercial leases acquired noncompetitively and competitively, you must submit a COP within 5 years after MMS approves your SAP. The MMS will extend the term of the SAP, if necessary, while conducting the technical and environmental reviews of your COP. We will conduct these technical and environmental reviews of your COP, including NEPA analysis, and, for leases issued competitively, will forward the plan, your consistency certification and information required pursuant to 15 CFR part 930, subpart E to affected States for CZMA review. For leases issued in a noncompetitive process, you will be required to prepare a consistency certification and concurrently submit it to the affected State's CZM agency and MMS along with the proposed COP and all supporting information required in 15 CFR part 930, subpart D. After the reviews are complete, MMS would approve, disapprove, or approve with modifications the COP. Based on comments received on the proposed rule, we have revised the rule to clarify our decision process when a State objects to the consistency certification. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. The MMS will specify the terms and conditions of the approval, and they would be incorporated into your COP. If MMS approves the COP or approves the COP with modifications, the applicant must conduct all of the proposed activities in accordance with the provisions of the approved plan and certify compliance with those terms and conditions identified by the MMS. If MMS does not approve the COP, we will provide an explanation of our disapproval, and the applicant may modify and resubmit the revised COP.

If MMS approves your project easement, we will issue an addendum to your lease specifying the terms of the easement. The project easement will provide for areas off the original lease areas for cable, pipeline, or associated facilities. Areas for cable and pipelines may not exceed 200 feet (61 meters) in width, unless safety and environmental factors during construction and maintenance of the associated cables or pipelines require a greater width. For associated facilities, the area is limited to the area reasonably necessary for power stations for electricity or

pumping stations for other energy products such as hydrogen.

You may propose in your COP to develop your lease in phases. You must clearly provide details as to the portions of the lease that will be initially developed for commercial operations, and the portions of the lease that will be reserved for subsequent phased development.

If MMS approves your COP, you must commence construction by the date given in your construction schedule, as stated in the approved COP. The MMS may approve a deviation from this schedule. However, before you may construct and install facilities under the approved COP, you must submit to MMS a Facility Design Report and a Fabrication and Installation Report. You may commence commercial operations 30 days after the CVA or project engineer has submitted the final Fabrication and Installation Report to MMS. The activities described in these two reports must fall within the scope of the approved COP, or you will be required to submit a revision to the COP for approval before commencing the activity.

A COP may require further revisions and potentially require additional or new environmental and regulatory reviews. You must notify MMS in writing before you conduct any activities not described in your approved COP, describing in detail the activities you propose to conduct. The MMS will determine whether the proposed activities may be conducted under your existing COP or will require a revision to the COP. We may request that you provide additional information to us to make this determination. The MMS will periodically review an approved COP and may determine, based on the significance of any changes in information and environmental conditions affecting activities, that revisions are necessary. The revisions may require new environmental and technical reviews.

Any time you cease commercial operations without an MMS approved suspension, you must notify MMS. The MMS may cancel your lease, and you must start the decommissioning process if you cease commercial operations for a period longer than 6 months.

When you complete the commercial operations under your approved COP, you must start the decommissioning process described in subpart I of this part.

General Activities Plan (GAP)

The GAP describes the operator's planned activities for a limited lease, ROW grant, or RUE grant. It includes information similar to what is required in a SAP, as well as additional information concerning planned activities throughout the term of the lease or grant. As with the SAP, the GAP must be submitted within 6 months of competitive issuance of a lease or grant or within 60 days after the determination of no competitive interest for a lease or grant being pursued noncompetitively. In some cases, a GAP would describe activities that are analogous to those covered in a COP for a commercial lease, i.e., if you are proposing a facility deemed by MMS to be complex or significant. Review, approval, and revision of a GAP will be subject to requirements and procedures similar to those applied to SAPs and COPs.

NEPA Compliance for Plans

The MMS action on the SAP, COP, and GAP would require the preparation of appropriate NEPA documentation. We anticipate that, initially, all commercial development projects will require an EIS for the COP. Also, we anticipate that limited leases and RUE and ROW grants will initially require an EIS. After the impacts and related mitigation of renewable energy activities on the OCS are better understood, it is possible that projects may require an EA. As the program matures, MMS will review the impacts from the program and make a determination whether we can recommend categorical exclusions for certain activities to the Council on Environmental Quality. For competitively issued commercial leases, MMS will prepare a lease sale and site assessment NEPA review to include the SAP activities. The applicant must provide MMS with the data necessary to complete the required NEPA documentation for other types of plans. This would include a description of those resources, conditions, and activities that could be affected by your proposed activities, or that could affect the activities proposed in your plan, including associated construction and decommissioning activities. An applicant may reference information that was included in the MMS NEPA review prepared for the lease. The required information would include, but is not limited to, information on the following:

- Hazard information including meteorology, oceanography, or manmade hazards;
- Water quality including turbidity and total suspended solids from construction;
- Biological resources including benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, barrier islands, beaches, dunes, wetlands, seagrasses and plant life;
- Threatened or endangered species including critical habitats, as defined by the Endangered Species Act of 1973;
- Sensitive biological resources or habitats including essential fish habitat, refuges, preserves, special management areas identified in coastal management programs (CMPs), sanctuaries, rookeries, hard bottom habitats, chemosynthetic communities, and calving grounds;
- Archaeological resources including historic and prehistoric archaeological resources to meet the requirements of the National Historic Preservation Act of 1966, as amended, and associated regulations;
- Social and economic information, including employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and viewshed;
- Coastal and marine uses including military activities, vessel traffic, and mineral exploration or development; and
- Other resources, conditions, and activities as identified by MMS.

The MMS may decide to use a third party to prepare the NEPA document. However, you may ask for our approval to perform, or to directly pay a contractor for, the NEPA document (see subpart A, § 285.111).

One commenter suggested that in order for States and local governments to use the MMS NEPA document for their ''equivalent'' environmental process, several analyses and information needs would need to be included. The MMS will work closely with affected States and local governments to coordinate and consult on activities proposed under this program to ensure efficient preparation of environmental reviews. These reviews may be conducted jointly by MMS and other appropriate agencies or separately.

The MMS received numerous comments regarding cumulative impacts. It was stated that, as more renewable energy projects are developed on the OCS, the cumulative effects of those projects may compound individual effects and put an additional strain on the ecology of the marine environment. The MMS shares the concerns of the commenters regarding cumulative effects. We will work closely

with Federal agencies, affected States, local governments, and other stakeholders to coordinate and consult on activities proposed under this program and to identify critical issues including their cumulative effects. Cumulative effects will be assessed at each stage of environmental review of projects, including lease sales, in order to identify such effects and to recommend appropriate mitigation measures and monitoring.

One commenter requested that MMS incorporate the requirement of adaptive management into the rule. We designed the structure of the regulations to reflect the approach of adaptive management. Operating companies are required to demonstrate and validate their performance. The MMS will set forth terms and conditions to be incorporated into plans and will determine when to require adjustments to mitigation and monitoring activities based on operating experience. Lessees are required to certify compliance with certain of those terms and conditions. Also, refer to the preamble discussion in subpart H.

CZMA Compliance for Plans: Based on comments received on the proposed rule, we have clarified the rule with respect to CZMA compliance. For purposes of Federal consistency, MMS will treat plans (COPs, and GAPs) associated with competitively-issued commercial and limited leases as OCS plans which must comply with requirements of CZMA subsection 307(c)(3)(B) and 15 CFR part 930, subpart E. The MMS will treat COPs associated with noncompetitively-issued commercial leases as OCS plans which must comply with requirements of CZMA subsection 307(c)(3)(B) and 15 CFR part 930, subpart E. The plans must describe all federally licensed or permitted activities and operations proposed on the MMS-issued lease, ROW grant, or RUE grant. The lease or grant holder will be required to prepare a consistency certification to submit to MMS with the proposed plan. The MMS will send one copy of the plan, supporting information, and consistency certification to the affected State CZM agency. The State agency will then determine whether the supplied information is adequate for its review. When the State agency has adequate information, it will begin its consistency review and either concur with or object to the consistency certification. For SAPs submitted under a competitive lease, MMS will prepare a consistency determination that will cover the lease sale and site assessment activities.

The MMS will treat SAPs and GAPs associated with noncompetitively-issued commercial and limited leases as Federal licenses and permits which must comply with requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930, subpart D. The applicant will be required to prepare a consistency certification and concurrently submit it to the affected State's CZM Agency and MMS along with the proposed SAP or GAP and all supporting information required in 15 CFR part 930, subpart D. The State agency will then determine whether the supplied information is adequate for its review. When the State agency has adequate information, it will begin its consistency review and either concur with or object to the consistency certification.

The MMS will treat a combined COP and SAP associated with a noncompetitive commercial lease as a Federal license and permit which must comply with requirements of CZMA subsection 307(c)(3)(A) and 15 CFR part 930, subpart D.

Subsequent consistency reviews for revisions for SAPs, COPs, and GAPs are not required unless MMS determines that the revisions: (1) Result in a significant change in the impacts previously identified and evaluated; (2) require any additional Federal authorizations; or (3) involve activities not previously identified and evaluated.

For CZMA compliance purposes, when a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security.

NEPA and CZMA Compliance for Additional Reports and Approvals

The NEPA and CZMA compliance for a project will be addressed in the MMS decision process for the SAP, COP, or GAP. The reports and applications that are required relating to facility design, fabrication, installation, and decommissioning are intended to provide MMS with specific technical details on the project as approved in the SAP, COP, or GAP. If these documents present activities that fall outside the scope of your approved SAP, COP, or GAP, then you will be required to submit a revision to your SAP, COP, or GAP. Additional NEPA or CZMA review may be required if the revisions for facility design, fabrication, installations, or decommissioning:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional authorizations; or

(3) Propose activities not previously identified and evaluated.

Frequency of NEPA/CZMA Reviews Based on the Type of Lease or Grant

The number of NEPA and CZMA reviews that would be conducted on your lease or grant is determined by the type of lease or grant that you hold (Table 2). For a competitive, commercial lease, MMS would conduct two NEPA and two CZMA reviews—one NEPA and CZMA review for the lease sale action, *and* the SAP activities, and one NEPA and CZMA review for the COP. We reduced the number of reviews we identified in the proposed rule from 3 to 2 in the final rule by covering SAP activities in the lease issuance reviews (e.g., lease sale or noncompetitive lease NEPA documents). This should greatly reduce the processing time for a SAP. However, if new information becomes available upon SAP submission that identifies potential impacts that were not previously identified and evaluated, additional review (including NEPA and CZMA) may be required. Applicants with competitive, commercial leases could reduce the review time and gain efficiency by submitting the COP with the SAP. The MMS received comments to allow the COP and SAP to be submitted simultaneously; however, this option was available in the proposed rule. It is an option in the final rule for those applicants that provide sufficient data and information with the COP for MMS to complete the needed technical, NEPA, CZMA, and other required reviews. For a noncompetitive commercial lease, two NEPA and two CZMA reviews would be required—one for the lease with the SAP and one for the COP. Since MMS requires the applicant to submit a SAP or a GAP within 60 days after the Director issues a determination that there is no competitive interest for the lease or grant, the SAP would be reviewed under the same review for the lease issuance. Efficiency is gained in this example because MMS can conduct reviews on the SAP and the lease at the same time. Again, the rule allows the applicant to submit a combined SAP/COP, which could result in additional efficiencies.

For limited leases, two NEPA and two CZMA reviews would be required for a competitive limited lease and one review for a noncompetitive limited lease. The reviews for the competitive limited lease would be conducted on the lease sale action and the GAP, while

the noncompetitive limited lease would have a simultaneous review of the lease issuance and the GAP.

We envision that all ROW grants and RUE grants would likely be noncompetitive. The ROW/RUE issuance action and the GAP would be reviewed under NEPA and CZMA simultaneously. In the unlikely case of a competitive ROW/RUE grant, a separate NEPA and CZMA review would be conducted on the ROW/RUE sale and the GAP.

Table 2. Frequency of NEPA/CZMA reviews based on instrument held.

Instrument Held	MMS Process	NEPA Documentation and CZMA Review
Competitive Commercial Lease	Conduct lease sale and issue decision on plans	1. Lease Sale and SAP activities EIS 2. COP*
Noncompetitive Commercial Lease	Negotiate and issue lease	1. Lease Issuance and SAP 2. COP*
Competitive Limited Lease	Conduct lease sale and issue decision on plan	1. Lease Sale 2. GAP
Noncompetitive Limited Lease	Negotiate and issue lease	1. Lease Issuance and GAP
Competitive ROW, RUE Grant	Conduct ROW, RUE sale and issue decision on plan	1. ROW, RUE Sale 2. GAP
Noncompetitive ROW, RUE Grant	Negotiate and issue ROW, RUE grant	1. ROW, RUE issuance and GAP

*Note: the review times may be reduced if the applicant submits a combined SAP/COP or a combined SAP/FERC license application. For commercial hydrokinetic leases FERC will conduct NEPA and CZMA review for license activities.

Section-by-Section Discussion for Subpart F

What plans and information must I submit to MMS before I conduct activities on my lease or grant? (§ 285.600)

This section describes the three different types of plans that are required to be submitted to MMS for approval. The type of plan that you would submit depends on the type of instrument held and the type of activity to be conducted: SAP, COP, and GAP. The SAP and the COP are used for commercial leases, while the GAP is used for limited leases and grants. Prior to conducting site assessment activities (e.g., resource data collection, technology testing) on a commercial lease, a lessee is required to submit a SAP to MMS for review and approval. A COP is required to be submitted to MMS for review and approval before a lessee may begin construction and/or operations on a commercial lease, including a project easement. A GAP is required to be submitted to MMS for review and approval before a lessee may begin activities on a limited lease or ROW grant or RUE grant including, if applicable, a project easement.

A commenter suggested that the proposed rule was unclear when a SAP and COP or a GAP is required. The comment states, ''The SAP and the COP are used for commercial leases, while the GAP would be used for limited leases and grants. However, § 285.640(a) notes that the GAP may be applicable to the project easement.'' We believe the rule clearly states the requirements for submitting the appropriate plan for a lease, easement, or ROW. A GAP is used if your limited lease includes a project easement. In such a case, the proposed activities for the project easement associated with your limited lease would be described in a GAP.

We did not make any changes to this section.

When am I required to submit my plans to MMS? (§ 285.601)

The timing for the submission of your plans depends on whether your lease or grant is issued on a competitive or noncompetitive basis (refer to subpart B for leases or subpart C for grants for further discussion of these types of conveyance). The timing is as follows:

- *Competitively issued lease or grant:* You must submit your SAP or GAP within 6 months of issuance.
- *Noncompetitive lease or grant:* You must submit your SAP or your GAP within 60 days after the Director issues a determination that there is no competitive interest for your lease or grant.
- *Operations for commercial lease:* You must submit a COP or a FERC license application *at least* 6 months before the end of your site assessment term if you intend to continue your commercial lease with an operations term for your commercial lease.

The MMS allows you to submit your COP with your SAP. However, you must submit the necessary data and information with your COP to allow MMS to complete its technical and environmental reviews. In an effort to make the process as streamlined as possible, some commenters suggested that the MMS combine both the SAP and COP into one step or plan, or at least allow the environmental analysis to be completed at one time, thereby reducing the burden on project proponents. They stated that, in some cases, it may be desirable for the lessee to go through both steps, but in others, a lessee may be ready to proceed with commercial operations. It was proposed that MMS would greatly facilitate development by combining the SAP and COP and their required environmental reviews where appropriate and desirable. Section 285.601(d) states that you may submit your COP with your SAP. The NEPA analyses could be performed on both submittals simultaneously.

For hydrokinetic commercial leases you may submit your FERC license application with your SAP. Although details for joint processing of such documents have not yet been developed, MMS and FERC will strive to establish an efficient process to accomplish review and approval,

including NEPA analysis. The MMS will be responsible for regulating approved site assessment activities, and FERC will be responsible for regulating approved construction and operations activities.

We made conforming changes to this section relating to FERC's role in regulating hydrokinetic activity.

Based on comments, we have reduced the number of NEPA and CZMA reviews for a commercial lease issued competitively from three to two by combining the lease sale and site assessment activities into one review. This, in combination with the elimination of MMS approval of site assessment surveys (e.g., geophysical, archaeological, biological), should greatly reduce the review time for commercial leases issued competitively, and would allow applicants to conduct site assessment surveys sooner.

One commenter noted that it is unclear why MMS has proposed to give the applicant only 60 days to prepare the GAP/SAP and all required environmental documentation for a noncompetitive lease, while holders of competitive leases are given 6 months to produce this documentation. The commenter stated that noncompetitive lease applicants should be given at least 6 months as well, noting that the physical impacts to be evaluated in a SAP or GAP will be the same whether a project is leased competitively or noncompetitively. We believe that since an unsolicited request for a noncompetitive lease is initiated by the applicant, 60 days after the publication of a notice of no competitive interest is a sufficient time period to prepare the SAP/GAP. The applicant should have ample time to gather information prior to application for a lease and during the time it takes MMS to make a determination of no competitive interest. However, if more time is needed, the lessee may request a suspension under § 285.416(c) after acquiring the lease. No changes have been made to this section.

What records must I maintain? (§ 285.602)

You must maintain and provide to MMS upon request all data and information related to compliance with required terms and conditions of your SAP, COP, or GAP. You must meet this requirement until MMS releases your financial assurance. Also, while hydrokinetic projects will entail obligations and responsibilities relating to FERC regulation under licenses and exemptions, under the terms and conditions of the lease, you must make available to MMS upon request, data and information for all activities conducted on leases issued under this part to meet our statutory responsibilities as lessor. We did not make any changes to this section.

Reserved Sections (§§ 285.603 Through 285.604)

Sections 285.603 through 285.604 are reserved.

Site Assessment Plan and Information Requirements for Commercial Leases

What is a Site Assessment Plan (SAP)? (§ 285.605)

This section describes a SAP. A SAP contains the plans for conducting data gathering and other activities, such as technology testing, to characterize a commercial lease, including the project easement. A SAP must include the results and supporting data from surveys such as physical characterization surveys and baseline surveys. It includes additional requirements for both simple and complex facilities. This section has been substantially revised. Based on comments received on the proposed rule, MMS has determined that geophysical and geological surveys, hazards surveys, archaeological surveys, and baseline collection studies (e.g., biological) conducted for the purpose of preparing SAPs, COPs, and GAPs may be permitted under the authority of the ACOE. In many instances, these types of activities may be verified under the ACOE's Nationwide Permit program. We have revised the regulation to remove the MMS approval of these types of surveys and the requirement to describe the survey designs in a SAP, COP, or GAP. Project proponents and lessees may now conduct these surveys pre- or post-lease/grant, subject to ACOE verification under the Nationwide Permit program or other appropriate approval and other applicable Federal law. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to their conducting such activities to ensure that the activities being proposed meet the conditions of the Nationwide Permits. Certain Nationwide Permits require that an applicant notify the ACOE and receive verification that an activity is covered under a Nationwide Permit prior to start of construction. Additionally, for competitively issued commercial leases, we will now prepare a NEPA document and a consistency determination that covers both the lease sale and site assessment activities. Applicants and lessees will be required to submit the results of their surveys and supporting data as part of their SAP, COP, or GAP. The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be published after the rule is promulgated.

We also added language stating that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113. This text was added in response to commenters who were concerned about the confidentiality of certain proprietary information in their plans.

One commenter did not believe the construction of two or three identical meteorological towers should trigger additional requirements, which will add significantly to the time and expense of SAP submission, and requested that § 285.605(c) be revised. The MMS revised § 285.605(d) to clarify the requirement. This section now states that an applicant must comply with the requirements of subpart G when they propose to construct a facility or combination of facilities that MMS determines to be complex or significant.

What must I demonstrate in my SAP? (§ 285.606)

This section provides details on the requirements for a SAP. The SAP must demonstrate how a lessee will conform to all applicable laws, implementing regulations, lease provisions, and stipulations. The activities conducted under a SAP must:

- Conform to all applicable laws, implementing regulations, lease provisions and stipulations;
- Be safe;
- Not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;
- Not cause undue harm or damage to natural resources, life (including human and wildlife); property; or the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;
- Use best available and safest technology;
- Use best management practices; and
- Use properly trained personnel.

One revision was made to this section—to state that the SAP must demonstrate that the planned site assessment activities will collect the necessary information and data required for the COP. One commenter requested that MMS not require the exact language, ''Best Available and Safest Technology.'' The commenter stated that this requirement is overly

restrictive and inappropriate for a new industry where the economics are challenging, the technology is new and evolving, and there are no accepted design standards. Instead, the commenter suggested, the MMS should require use of ''reasonably available and safe technology,'' noting that these facilities will be unmanned during most of their operation. Also, the commenter stated that the proposed § 285.606(a)(2) already requires that proposed activities be ''safe,'' and this is sufficient to address safety concerns. The commenter concluded that subsection (a)(5) be omitted until and unless a sufficient record of scientific measurement studies demonstrates a need for a tighter safety standard. We kept the requirement of ''Best Available and Safest Technology,'' in § 285.606(a)(5), as it is required for activities conducted pursuant to the OCS Lands Act (43 U.S.C. 1347(b), *et seq.*).

One commenter strongly supports the use of best management practices to ensure that potential adverse impacts associated with the development of renewable energy resources on the OCS are minimized to the greatest extent practicable. We were requested to publish the applicable best management practices in a specific guidance document, which would be updated on a regular basis to reflect recent adaptive management strategies, technology development, and monitoring results. The MMS prepared a Record of Decision (ROD) in December 2007, for its Programmatic EIS on the Alternative Energy Program. The EIS identified initial mitigation measures for the new program by adopting 15 interim policies and 52 initial best management practices. The ROD is published at *http://ocsenergy.anl.gov/documents/docs/OCS_PEIS_ROD.PDF*. New measures will be identified as appropriate. The MMS will provide guidance to applicants after the promulgation of this rule. This guidance will incorporate these best management practices and interim policies.

How do I submit my SAP? (§ 285.607)

This section requires you to submit a paper copy and an electronic copy of the SAP to MMS at the address in § 285.110.

We did not make any changes to this section.

Reserved Sections (§§ 285.608 Through 285.609)

Sections 285.608 through 285.609 are reserved.

Contents of the Site Assessment Plan

What must I include in my SAP? (§ 285.610)

This section contains further detailed requirements on what information must be submitted for SAP applications, including: Identifying information, a discussion of the objectives of the site assessment or technology testing proposal, designation of operator (if applicable), general structural and project design, fabrication and installation information, deployment activities, air emissions, lease stipulations, a listing of all Federal, State, and local authorizations or approvals for projected site assessment activities, a list of entities that you have consulted with regarding the potential impacts of your project, how you will mitigate and monitor impacts, CVA nomination (if required), decommissioning procedures, a statement about other authorizations, financial assurance information, and additional information as requested by MMS. For site assessment activities that include the installation of any facilities (e.g., a meteorological tower, meteorological buoy), additional requirements are listed. They include survey results and supporting data from geotechnical, shallow hazards, archaeological, geological, and biological surveys.

This section was revised to state the requirements for survey results and supporting data and to provide descriptions of any technology testing activities. We also made conforming revisions relating to FERC's role in regulating hydrokinetic activity.

What information must I submit with my SAP to assist MMS in complying with NEPA and other relevant laws? (§ 285.611)

This section requires the applicant to submit information needed to assist MMS in preparing compliance documents related to NEPA (EIS or EA) and other relevant laws, including MSA, ESA, and CZMA, that are required for SAP approval. As stated previously, MMS will prepare a NEPA review and consistency determination to cover both the lease sale and site assessment activities. If the action proposed under a competitively issued commercial lease does not change from that described in the environmental reviews conducted for the lease sale and site assessment activities, then no further environmental review would be required for a SAP. However, if MMS determines that the action has changed to the extent that the previously conducted environmental reviews do not cover the activities, then MMS would notify the applicant that additional information and reviews would be required. In this case, and for noncompetitively issued commercial leases, this includes information on resources, conditions, and activities listed in this section that may be affected by or may affect activities proposed and approved in your SAP.

This section also requires the applicant for a noncompetitively issued lease, or if notified by MMS for a competitive commercial lease, to submit a consistency certification for CZMA. The consistency certification must state that the proposed activities covered in the SAP comply with the State(s) approved CMP and that the applicant will conduct these activities in a manner consistent with such a program. For leases issued noncompetitively, the consistency certification must also include ''information'' and ''analysis'' as required by 15 CFR part 930, subpart D.

When leases are issued competitively, the consistency certification must also include ''information'' and ''analysis'' as required by 15 CFR part 930, subpart E.

We revised this section based on comments requesting us to clarify the NEPA and CZMA requirements.

How will my SAP be processed for Federal consistency under the Coastal Zone Management Act? (§ 285.612)

This is a new section that explains that processing your SAP will be dependent upon how your commercial lease was issued. When your commercial lease is competitively issued, MMS will prepare a consistency determination for the lease sale and site assessment activities. If the action proposed under a competitively issued commercial lease does not change from that described in the environmental reviews conducted for the lease sale and site assessment activities, then no further environmental review would be required for a SAP. However, if MMS determines that the action has changed to the extent that the previously conducted environmental reviews do not cover the activities, then MMS would notify the applicant that additional information and reviews would be required. When your commercial lease is noncompetitively issued, you must furnish your SAP, consistency certification, and other information and analysis required by 15 CFR part 930, subpart D, to the State CZM agency and MMS concurrently. This section was added in response to comments requesting clarification of the CZMA process.

How will MMS process my SAP? (§ 285.613)

This section describes the MMS review process for a SAP. The MMS will review the SAP and determine if it contains all of the required information needed to complete the technical and environmental reviews. Multiple commenters suggested that, in order to help prevent regulatory delays, the MMS should include language that requires the MMS to determine completeness of the GAP/SAP/COP within a specific timeframe (e.g., 30 days for the SAP/GAP and 60 days for the COP). We did not include specific timeframes in the rule, since section 8(p) of the OCS Lands Act does not require them. However, in response to comments, after the final rule is published, we will issue guidance setting target deadlines for MMS processes.

After MMS has all of the information needed for its reviews, we will prepare appropriate NEPA documentation.

We will consult with relevant Federal, State, and local agencies and affected Indian tribes and provide to other Federal, State, and local agencies and affected Indian tribes relevant nonproprietary data and information pertaining to the proposed site assessment activities, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g., ESA and MSA). We may request additional information during the review and approval process; if you do not provide this information, MMS may disapprove your application.

After MMS completes the technical and environmental reviews, we may approve, disapprove, or approve with modifications your SAP. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. If we disapprove your SAP, we will provide the reasons for the disapproval, and you will have an opportunity to revise and resubmit your SAP. If we approve your SAP, it will be subject to terms and conditions set by MMS. We will specify these terms and conditions, and they will be incorporated into your SAP. Examples of the types of terms and conditions we may require include, but are not limited to, terms and conditions from an ESA incidental take statement; conservation recommendations resulting from essential fish habitat (EFH) consultations; and other safety, operational, or environmental protection measures. Also, you must certify compliance with certain terms and conditions identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures.

We revised this section in response to comments requesting us to clarify the CZMA process that will be followed and requests to include affected Indian tribes in our consultation process. We also renumbered this section.

Activities Under an Approved SAP

When may I begin conducting activities under my approved SAP? (§ 285.614)

After MMS approves the SAP, the applicant may begin to conduct approved activities. However, if you are constructing a facility or a combination of facilities deemed by MMS to be complex or significant, as provided in § 285.613(a)(1), you must comply with the requirements of subpart G and submit your Safety Management System, required by § 285.810, before construction may begin.

This section was revised to state that a lessee may begin approved activities that are not deemed by MMS to be complex or significant following approval of the SAP. In the proposed rule, MMS did not allow site assessment activities to be performed prior to approval of a SAP. Now those surveys may be conducted under the verification of the ACOE and other applicable Federal law, as described previously. However, MMS strongly encourages applicants to coordinate with MMS and the ACOE prior to conducting any pre- or post-lease/grant survey activities. Applicants will be required to submit the results of their surveys as part of their SAP, COP, or GAP.

When may I construct OCS facilities proposed under my SAP? (§ 285.614 proposed)

The provisions of this proposed section were deleted or combined with § 285.615.

What other reports or notices must I submit to MMS under my approved SAP? (§ 285.615)

This section identifies the various reports and notifications that must be submitted to MMS and their timing. These include the initial survey report, an annual summary of findings from site assessment activities, notification of completion of construction and installation activities, and annual compliance certification. The compliance certification includes a listing and description of any mitigation measures and monitoring and their effectiveness. The MMS will protect the annual summary information from public disclosure, as provided in § 285.113.

Reserved Section (§ 285.616)

Section 285.616 is reserved.

What activities require a revision to my SAP, and when will MMS approve the revision? (§ 285.617)

The lessee or operator must notify MMS in writing, including a detailed description, prior to conducting any activities not described in the SAP, and we will determine if those activities require a revision to the approved SAP. We will also conduct periodic reviews of the activities being conducted under an approved SAP to ensure that they fall within the scope of the SAP. The SAP will likely be required to be revised if the applicant plans to:

- Conduct activities not described in the approved SAP,
- Change the size or type of facility or equipment used,
- Change the surface location of a facility or structure,
- Add another facility or structure not contemplated in the approved SAP,
- Change the location of the onshore support base from one State to another or to a new base requiring expansion, or
- Change the location of bottom disturbances by 500 feet (152 meters), or changes to any other activity specified by MMS.

A revision to the SAP may require NEPA, CZMA, and other reviews if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; require any additional Federal authorizations; or involve activities not previously identified and evaluated.

The MMS may approve the revision to the SAP if the revision is designed to prevent or minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable; and if the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

We did not make any changes to this section.

What must I do upon completion of approved site assessment activities? (§ 285.618)

After completing activities under the approved SAP, the lessee must initiate

the decommissioning process for any facilities built for conducting SAP activities. However, if you submit a COP to MMS, you may leave the facilities in place while MMS reviews the COP. You are not required to start decommissioning if the facilities are authorized to remain in place under your approved COP. However, if MMS determines that the facilities built for conducting SAP activities may not remain in place, then the decommissioning process described in subpart I of this part must be initiated. Upon the termination of your lease, you must initiate this same decommissioning process for all facilities authorized by your approved COP.

We made conforming revisions to this section relating to FERC's role in regulating hydrokinetic activity.

Reserved Section (§ 285.619)

Section 285.619 is reserved.

Construction and Operations Plan for Commercial Leases

What is a Construction and Operations Plan (COP)? (§ 285.620)

This section provides the basic requirements for the COP. The COP describes your construction, operations, and conceptual decommissioning plans under your commercial lease, including your project easement. The COP must include the location of the operations and facilities; the land, labor, material, and energy requirements associated with such operations and facilities; and the environmental and safety safeguards. The COP must cover all proposed activities and operations, including activities associated with constructing and maintaining project easements. The MMS must approve the COP before any construction and operation can begin.

It should be noted that COPs are required only for OCS renewable energy activities other than hydrokinetic activity. Since construction and operations relating to OCS hydrokinetic activity are regulated under the FERC licensing process, the construction and operations information for hydrokinetic commercial leases will be submitted to FERC in the form of a license application.

This section was revised to include a provision that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

What must I demonstrate in my COP? (§ 285.621)

This section describes what the lessee must demonstrate in the COP. The COP must demonstrate how proposed activities conform to all applicable laws, implementing regulations, lease provisions and stipulations or conditions of the commercial lease. In addition, the COP must demonstrate that the proposed activity is:

- Safe;
- Does not unreasonably interfere with other uses of the OCS;
- Does not cause undue harm or damage;
- Uses best available and safest technology;
- Uses best management practices; and
- Uses properly trained personnel.

We did not make any changes to this section. One commenter requested that MMS not require the strict language ''Best Available and Safest Technology.'' The commenter stated that this requirement is overly restrictive and inappropriate for a new industry where the economics are challenging, the technology is new and evolving, and there are no accepted design standards. Instead, the commenter suggested, the MMS should require use of ''reasonably available and safe technology,'' noting that these facilities will be unmanned during most of their operation. Further, the commenter stated that the proposed § 285.606(a)(2) already requires that proposed activities be ''safe,'' which is sufficient to address safety concerns. The commenter suggested that subsection (a)(5) could be omitted until and unless a sufficient record of scientific measurement studies demonstrates a need for a tighter safety standard. We kept the requirement of ''Best Available and Safest Technology,'' as it is required for activities conducted pursuant to the OCS Lands Act. Best available and safest technologies are those that are economically feasible for use when failure of equipment would have a significant effect on safety, health, or the environment. We believe this is a reasonable requirement.

How do I submit my COP? (§ 285.622)

This section provides the requirements for submitting the COP and future revisions. The lessee must submit one hard copy and one electronic version of the COP to MMS. The lessee may submit information to cover the project easement with the original submission of the COP, or at a later time as a revision to the COP.

We did not make any changes to this section.

Reserved Sections (§§ 285.623 Through 285.624)

Sections 285.623 through 285.624 are reserved.

Contents of the Construction and Operations Plan

What survey activities must I conduct to obtain approval for the proposed site of facilities? (§ 285.625 proposed)

We moved the requirements proposed in § 285.625 to § 285.626, so that all of the information that is required in the COP is located together. Section 285.625 is now reserved.

What must I include in my COP? (§ 285.626)

This section lists the project-specific information that must be included in the COP. We incorporated proposed § 285.625 to this section so that all of the information that is required in the COP is located together.

Before MMS will approve the site of the commercial facilities proposed for the project, you must submit the results of the listed surveys with supporting data to MMS in your COP. The required surveys and activities include:

- Shallow hazard surveys;
- Geological surveys;
- Geotechnical surveys;
- Archaeological resource surveys;
- Biological surveys; and
- An overall site investigation.

You should conduct these surveys and activities prior to the preparation of your SAP.

This section was revised to state the requirement to include the results and supporting data from the listed surveys in your COP. Results and supporting data from any socioeconomic surveys that you might conduct should be submitted with your COP, pursuant to § 285.627, to assist MMS in complying with NEPA and other Federal laws. The COP does not need to repeat information that was previously submitted in the SAP, but should reference such material.

Additional required information includes:

- Identifying information;
- The construction and operation concept;
- Designation of an operator;
- Lease stipulation and compliance information;
- A location plat;
- General structural and project design, fabrication, and installation information; including how you will use a CVA to review and verify each stage of the project (if required);
- All cables and pipelines, including lines on project easements;

- A description of the deployment activities;
- A list of solid and liquid wastes generated;
- A listing of chemical products used;
- A description of any vessels, vehicles, and aircraft that will be used to support the activities;
- A general description of the operating procedures and systems;
- Decommissioning and site clearance procedures;
- A listing of all Federal, State, and local authorizations, approvals, or permits that are required;
- Proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts;
- A summary of information incorporated by reference;
- A list of entities with whom you communicated, or with whom you will communicate, regarding potential impacts associated with the proposed activities;
- Reference information;
- Financial assurance statements;
- CVA nominations (if required);
- Construction schedule;
- Air quality information as described in § 285.659; and
- Any other information required by MMS.

This section was revised to change the word ''consulted'' to ''communicated'' and the word ''consulting'' to ''communicate.'' This clarifies our intent to require communication, not consultation, concerning the potential impacts of your proposed activities. Previously, the air quality requirements were in subpart F, and we integrated the air quality requirements into this section. The MMS will clearly describe all plan requirements in guidance to applicants after promulgation of the rule. The MMS also plans to hold workshops to explain the provisions of the rule following publication.

What information and certifications must I submit with my COP to assist the MMS in complying with NEPA and other relevant laws? (§ 285.627)

This section discusses additional submittal requirements to assist MMS in complying with NEPA and other relevant laws, including MSA, ESA, and CZMA. The information must include the resources, conditions, and activities listed in this subpart that could be affected by proposed activities or that could affect proposed construction, operation, and decommissioning activities. A lessee may reference information that was included in the MMS NEPA review prepared for the lease. The lessee must include one copy of the consistency certification for the project to verify compliance with each State's approved CMP, including required ''information'' and ''analysis'' per § 285.627(a)(9). Also, the lessee must submit an oil spill response plan and the Safety Management System for the project.

This section was expanded in response to comments requesting more detail on the information requirements for MMS compliance with NEPA and other relevant laws. We included a new table that describes this information more clearly. Additionally, MMS will prepare guidance to applicants after the rule is promulgated and will hold workshops on the final rule. This section was also modified to clearly state that MMS will require a lessee to submit an electronic version of its consistency certification so that MMS will be able to easily provide it to State CZM agencies.

How will MMS process my COP? (§ 285.628)

This section discusses how MMS will review the submitted COP and determine if it contains the information necessary to conduct the technical and environmental reviews. The MMS will notify the applicant if the COP lacks any information needed for the reviews. We will prepare appropriate NEPA documentation and forward one copy of the COP, consistency certification, and associated data and information under the CZMA to the State's CZM agency. When appropriate, we will coordinate and consult with, and provide relevant, nonproprietary data and information to, relevant State, Federal, and local agencies and affected Indian tribes, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g., ESA and MSA) and Executive Orders. We may request additional information during the review and approval process; if you do not provide this information, MMS may disapprove your COP.

After MMS completes the technical and environmental reviews, we may approve, disapprove, or approve with modifications your COP. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. If we approve your COP, it will be subject to terms and conditions set forth by MMS. The lessee must certify compliance with certain terms and conditions required under § 285.633(b). If MMS disapproves your COP, we will inform you of the reasons, and you will have an opportunity to resubmit a revised plan making the necessary corrections. The MMS may suspend the term of your lease, as appropriate, to allow this to occur. If a project easement is approved, MMS will issue an addendum to the lease specifying the terms of the project easement.

We revised this section to include coordination and consultation with affected Indian tribes. We also revised the section based on comments requesting that we clearly state how MMS's decision process will take place when a State objects to a consistency certification.

May I develop my lease in phases? (§ 285.629)

In the COP, the lessee may request to develop the commercial lease in phases. To support this request, the lessee must provide details about the portions of the lease that will be initially developed for commercial operations, and those portions of the lease that will be reserved for subsequent phased development.

This option to develop a lease in phases applies only for non-hydrokinetic lease activities. Those lessees conducting hydrokinetic activities requiring a FERC license may only develop their project per the terms of their license.

We did not make any changes to this section.

Reserved Section (§ 285.630)

Section 285.639 is reserved.

Activities Under an Approved COP

When must I initiate activities under an approved COP? (§ 285.631)

After MMS approves the COP, the lessee must commence construction by the date given in the construction schedule, and included as a part of your approved COP, unless MMS approves a deviation from the schedule.

We did not make any changes to this section.

What documents must I submit before I may construct and install facilities under my approved COP? (§ 285.632)

This section describes documents that must be submitted to MMS for review, before construction and installation of facilities may begin under an approved COP. This includes a Facility Design Report and a Fabrication and Installation Report for facilities proposed for commercial operations. The requirements for these reports are

found in § 285.701 and 702. The activities described in these reports must fall within the scope of the approved COP. If they are not within the scope of the approved COP, the lessee will be required to submit a revision to the COP for MMS approval, before commencing the activity.

We did not make any changes to this section.

How do I comply with my COP? (§ 285.633)

After completing the environmental and technical reviews of the COP, if MMS approves your COP, we will specify terms and conditions to be incorporated into your COP. These terms and conditions will be considered as part of the COP, and you must comply with them. Examples of the types of terms and conditions we may require include, but are not limited to: (1) Terms and conditions from the ESA incidental take statement; (2) conservation recommendations resulting from EFH consultations; and (3) other safety, operational, or environmental protection measures. You must certify compliance with certain terms and conditions identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures.

We did not make any changes to this section.

What activities require a revision to my COP, and when will MMS approve the revision? (§ 285.634)

The lessee or operator must notify MMS in writing, including a detailed description, prior to conducting any activities not described in the COP, and we will determine if those activities require a revision to the approved COP. We will also conduct periodic reviews of the activities being conducted under an approved COP to ensure that they fall within the scope of the COP. The COP will likely be required to be revised if the lessee plans to:

- Conduct activities not described in the approved COP;
- Change the size or type of facility or equipment used;
- Change the surface location of a facility or structure;
- Add another facility or structure not contemplated in the approved COP;
- Change the location of the onshore support base from one State to another or to a new base requiring expansion;
- Change the location of bottom disturbances by 500 feet (152 meters);
- Respond to structural failure of one or more facilities; or
- Make changes to any other activity specified by MMS.

A revision to the COP may require NEPA, CZMA, and other reviews if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; require any additional Federal authorizations; or involve activities not previously identified and evaluated.

The MMS may approve the revision to the COP if the revision is designed to prevent or minimize adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components to the extent practicable; and the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

Commenters recommended that a distinct recovery plan to address structural failure of one or more facilities, regardless of the cause, be a mandatory component in the rule rather than a general description of operating procedures in case of emergencies. In response to this comment, the rule requires that the lessee submit to MMS a revised COP (see § 285.634(c)(7)) to describe its response to a structural failure of one or more facilities. The MMS will conduct a NEPA evaluation of the proposed revision to the COP and develop specific terms and conditions of approval for the project. The MMS requires certification of compliance with certain terms and conditions of plans.

What must I do if I cease activities approved in my COP before the end of my commercial lease? (§ 285.635)

The lessee must notify MMS any time commercial operations are ceased without an MMS approved suspension. We may cancel the lease if activities are ceased for an indefinite period that is longer than 6 months, and you must initiate the decommissioning process described in subpart I of this part.

We did not make any changes to this section.

What notices must I provide MMS following approval of my COP? (§ 285.636)

The lessee must notify MMS, in writing, of the following events within the time periods provided:

- No later than 30 days after commencing activities associated with the placement of facilities on the lease area under a Fabrication and Installation Report;
- No later than 30 days after completion of construction and installation activities under a Fabrication and Installation Report; and
- At least 7 days before commencing commercial operations.

We did not make any changes to this section.

When may I commence commercial operations on my commercial lease? (§ 285.637)

For non-hydrokinetic projects (i.e., wind), the lessee may commence commercial operations 30 days after the CVA or project engineer has submitted to MMS the final report for the fabrication and installation review.

If the lessee's proposed activities require a FERC license or exemption (i.e., hydrokinetic activities), then the terms of the license or exemption govern when the lessee may begin commercial operations.

We changed the rule to now allow a CVA or a project engineer to submit the fabrication and installation review to MMS and to acknowledge FERC license requirements relating to initiation of commercial hydrokinetic operations. These revisions were in response to comments.

What must I do upon completion of my commercial operations as approved in my COP or FERC license? (§ 285.638)

After completing operations on your lease, you must initiate the decommissioning process as set forth in subpart I of this part. If your project activities are instead governed by a FERC license, then the terms of your FERC license and MMS requirements will dictate your decommissioning activities.

We made conforming revisions to this section relating to FERC's role in regulating hydrokinetic activity.

Reserved Section (§ 285.639)

Section 285.639 is reserved.

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

What is a General Activities Plan (GAP)? (§ 285.640)

The GAP describes proposed activities and operations for the assessment and development of a limited lease or grant including, if applicable, a project easement. A GAP contains the plans for resource data gathering, operations, and the testing of technology devices to characterize a limited lease or grant. A GAP must include the results and supporting data from surveys such as physical characterization surveys and baseline surveys. It includes requirements for construction, activities, and

decommissioning plans for all planned facilities, including onshore and support facilities that you will construct and use for your project including project easements. It includes additional requirements for both simple and complex facilities, or if you intend to apply for a project easement. You must receive MMS approval of your GAP before you can begin activities on your lease or grant. For a ROW grant or RUE grant that is issued competitively, you must submit your GAP within 6 months of issuance. For a ROW grant or RUE grant issued noncompetitively, you must submit your GAP within 60 days of the determination of no competitive interest. The MMS will evaluate your request for a noncompetitive grant and GAP simultaneously.

This section has been substantially revised. Based on comments received on the proposed rule and a re-interpretation of subsection 8(p) of the OCS Lands Act, as amended, MMS has determined that geophysical and geological surveys, hazards surveys, archaeological surveys, and baseline collection studies (e.g., biological) conducted for the purpose of preparing SAPs, COPs, and GAPs are permitted under the authority of the ACOE. In many instances, these types of activities may be verified under the ACOE Nationwide Permit program. We have revised the rule to remove the MMS approval of these types of surveys and the requirement to describe the survey designs in a SAP, COP, or GAP. Project proponents may now conduct these surveys pre- or post-lease/grant, subject to ACOE verification under the Nationwide Permit program or other appropriate authorization and other applicable Federal law. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to their conduct to ensure that the activities being proposed meet the conditions of the Nationwide Permits. Certain Nationwide Permits require that an applicant notify the ACOE and receive verification that an activity is covered under a Nationwide Permit prior to start of construction. Lessees will be required to submit the results of their surveys and supporting data as part of their SAP, COP, or GAP.

We also added provisions in this section stating that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113. This text was added in response to commenters who were concerned about the confidentiality of certain proprietary information in their plans.

One commenter did not believe the construction of two or three identical meteorological towers should trigger additional requirements, which will add significantly to the time and expense of a GAP submission, and requested that proposed § 285.640(b) be revised. The MMS revised the rule to clarify the requirement. We revised § 285.645(c) to state that a lessee must comply with the requirements of subpart G if the lessee proposes to construct a facility or combination of facilities which MMS determines to be complex or significant.

What must I demonstrate in my GAP? (§ 285.641)

The GAP must demonstrate that the applicant plans and is prepared to conduct the proposed activities in a manner that:

- Conforms to all applicable laws (e.g., NEPA, MSA, ESA, and CZMA), implementing regulations, lease provisions, and stipulations;
- Is safe;
- Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;
- Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;
- Uses best available and safest technology;
- Uses best management practices; and
- Uses properly trained personnel.

We did not make any changes to this section. One commenter requested that MMS not require the strict language ''Best Available and Safest Technology.'' The commenter stated that this requirement is overly restrictive and inappropriate for a new industry where the economics are challenging, the technology is new and evolving, and there are no accepted design standards. Instead, the commenter suggested that the MMS should require use of ''reasonably available and safe technology,'' noting that these facilities will be unmanned during most of their operation. The commenter stated that proposed § 285.641(e) already requires that proposed activities be ''safe,'' and this is sufficient to address safety concerns. The commenter recommended that subsection (a)(5) be omitted until and unless a sufficient record of scientific measurement studies demonstrates a need for a tighter safety standard. We kept the requirement of ''Best Available and Safest Technology,'' as it is required for activities conducted pursuant to the OCS Lands Act.

How do I submit my GAP? (§ 285.642)

This section provides the requirements for submitting the GAP. The lessee must submit one paper copy and one electronic version of the GAP to MMS. The lessee may submit information to cover the project easement with the original submission of the GAP, or at a later time as a revision to the GAP.

We did not make any changes to this section.

Reserved Sections (§§ 285.643 Through 285.644)

Sections 285.643 through 285.644 are reserved.

Contents of the General Activities Plan

Section 285.645 What must I include in my GAP?

This section lists the project-specific information that must be included in the GAP.

This includes: Identifying information, a discussion of the objectives of the site assessment or technology testing proposal, designation of operator (if applicable), general structural and project design, fabrication and installation information, deployment activities, air emissions, lease stipulations, a listing of all Federal, State, and local authorizations or approvals for projected site assessment activities, a list of entities that you have communicated with regarding the potential impacts of your project, how you will mitigate and monitor impacts, CVA nomination (if required), decommissioning procedures, a statement about other authorizations, financial assurance information, and additional information as requested by MMS. If you are applying for a project easement, or constructing a facility or a combination of facilities deemed by MMS to be complex or significant, you must provide the following information in addition to what is required in paragraphs (a) and (b) of this section and comply with the requirements of subpart G: The construction and operation concept, all cable and pipeline plans including cables on project easements, a description of the deployment activities, a general description of the operating procedures and systems, contact information, CVA information, construction schedule, and other information as required by MMS.

For the installation of any facilities (e.g., meteorological tower, meteorological buoy, technology testing

device, anchored vessels, transmission substations), you are required to also include survey results and supporting data from: Geotechnical, shallow hazards, archaeological, geological, and biological surveys.

This section was revised to state the requirement for survey results and supporting data and descriptions of any technology testing activities.

What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws? (§ 285.646)

This section discusses the information that must be submitted with the GAP to assist MMS in complying with NEPA and other relevant laws. For NEPA compliance, the lessee or grantee must provide information on resources, conditions, and activities listed in this section that could be affected by or could affect your proposed activities. In addition, the lessee or grantee must submit information for CZMA compliance including one copy of the consistency certification required by CZMA and required ''information'' and ''analysis'' as required in § 285.646.

This section was expanded in response to comments requesting more detail on the information requirements for MMS compliance with NEPA and other relevant laws. We included a new table that describes this information more clearly. Some commenters requested us to describe in the rule the specific requirements for baseline information. The MMS will prepare guidance to applicants after the rule is promulgated and will hold workshops on the final rule.

How will my GAP be processed for Federal consistency under the Coastal Zone Management Act? (§ 285.647)

This section explains that processing of your GAP will be dependent upon how your limited lease, ROW, or RUE was issued. If your limited lease, ROW grant, or RUE grant is competitively issued, you must submit one copy and one electronic copy of your consistency certification to MMS along with other necessary information and analysis required in 15 CFR part 930, subpart E. After MMS has determined that all GAP information requirements are met and has prepared its NEPA compliance document, we will forward this information to the affected State's CZM Agency. If your limited lease, ROW grant, or RUE grant is noncompetitively issued, you must furnish your SAP, consistency certification, and other information and analysis required by 15 CFR part 930, subpart D, to the State CZM Agency and MMS concurrently. This is a new section that we added in response to comments to clarify the CZMA process.

How will MMS process my GAP? (§ 285.648)

This section discusses how MMS will review the submitted GAP and determine if it contains the information necessary to conduct our technical and environmental reviews. The MMS will review the submitted GAP and determine if it contains all the required information necessary to conduct our technical and environmental reviews. If the GAP lacks information needed for the reviews, we will notify the applicant and request the necessary information. We will prepare appropriate NEPA documentation. When appropriate, we will coordinate and consult with relevant State and Federal agencies as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. ESA and MSA), and provide to other State and Federal agencies relevant data and information pertaining to the proposed site assessment activities. We may request additional information during the review and approval process; if you do not provide this information, MMS may disapprove your application.

After MMS completes the technical and environmental reviews, MMS may approve, disapprove, or approve with modifications your GAP. When a State objects to the consistency certification, MMS will not approve the plan if: (1) Consistency has not been conclusively presumed; or (2) the State objects to the applicant's consistency certification, and the Secretary of Commerce has not found that the permitted activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security. If we disapprove your GAP, we will provide the reasons for the disapproval, and you will have an opportunity to revise and resubmit your GAP. If we approve your GAP, it will be subject to terms and conditions set forth by MMS. We will specify these terms and conditions, and they will be incorporated into your GAP. Examples of the types of terms and conditions we may require include, but are not limited to: (1) Terms and conditions from an ESA incidental take statement; (2) conservation recommendations resulting from EFH consultations; and (3) other safety, operational, or environmental protection measures. Also, you must certify compliance with certain of these terms and conditions as identified by MMS. The certification would include summary reports, a description of mitigation measures and monitoring, the effectiveness of the mitigation measures, and new proposed mitigation measures. If a project easement is approved, MMS will issue an addendum to the lease specifying its terms.

This section was revised in response to comments to clarify the CZMA process for a GAP.

Reserved Section (§ 285.649)

Section 285.649 is reserved.

Activities Under an Approved GAP

When may I begin conducting activities under my GAP? (§ 285.650)

After MMS approves the GAP, the lessee may begin conducting activities that do not involve the construction of facilities on the OCS.

When may I construct complex or significant OCS facilities on my limited lease or any facilities on my project easement proposed under my GAP? (§ 285.651)

After MMS approves the GAP, the lessee may begin to conduct approved activities. However, the lessee also must comply with the requirements of subpart G and submit your Safety Management System, required by § 285.810, before construction may begin, if the lessee is applying for a project easement, or installing a facility or a combination of facilities deemed by MMS to be complex or significant as provided in § 285.648(a)(1).

Additionally, in the proposed rule, MMS did not allow site assessment activities to be performed prior to approval of a GAP. Now those surveys may be conducted under the authority of the ACOE and other applicable Federal law, as described previously. However, MMS strongly encourages applicants to coordinate any pre- or post-lease/grant survey activities with MMS and the ACOE prior to conducting such activities. Lessees will be required to submit the results of their surveys as part of their SAP, COP, or GAP. The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be issued after the rule is promulgated.

How long do I have to conduct activities under an approved GAP? (§ 285.652)

For a limited lease, after MMS approves the GAP, the lessee must conduct the approved activities within 5 years unless MMS renews the term. For an ROW grant or RUE grant, the time for conducting approved activities is provided in the terms of the grant.

We did not make any changes to this section.

What other reports or notices must I submit to MMS under my approved GAP? (§ 285.653)

This section lists the various reports and notifications that must be submitted to MMS. These include the initial survey report, notice of completion of construction and installation activities, annual compliance certification, an annual report of findings that result from conducting the activities approved under the GAP, and an annual compliance certification of certain terms and conditions of your GAP that MMS identifies. The compliance certification includes a listing and description of any mitigation measures and monitoring and their effectiveness. If you determine that either the measures or monitoring were not effective, then you must include recommendations for new measures or monitoring methods. You must also submit an annual summary report of the findings from any activities that you conduct under your approved GAP and the results of those activities. The information from this report will be protected as provided in § 285.113.

We did not make any changes to this section.

Reserved Section (§ 285.654)

Section 285.654 is reserved.

What activities require a revision to my GAP, and when will MMS approve the revision? (§ 285.655)

The lessee or grantee must notify MMS in writing prior to conducting any activities not documented in the GAP. The MMS will determine if those activities require a revision to the approved GAP. We will also conduct periodic reviews of the activities being conducted under an approved GAP to ensure that they fall within the scope of the GAP. The GAP will likely be required to be revised if you plan to:

- Conduct activities not described in the approved GAP;
- Change the size or type of facility or equipment used;
- Change the surface location of a facility or structure;
- Add another facility or structure not contemplated in the approved GAP;
- Change the location of the onshore support base from one State to another or to a new base requiring expansion;
- Change the location of bottom disturbances by 500 feet (152 meters);
- Respond to structural failure of one or more facilities; or
- Change to any other activity specified by MMS.

Revisions to the GAP will require NEPA and other reviews if MMS determines that the proposed revision could result in a significant change in impacts previously identified and evaluated; could require any additional Federal authorizations; or could involve activities not previously identified and evaluated.

The MMS may approve the revision to the GAP if the revision is designed not to cause undue harm or damage to natural resources; or to sites, structures, or objects of historical or archaeological significance; and the revision is otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

What must I do if I cease activities approved in my GAP before the end of my term? (§ 285.656)

The lessee or grantee must notify the MMS upon ceasing activities under an approved GAP without an approved suspension. If activities are ceased for an indefinite period that exceeds 6 months, MMS may cancel the lease or grant under § 285.437, and the lessee or grantee must initiate the decommissioning process, as set forth in subpart I of this part.

We did not make any changes to this section.

What must I do upon completion of approved activities under my GAP? (§ 285.657)

After completing the activities approved under the GAP, the lessee or grantee must initiate the decommissioning process, as required in subpart I of this part.

We did not make any changes to this section.

Cable and Pipeline Deviations

Can my cable or pipeline construction deviate from my approved COP or GAP? (§ 285.658)

This section discusses the requirements related to the construction of cables, pipelines, and facilities so as to minimize deviations from the approved plan under the limited lease or grant.

If MMS determines that significant changes have occurred requiring an adjustment to your lease or grant before construction of a cable or pipeline, it will consider modification to your ROW grant, RUE grant, or lease addendum for a project easement in connection with your COP or GAP. This section has been revised to make clear that modifications to your grant or lease addendum would require MMS and you to agree on such modification. If MMS determines that a deviation occurred after you have constructed your cable or pipeline, you would be required to notify affected lessees or ROW/RUE grant holders, and you would be required to relinquish the unused portion of the lease or grant. Substantial deviations could result in the cancellation of the lease or grant.

We did not make any changes to this section.

What requirements must I include in my SAP, COP, or GAP regarding air quality? (§ 285.659)

This section was relocated from subpart H to clarify that the air quality requirements are part of the SAP, COP, or GAP. This section discusses compliance with the Clean Air Act (42 U.S.C. 7409) and its implementing regulations. The section informs the applicant of requirements if their project is located in the western Gulf of Mexico or if it is located anywhere else on the OCS. If air quality modeling is needed, the section outlines how to establish a modeling protocol. Finally, for projects located in the Gulf of Mexico, the number of copies to be submitted is stated and the types of information required.

Subpart G—Facility Design, Fabrication, and Installation

Overview

As indicated in the discussion of subpart F, your plan (SAP, COP, or GAP) would include general descriptions for project design and facility fabrication and installation. Subpart G describes the various detailed technical reports that the MMS will require lessees, operators, and grant holders to submit that address the final design, fabrication, and installation of facilities on a lease or grant. These reports will be submitted after MMS approves the SAP, COP, or GAP, as applicable.

Subpart G also describes a third-party verification process that will require lessees, operators, and grant holders to use a CVA to verify and certify that projects are designed, fabricated, and installed in conformance with accepted engineering practices and with the submitted reports. However, MMS may waive the requirement to use a CVA, under certain conditions. If you are not required to use a CVA, your project engineer will perform functions similar to the CVA.

Certified Verification Agent (CVA)

The CVA is responsible for conducting an independent assessment of the facility design and the fabrication and installation processes to ensure that facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the approved plans and applications.

The CVA will also ensure that repairs and major modifications are completed in conformance with accepted engineering practices. The CVA will certify and report to the lessee, operator, or grant holder and MMS on the status of each phase included in the Facility Design Report and the Fabrication and Installation Report. The CVA must submit interim reports, as required by the Director, and a final report covering the adequacy of each phase.

The MMS received comments requesting that we either remove the CVA requirement or only require CVAs on high-impact or high-risk projects. Concerns with cost, redundancy, and the fact that most projects will be developed under a project-financing structure, with the lender providing an independent engineer to review design and construction, were cited as reasons for forgoing the CVA. In response to these concerns, MMS is including a provision that will allow the lessee, grant holders, or operators to request a waiver of the CVA requirement.

The MMS will consider waivers on a case-by-case basis. Requests for waivers must be submitted with the SAP, COP, or GAP, and we will provide a decision on the waiver, along with the decision on the SAP, COP, or GAP. However, if MMS waives the CVA requirement, the project engineer will be expected to perform the same duties and responsibilities as the CVA.

To receive a waiver, the company must demonstrate to MMS the following:

- For design of the structure, you must demonstrate that the facility will be of a standardized design that has been used successfully in a similar environment and the installation will be designed in conformance with accepted engineering practices.
- For the fabrication of your structure(s), you must demonstrate that the facility manufacturer has successfully manufactured similar facilities and the facility will be fabricated in conformance with accepted engineering practices.
- For the installation of your structure(s), you must demonstrate that the contractor has successfully installed similar facilities in a similar offshore environment and your structure(s) will be installed in conformance with accepted engineering practices.
- For repairs and major modifications of a structure, you must demonstrate that the repairs and major modifications are completed in conformance with accepted engineering practices.

Facility Design Report

This report provides MMS with a detailed description of the proposed facility or facilities and locations on the OCS. The lessee, operator, or grant holder is required to provide to MMS a complete set of structural drawings, structural loading information, detailed design criteria, and foundation information including mooring or tethering systems in the case of a floating facility. The CVA, nominated in your plan, will conduct an independent assessment of the design of the facility and ensure that it is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location. The CVA must submit interim reports, as required by the Director, and a final report covering the adequacy of the design phase.

Fabrication and Installation Report

Under the final rule, Fabrication and Installation Reports will be combined. The Fabrication and Installation Report describes the plans for both the facility's fabrication (including the manufacture, assembly, and construction) and installation process. The report will include a schedule for fabrication and installation as well as detailed engineering and environmental information. The CVA, nominated in the SAP, COP or GAP, or the project engineer, will conduct an independent assessment of the fabrication and installation phases. The CVA or project engineer must use good engineering judgment and practices in conducting an independent assessment of fabrication and installation activities and ensure that these activities are conducted according to the approved applications. The CVA or project engineer must submit interim reports, as required by the Director, and a final report covering the adequacy of the fabrication and installation phase.

After fabrication and installation activities are completed, the CVA or project engineer must submit a certification statement certifying that the fabrication and installation were conducted in accordance with accepted engineering practices.

Section-by-Section Discussion for Subpart G

Reports

What reports must I submit to MMS before installing facilities described in my approved SAP, COP, or GAP? (§ 285.700)

This section lists two reports required prior to installing facilities: (1) Facility Design Report; and (2) Fabrication and Installation Report. The MMS has 60 days to review these reports and notify the applicant of any objections. If MMS does not have any objections, the applicant may begin to construct and install the facilities at the end of the 60-period.

If there are any objections, MMS will notify you either verbally or in writing within 60 days of receipt. After notification of objections, MMS may follow up with written correspondence outlining its specific objections to the report and identifying certain actions necessary to resolve the agency's objections. You cannot commence activities addressed in such report until all objections are resolved to MMS's satisfaction.

The MMS did not make any changes to this section.

What must I include in my Facility Design Report? (§ 285.701)

The Facility Design Report provides specific details of the design of all facilities, including cables and pipelines, outlined in your approved SAP, COP, or GAP. This report must demonstrate that the design conforms to the responsibilities of a lessee contained in these regulations. This section includes a list of required contents for the report and details the required contents of each element of the report. The report must include:

- A cover letter;
- A location plat;
- Front, side, and plan view drawings;
- A complete set of structural drawings;
- A summary of environmental data used for design;
- A summary of the engineering design data;
- A complete set of design calculations;
- Project-specific studies used in the facility design or installation;
- Description of the loads imposed on the facility;
- A geotechnical report; and
- A certification statement and location of records.

In response to comments, we added a provision to this section that clarifies that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

What must I include in my Fabrication and Installation Report? (§ 285.702)

The Fabrication and Installation Report describes how facilities will be

fabricated and installed in accordance with the design criteria identified in the Facility Design Report, the approved SAP, COP, or GAP; and generally accepted industry standards and practices. The Fabrication and Installation Report must demonstrate how your facilities will be fabricated and installed in a manner that conforms to the responsibilities of a lessee contained in these regulations. This section includes a list of required contents for the report, and details the required contents of each element of the report. The report must include:

- A cover letter;
- A schedule for fabrication and installation;
- Fabrication information;
- Installation process information;
- Federal, State, and local permits (e.g., EPA, ACOE);
- Environmental information; and
- Project easement design.

In response to comments, we added a provision to this section that clarifies that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113. We also added a provision that will allow MMS to waive the requirement for a CVA for the Fabrication and Installation Report, based on criteria added to § 285.705.

What reports must I submit for project modifications and repairs? (§ 285.703)

This section requires a report from the lessee on major repairs and modifications to certify that the repairs and modifications to the project conform with accepted engineering practices. The report must also identify the location of all records pertaining to the major repairs or major modifications.

A major repair is a corrective action involving structural members affecting the structural integrity of a portion of or all the facility. A major modification is an alteration involving structural members affecting the structural integrity of a portion of or all the facility.

We moved this section from § 285.711, because we changed the requirement to always use a CVA for project modifications and repairs. We revised this section to state that MMS may require the lessee to use a CVA for project modifications and repairs.

Reserved Section (§ 285.704)

Section 285.704 is reserved.

Certified Verification Agent

When must I use a Certified Verification Agent (CVA)? (§ 285.705)

This section details the responsibilities of the CVA. The CVA must ensure that facilities are designed, fabricated, and installed in conformance with accepted engineering practices, the Facility Design Report, and the Fabrication and Installation Report, and ensure that repairs and major modifications are completed in conformance with accepted engineering practices. The CVA must provide reports of all incidents that affect the design, fabrication, and installation of the project and its components.

In response to comments, we added a provision to this section that allows MMS to waive the requirement to use a CVA. The new provision describes the criteria that MMS will use to decide whether to waive the CVA; this revision was made in conjunction with those in §§ 285.701 and 285.702. In addition, we changed the title of this section from ''What is the function of a Certified Verification Agent (CVA)?'' to ''When must I use a Certified Verification Agent (CVA)?'' to reflect the changes made in the purpose of this section. Even if MMS waives the requirement that you use a CVA, the project engineer must perform the same duties and responsibilities as the CVA.

How do I nominate a CVA for MMS approval? (§ 285.706)

A CVA must be nominated in the SAP, COP, or GAP, as applicable. This section describes the process for nominating the CVA and the information that must be included in the qualifications statement. The section also requires that the verification be conducted by or under the direct supervision of registered professional engineers and prohibits a CVA from functioning in a way to create a conflict of interest.

We did not make any changes to this section.

What are the CVA's primary duties for facility design review? (§ 285.707)

The CVA must certify to MMS that the facility is designed to withstand the environmental and functional load conditions for the intended life at the proposed location. This section lists those elements of the design phase that the CVA must independently assess. These elements include:

- Planning criteria;
- Operational requirements;
- Environmental loading data;
- Load determinations;
- Stress analyses;
- Material designations;
- Soil and foundation conditions;
- Safety factors; and
- Other pertinent parameters of the proposed design.

For floating facilities, the CVA must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity, etc.) are met.

We did not make any changes to this section.

What are the CVA's or project engineer's primary duties for fabrication and installation review? (§ 285.708)

The CVA or project engineer must certify to the MMS that the facilities are fabricated and installed as proposed in the approved Facility Design Report and the Fabrication and Installation Report. This section details the monitoring and inspection functions of the CVA or project engineer during this phase of the project. It also requires the CVA or project engineer to inform the lessee when procedures or design specifications are changed.

For the fabrication and installation review, the CVA or project engineer must:

- Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities;
- Monitor the fabrication and installation of the facility;
- Make periodic onsite inspections while fabrication is in progress;
- Make periodic onsite inspections while installation is in progress; and
- Certify in a report that project components are fabricated and installed in accordance with accepted engineering practices, the approved COP, SAP, or GAP, and the Fabrication and Installation Report.

The report must identify the location of all records pertaining to fabrication and installation. The lessee or grantee may commence commercial operations or other approved activities 30 days after MMS receives the certification report, unless MMS notifies the applicant within that time period of objections to the certification report.

The CVA or project engineer must monitor the fabrication and installation of the facility to ensure that it is built and installed according to the Facility Design Report and Fabrication and Installation Report. If the CVA or project engineer finds that fabrication and installation procedures are changed or design specifications are modified, the CVA or project engineer must inform the applicant.

We made minor edits to this section to include the applicable project engineer functions.

When conducting onsite fabrication inspections, what must the CVA or project engineer verify? (§ 285.709)

The CVA or project engineer must make periodic onsite inspections while fabrication of the facility is in progress. The CVA or project engineer must verify the following items during these inspections:

- Quality control by lessee (or grant holder) and builder;
- Fabrication site facilities;
- Material quality and identification methods;
- Fabrication procedures specified in the Fabrication and Installation Report, and adherence to such procedures;
- Welder and welding procedure qualification and identification;
- Structural tolerances specified, and adherence to those tolerances;
- The nondestructive examination requirements, and evaluation results of the specified examinations;
- Destructive testing requirements and results;
- Repair procedures;
- Installation of corrosion-protection systems and splash-zone protection;
- Erection procedures to ensure that overstressing of structural members does not occur;
- Alignment procedures;
- Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and
- Status of quality-control records at various stages of fabrication.

For any floating facilities, the CVA or project engineer must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity, etc.) have been met. The CVA or project engineer must also consider foundations, foundation pilings and templates, and anchoring systems and mooring or tethering systems.

We made minor revisions to this section to include the applicable project engineer functions.

When conducting onsite installation inspections, what must the CVA or project engineer do? (§ 285.710)

The CVA or project engineer must make periodic onsite inspections while installation is in progress. The CVA or project engineer must verify, survey, witness, or check the following items during facility installation:

- Loadout and initial flotation procedures;
- Towing operations procedures to the specified location, and review the towing records;
- Launching and uprighting activities;
- Submergence activities;
- Pile or anchor installations;
- Installation of mooring and tethering systems;
- Final deck and component installations; and
- Installation at the approved location according to the Facility Design Report and the Fabrication and Installation Report.

For a fixed or floating facility, the CVA or project engineer must verify that proper procedures were utilized during the loadout of the jacket, decks, piles, or structures from each fabrication site; the actual installation of the facility or major modification; and the related installation activities.

For a floating facility, the CVA or project engineer must verify that proper procedures were utilized during the loadout of the facility; the installation of foundation pilings and templates, and anchoring systems; and the installation of the mooring and tethering systems.

The CVA or project engineer must conduct an onsite survey of the facility after transportation to the approved location. The CVA or project engineer must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

In response to comments, MMS changed this section to require the CVA or project engineer to verify that proper procedures were followed during the operations addressed in the section. This change no longer requires the CVA or project engineer to witness all of the activities, but rather to verify that proper procedures were used.

Reserved Section (§ 285.711)

Section 285.711 is reserved.

What are the CVA's or project engineer's reporting requirements? (§ 285.712)

This section details when the CVA or project engineer must submit reports to MMS and the lessee or grantee, including interim reports, as requested by the MMS. For each report, the CVA or project engineer must submit one electronic copy and one paper copy to MMS. In each report, the CVA or project engineer must:

- Give details of how, by whom, and when the CVA or project engineer activities were conducted;
- Describe the CVA's or project engineer's activities during the verification process;
- Summarize the CVA's or project engineer's findings; and
- Provide any additional comments that the CVA or project engineer deems necessary.

We made minor revisions to this section to include the applicable project engineer functions.

What must I do after the CVA or project engineer confirms compliance with the Fabrication and Installation Report on my commercial lease? (§ 285.713)

After receiving confirmation of compliance with the Fabrication and Installation Report from the CVA or project engineer, the lessee or grantee must notify MMS within 10 business days after commencing commercial operations.

We made minor edits to this section to include the applicable project engineer functions.

What records relating to SAPs, COPs, and GAPs must I keep? (§ 285.714)

This section provides requirements for records that the lessee must maintain for the duration of the project, until MMS releases the required financial assurance. The lessee or grantee must compile, retain, and make these records available to MMS representatives. These records include:

- The as-built drawings;
- The design assumptions and analyses;
- A summary of the fabrication and installation examination records;
- The inspection results; and
- Records of repairs not covered in the inspection report.

The lessee or grantee must record and retain the original material test results of all primary structural materials during all stages of construction. The lessee or grantee must provide MMS with the location of these records in the certification statement.

We did not make any changes to this section.

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs and GAPs

Overview

This subpart describes requirements to prevent or minimize the likelihood of harm or damage to the marine and coastal environments and to promote safe operations, including their physical, atmospheric, and biological components. The MMS intends to use adaptive management practices to help ensure that renewable energy activities are conducted safely. Such a system relies on demonstrating and validating actual operating performance. The MMS then will require adjustments to

mitigation and monitoring activities on a case-by-case basis based on operating experiences. You must certify compliance with certain terms and conditions that the MMS will specify and incorporate into the SAP, COP, or GAP.

We retitled this subpart to reflect FERC's role in regulating hydrokinetic activity. Since FERC will regulate construction and operations activity on hydrokinetic commercial leases, this subpart applies only to the renewable energy activities that will be regulated by MMS under approved SAPs, COPs, and GAPs.

Air Quality

The air quality requirements were moved to subpart F.

Safety Management System

The safety management system would include, as applicable:

- Remote monitoring, control, and shutdown capabilities;
- Emergency response procedures;
- Fire suppression equipment;
- Testing procedures; and
- Training.

These safety management provisions also cover maintenance and equipment shutdowns, including reporting and notification requirements, as well as requirements relating to both MMS and operator self inspections. The safety management system would be required to be submitted as part of the COP.

Maintenance and Shutdowns

This section describes when operators are required to notify MMS of shutdowns. Notification is required when safety equipment is taken out of service for more than 12 hours. If safety equipment is removed from service for more than 60 days, the operator must submit a written notice to MMS. The operator must also notify MMS when the equipment is returned to service.

Equipment Failure and Adverse Environmental Affects

These provisions address equipment failure and adverse effects of environmental or other conditions. Operators are required to notify MMS and repair any equipment failure, including pipelines and cables, as soon as practicable. The MMS may require an analysis to determine the cause of the failure. The final rule has been revised to clarify what repairs must be reported to MMS. The rule also states that MMS may require a lessee to revise its COP depending on the magnitude of the damages to facilities. If environmental or other conditions adversely affect a cable, pipeline, or facility, the operator must submit a corrective action plan to MMS; take the actions described in the plan; and submit a report to MMS of the actions taken.

Inspections

The MMS will conduct periodic scheduled and unscheduled inspections of OCS renewable energy facilities. The purpose of an MMS inspection is to ensure that an operator is conducting operations in accordance with all laws, regulations, and MMS-approved plans and to verify that proper safety equipment is correctly installed and working properly.

Operators are required to develop a self-inspection program for all facilities that covers all structures including all parts above and below the waterline. Each operator must inspect for corrosion and other factors affecting the structural integrity of the facility. Operators also must submit annually a summary of inspections, including how they conducted the inspections; what equipment was used; what repairs were made, if any; and the structural condition.

With regard to hydrokinetic activity regulated under FERC license, MMS will retain a role in inspections under the MOU adopted by FERC and MMS. We may inspect to ensure compliance with any provision of a lease, easement, or right-of-way we issue. The MMS will coordinate such inspections with FERC.

Facility Assessments

This subpart also contains the requirements for facility assessments, incorporating sections 17.2.1 through 17.2.5 of the American Petroleum Institute Recommended Practice 2A–WSD (API RP 2A–WSD), as they relate to initiating facility assessments. This proposed provision would also require mitigation if a facility did not pass the assessment process described in API RP 2A–WSD. We selected the API RP 2A–WSD because there is a lack of standards for offshore renewable energy facilities, and this standard has proven to be an effective assessment tool for other OCS structures in U.S. waters. This relates to the structure only and does not include production or transmission equipment.

Incident Reporting

This final rule will require that operators report immediately to the Director certain significant incidents associated with activities regulated under this part. An initial report must be followed within 15 days by a written report. Significant incidents that require immediate notification are identified, and include any incidents resulting in fire, explosions, or that involve a fatality. In addition, MMS requires submission of a written incident report within 15 days following certain types of incidents, including those involving injuries that result in the injured not being able to resume all duties the following day.

Section-by-Section Discussion for Subpart H

How must I conduct my activities to comply with safety and environmental requirements? (§ 285.800)

This section states the performance requirements for using trained personnel and technologies, precautions, and techniques to prevent or minimize the likelihood of harm or damage to human life and the environment. In addition, you must certify compliance with those terms and conditions identified in your approved SAP, COP, or GAP.

We did not make any changes to this section.

How must I conduct my approved activities to protect marine mammals, threatened and endangered species, and designated critical habitat? (§ 285.801)

This section describes the actions you must take if there is reason to believe that protected species or designated critical habitat may be affected by your operations. If there is reason to believe that a threatened or endangered species may be present or designated critical habitat may be affected while you conduct your MMS-approved activities, you must notify MMS, and we will consult with appropriate agencies and, after consultation, shall identify whether, and under what conditions, you may proceed. If there is reason to believe that marine mammals or threatened or endangered species may be incidentally taken as a result of your MMS-approved activities, you must agree to secure an authorization from NOAA or the FWS for incidental taking, including taking by harassment, which may result from your actions. This section also includes provisions related to mitigating and monitoring measures you may be required to take.

We deleted the references to the SAP, COP, and GAP to clarify that this section applies to conducting activities under an approved plan and not to the information requirements for those plans.

How must I protect archaeological resources? (§ 285.802)

This section was removed from the final rule. The details about how a lessee or grant holder should protect

archaeological resources will be included in a guidance document that MMS will develop after the rule is final.

What must I do if I discover a potential archaeological resource while conducting my approved activities? (§ 285.802)

This section describes the procedures that must be followed if a potential archaeological resource is discovered while conducting any activity related to a project. It also includes additional requirements MMS may impose after such a discovery, such as conducting additional archaeological investigations. If a potential archaeological resource is discovered, you must immediately halt all seafloor disturbing activities within the area of the discovery; notify the Director of the discovery within 72 hours; and keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until MMS has made an evaluation and tells you how to proceed.

The MMS may require additional investigations to determine if the resource is eligible for listing in the National Register of Historic Places under 36 CFR 60.4. This will be required if either the site has been impacted by your project activities or if impacts to the site or to the area of potential effect cannot be avoided. If these investigations indicate that the resource is potentially eligible to be listed in the National Register of Historic Places, MMS will tell you how to protect the resource or how to mitigate adverse effects to the site. Under section 110(g) of the National Historic Preservation Act, MMS may charge reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

The MMS changed the title from, ''What must I do if I discover a potential archaeological resource?'' to ''What must I do if I discover a potential archaeological resource while conducting my approved activities?'' to clarify that this section addresses activities under approved plans, not information requirements for the SAP, COP, or GAP.

How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act? (§ 285.803)

This section addresses the actions that MMS and you must take if, during the conduct of approved activities, MMS finds an EFH or habitat areas of particular concern that may be adversely affected by your approved activities. The MMS will consult with NMFS, and the lessee or grant holder will be required to adopt mitigation measures designed to avoid or minimize the adverse effects. The MMS may require additional surveys to define boundaries and avoidance distances. If MMS requires additional surveys, we will specify the requirements at that time.

The MMS renamed this section from, ''How must I protect essential fish habitats identified and described under MSA?'' to ''How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?'' to clarify that this section addresses activities under approved plans, not information requirements for the SAP, COP, or GAP.

Reserved Sections (§ 285.804 Through § 285.806)

Sections 285.804 through 285.806 are reserved.

Air Quality

What requirements must I meet regarding air quality? (§ 285.807)

This section was moved to subpart F, § 285.659, and renamed to ''What requirements must I include in my SAP, COP, or GAP regarding air quality?'' to reflect that this section addresses information that must be included in a SAP, COP, or GAP.

Reserved Sections (§ 285.808 Through § 285.809)

Sections 285.808 through 285.809 are reserved.

Safety Management Systems

What must I include in my Safety Management System? (§ 285.810)

You must submit a Safety Management System with the SAP, COP, or GAP. The Safety Management System must describe the following for all aspects of the project:

- How you will ensure the safety of personnel;
- Remote monitoring, control, and shutdown capabilities;
- Emergency response procedures;
- Fire suppression equipment, if needed;
- How and when you will test your Safety Management System; and
- How you will demonstrate that personnel are properly trained.

This section also requires that you demonstrate compliance, identify any impacts and any mitigation measures that are not effective, and make recommendations for new mitigation measures.

We did not make any changes to this section.

When must I follow my Safety Management System? (§ 285.811)

This is a new section added to clarify when a lessee or grantee must implement their Safety Management System.

Reserved Section (§ 285.812)

Section 285.812 is reserved.

Maintenance and Shutdowns

When do I have to report removing equipment from service? (§ 285.813)

This section requires you to notify MMS when equipment necessary for implementing an approved plan is taken out of service for more than 12 hours. It also requires that MMS be notified after the repairs are complete.

We revised this section, based on comments that stated that the section was unclear as to the requirement for reporting when safety equipment is removed from service. We clarified that the lessee/operator must report the removal of any equipment that is necessary for implementing the approved plan.

Reserved Section (§ 285.814)

Section 285.814 is reserved.

Equipment Failure and Adverse Environmental Affects

What must I do if I have facility damage or an equipment failure? (§ 285.815)

This section requires that all facility damage or equipment failures be repaired as soon as possible, and that MMS be notified of the repairs as soon as practicable. Based on comments, we revised this section to clarify what equipment and facility repairs must be reported to MMS. We did this by requiring repair notifications if you are required to report facility damage or failure under § 285.381. This section also requires that you submit a report describing the repairs to MMS, and states that MMS may require an analysis of the failure necessitating the repairs. This section also states that MMS may require you to submit a revised COP depending on the extent of the damage to facilities or other failure.

What must I do if environmental or other conditions adversely affect a cable, pipeline, or facility? (§ 285.816)

If environmental or other conditions adversely affect a cable, pipeline, or facility, this section requires you to submit a plan of corrective action to

MMS. In addition, the lessee or grantee must take the remedial action described in the plan, and submit a report of the remedial action taken.

We did not make any changes to this section.

Reserved Sections (§§ 285.817 Through 285.819)

Sections 285.817 through 285.819 are reserved.

Inspections and Assessments

Will MMS conduct inspections? (§ 285.820)

The MMS conducts inspections of OCS facilities and any vessels engaged in activities authorized under this part to verify that the applicant is operating in accordance with the OCS Lands Act, the regulations, lease stipulations, conditions of the grant, approved plans, and other applicable laws and regulations, and to determine whether the proper safety equipment is installed and operating properly.

We did not make any changes to this section.

Will MMS conduct scheduled and unscheduled inspections? (§ 285.821)

The MMS will conduct both scheduled and unscheduled inspections of your facilities.

We did not make any changes to this section.

What must I do when MMS conducts an inspection? (§ 285.822)

These regulations require you to make the area of the lease or grant; all facilities on the lease or grant; and records of design, construction, operation, maintenance, repairs, or investigations available to MMS for inspection. You must retain all records as required, and certain records must be retained until MMS releases your financial assurance.

We did not make any changes to this section.

Will MMS reimburse me for my expenses related to inspections? (§ 285.823)

Upon request, MMS will reimburse your reasonable expenses for the expenses related to food, quarters, and transportation provided for MMS representatives while they inspect the project facilities.

We did not make any changes to this section.

How must I conduct self inspections? (§ 285.824)

This section requires the lessee or grantee to develop an annual self inspection plan describing both above-water and below-water structural inspections and describing how corrosion protection will be monitored. It also requires that you submit an annual report that summarizes the results of the inspections.

We did not make any changes to this section.

When must I assess my facilities? (§ 285.825)

This section requires the lessee or grantee to use the assessment requirements of American Petroleum Institute Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms—Working Stress Design (API RP 2A–WSD) to conduct assessments of structures, when needed, based on the platform assessment initiators in API RP 2A–WSD. The lessee or grantee must initiate mitigation actions for structures that do not pass the assessment process of API RP 2A–WSD and perform other assessments as required by MMS.

We did not make any changes to this section.

Reserved Sections (§§ 285.826 Through 285.829)

Sections 285.826 through 285.829 are reserved.

Incident Reporting and Investigation

What are my incident reporting requirements? (§ 285.830)

This section requires that all incidents listed in § 285.831 that occur on the area covered by a lease or grant and that are related to operations conducted under your lease or grant be reported to MMS. We did not make any changes to this section.

What incidents must I report, and when must I report them? (§ 285.831)

This section requires that all fatalities, incidents requiring evacuation of a person(s) from a facility, fires, explosions, incidents, and collisions resulting in property damage greater than $25,000, incidents resulting in structural damage, crane incidents, and incidents that damage or disable safety systems be reported to MMS immediately with written follow up within 15 days. It also requires that any injuries that result in the injured not being able to resume all duties the following day and incidents that require personnel to muster for evacuation be reported in writing within 15 days.

We did not make any changes to this section.

How do I report incidents requiring immediate notification? (§ 285.832)

This section describes what you must do for incidents that require immediate notification. You must notify the Director orally immediately after aiding the injured and stabilizing the situation. This section also describes the information required in the notification.

We did not make any changes to this section.

What are the reporting requirements for incidents requiring written notification? (§ 285.833)

This section describes the specific information regarding incidents that must be reported in writing to the MMS. It allows you to submit a form prepared for another agency to fulfill the requirement as long as it contains all the information required by MMS. The MMS may subsequently require additional information about an incident on a case-by-case basis.

We did not make any changes to this section.

Subpart I—Decommissioning

Overview

This subpart describes requirements for decommissioning OCS renewable energy facilities and associated structures including the submission of advance plans, applications, and notices to the MMS. Co-lessees and co-grant holders are all jointly and severally responsible for meeting decommissioning obligations on their respective leases or grants. All facilities, including pipelines, cables, and other structures and obstructions, must be removed when they are no longer used for operations but no later than 2 years after the termination of the lease, ROW grant, or RUE grant.

The MMS made conforming changes to the 30 CFR, part 250, subpart Q regulations regarding decommissioning requirements as they apply to oil and gas facilities that could be left in place for alternate use. We removed the phrase ''or other use'' from § 250.1730 because the EPAct amended the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)) to give DOI authority to allow the use of OCS oil and gas platforms for other authorized marine-related purposes. For uses that MMS authorizes, the structure would no longer need to meet the requirements of § 250.1730(a).

Section-by-Section Discussion for Subpart I

Decommissioning Obligations and Requirements

Who must meet the decommissioning obligations in this subpart? (§ 285.900)

Co-lessees and co-grant holders are jointly and severally responsible for the decommissioning responsibilities for facilities on a lease or grant, including all obstructions.

We did not make any changes to this section.

When do I accrue decommissioning obligations? (§ 285.9010)

Decommissioning obligations accrue when the lessee or grant holder installs; constructs; or acquires a facility, cable, or pipeline; or creates an obstruction.

We did not make any changes to this section.

What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP? (§ 285.902)

This section provides a general overview of the decommissioning process:

- After your lease terminates, the lessee or grant holder has 2 years to decommission and clear the seafloor of all obstructions created by activities on the lease or grant.
- Before decommissioning, the lessee or grant holder must submit a decommissioning application. This can be submitted at any time, but no later than 2 years before any intended decommissioning operation.
- Once MMS approves the decommissioning application, a decommissioning notice is required before beginning any decommissioning activity. The decommissioning notice is required to keep MMS informed of decommissioning activities.
- If an archaeological resource is discovered while decommissioning, activities around the resource must stop, and the lessee or grantee must inform MMS.
- Biologically sensitive features and items of archaeological interest must be avoided and protected during decommissioning and site clearance activities.
- If biologically sensitive features or items of archaeological interest are found, MMS will direct the lessee or grantee on what action to take.
- The MMS added a provision to document early efforts made by the applicant to coordinate with affected State, local, and tribal governments. This was added to remind project operators of the importance of coordinating early with affected entities.

Lessees decommissioning FERC-licensed facilities are not required to comply with this section.

Based on comments received, we changed the time to complete decommissioning on a lease or grant from 1 year after termination to 2 years after termination.

What are the requirements for decommissioning FERC-licensed hydrokinetic facilities? (§ 285.903)

This is a new section addressing the decommissioning requirements for FERC-licensed hydrokinetic facilities on the OCS. FERC license holders must comply with the conditions of their MMS-issued lease, including decommissioning requirements.

If you fail to comply with the requirements, then MMS may call for the forfeiture of your bond or other financial assurance and take enforcement action under § 285.400 of this part. Further, you remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.

Can I request a departure from the decommissioning requirements? (§ 285.904)

Based on comments, we added a new section to clarify that a lessee or grant holder may request a departure from the decommissioning requirements under § 285.103. The MMS will consider the impacts of leaving the facilities, projects, cables, pipelines, and other obstructions in place versus the impacts of removal when determining whether to approve the departure. This also applies to circumstances when a limited lease holder installs a met tower or other equipment, then the lessee acquires a commercial lease that encompasses the limited lease area.

Decommissioning Applications

When must I submit my decommissioning application? (§ 285.905)

While the conceptual decommissioning plans will be included in the SAP, COP, or GAP, in many cases the project will not be decommissioned until many years after approval of the plan; therefore, a decommissioning application is required. A decommissioning application may be submitted at any time, but no later than 2 years before any intended decommissioning operation. However, if a lease or grant is cancelled, relinquished, or otherwise terminated, the application must be submitted within 90 days.

We did not make any changes to this section.

What must my decommissioning application include? (§ 285.906)

The application will include such items as: An identification and description of the facilities to be removed; a proposed decommissioning schedule; a description of the removal methods; description of site clearance activities; plans for transporting and disposing of the removed facilities; a description of those resources, conditions, and activities that could be affected by or could affect the proposed decommissioning activities; results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site; mitigation measures to protect archaeological and sensitive biological features during removal activities; and a statement on whether or not divers will be used to survey the area after removal to determine any effects on marine life.

The MMS revised this section to require that the decommissioning application include a description of measures to prevent unauthorized discharge of pollutants including marine trash and debris into the offshore waters.

How will MMS process my decommissioning application? (§ 285.907)

The MMS will review the proposed decommissioning and site clearance activities to ensure compliance with all applicable laws, regulations, and other requirements. The MMS will compare the decommissioning application with the decommissioning general concept in the approved SAP, COP, or GAP to determine what technical and environmental reviews are needed. The operator may be required to revise the approved SAP, COP, or GAP, if MMS determines the proposed decommissioning activities would result in a significant change in the SAP, COP, or GAP; or requires any additional permits; or proposes activities not previously identified and evaluated in the SAP, COP, or GAP. The MMS may begin the appropriate NEPA and other regulatory reviews as required.

After completing the technical and environmental reviews, MMS may approve, approve with conditions, or disapprove the decommissioning application. If MMS disapproves decommissioning application, the operator must resubmit the application to address the concerns identified by MMS.

We did not make any changes to this section.

What must I include in my decommissioning notice? (§ 285.908)

This section describes what needs to be included in the decommissioning notice. A decommissioning notice is separate from the decommissioning application and can only be submitted after MMS approves the decommissioning application. The decommissioning notice is submitted at least 60 days before you plan to begin decommissioning activities. The decommissioning notice includes any changes from your decommissioning application and your decommissioning schedule. The MMS will evaluate your decommissioning notice and may require additional changes to your decommissioning application before you can begin decommissioning activities.

We did not make any changes to this section.

Facility Removal

When may MMS authorize facilities to remain in place following termination of a lease or grant? (§ 285.909)

In the decommissioning application, the operator may request that certain facilities authorized in the lease or grant remain in place for other activities authorized in this part, elsewhere in this subchapter, or by other applicable Federal laws. The MMS will approve such requests on a case-by-case basis considering potential impacts to the marine environment; competing uses of the OCS; impacts on marine safety and national defense; maintenance of adequate financial assurance; and other factors determined by the Director.

If MMS authorizes facilities to remain in place, the former lessee or grantee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to MMS showing that another party has assumed that responsibility and has secured adequate financial assurances. In the decommissioning application, the operator may request that certain facilities authorized in the lease or grant be converted to an artificial reef or otherwise toppled in place.

We did not make any changes to this section.

What must I do when I remove my facility? (§ 285.910)

All facilities must be removed to a depth of 15 feet below the mudline, and you must verify to MMS that you have cleared the site within 60 days after you remove a facility.

We did not make any changes to this section.

Reserved Section (§ 285.911)

Section 285.911 is reserved.

Decommissioning Report

After I remove a facility, cable, or pipeline, what information must I submit? (§ 285.912)

Within 30 days after removing a facility, the operator must submit a written report to MMS summarizing removal operations. The report must include a summary of the removal activities including the date it was completed; a description of any mitigation measures you took; and, if explosives were used, a statement signed by an authorized representative that certifies that the types and amount of explosives used in removing the facility were consistent with those in the approved decommissioning application.

We did not make any changes to this section.

Compliance With an Approved Decommission Application

What happens if I fail to comply with my approved decommissioning application? (§ 285.913)

If the lessee, grantee, or operator fails to comply with the approved decommissioning plan or application, MMS may call for the forfeiture of your bond or other financial guarantee, and the lessees or grantee remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.

We did not make any changes to this section.

Subpart J—Rights-of-Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities

Overview

This subpart establishes general requirements for how MMS will consider proposals for activities that involve the alternate use of existing OCS facilities. This subpart also includes general provisions that explain how MMS will approve and regulate such alternate use activities on the OCS. We will authorize such activities through the issuance of an Alternate Use Right-of-Use and Easement (Alternate Use RUE).

This subpart explains how applicants request an Alternate Use RUE, how MMS will decide whether to issue Alternate Use RUEs, and how Alternate Use RUEs will be competitively issued (if MMS determines that competitive interest exists). Once an Alternate Use RUE is issued by MMS, this subpart provides details on the term of such authorizations; required payments to MMS; necessary financial assurance; as well as other administrative issues such as assignment, suspension, and termination of Alternate Use RUEs.

This subpart also includes provisions regarding decommissioning of approved alternate use facilities. In addition to the provisions in this subpart J, MMS has associated revisions to MMS's existing oil and gas decommissioning regulations found in 30 CFR part 250, subpart Q, that clarify and expand on an oil and gas platform owner's obligations for decommissioning, and when such decommissioning obligations may be suspended for approved alternate uses.

The statutory authority for this subpart is paragraph 8(p)(1)(D) of the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)). Under this authority, as delegated by the Secretary, the MMS may approve activities that use, for energy or other marine-related purposes, facilities that are currently or were previously used for other activities authorized under the OCS Lands Act.

We received numerous comments on the proposed rule pertaining to the use of OCS facilities for aquaculture purposes. We wish to clarify that this rule does not authorize aquaculture operations. A different agency would be responsible for permitting and managing actual aquaculture activity under any RUE that is granted. In the event that legislation is enacted that regulates OCS aquaculture, we will reassess this issue and ensure coordination will be accomplished with all relevant agencies.

Section-by-Section Discussion for Subpart J

Regulated Activities

What activities does this subpart regulate? (§ 285.1000)

This provision describes the scope of activities regulated by this subpart. The authority for Alternate Use Rights-of-Use and Easements (Alternate Use RUEs) was established in paragraph 8(p)(1)(D) of the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)). Under this authority, as delegated by the Secretary, the MMS may approve activities that use, for energy or other marine-related purposes, facilities that are currently or were previously used for other activities authorized under the OCS Lands Act. However, the MMS may not approve alternate use activities under subsection 8(p)(1)(D) of the OCS Lands Act if those activities are authorized by another statutory authority, including: The OCS Lands Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*), the Ocean

Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), or other applicable law.

To illustrate the types of activities that will be subject to this subpart, examples such as the following are useful. In the first example, an individual seeks to use an existing oil and gas platform in the Gulf of Mexico as an offshore emergency rescue training facility. Utilizing an existing OCS facility for such activities is not currently authorized by any other statutory authority. Therefore, MMS may authorize the use of an existing facility for such emergency rescue training activities using an Alternate Use RUE. In another example, an individual seeks to convert an existing oil and gas platform in the Gulf of Mexico to a deepwater port. Activities associated with the construction and operation of a deepwater port on the OCS are authorized under the Deepwater Port Act of 1974, as amended, and regulated jointly by the U.S. Coast Guard and U.S. Maritime Administration. Since such deepwater port activities are authorized by the Deepwater Port Act, the activities do not require an Alternate Use RUE under this subpart. While the MMS may not issue an Alternate Use RUE for deepwater port activities (or other activities that are authorized by other Federal law) that would use an existing OCS structure, MMS approvals may be required under either part 250 or part 282 of this subchapter for activities that could impact existing MMS-approved operations on an existing facility, as well as for deferring decommissioning requirements upon the termination of an OCS lease.

Use of the term ''existing facility'' or ''existing platform'' in this subpart is not intended to limit such facilities to those that are currently in place as of the time of publication of this rule. Any facility that, at the time of an alternate use proposal, is situated on the OCS and has been authorized by MMS under the OCS Lands Act is potentially eligible for consideration under this subpart. Therefore, such ''existing facilities'' may include oil and gas facilities, facilities constructed in association with sand, gravel, sulfur or any other mineral resource development approved under the OCS Lands Act, as well as renewable energy facilities pursuant to this part.

As stated in § 285.1000(c), MMS has the discretion to authorize alternate use activities on existing OCS structures that are currently in active operation, or limit alternate use activities to existing OCS structures that are no longer in operation and would otherwise be subject to removal. The MMS will consider these issues on a case-by-case basis taking into account the unique operating considerations for each proposed alternate use activity as well as the associated operations on the existing OCS platform. As explained previously, MMS does not intend to implement an aquaculture program under subpart J.

We did not make any changes to this section.

Reserved Sections (§§ 285.1001 Through 285.1003)

Sections 285.1001 through 285.1003 are reserved.

Requesting an Alternate Use RUE

What must I do before I request an Alternate Use RUE? (§ 285.1004)

Before submitting a request to the MMS for issuance of an Alternate Use RUE, the applicant must contact the owner of the existing OCS facility as well as the current lessee of the area in which the facility is located and reach preliminary agreement regarding the alternate use of the structure. Since the platform or other facility is the private property of the owner, MMS could not issue an Alternate Use RUE unless the alternate use was tentatively agreed to by the owner of the facility. If the alternate use applicant is also the lessee and owner of the existing OCS facility, a preliminary agreement regarding alternate use is not needed.

This provision does not require the owner of the facility and lessee of the area in which the facility is located to give a final, unconditional approval for the proposed alternate use. This initial agreement among the parties need only state that the owner and lessee are aware of the proposed alternate use activity, and have no immediate objections to such activities. This preliminary agreement does not need to be in any specific prescribed form.

We did not make any changes to this section.

How do I request an Alternate Use RUE? (§ 285.1005)

The MMS will consider requests for an Alternate Use RUE on a case-by-case basis, provided such requests comply with the requirements of this provision. An applicant's request for an Alternate Use RUE must include a summary of the proposed activities that would involve use of the existing OCS facility; a statement affirming that the proposed activities are not otherwise authorized by other MMS regulations or any other Federal law; and satisfactory evidence that the applicant qualifies to hold a lease, ROW, or RUE on the OCS. When summarizing the proposed activities under an Alternate Use RUE, the applicant must include all of the information identified in § 285.1005(a). Any request to MMS for an Alternate Use RUE must also include the signatures of the alternate use applicant, the owner of the existing OCS facility, and the lessee of the area in which the existing facility is located.

If an existing OCS facility proposed for an Alternate Use RUE is in operation on an active OCS lease, the alternate use applicant as well as the lessee or owner of the structure must consider what approvals and plan modifications may be required under part 250 or part 282 of this subchapter with respect to impacts on operations regulated by those parts.

We did not make any changes to this section.

How will MMS decide whether to issue an Alternate Use RUE? (§ 285.1006)

The MMS will consider requests for an Alternate Use RUE on a case-by-case basis. The MMS will evaluate all proposals to ensure that the proposed activities that would involve the use of existing OCS facilities can be conducted in a manner that is safe and protects the marine, coastal, and human environment; does not inhibit or otherwise restrain orderly development of OCS mineral and energy resources; and avoids serious harm or damage to, or waste of, any natural resources or property. Regardless of whether the existing OCS facility is currently in use or no longer in use and subject to removal, the MMS has the discretion whether or not to approve and issue an Alternate Use RUE. Since Alternate Use RUEs will require the MMS to regulate the development, operation, and eventual decommissioning of such alternate use projects, the MMS may determine that it has insufficient resources or subject matter expertise to properly regulate such projects. However, the MMS may partner with other Federal agencies with relevant expertise to ensure proper regulation of certain types of alternate use activities.

We did not make any changes to this section.

What process will MMS use for competitively offering an Alternate Use RUE? (§ 285.1007)

Paragraph 8(p)(3) of the OCS Lands Act requires that Alternate Use RUEs be issued on a competitive basis unless the Secretary determines, after public notice of the proposed Alternate Use RUE, that there is no competitive interest.

Before initiating the competitive process, the MMS will first determine whether an applicant's proposal contains the information necessary to be deemed acceptable, as set forth in § 285.1005. The MMS will then determine whether the proposed activity that would involve the use of an existing OCS facility is one that is (1) subject to MMS authority under paragraph 8(p)(1)(D) of the OCS Lands Act, and (2) the type of activity that the MMS has the necessary expertise and resources to regulate effectively. If the answer is yes to both (1) and (2), the MMS will issue a public notice in the **Federal Register** to determine if there is competitive interest in using the facility for other alternate use activities. The MMS will specify a time period (e.g., 30 days) from the date of issuance of the public notice for those who are interested in the use of that facility to respond to MMS indicating that interest. Indications of competitive interest are not required to provide all the information required in § 285.1005. If there is no expression of competitive interest within the timeframe expressed in the public notice, the MMS will presume that there is no competitive interest and will commence review of the applicant's proposal for an Alternate Use RUE.

If there are indications of competitive interest received by the MMS within the timeframe in the public notice, the MMS will proceed with a competitive offering. The MMS will request that each competing applicant submit a description of the types of activities proposed for the existing facility, as well as satisfactory evidence that the competing applicant qualifies to hold a lease, ROW, or RUE on the OCS. The MMS may impose a time period to submit the requested information, but one that would allow sufficient time for competing applicants to prepare the necessary information requested. The MMS may subsequently request additional information to adequately evaluate competing proposals. At this stage, competing applicants are not required to seek or obtain the consent of the lessee or owner of the existing OCS facility.

The MMS will evaluate the competing proposals to determine whether the proposed activities appear to be compatible with existing operations at the facility and are activities that it has the expertise and resources available to regulate effectively. If more than one proposal initially appears feasible, the MMS may commence an environmental review under NEPA, where each of the proposals is analyzed. Based on its NEPA analysis, the MMS may select one or more of the alternative proposals as potentially acceptable.

Once the MMS has chosen one or more acceptable proposals for activities involving the alternate use of an existing OCS facility, it will notify the competing applicants and submit each acceptable proposal to the lessee and owner of the existing OCS facility. The lessee and owner of the existing OCS facility may accept any one of the proposals deemed acceptable by the MMS. If the lessee and owner of the facility agree to accept one of the proposals through a written acknowledgement submitted to MMS, the MMS will complete efforts to issue an Alternate Use RUE. If the lessee and owner of the facility are unwilling to accept any of the proposals deemed acceptable by the MMS, the MMS will not issue an Alternate Use RUE.

Activities under subpart J will include full analysis as required by NEPA and other applicable laws. Compliance with the CZMA will follow 15 CFR part 930, subpart C, for competitive RUE offerings and 15 CFR part 930, subpart D, for noncompetitive RUE offerings.

We did not make any changes to this section.

Reserved Sections (§§ 285.1008 Through 285.1009)

Sections 285.1008 through 285.1009 are reserved.

Alternate Use RUE Administration

How long may I conduct activities under an Alternate Use RUE? (§ 285.1010)

This provision explains that MMS will determine the duration of Alternate Use RUEs on a case-by-case basis considering pertinent factors including the size, scale, and type of the proposed alternate use activities. Considering the scope of potential alternate use activities that could reasonably occur on the OCS, MMS does not believe that it is appropriate to set a specific term in the regulations for Alternate Use RUEs.

This provision also provides that MMS will consider requests for renewal of an Alternate Use RUE on a case-by-case basis, at MMS's discretion.

We did not make any changes to this section.

What payments are required for an Alternate Use RUE? (§ 285.1011)

This provision provides that MMS will determine rentals or other charges on a case-by-case basis, and such rentals or other charges will be set forth in the Alternate Use RUE. The MMS will charge rentals or other charges for Alternate Use RUEs to ensure a fair return to the United States, as required by subsection 8(p)(2) of the OCS Lands Act (43 U.S.C. 1337(p)(2)). There are many different potential alternate uses of the OCS that could be authorized (e.g., training, research, education, and recreation), and each of these potential uses could have different effects in terms of the exclusion of other valuable uses of the OCS area. Certain alternate use activities could require that a significant portion of an OCS area be excluded from other potentially valuable uses. The MMS will consider such exclusivity requirements for a potential alternate use activity in determining a fair return to the United States. The MMS will calculate the rentals or other charges for Alternate Use RUEs taking into account the areal extent of the alternate use activity, the MMS resources needed for regulating such activities, and the exclusion in that area of competing uses.

We did not make any changes to this section.

What financial assurance is required for an Alternate Use RUE? (§ 285.1012)

This provision makes clear that MMS will require that holders of Alternate Use RUEs provide financial assurance in an amount sufficient to cover all obligations under the Alternate Use RUE, including decommissioning obligations. Holders of Alternate Use RUEs will be required to retain such financial assurance until MMS determines that all obligations have been fulfilled to MMS satisfaction. The provision also provides that MMS may increase or decrease required financial assurance amounts, as appropriate, provided that financial assurance will always be required in an amount necessary to satisfy all obligations under the authorizing instrument.

The MMS has not defined in the regulations what specific forms of financial assurance will be deemed acceptable. The MMS will consider all forms of financial assurance that are deemed acceptable by MMS under its other regulatory programs, and will consider other proposals for financial assurance on a case-by-case basis.

Unlike the provisions for renewable energy under this part, and what is established for oil and gas leasing under part 256, MMS has determined that the regulations for alternate use activities should not set specific minimum levels for financial assurance. Considering the range of potential activities that could be approved for an Alternate Use RUE, MMS has determined that it is more appropriate to set required financial assurance levels on a case-by-case basis.

We did not make any changes to this section.

Is an Alternate Use RUE assignable? (§ 285.1013)

This provision provides that Alternate Use RUEs may be assigned to eligible assignees. This provision sets forth the requirements that must be satisfied for MMS to approve an assignment request. At this time, it is not clear to what extent Alternate Use RUEs will be requested and approved by MMS. Therefore, we are not creating a standard MMS form for assignments at this time.

In §§ 285.1013(d) and (e), we describe to what extent assignors and assignees are responsible for obligations associated with an Alternate Use RUEs arising both before and after MMS approval of an assignment. This provision is intended to be consistent with other MMS regulatory precedent (*See* 30 CFR 256.62(d) and (e)).

We did not make any changes to this section.

When will MMS suspend an Alternate Use RUE? (§ 285.1014)

This section explains that MMS may suspend activities authorized under an Alternate Use RUE and describes when such a suspension may be ordered. It is important to note that MMS may suspend activities authorized under an Alternate Use RUE even if there has been no finding of fault by the grantee. The holder of an Alternate Use RUE may be in full compliance with the terms and conditions of the grant, but other circumstances outside the control of the grantee may require MMS to suspend activities in order to comply with judicial decrees, for reasons of national security or defense, to avoid unsafe activities or interference with lessee's operation, and to protect against potential environmental damage. For this reason, any such suspension will extend the term of the Alternate Use RUE for the period of the suspension.

We did not make any changes to this section.

How do I relinquish an Alternate Use RUE? (§ 285.1015)

This provision explains that the holder of an Alternate Use RUE may relinquish its grant at any time provided it complies with the requirements of this section. The MMS will officially approve any relinquishment after it has determined that the requestor has complied with all necessary requirements, including the payment of any outstanding rentals (or other payments) and fines. The relinquishment will take effect on the date that MMS officially approves the request.

We did not make any changes to this section.

When will an Alternate Use RUE be cancelled? (§ 285.1016)

This provision explains under what circumstances MMS may cancel an Alternate Use RUE. The provisions of this section are similar to the cancellation provisions under subpart D of this part, but include an additional provision for cancellation when continued activity under an Alternate Use RUE is determined to be adversely impacting ongoing lease activities on the existing OCS facility (e.g., an associated oil and gas production platform on which alternate use activities have been authorized).

Commenters to the proposed rule expressed concern that this provision did not provide for notice and opportunity to be heard prior to cancellation of an Alternate Use RUE. The MMS agrees with these comments and added a provision to the rule concerning notice and an opportunity to be heard.

Reserved Section (§ 285.1017)

Section 285.1017 is reserved.

Decommissioning an Alternate Use RUE

Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE? (§ 285.1018)

This provision explains that the holder of an Alternate Use RUE will be responsible for removing all structures and completing all other decommissioning activities associated with an approved alternate use activity. The Alternate Use RUE will set forth specific requirements for decommissioning, as determined by the MMS based on the approved alternate use activity.

As set forth in the conforming amendments to part 250, subpart Q, included in this final rule, approval of an Alternate Use RUE will not relieve the original lessee (e.g., the original oil and gas lessee) from its accrued decommissioning obligations. If the MMS approves an Alternate Use RUE with respect to an existing facility located on a lease that has terminated, or a lease that subsequently terminates following approval of an Alternate Use RUE, the MMS will defer commencement of decommissioning activities related to that facility for the duration of the Alternate Use RUE. Such deferral will be limited, however, to the facility that is associated with the alternate use activities, and the lessee will be required to complete all other decommissioning activities associated with the lease. Unless the lessee and owner of the existing facility are also the holder of the Alternate Use RUE, the lessee and owner of the existing facility are not responsible for decommissioning requirements associated with an Alternate Use RUE. Similarly, the holder of an Alternate Use RUE is not responsible for decommissioning requirements with respect to the existing facility. To avoid confusion or potential subsequent dispute between the parties, MMS anticipates setting forth in the Alternate Use RUE grant the specific decommissioning obligations pertaining to the alternate use activities.

We did not make any changes to this section.

What are the decommissioning requirements for an Alternate Use RUE? (§ 285.1019)

This provision explains that decommissioning requirements for Alternate Use RUEs will be established on a case-by-case basis after considering the specific alternate use proposal. These specific decommissioning requirements will be set forth in detail in the grant authorizing instrument. This provision also explains that all decommissioning activities will be required to be completed within 1 year of termination of the Alternate Use RUE.

We did not make any changes to this section.

Comments on the Proposed Rule and MMS Responses

We reviewed all the comments on the preamble and proposed rule. We categorized and summarized similar comments and then responded to those comments by subpart subject matter. We organized the comments and our responses in a table for each subpart as follows.

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GENERAL COMMENTS	
Comment	**Response**
Consultation and Coordination	
Clarify roles and responsibilities for Federal agencies, States, lessees, local governments, existing users, and other stakeholders. Clarify the process by which MMS will coordinate with State, tribal, and local governments in adapting permits and conditions and adjusting mitigation and monitoring requirements.	We will work with all appropriate parties to determine the appropriate process. The regulations do not need to clarify the roles and responsibilities of other parties. Nor do the regulations need to clarify the process that MMS will use to coordinate with all parties.
There appears to be a degree of inconsistency in the rule with respect to mandatory versus discretionary consultation and coordination with State and local government. The MMS should ensure that there is certainty throughout the rule regarding the need for mandatory coordination and consultation by the MMS with the affected State and local governments.	We do not see any inconsistency in the rule. The regulations clearly require MMS to ensure that activities are carried out in a manner that provides for public notice and provide for consultation with States and local governments.
Expand the language regarding coordination. The rule currently limits coordination and consultation with State and local entities to one representative from the Governor's office and one executive representative from local government. Although this may seem advantageous to expediting decision-making, it can create suspicion and distrust in the parties that are not at the table.	The rule does not limit coordination and consultation to just one representative from the Governor's office and one executive from local government. Task forces, formed with the Governor of a State or an executive from a local government, is just one way MMS will coordinate with affected States and local communities. MMS is not limited to just that option.
Work closely with, and enter into Memoranda of Understanding (MOUs) with States, local officials, tribes, resource agencies and Federal agencies, including Federal Energy Regulatory Commission (FERC), to pre-qualify sites for bidding, coordinate permitting, eliminate duplicative processes, and ensure accountability by all public officials throughout the leasing process. Consultation should occur before a site is identified in a request for a commercial lease or a request for interest in a site.	The rule provides for early and continuous consultation, and MMS plans to work under the rule with States, local officials, tribes, resource agencies and Federal agencies, and enter into MOUs, as appropriate. The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
Establish standing regional task forces specifically in the rule.	We have not adopted this recommendation. The MMS may create regional task forces under the provisions of the rule. We believe it would be premature and inefficient to establish specific standing regional task forces by rule at this time.
It is unclear in the rule to what degree the MMS will consult on State ocean and coastal planning processes for State waters when considering the siting and scale of OCS leases that require a transmission line through State waters.	The rule provides the necessary framework for timely and efficient consultation with States on transmission lines in subpart F.
Develop a Joint Planning Agreement, per Figure 1 of the Draft EA, and encourage MMS to follow through with this effort to help ensure that all concerns are taken into account and to streamline the regulatory process.	The rule allows the use of a Joint Planning Agreement or other arrangements to support consultation as appropriate.
Address coordination on a regional basis, to	We plan to make sound decisions to balance

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enable States to avoid duplication of effort, efficiently manage their common resources, and effectively engage with MMS.	ocean uses appropriately. We will consult and coordinate extensively with relevant organizations at the national, regional, state, and local levels to receive input relating to the siting of renewable energy projects and the development of program priorities.
Consider impacts on existing stakeholders as part of any project and work to minimize these impacts.	Section 285.102(a)(10) requires MMS to ensure that authorized renewable energy and alternate use activities consider other uses of the sea or seabed.
Consult with States and local governments before finalizing the rule so that States' needs are reflected in the final rule and the regulatory framework is clear to all parties.	We have considered State and local government comments in adopting the final rule, and we will continue to consult with all interested and affected parties in its implementation.
The MMS should develop language requiring coordination between developers and stakeholders. This should be a precursor to development of a SAP.	The rule encourages developers to coordinate with stakeholders before a lease or grant is issued, in subparts B and F and in the preamble, and appropriate consultation and coordination are required of lessees and grantees.
Other than commenting in response to Federal Register notices, what will be the opportunities for public comment on a lease, subsequent plans, and related environmental documents?	In addition to commenting in response to Federal Register Notices, the public may participate in relevant NEPA hearings and actions, may be included in task forces or similar consultations, and may offer comments and recommendations at any time on any aspect of the alternative energy program and activities.
Will a non-applicant stakeholder be permitted to seek administrative appeal under 30 CFR, part 290, or judicial review, of the final decision?	Per 43 CFR 4.410, to appeal a decision, the person or party must have taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal.
Incorporate input from existing users and consider consistency with CZMA and State coastal zone plans before initiating any leasing process.	The rule provides for appropriate CZMA consultations throughout the lease and grant processes in subparts B, C, and F.
Use interagency working groups prior to and during the NEPA consultation process and CZMA Federal consistency process.	This approach is possible under the rule.
Include review by the agencies implementing each State's CZM Program.	The rule provides for CZMA consultations with affected States. It will be the responsibility of those States to provide for review by their appropriate agencies.
Work with the National Oceanic and Atmospheric Administration's (NOAA's) Office of Ocean and Coastal Resource Management to provide guidance, possibly through a series of regional workshops, that will addresses specific questions regarding CZMA consistency review as applied to activities under this new program.	This approach is possible under the rule. We intend to work with NOAA and each State's CZM agency to ensure these issues are addressed, and we may hold workshops as recommended.
The joint task force mechanism structure and procedure should be more fully developed and be required as early in the leasing process as possible. The MMS should be clearer regarding	We will provide details about task forces in the implementation guidance that we intend to issue after the rule is approved.

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who should be on these task forces, how interested parties and stakeholders may access the task forces, the objective of the task forces, and the notice procedure for public comment/participation. The MMS should also describe their specific role, purposes, powers, etc. and to whom and how they are to report.	
Require that developers be involved in providing information to these task forces and engaged in the process to some degree, yet not permitted to impede, overwhelm, or control the mechanism or process. The Settlement Process of the Reedsport, Oregon Wave Energy project provides one good model for how this may be structured. The MMS must recognize and respect the needs and concerns of existing users and a broad range of stakeholders, including conservationists and local communities, especially those outside the conventional energy development/OCS interests.	We will work with all taskforce participants to ensure that appropriate information is provided to the task force.
The proposed rule should create a mechanism to compensate States for adverse impacts to coastal resources or uses. This compensation should be separate from general revenue sharing and authorized for use specifically for mitigating adverse coastal impacts through mitigation, conservation and reclamation, and planning assistance. Any "mitigation" revenue should be distributed to affected States on a basis proportionate to the impacts and not according to the usual '27% revenue sharing' basis.	The Energy Policy Act of 2005 (EPAct) does not require or authorize MMS to provide or require developers to provide compensation for mitigating adverse impacts to the States or local areas.
Wind farm constructors and operators should be required to report any cable breaks on submerged facilities and their causes. The MMS should use this data to monitor developments on the OCS and to develop regulatory processes for assuring that buried cables remain buried during their useful life. Cables, though, should be removed at the time of decommissioning, unless it is clearly demonstrated that they will remain buried after decommissioning.	§ 285.813 requires the reporting of any cable breaks. We plan to monitor lease, right-of-way (ROW), and right-of-use and easement (RUE) activities and adapt requirements accordingly. Decommissioning of cables will be reviewed and authorized, on a case-by-case basis, in accordance with subpart I.
Will MMS favor or prioritize competing alternative energy uses (such as wave vs. wind)?	Although we have no plans to establish such priorities at this time, we may do so in implementing the rule.
Will MMS give priority in offshore development to local governments (city and county) or communities over private development?	The rule does not provide for such priority.
Initiate comprehensive planning for the ocean ecosystem to ensure an appropriate balance between emerging industrial uses and conservation.	We plan to make sound decisions to balance ocean uses appropriately and will consult with NOAA and other relevant Federal agencies to ensure consistency and integration in the large context of spatial planning for ocean uses and ecosystem protection. In addition, we will consult

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	and coordinate extensively with relevant organizations at the national, regional, state, and local levels to receive input relating to the siting of renewable energy projects and the development of program priorities.
In cases where multiple offshore power generation plants need access to shore or connection to the power grid in the same geographic area, who has authority to decide how competing needs or claims will be resolved?	Ultimately, the MMS will be the authority on competition on the OCS. However, as provided in the rule and preamble, we intend to consult and coordinate closely with all interested and affected parties in making such decisions.
How will NOAA and MMS (or any other relevant agency with interest or potential jurisdiction such as the FERC resolve competing license applications for the same physical area when one request is being made under MMS authority and the other request is being made under NOAA authority? There needs to be a process created for competing claims that are administered by separate government authority, and clear procedures and processes established for resolving potential jurisdictional overlaps of authority between MMS and NOAA (as well as any other relevant agencies).	The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. The MMS can develop MOUs with appropriate agencies as needed.
Clarify how subsea cabling from an OCS project will be managed as it crosses into State waters. It is unclear whether the cable triggers a separate licensing or certification process outside of the MMS leasing process.	Information concerning subsea cables, including routing through State waters, will be included in the various plans. Review and approval of the routing through State waters is covered by the regulations. The regulations also require operators to obtain appropriate State and local approvals for State water and onshore activities.
Ensure a timely, cost-effective permitting process. To facilitate a transparent and smooth permitting process for prospective wind developers, it will be useful for MMS to specify timelines in the final rule as a guide for different entities to conduct a responsive and timely review. The timelines need to be practical for wind developers to be able to pursue opportunities and for regulators to efficiently and effectively oversee the permitting process.	The rule provides a framework that identifies processes and information requirements for issuing leases and reviewing and approving plans. Anticipated deadlines for MMS's completion of its responsibilities will be determined once MMS gains an enhanced understanding of the likely timeframe for processing renewable energy leases. We plan to provide target deadlines for MMS decisions and actions in the implementation guidance that we intend to issue after the rule is approved.
Will the MMS establish and maintain a docket on each application for lease, RUE, or ROW for a hydrokinetic facility? Will the docket contain all documents in the proceeding? Will the docket be available for public review? If so, will the docket be available online?	The MMS will publish a notice of a requested lease, ROW, or RUE grant in the Federal Register. Information on proposed projects will be posted on the MMS.gov Web site, as appropriate.
Employ adaptive management to ensure that new information is applied to assess needs for modification, mitigation, and/or removal.	The rule includes adaptive management protocols, notably in subparts B, F, and H.
The MMS' rule does not account for the adverse impacts on renewables developers, such as	The rule provides opportunities for MMS to exercise flexibility in managing projects proposed

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potentially duplicative regulation between MMS and FERC, excessive costs and the bonus bid based competitive system. Nor does the rule provide a process for waiver of the regulations as they apply to small developers of new technologies. The MMS must promulgate a separate penalty and enforcement system for small companies to comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA).	by small businesses. These options include waivers for operating fees and rentals and the ability to request departures. However, many of the requirements cannot be modified because of the potential impacts on safety and the environment. The MMS can not waive compliance with other Federal laws (NEPA, CZMA, National Historic Preservation Act etc). The SBREFA does not give MMS the authority to reduce or waive civil penalties for small business. The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
Recommend that MMS use consistent terminology to describe the objective of having lessees and grantees avoid and/or minimize adverse effects to natural resources in coastal and marine environments. Under § 285.800 (a)(2), the regulatory text calls for lessees and grantees to use techniques "to minimize the likelihood of harm or damage to human life, the marine environments,..." At §285.105(a), lessees and grantees are directed to "minimize adverse effects to the coastal and marine environments..." At §§ 285.606 (a) and 285.621(d), a lessee is directed to demonstrate that activities under a SOP and a COP, respectively, will "not cause undue harm or damage to natural resources..." For both the regulated community and agency staff, the changing language seems to indicate different levels of protection, although this is not MMS's intent.	Agree. We revised these sections to use consistent terminology; all sections were changed to, "will not cause undue harm or damage to natural resources..."

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Subpart A lacks guidance on several important "regulatory-approach" issues. Subpart A should be expanded to include the following: (1) general regulatory policies that MMS will employ, (2) express commitments to adaptive management, (3) a public interest review standard (i.e., standard similar to that employed by the ACOE under section 10 of the Rivers and Harbors Act, pursuant to ACOE regulatory policies in 33 CFR part 320) for reaching decisions on leasing authorizations, and (4) a process for addressing other State, Federal, and local government requirements.	We did not adopt this recommendation. We believe the rule adequately conveys policies and processes for regulating renewable energy activity on the OCS.
Revise § 285.101 to articulate the purpose of the	We did not adopt this recommendation. We believe

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rule. It should include language pertaining to the generally-held view that power generated using the current mix of technologies can yield significant environmental benefits. The MMS should insert the following as 101(d): Promote timely development of commercially viable alternative energy projects on the OCS.	this section adequately states the purpose of the rule which reflects the purpose of EPAct. The EPAct did not include among its purposes that suggested by the commenter. While the benefits of MMS issuing leases and grants for renewable energy activities will include positive environmental impacts, that is not for purpose of the EPAct nor the OCS Lands Act, which it amended.
The MMS should recognize the need to include Indian tribes in the processes for this rule. Add Indian tribes to various parts of this section.	We have accepted this recommendation and provide for coordination and consultation with affected Indian tribes in § 285.102(e) and in other appropriate sections.
The proposed rule provides that MMS may waive requirements under its rules governing operations when needed to "facilitate the proper development of a lease or grant . . . ." Although we recognize practical considerations on which this provision may rest, we suggest MMS clarify in its rule that such waivers would not be solely sufficient as to something otherwise required under a State enforceable policy applicable pursuant to the CZMA's consistency provision.	We believe the requirements in § 285.103(b)(2) provide sufficient guidance to ensure that the use of a departure would not allow a lessee or grantee to bypass or sidetrack a State enforceable policy or requirement of any Federal law.
Section 285.103(b)(4) requires that "any departure approved under this section and its rationale must...[b]e documented in writing." It is unclear what this requirement means. If it means that MMS must approve the departure in writing and provide a written justification for the departure, then this provision should clearly state that requirement. Alternatively, if MMS' intent is only that the departure must be submitted by the applicant with a written justification, then the regulations should likewise make that clear.	Section 285.103 allows MMS to prescribe or approve a departure. The section is clear that MMS will not prescribe or approve a departure unless it meets the criteria for a departure and the supporting rationale is documented in writing by the lessee or grantee.
§ 285.105: The rule should also require project developers to coordinate and consult with stakeholders in adjoining States early in the planning and development of their proposed projects. This requirement should be included under subpart A § 285.105.	We have not adopted this recommendation. We cannot mandate potential project developers to coordinate and consult before they acquire a lease or grant, because no law gives us this authority. However, we do encourage such early coordination and consultation efforts and require them to be documented in submitted plans (subpart F).
§ 285.106: Revise § 285.106(b) to eliminate subsection (b)(4), which appears to be subsumed within subsection (b)(2) and to serve only as a source of potential confusion.	We have adopted this recommendation.
§ 285.106: Strengthen the requirements for leaseholders to prevent speculative and nuisance interference with the leasing process.	We have adopted this recommendation. We have added a requirement to §§ 285.106 and 107 that lessees and grantees demonstrate the technical and financial capabilities and intention to construct, operate, maintain, and terminate/decommission projects.
§ 285.106: The rules should restrict foreign ownership of leases.	The requirements for lease and grant holders, found in § 285.106, provide these restrictions consistent with other DOI leasing programs.

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§ 285.106: As written, it is not clear whether private universities and research institutions are eligible. These institutions may be interested in using OCS facilities for aquaculture and other types of research.	A private university or research institution would be an association of citizens, nationals, resident aliens, or corporations and would be eligible to hold a lease or a grant under § 285.106(a)(4). We did not make any changes to the regulatory text.
The rules should include an MMS process for addressing insolvent or bankrupt projects. Simply reporting financial failure is insufficient.	The financial assurance provisions in the rule will ensure compliance with all obligations under the leases or grants.
To protect public assets from irresponsible financial management, prior to issuing final permits for any and all projects that show unsound economics and the potential for failure, MMS must require a "performance bond" that is separate from a decommission.	We have not adopted this recommendation. The rule provides for financial assurance based on estimates of decommissioning costs and other financial commitments. Requiring an additional bond based on project economics is not necessary, because project economics are encompassed in such costs and commitments.
Clarify if merges, name changes, or changes of business form must be filed as assignments. The MMS has this provision to address these types of changes to a business; there is no need to request an assignment under §§ 285.408 through 285.411.	We have adopted this recommendation and changed § 285.408 to clarify that these cases are addressed in § 285.109.
Citations regarding cost recovery are incorrect and should be revised.	We have adopted this recommendation and changed the citations in both §§ 285.111 and 285.118 to 43 CFR part 4, since there are multiple sections that apply to appeals.
Expand the definition of "Natural Resources" to include natural lightscapes and soundscapes.	We have not adopted this recommendation. The definition of "Natural Resources" in § 285.112 is broad enough to include these resource values.
§ 285.112: The "alternative use" definition in § 285.112 is vague, overly broad, and does not provide sufficient information about the types of activities that would be considered as an "alternative use" of these facilities. The MMS needs to identify those activities that would be included or excluded as "alternative uses."	We have not adopted this recommendation. We do not wish to limit the possible uses that we could consider under these regulations by specifying alternate uses at this time.
§ 285.112: The "alternative use" definition in § 285.112 is unclear and confusing and contains "use" within the definition. This is circular and does not define what a "use"' consists of. You must define when a "use" exists, i.e., when is something occupied or otherwise not available for others to occupy.	We have not adopted this recommendation. We believe it is possible for an existing OCS facility to accommodate multiple alternate uses (e.g., an ocean research program could share the facility with a SCUBA diving business).
§ 285.112: The rule fails to include the definition of "adaptive management" in § 285.112, an important approach that should be defined and meaningfully applied in the proposed rule. Define "adaptive management" as "seeking continuous refinements in and improvements to the project's environmental management systems to respond to new information resulting from changed or unforeseen circumstances, new scientific and technical information, and new or updated	We have not adopted this recommendation. We include adaptive management protocols in the rule that are consistent with the recommended definition but do not believe there is a need to include a definition of the term. Whether or not the term is specifically defined will not affect implementation of the protocols.

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modeling."	
§ 285.112: The "commercial activities" definition in § 285.112 is unclear and confusing. It excludes all commercial activities that are not associated with electricity or energy production. This is problematic for two reasons: (1) There are other "commercial activities" (e.g., hotels, restaurants) that may take place which do not include the generation of electricity or energy. How are these other commercial activities defined? (2) There may be some noncommercial generators of electricity and energy, such as Public Utility Districts.	We have revised this definition to apply only to renewable energy leases and grants and not to alternate uses (e.g., hotels, restaurants). Public utilities would be captured under this definition and the definition of "commercial operations" because they would conduct activities to generate power for public use.
§ 285.112: The definitions in § 285.112 relating to leases, ROWs, and RUEs are unclear and confusing. They are circular and do not define anything other than the title of the authorization document. The definitions should make clear the substantive legal differences between each form of authorization.	We have not adopted this recommendation. There are no substantive legal differences among the types of instruments offered in the rule. The difference is in the purpose of the instrument.
§ 285.112: Definition of Lease: The definition of "lease" in § 285.112 should make it clear that a lease conveys a property right to the lessee. Therefore, the definition should be amended to state that a lease "means the right to use a designated portion of the OCS...."	We have changed the definition of lease to substitute "agreement" for "authorization" and to refer to the right to use the OCS in the lease agreement.
§ 285.112: Definition of Lessee and Operator: The language defining a lessee in § 285.112 as "all persons authorized...to conduct activities authorized in this part" is so broad that it would make a contractor, operator or even a CVA, a lessee, The "depending on context" language does not give enough guidance to make this definition helpful. Similarly, the definition of "operator" is too broad to be helpful. It should provide greater clarification as to the distinction between "operator" and "lessee." The definition of "lessee" under the OCS oil and gas regulations, § 250.105, is a better model for these regulations.	The definition of lessee was revised to read, "means the holder of a lease, an MMS-approved assignee and, when describing the conduct required of parties engaged in activities on the lease, also refers to the operator and all persons authorized by the holder of the lease or operator to conduct activities on the lease." The term operator means "the individual, corporation, or association having control or management of activities on the lease or grant under this part." The operator may be a lessee, grant holder, or a contractor designated by the lessee of holder of a grant under this part.
§ 285.112: The term "relevant federal agencies" should be defined as those that have statutory responsibilities over resources and values that could be affected by decisions made in implementing the regulations.	We have not adopted this recommendation. We believe that the term "relevant federal agencies" as used in EPAct is unambiguous and needs no definition in the rule.
§ 285.112: A definition for "undue harm" should be added. The regulations refer to "undue harm" in many sections that call for the mitigation of impacts. It is often used in conjunction with requiring operators to mitigate damage to resources. The reader is left wondering if "undue harm" is meant to mean something other than mitigating damage.	We have not adopted this recommendation. We do not believe a definition of this term is needed in the rule. Analogous DOI regulations do not include a definition of this term.

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§ 285.112: Clearly explain the terms "use" and "user." For instance, fisheries should be included in subpart A, § 285.1 02 (7) as "other authorized users of the OCS." Under § 285.102 (9), "reasonable uses" should also be clearly defined. In many instances, both commercial and recreational fishing are considered reasonable uses.	We have not adopted this recommendation. We do not believe definitions of these terms are needed in the rule. Analogous DOI regulations do not include definitions of these terms.
§ 285.112: Include natural lightscapes and acoustic studies as examples of baseline collection studies.	We have not adopted this recommendation. The examples provided in the rule and preamble are not intended to be all inclusive. They are merely examples and do not preclude lightscape and acoustic studies.
§ 285.113: Keep confidential all proprietary information associated with any resource assessment/technology testing activities including, but not limited to, all raw data, analyses, and computational models.	We have revised § 285.113 and other relevant sections to state clearly how we will protect proprietary information.
§ 285.113: Make data more available for evaluation by States and other stakeholders.	The types of data to be made available to States and other stakeholders under the rule will be guided by the requirements of the FOIA. Section 285.113 states how and when data will be made available. The EPAct does not authorize protections of data beyond what is provided in FOIA. Entering into relevant agreements with States is possible under the rule. Specific procedures for handling data will be developed and included in the implementation guidance that we intend to issue after the rule is approved.
§ 285.113: The protections outlined in proposed § 285.113 are insufficient to shield highly sensitive commercial data such as business and trade secrets. Any data that MMS obtains under § 285 will be subject to release under the FOIA, notwithstanding the objections of the party that provided the information, if a court determines that the data does not fall within one of the exemptions to disclosure under that Act (e.g., 30 CFR part 252.6).	The EPAct does not authorize protections to data beyond what is provided in FOIA.
§ 285.113: All data regarding environmental and socioeconomic effects of proposed projects should be made available to the general public. All data, including the applicant's financial information and proprietary information (i.e., intellectual property), should be disclosed to the applicable State governments, so that the State(s) may conduct thorough and accurate analyses. The MMS should consider entering into agreements with the relevant State(s) to ensure the information will be kept confidential by State agency employees and will not be disseminated outside the various State agencies or further than necessary within the State agencies.	Availability of data will be handled in accordance with § 285.113. Specific procedures for handling data will be developed and included in the implementation guidance that we intend to issue after the rule is approved. Under § 285.113(b), MMS will not release any data or information that is exempt from disclosure under FOIA, unless the submitter agrees to the disclosure, except to the extent required by law. This includes data and information that is released to any State. We will pursue agreements with States on this issue, as appropriate.

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The MMS should require wind speed data submitted by an applicant to be verified by an independent third party. The data should be for at least three (3) years of observation.	The rule would allow such an approach. We will determine the amount and type of resource data to require to support our decision-making on a case by case basis in lease and plan processes.
The MMS should not compel those responding to request for information to submit the required information by a specific date.	We have not adopted this recommendation. We believe that due dates for responding to such requests are necessary for efficient and responsible program analysis.
§ 285.116: Section 285.116 states that MMS may request information at any time, and lessees and other parties are required to respond in a timely manner, or they will be subject to enforcement. A reasonableness standard should be applied to this broad grant of power to ensure that applicants and other stakeholders are not required to "timely" meet unreasonable deadlines.	We have removed the following sentence from § 285.116: "You must respond to such a request in a timely manner, as established in the request." As a matter of policy, we will be reasonable in both our information requests and any enforcement actions.
Requesting information from lessees and other parties - MMS can only require the lessee to meet timeframes, not anyone else.	We have revised § 285.116 to clarify that parties other than lessees, applicants, operators, or holders of ROW grants, RUE grants, or Alternate Use RUE grants are not required to meet timeframes for information requests from the Director.
We recommend that the following sentence in § 285.116 be modified, as follows: "Such requests for information could relate to the identification of environmental, technical, regulatory or economic matters that promote or detract from continued development of alternative energy technologies on the OCS."	We have adopted this recommendation and added "regulatory."

SUBPART B—ISSUANCE OF OCS RENEWABLE ENERGY LEASES	
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Clarify which areas are subject to leasing under the current program. Do the water depths from the Final Programmatic EIS apply? The final Programmatic EIS for the Alternative Energy Program examined areas with water depths of 100 meters or less for wind and wave technologies and areas with water depths of 500 meters or less for current technologies. Will these criteria be the basis for determining the initial areas subject to leasing for alternative energy projects by MMS's program unless a supplemental programmatic EIS is conducted?	The water depths were included in the Programmatic EIS as reference points for NEPA review of likely scenarios, and actual leasing under the rule will not be limited by them. Various activities involving different technologies and water depths will be considered under the rule and subsequently undergo appropriate individual NEPA analysis.
Add details on the proposed lease area assessment process.	Further details on the lease area assessment process have been added to the discussion of both the leasing process and NEPA review process in the preamble to the final rule. Also, MMS will issue implementation guidance with further explanation after the rule is approved.
Change provisions allowing industry to identify areas available for leasing – Establish a 3-year planning cycle during which limited strategic	Such an approach is possible under the rule.

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areas are selected where commercial leases for alternative energy projects would be offered. Each 3-year cycle would be initiated with the identification of areas to be offered by MMS, followed by competitive leasing and environmental analysis of the site-specific projects offered, and the cycle would end with the issuance of leases. For alternative energy development projects, only areas identified by MMS as having adequate energy resources, appropriate water depth, proximity to a load center, and minimal environmental impact would be offered. The specific localities would be determined in coordination with the affected States and would be subject to adequate interest by industry. Each area identified would be evaluated through the NEPA process, and specific locations within the area could be identified as unacceptable for development.	
Add language that makes it clear that areas on the OCS may be offered for lease once a determination is made that development in such areas will be in accordance with the various responsibilities of MMS, as set forth at § 285.102, which include protection of the environment, and state that if conflicts arise with the stated criteria that cannot be resolved with respect to a given tract, that area will not be offered for lease.	We have not adopted this recommendation. Section 285.102 clearly states that MMS must ensure that all activities—which would include leasing—are carried out in a manner that provides for the responsibilities listed.
We support the exclusion of the sites listed in this section from those areas to be made available for leasing, including units of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System or any National Monument. Other designated resource areas of interest to coastal States include National Estuarine Research Reserves, units of the National Estuary Program, and identified EFH. Alternative energy research and development should not necessarily be included in or excluded from these areas, rather such activities must be fully consistent with the respective program regulations.	The rule provides for coordination and consultation with Federal agencies, through which consistency with respective program regulations will be assured.
Concerning coordination on various biological components of the proposed rule, such as surveys and migratory bird consultation, the proposed rule does not discuss or reference MMS's responsibilities regarding the Migratory Bird Treaty Act.	The final rule addresses the protection of migratory birds in several major ways. As described in the preamble, all NEPA reviews must examine biological resources including marine birds. In the rule, NEPA reviews occur at the lease issuance stage, as well as, site assessment, construction and operations, and decommissioning stages. In addition, the rule requires that biological surveys, which include descriptions of the presence of sea birds, be submitted with the SAP, COP, GAP and

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	decommissioning application Further, we are working with FWS on an MOU to implement E.O. 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds" (January 10, 2001).
The proposed rule does not mention the Fish and Wildlife Coordination Act (FWCA) which applies to water resource development projects. Although a 1982 Solicitor's Opinion states that the FWCA does not apply to mineral development or oil and gas projects on the OCS, the Service believes the proposed alternative energy development program in the OCS, which is the subject of MMS rule, would be the type of project to which the FWCA would apply.	We have reviewed the 1982 Solicitor-Opinion, "the Fish and Wildlife Coordination Act Does not Apply to OCS Leases and Permits Issued by the Secretary," and have concluded that it is also applicable to leases and grants issued for renewable energy and alternate use activities.
Select lease sale areas to minimize effects on existing uses - do so by requiring coordination between the applicant, State and local governments, and other stakeholders early in the site selection process.	We plan to make sound decisions to balance ocean uses appropriately. We will consult and coordinate extensively with relevant organizations at the national, regional, state, and local levels to receive input relating to the siting of renewable energy projects and the development of program priorities.
§ 285.222: Proposed § 285.222(a) should be revised to set a 30-day deadline for acceptance or rejection of the high bid. In addition, if MMS declines to revise proposed § 285.107 to establish meaningful bidder competence requirements, proposed § 285.222(b) should be changed to provide for review of high bidders' qualifications to make productive use of alternative energy leases before the lease is awarded in place of conducting a bid adequacy review. American Wind Energy Association believes that this provision (MMS reserving the authority to nullify an auction because the competitively determined value of a lease falls short of a minimum value that MMS has placed on it) is misguided.	We have not adopted this recommendation. We believe that the proposed 90-day deadline is more practical, recognizing that bid review may be accomplished in less time. We have revised bidder qualifications in § 285.107. We have decided to establish a bidder competence requirement, but that in itself is not considered sufficient to protect the public interest. To ensure receipt of a fair return, MMS intends to rely primarily on area-specific minimum bid levels and auction designs that encourage competitive bids. Where competition clearly prevails, MMS expects to make high bid acceptance and rejection decisions within 30 days following the sale, absent the presence of unusual bidding patterns. The 90-day post-sale evaluation period is generally intended to apply in those unusual cases where bid adequacy procedures must be used.
The MMS should delete the regulatory reference to minimum bids and provide additional guidance as to the bid evaluation criteria it might announce and apply.	We have not adopted this recommendation. We believe setting a minimum bid is necessary to inform auction participants of the smallest bid amount that could be accepted in a sealed bid auction, or to set the level for opening bids in an ascending bid auction. Further, minimum bids can serve as a deterrent to strategic or speculative bidding. Bid evaluation procedures will be announced in the Proposed Sale Notice.
§ 285.223: Proposed § 285.223 should be revised to eliminate references to (i) selection by lots to break ties; and (ii) MMS reviews of "bid adequacy." A selection system that incorporates some element of merit, such as the credit-worthiness of the company or individual, is	We have revised § 285.223 to provide for breaking ties by further bidding rather than by lot. Also, we have revised the qualification requirements in § 285.107, as recommended by commenters.

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preferred to selection by lot. In addition, if MMS declines to revise proposed § 285.107 to establish meaningful bidder competence requirements, proposed § 285.222(b) should be changed to provide for review of high bidders' qualifications to make productive use of alternative energy leases before the lease is awarded.	
The MMS's competitive bidding methodology is at odds with FERC's first-through-the-door approach for sites that straddle the 3-mile jurisdiction boundary.	The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
Allowing bidders to define a set of tracts on which they wish to submit a package bid should increase interest in a sale because it will help ensure that bidders acquire the tract most suitable for their particular project.	The rule allows this approach.
Package bidding protocols and rules would dramatically increase the complexity of the alternative energy leasing process. The MMS should evaluate the costs and benefits of package bidding, and consider the results of the first rounds of leasing in the continuing evaluation. Those first rounds of leasing, however, should be conducted in a more conventional format, based on MMS's informed judgments concerning the appropriate size of leases offered to all bidders.	While we will be able to proceed with package bidding under the rule, it is likely that a more conventional approach will be used early on, and MMS will consider these early leasing results in considering different approaches in the future.
Bidders should have flexibility to designate a package of tracts but should not be burdened with intertract competition. MMS should not be attempting to inflate or manufacture artificial interest where none exists with intertract bidding, but should conclude that no competition exists and proceed to issue a noncompetitive lease for that tract.	The MMS may choose to employ intertract competition to assess bid adequacy in cases where there are multiple tracts of interest but few bidders per lease, and when bids submitted for a tract are otherwise not a good indicator of true market competition. The sealed bid auction format is administratively compatible with the application of a ranking and filtering procedure to identify the set of highest bids per tract before MMS decides which of those tracts to lease, and reduces reliance on a calculated reservation price. The object of intertract competition would be to provide signals through the bids, which serve to assist MMS in leasing areas with the most valuable sources of energy to the bidders that value those areas most highly.
For intertract competition, MMS would need to assume the role of electrical supply planner The complexity of an intertract bidding system would add significantly to the time and expense required to execute leases, and the system would complicate MMS competitive interest determinations.	A broader sale that utilizes intertract competition could be held for many reasons. Overall, the competitive lease process leading to a lease sale on the OCS could take more than a year to complete. In all likelihood, the information submitted in response to the initial request or after the call for nominations could only give a partial indication of the extent to

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	which entities hold an interest in leasing an area. The cost to MMS and potential lessees of complying with NEPA requirements before a sale is held may be lower if multiple tracts are analyzed. The MMS could offer tracts for lease that comprise an area that exceeds nominations, and use intertract competition as a fair-market evaluation technique to determine how many tracts receiving bids can be leased. A programmatic goal could aim to increase the total number of tracts under lease in the sale area, to maintain the number of tracts leased at a constant level, or to allow the number of tracts under lease to decline, given the level of bidder interest. We do not believe MMS would need to assume the role of electrical supply planner. However, it is possible that MMS will be put in a position to design lease sales that are responsive to electrical supply circumstances and needs identified by stakeholders including, State and local governments, utilities, and others.
Allow applicants to bundle together several tracts which have the best potential for commercial development - applicants have been actively investigating available and developing technology and the existing environmental data for various sites, and are in the best position to determine whether one, two, or more tracts are necessary to support commercial development.	The rule allows this approach.
Sealed bids are the best method - Most bidding activities will be time bound due to a response to a utility RFP. This window will last from 60 - 90 days. If control of the site is not able to be established prior to the submittal of the bid, then the bid will most likely not be evaluated further. Developing a site at an approximate cost of $6,500,000 per site in the hope that the Integrated Resource Plan or RFP may occur within 5 years requires the project developer to assume significant financial risk. A single round of bidding is a more equitable process than ascending bidding and is the simplest, most straight forward method.	We recognize that under certain conditions, a sealed bid auction can yield better results than an ascending bid auction. Such an auction would help ensure that MMS receives a fair return for leases awarded while prompting a minimal number of tract specific assessments to calculate reservation prices. We will review information received in response to a Request for Interest and a Call for Information and Nominations before announcing a sale design and auction format in a proposed notice of sale.
Adopt a multiple-factor bidding process for leases that fully account for environmental and economic externalities, environmental best practices, technological superiority, past experience, future plans, stakeholder engagement and consultation, and the efficiency of the proposed project.	We have adopted this recommendation and revised § 285.220 and other relevant sections to provide for such a process.
Section 388 of EPAct requires that MMS receive a "fair return" for any lease, easement, or ROW. Until commercial production of wind energy on the OCS is demonstrated through	The MMS has chosen to retain the flexibility to implement bid adequacy procedures, when needed to ensure the public receives a fair return for renewable energy lease rights conveyed. The agency believes

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implementation of multiple projects, a "fair return" to the United States should be a minimal standard. It certainly should not be used as a basis to reject a good faith bid for a lease received through a public and competitive process in the early years of the Alternative Energy Alternate Uses (AEAU) regulatory program. The MMS should adopt a policy wherein the agency will negotiate with applicants to ensure that areas of interest get developed, even if bids fall below an artificial price signal which may not reflect actual market value. The Government should not need to be compensated for such a lease, as it is not foregoing anything that would require a "return." The base rental rate and operating fees will cover costs to MMS of operating and overseeing the program and will deter insincere applicants not acting in good faith.	that a combination of bonus, rent, and operating fee payments should be balanced in a way that encourages successful development. The MMS will establish categorical lease terms, when reasonable, to simplify leasing by avoiding the complex analysis that would be required to negotiate lease terms for each proposal on the OCS. The MMS has added a multiple-factor auction format to the processes it may utilize to award leases competitively (§§ 285.221 and 285.222). The agency does not anticipate that the format would have wide application, but expects that the public will benefit in cases where the process makes it possible for the Government to obtain commitments from industry to do innovative research and technology development to test and demonstrate a new project concept.
§ 285.214: Proposed § 285.214 should be revised to clarify that MMS may, over time, issue multiple Calls for Information and Nominations covering any particular region of the OCS.	We have not accepted this recommendation, because we believe it should be understood that multiple Calls may be issued for the same area over time. We have added additional explanation in the preamble.
We suggest one of the sections of subpart B should apply to the matter of ownership of a commercial lease. Given the investment of government time and effort to evaluate a project, a commercial lease should not be transferrable or saleable to another party.	We do not see a need to prohibit assignment of OCS renewable energy leases, and we believe that subpart D and related provisions appropriately provide for transfers that will maintain diligence requirements promoting development of OCS renewable energy resources.
Develop a mechanism to provide compensation to mitigate adverse impacts to coastal resources or uses.	We have not adopted this recommendation. The EPAct does not require or authorize a mechanism to provide compensation to mitigate adverse impacts to coastal resources or uses.
Competition for alternative energy leases will be limited. An ascending bid process would be preferable, and sealed bidding should not be used.	We have not adopted this recommendation. The rule provides for both sealed and ascending bidding auction formats. The MMS will consider issues such as these in selecting auction formats under the rule on a case-by-case basis.
§ 285.200: Section 285.200(b) states that a lease confers on the lessee the right "to one or more project easements without further competition...." It also provides that lessees must apply for project easements as part of the COP or GAP. The regulations should also make clear that the lessee may later amend the COP or GAP and request modified or additional easements if necessary, without being subjected to further competition.	We have not adopted this recommendation. We believe that the regulations clearly provide for amending (revising) plans and that project easements could be covered in such amendments. Additional explanation on this topic has been added to the preamble.
The MMS should seek to avoid all unnecessary delays in the leasing process and should require a competitive leasing process only in situations where more than one applicant has shown	As explained in the preamble, we do not believe that competition should be limited only to situations in which overlapping interest is indicated. We have maintained the discussion of six approaches to

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serious interest in the same area and where the proposed lease areas overlap. If there is an initial indication of an overlap among areas of interest for development, the applicants should be given an opportunity to consult and reach agreement on amendments to the proposed areas such that there is no overlap. The MMS offered six options on the process for deciding conflicts when two proposed projects overlap. A seventh option was proposed. The MMS should consult with the applicants for Projects A and B to give each applicant the opportunity to amend its application to avoid the overlap. Only if the applicants are unable to agree should MMS consider one of the other alternatives. Of the options MMS proposed for consideration, only Option 2--competitive bidding only for the overlapping areas and noncompetitive lease issuance for the nonoverlapping areas--should be used.	partial overlap as options for proceeding under the rule. We have not adopted the additional approach recommended due to concerns about adverse effects on competition. Also, we have adopted additional qualification requirements in § 285.107.
§ 285.231: In § 285 .231 (b), MMS must issue a public notice of the noncompetitive lease request. Inordinate delay is a great concern. This is an example of a section where MMS should prescribe a time deadline to issue the public notice, not to exceed 20 days. This section also should provide a more detailed explanation of what constitutes a "public notice" if MMS intends it to constitute something less than publication in the Federal Register. The same comment applies to § 285.307(a) (RUEs and ROWs).	We have not accepted this recommendation to place a deadline in the rule. However, we will include a target deadline for this and other MMS actions in implementation guidance we intend to issue after the rule is approved. Also, we believe that public notice means a notice published in the Federal Register (as we have done in implementing the MMS interim policy on limited leasing).
§ 285.231: Under § 285.231 (d), if MMS makes a determination of no competitive interest, it will publish a notice of determination in the Federal Register. The MMS again should establish a date, not to exceed 30 days from the closing date of the request for competitive interest, to make such determination.	We have not accepted this recommendation to place a deadline in the rule. However, we will include a target deadline for this and other MMS actions in implementation guidance we intend to issue after the rule is approved.
Allow lease applicants to designate proprietary data and information as confidential business information (CBI), and such information should not be made publicly available unless an interested party can establish why the information is not proprietary or its designation as CBI is otherwise inappropriate.	We have revised § 285.113 and other sections of the rule in subparts B, F, and G, as well as relevant parts of the preamble, to clarify that certain information will be withheld from public disclosure as CBI under FOIA exemption 4.
Either reduce the amount of detailed information required (Call for Nominations) or guarantee proprietary treatment for the submitted information.	We have added a statement that certain information cited in § 285.213(d) will be withheld from public disclosure under FOIA exemption 4.
Send any notices to a "contact list" which would include the e-mail addresses or physical	We have not adopted this recommendation in the text of the rule. We do not believe it would be

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addresses of any parties that commented on the lease form or this rule. It is easy to miss "Calls" and "Requests for Information" in the Federal Register.	appropriate to include the specifics of a "contact list" in the regulatory text. However, such contact lists may be used by MMS in implementing the rule, and we will take measures to communicate promptly and efficiently regarding notices.
Apply federal consistency and early coordination standards/rules to access easements needed for the power transmission cable.	Project easements will be subject to CZMA consistency requirements and applicable coordination provisions in the rule.
Adopt the use of a settlement agreement type process, like that used by FERC, to ensure an opportunity for early stakeholder involvement and compatibility with the Territorial Sea Plan (TSP) and other regulatory programs.	We have not adopted this recommendation. We do believe that a settlement agreement process could inhibit the flexibility (e.g., adaptive management) that will be necessary in the OCS AEAU Program.
Enter into formal, well-defined relationships with as many of the regulatory bodies as feasible - e.g., FERC and each costal State's agencies that would be involved in the development of offshore energy projects.	We believe the rule provides for establishing well-defined relationships necessary for coordination and consultation in authorizing OCS renewable energy projects. The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
Include a requirement under subpart B to coordinate and collaborate with Federal, State, and local agencies in developing options for environmental analysis and leasing under § 285.211(b).	We have not adopted this recommendation. We believe that § 285.211 and other provisions adequately call for consultation in developing leasing options and conducting NEPA and other environmental analyses.
Note the consultation requirement for Assateague Island National Seashore in the final rulemaking as a condition of any future actions associated with alternative energy development and production and alternate uses of facilities on the OCS in proximity to and with potential to affect this park - consultation is a requirement of the park's enabling statute, located at 16 U.S.C. 59f-11(b).	We note this requirement and will ensure that it is implemented in any relevant actions taken under the rule. Such requirements will apply absent specific mention in the rule, so revisions to include such requirements are unnecessary.
Develop joint procedures through MOUs between the National Park Service (NPS) and MMS that address coordination and collaboration among Federal agencies at the Washington and regional level.	The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties and enter into MOUs as appropriate. We may pursue appropriate MOUs with the NPS in implementing the rule.
While MMS states that it will consult with "relevant federal agencies" (§ 285.203), it is not clear that this includes the Department of the Defense (DOD) or pertains only to those agencies with jurisdiction under the environmental laws. For § 285.203, recommend adding "including the Department of Defense" after "relevant Federal agencies." Alternatively, MMS could state in the preamble to the final rule that DOD is one of the relevant federal agencies with whom it will coordinate and consult before issuing a lease.	We have not adopted this recommendation in the rule text because it should be understood that DOD is a relevant Federal agency. We have specified DOD as a relevant agency in the preamble.

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Work with DOE, NOAA, FWS, and FERC to identify the best placement of alternative energy pilot sites.	This will be possible under the rule.
The MMS should clearly delineate Federal agency roles for review of lease requests and environmental impact review for offshore wind farms.	We have not adopted this recommendation in the text of the rule. We will attempt to outline agency roles in the implementation guidance we intend to issue after approval of the rule. The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties and enter into MOUs as appropriate.
Send the notice of proposed sales to the affected Fishery Management Council as established under the Magnuson-Stevens Act.	We have not adopted this recommendation in the text of the rule. Such a notification protocol may be established in implementing the rule and documented in the implementation guidance we intend to issue after approval of the rule. The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties as appropriate.
Regarding lease forms, MMS should specify the affected parties and lay out the mechanism to ensure consultation. Interested Federal and State agencies, as well as the alternative energy business community and general public, should be allowed to comment on draft wording.	The lease form is not included in the rule. We intend to develop a model lease form through a public process that will invite all interested and affected parties for input. Subsequently, consultation on specific leases will be conducted through the relevant means and processes outlined in the rule.
Advise lessees and grantees to engage affected agencies early in the process, to help eliminate errors in the location and boundaries of park units and other areas. Several park units have boundaries that extend significantly offshore, like Assateague Island National Seashore in Maryland and Virginia, and Olympic National Park in Washington, which extends 25 to 40 miles from the shoreline.	The rule includes several provisions encouraging early consultation with affected agencies, notably in subparts B and F.
The rule should contain sample or template documents to guide consultation requirements. For a commercial lease, one option is to create an agreement (similar to a settlement agreement used in a FERC license application) that is incorporated into the sale notice and is expanded upon in the site assessment phase.	We have not adopted this recommendation in the text of the rule. As stated elsewhere, we do not wish to adopt a settlement agreement process, and we believe there are ample provisions in the rule that encourage early consultation. Also, we will expand on the rule provisions in the implementation guidance we intend to issue after the rule is approved.
Employ a regional/State stakeholder process when conducting analysis, in cooperation with affected States and Federal agencies, on factors useful to determining future leasing zones	Such an approach would be possible under the rule. While it is not necessary for MMS to outline such a process or commit to it in the regulatory text, we fully intend to coordinate and consult extensively with stakeholders.
Other State entities (e.g., the Department of Natural Resources) not part of the State Governor's Office(s) should be included in each project "task force," (not all relevant State agencies are cabinet agencies), as should tribal governments.	We have not adopted this recommendation in the text of the rule. Interested and affected State agencies designated by the Governor may be included in a task force, and tribes also may be included. The composition of relevant task forces will be discussed in more detail in the implementation guidance we intend to issue after the

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	rule is approved.
Working with each affected State to develop an MOU regarding timing and content of Federal Consistency review and the ability for MMS to develop such Memoranda should be codified in the proposed regulations.	Such an approach would be possible under the rule. The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties and enter into MOUs as appropriate.
§ 285.230: (1) Add the following sentence to the end of subsection (e) of proposed rule 285.230: "If the governing body of an affected local government has enacted an ordinance establishing a formal consultation process for selecting areas for the siting of alternative energy facilities in the OCS under this part, you must certify that that you have used, or attempted in good faith, to use that process to identify appropriate parts of the OCS for your proposed alternative energy project." (2) Add a new paragraph (5) to proposed rule 285.211(b) to read as follows: "(5) If the governing body of an affected local government has enacted an ordinance establishing a formal consultation process for selecting areas for the siting of alternative energy facilities in the OCS under this part, before MMS initiates a competitive lease process for part of the OCS involving that affected local government, MMS will first attempt to use that process to identify appropriate parts of the OCS."	We have not adopted these recommendations. While we strongly believe that local consultation requirements and processes should be considered, they do not have primacy in the authorization of renewable energy activities on the OCS. We intend that MMS and project proponents will coordinate and consult with local interests as necessary, but we will not mandate local requirements in the rule.
The rule should expressly provide the State a separate opportunity to comment on the terms of any proposed lease.	The rule provides States the opportunity to comment on the terms of proposed leases (§§ 285.211 and 216).
If the right to a project easement includes the right to pass through State waters, then there needs to be some kind of explicit acknowledgment of the need for consultation with the affected State(s).	Subpart F of the rule includes provisions for consulting with affected States on project easements, which are elements of plans (COP and GAP) that will undergo State review and be subject to CZMA consistency requirements.
The rule should clearly state that MMS will consult with affected parties, including State and local governments, to determine mitigation requirements.	The rule provides for such consultation in § 285.211, and the preamble discussion of that section states explicitly that we will consult with State and local officials on mitigating stipulations and conditions.
Add affected Indian tribes—"For leases issued under this part, by either the competitive or noncompetitive process, MMS will coordinate and consult with relevant Federal agencies, with affected Indian tribes, with the Governor of any affected State, and the executive-of any affected local government, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act and by other relevant Federal statutory requirements (e.g. Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA)). Affected Indian tribes	We have added "affected Indian tribes" in § 285.203, and added a definition of such tribes in subpart A. We have not added a citation of the MMPA, because we wish to list a number of examples of relevant laws rather than an exhaustive list. The fact that a particular law or requirement does not appear on the list does not affect its potential applicability.

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are those Indian tribes with treaty or other reserved rights that may be impacted by a lease issued under this part."	
In the case of Connecticut, utilize the online Federal Consistency Worksheet to comply with State coastal management programs.	Such an approach would be possible under the rule.
Work with coastal States to simply and clarify framework for processing CZMA reviews and to incorporate CZMA compliance standards into lease terms. The competitive lease process may require up to three different CZMA determinations under various subparts of the CZMA.	The rule provides for appropriate consultation, and MMS plans to work with interested and affected parties as appropriate. We intend to work with the States as suggested.
Add new § 285.2xx: What steps will MMS employ to ensure coordinated and effective application of the CZMA process?	We have not adopted this recommendation per se. However, we have added new language to this effect in subparts B, C, and F, have expanded relevant preamble discussion, and will provide more details in the implementation guidance we intend to issue after approval of the rule.
While there may be opportunities to streamline project review, it remains important that CZM Programs are able to review the project at each stage: lease sale, SAP, and the subsequent COP - the project size, design and subsequent coastal effects could be markedly different between the lease and COP stage.	The rule provides for project review in stages under CZMA, at § 285.612 for the SAP, § 285.627(b) for the COP, and § 285.647 for the GAP.
Include review by the agencies implementing each State's CZM Program. Additionally, the CZMA should be added in both sections as one of the applicable Federal acts.	The rule provides for State CZMA review, and we expect such review will be conducted by appropriate State implementing agencies. We do not believe it is necessary to cite all individual applicable Federal laws.
The rule should include a completed matrix for easy reference by CZM Programs and applicants to avoid confusion and to increase predictability; timelines for each type of review may also prove to be helpful.	We have not adopted this recommendation per se. However, we have added new language to this effect in subpart F, have expanded relevant preamble discussion, and will provide more details in the implementation guidance we intend to issue after approval of the rule.
It is unclear if the certification is required to include an evaluation of consistency with a State's federally approved CZM Program or is meant to address only consistency with energy plans. This language is used in several sections of the proposed regulations and should be clarified in all sections where it is used.	With respect to the commenter's concern that we have used certain language (certification) in several sections and that it should be clarified, we have deleted § 285.212(e) entirely and have changed "certification" to "a statement" in § 285.230(e). Absence of "certification" should clarify that we are not referring to actions under the CZMA.
Allow 30/60 calendar days to review terms and conditions and execute a lease - 10 business days may be insufficient if the developer companies haven't seen the leases prior to receipt, (the requirements in § 285.224(a) would also have to be met in this same timeframe.)	We have not adopted this recommendation. We believe 10 days is reasonable for executing the lease, paying the remainder of the bonus, and providing financial assurance. Companies will be aware of lease terms and conditions well in advance of lease issuance (in sale notices for competitive offerings and in lease negotiations with MMS for noncompetitive offerings).
The 10-day business deadline for successful	We have not adopted this recommendation. As

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bidders to submit 80 percent of its winning cash bonus plus 6 months rental and the cost of initial financial assurance measures is unreasonably short.	stated previously, we believe the 10-day timeframe is reasonable. We have increased the timeframe for paying the first 6 months' rent to 45 days in order to give lessees the opportunity to relinquish unwanted acreage (see preamble pertaining to subpart B).
It is unclear how the process described by MMS will permit developers to respond in a timely manner to RFPs issued by utilities or other buyers. Developers will be hard pressed to respond to the bid requirements and also procure the necessary control of the site to ensure that their bid demonstrates "control of the site."	The rule provides the means for developers to obtain control of the site. It will be up to the RFP offerors and the developers to work out the most efficient procedures to meet their individual needs as efficiently as possible. If MMS can help in such efforts with coordination and consultation mechanisms, we will seek to issue clarifications in the implementation guidance we intend to issue after the rule is approved.
Sixty days for submittal of a SAP too short - Because MMS will seek comment and competing offers for all requests for noncompetitive leases, an applicant has no certainty of receiving the lease that they requested and, thus, should not be obligated to submit an SAP in such a short time after the lease issuance.	We believe that an entity submitting an unsolicited request for a lease should have a very good idea of its intentions for that lease at the time it submits its request and should not need more than 60 days to submit a SAP. However, it should be noted that under revised § 285.103, a departure from this deadline requirement may be approved on a case-by-case basis.
Define the statutory phrase a "competitive basis lease" to "include leases with any bidder selected as part of a request for proposals issued by a State, a State agency with jurisdiction over utilities or electricity rates, a subdivision of a State, or a regulated utility" OR provide that there would be a strong presumption that "no competitive interest" exists in those situations where a bidder has been selected as part of an RFP issued by a State, a State agency with jurisdiction over utilities or electricity rates, a subdivision of a State, or a regulated utility.	We have not adopted either of these recommendations. After this rule is approved, all proponents of renewable energy projects on the OCS must acquire lease rights in accordance with the rule. As stated elsewhere, we intend to coordinate and consult as necessary to assure efficient sequencing of actions by relevant entities under the rule.
Consider strategies, in addition to diligence requirements, to ensure that individual developers could not tie up large areas of the OCS, prohibiting other development interests and other uses.	We believe the rule's diligence measures and new qualification requirements in § 285.107 are adequate for this purpose.
Monitor developments under the lease to ensure that lessees are actively working to develop sites - require ongoing financial investment such as meeting specified work commitments or payment of 'delay rental' in lieu of work commitment; if they are not actively working to develop sites, MMS must exercise its powers to rescind leases and restart the bid process	The rule provides for such monitoring and action by MMS to assure diligence. Relevant provisions are included in subparts B, D, and F.
§ 285.221: The MMS should revise proposed § 285.221(a) to conclude with the statement that "In deciding among these auction formats and specifying auction details in the Proposed Sale Notice and Final Sale Notice, we will guard against auction procedures that invite sham and	We have not adopted this recommendation in the text of the rule but have added discussion along these lines in the preamble.

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speculative bidding by placing undue weight on contingent promises of future payment."	
Address the ROW easements early (at the lease sale or SAP stage), rather than later as part of the COP or GAP. Doing so may avoid potential conflicts with other users and provide greater certainty and lower cost to project developers.	We have not adopted this recommendation in the text of the rule. While we agree that it would be desirable to address the project easement as early in the process as possible, we believe that in most cases it will not be possible to review and approve locations and activities until the COP stage. However, it would be possible under the rule for developers to pursue earlier review and approval, (e.g., by submitting project easement information in a combined SAP/COP). We have revised the discussion in the preamble to address this issue.
The rule should clarify how appropriate corridors will be established and who will determine the need for multiple corridors. In addition, if a portion of an applicant's proposed transmission corridor easement crosses an area proposed for lease by another company, how will use of the area be resolved?	We have not adopted this recommendation in the text of the rule. Transmission corridors will be considered case-by-case in the review and approval of project easements and transmission ROWs, and this may include the consideration of multiple corridors, if needed. Overlapping project easements and ROWs may be accommodated under the rule. We have revised the discussion in the preamble to explain these issues.
How will MMS handle project easements that may need to run through the territory of another lessee?	Overlapping leases, project easements, and ROWs may be accommodated under the rule. We have revised the discussion in the preamble to explain how.
Project easements should be evaluated in the same manner as project areas, and MMS should ensure that a fair return for this right is granted.	This recommendation has not been adopted. We believe that it would not be practical to evaluate the actual acreage of a project easement that, in most cases, will not be known at the time of lease issuance. Therefore, under the rule MMS would approve the project easement subsequent to lease issuance and charge a rental to receive fair return. This is similar to the authorization of pipelines on the OCS, which does not entail charging more than rent to achieve fair return.
The OCS alternative energy rule should require an Economic Viability Plan (EVP), and the lease rights must be subject to an acceptable EVP demonstrating that the project is economically viable.	We have not adopted this recommendation. We believe it is beyond the purview of MMS to attempt to conclusively determine the economic viability of a project. Under the rule we will assume (and it is reasonable to do so) that a developer who goes to the expense of acquiring a lease and posting securities to ensure site integrity through subsequent phases of development is doing so in pursuit of a profitable venture.
If MMS adopts its existing "interim lease," or a similar "interim RUE limited lease," concept into the AEAU regulations, the agency could reduce the time for placing a met tower for a commercial lease by 18 months or more, thereby dramatically shortening the development timeline.	We have not accepted this recommendation in the text of the rule. We explain in the preamble how developers could pursue a limited lease in concert with a commercial lease to expedite authorization of necessary data collection activities (e.g., installation of a meteorological tower).

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§ 285.231: In § 285.231(a), MMS states that it will not consider unsolicited requests for a lease "in an area of the OCS" scheduled for a competitive lease sale, However, MMS does not explain how large an "area" may be. If the area that MMS is contemplating is large, this provision would discourage opportunities for noncompetitive lease development.	We do not intend to discourage noncompetitive lease development with this provision but wish to make clear that those areas in which there is demonstrated competitive interest will not be available for noncompetitive lease issuance. However, since an area proposed for a competitive lease sale could vary in size significantly, we do not think it would be reasonable or desirable to provide a size limit in the rule. We have added discussion of this issue in the preamble to clarify our intentions.
§ 285.231: As stated in § 285.231(b), MMS must issue a public notice of the noncompetitive lease request. In light of possible delays, MMS should prescribe a time deadline for issuing such notices and related findings. This same comment applies to § 285.307(a) for RUEs and ROWs.	We have not adopted this recommendation. We do not wish to establish firm deadlines for these actions at this time. As we gain experience in implementing the program, we may consider such deadlines at a later date.
If a developer files an unsolicited request for a limited lease, and then finds that MMS will offer the area competitively, the developer nominating the lease should be allowed to withdraw its interest and receive a refund of their acquisition fee. Little is to be gained from such a developer being forced to under-bid just to get his funds returned.	We have not accepted this recommendation. The MMS will incur expenses related to processing an unsolicited request for a lease. In cases where an area would be offered competitively, MMS believes retention of the acquisition fee is appropriate where the entity that originally requested the lease does not bid. In the worst case, fee retention allows the Government to lower its costs in the event a sale is cancelled due to a lack of participation. Further, we believe an acquisition fee is appropriate to begin the noncompetitive process and have set the fee at a level intended to discourage speculation but not inhibit interest. Applicants who are not willing to compete should not be allowed to start a process and then withdraw without forfeiting the fee.
The MMS could have unconstrained discretion to decide whether particular tracts should be leased on a noncompetitive basis. It is recommended that MMS change the regulation so that the agency would limit its authority to reject a request for noncompetitive leasing to cases where the acreage would be offered in a lease sale or when the acreage is not suitable for reasons that would be equally applicable to leasing on a competitive basis.	We have not adopted this recommendation. The EPAct requires that renewable energy leases be issued competitively unless the Secretary determines that there is no competitive interest. Also, we note that the authority to issue leases is discretionary.
Given the investment of Government time and effort to evaluate a project, a commercial lease should not be transferrable or saleable to another party. If the lessee desires not to build and operate the project, the lessee should return the lease to MMS.	We have not adopted this recommendation. Subpart D authorizes assignments and relinquishments. It would not be in the public interest to establish a policy that could inhibit business transactions between qualified entities.
The MMS should immediately propose a lease form for public review and comment so that, as soon as possible after the AEAU regulations become final, MMS will be ready to proceed with lease issuance.	We will develop a lease form in a timely manner that will not result in any delays in issuing leases.

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Some technology does not lend itself well to the proposed 3 nm x 3 nm standard "squares" proposed in the regulations - A marine renewable project might cross a portion of two or more contiguous OCS blocks (this same issue would also apply to the noncompetitive lease process). The lease size would be specific to a proposed lease activity - MMS should recognize that environmental concerns may vary with lease size and should be addressed accordingly.	As explained in the preamble to the proposed rule, lease size will be determined on a case-by-case basis to ensure it is appropriate for the anticipated activity, and leases may be smaller than 3 nm x 3 nm or larger. Environmental concerns and their relationship to lease size may be appropriately addressed under the rule and NEPA.
§ 285.206: Replace § 285.206(b) with: The lease size will correspond to MMS's determination of the minimum area that will allow the lessee sufficient space to develop the project and manage activities in a manner that is consistent with the provisions of this part. The minimum area will include, where appropriate, space needed for adjustment to the locations of proposed structures based on detailed site characterization work and sufficient space between project areas.	We have not adopted this recommendation. We believe the suggested wording is not necessary, because the existing wording in the section of the rule cited by the commenter provides for the lease size to correspond to MMS's determination and to accommodate adjusting location of structures.
Clarify the lease size in the final rule, assuring a lessee sufficient setback from adjoining tracts to ensure unimpeded access to wind resources, notwithstanding subsequent development.	We have not adopted this recommendation in the text of the rule. We have added explanation in the preamble to clarify that providing for a size appropriate to accommodate anticipated activities may include any necessary setbacks.
§ 285.235: The proposed rules state that a commercial lease may have additional time added to the operations term, not to exceed the length of the original lease term. Section 285.235(a)(5). The MMS should clarify whether the referenced original term is the operations term of 25-years or the full lease term of 30-years (25-year operations term + 5-year site assessment term). Also, see comments regarding lease renewals in § 285.425.	We believe that §§ 285.235(a)(3) and 285.425 clearly refer to the operations term and not to the site assessment term. We have added clarifying explanation in the preamble.
§ 285.235: The 25-year operations term should commence after the submission of the final, CVA-certified Fabrication and Installation Report required by proposed § 285.708(a)(5). Under the lease term heading, an additional provision should be added to part (4) of the table in § 285.235(a), to state that: The operations term begins on the date when the CVA submits a certified final Fabrication and Installation Report as required by § 285.708(a)(5).	We have not adopted this recommendation. We believe it is better to start the operations term with approval of the COP than on the date when the CVA submits a certified final Fabrication and Installation Report for administrative purposes. We have retained the start of the operations term at the time of COP approval, but as recommended by other comments, have revised the date on which the operating fee commences to be the date on which commercial generation of electricity begins.
Among the lease sale terms and conditions, include the following: (1) A term that puts potential bidders on notice that a lease can be terminated in the event that vital information has been overlooked or misapplied, and (2) A term that identifies the components of a liquidated damage award in order to truncate protracted	We have not adopted these recommendations. We believe that termination on the basis of overlooked or misapplied information is covered under § 285.437(b) of the proposed rule. We also believe the cancellation and compensation provisions are adequate, as they are analogous to similar provisions under other DOI programs that do not include the

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litigation and unrealistic expectation on the part of potential lessees in the event a lease must be canceled for public purpose reasons, like environmental protection.	terms recommended by the commenter.
A 25-year term may be too short to attract cost-effective financing, but may be long enough if the rule allows for open-ended lease terms and automatic renewals. The term could use a minimum of 40 years as the commercial operating period. However, stakeholders have indicated that open-ended lease terms may not be appropriate given the uncertainty of environmental effects. The MMS should consider adopting a process, such as an adaptive management committee, for open-ended leases or automatic renewals that would adequately protect the environmental resources during the relicensing process.	We have not increased the operations term or provided for an open-ended term. As explained in the preamble of the proposed rule, an operations term longer than 25 years could be established for a particular lease under the rule. Further, the preamble explained that we believe that open-ended leases could perpetuate inefficient or obsolete operations.
Acknowledge that other foreseeable lease terms will include conditions related to environmental protection, including, as needed, mitigation for any unavoidable impacts (e.g., compensatory funding to the State for impacts to fisheries or to birds and other wildlife that use both State and Federal waters for foraging, breeding, and migration.)	We have not adopted this recommendation. While the proposed rule provides for mitigation, the EPAct does not require or authorize a mechanism to provide compensation to mitigate adverse impacts to coastal resources or uses.
The proposed process appears to lengthen the term of existing oil/gas leases, rather than substitute a new and current lease agreement for a new use of existing facilities. If so, the process should be changed to require either a new lease or a revised lease, with current terms and stipulations that do not put the U.S. Government in jeopardy of a breach of contract if and when it complies with current laws and regulations.	As provided in subpart J and explained in the preamble to the proposed rule, alternate use is authorized by a right-of-use and easement and does not lengthen the term of existing oil and gas leases.
Consider a more practical approach that avoids premature presumption of project approval before the project has undergone adequate environmental review.	We have not adopted this recommendation. We do not believe that the proposed approach to leasing and development results in premature presumption of project approval. All projects under the rule will be subject to appropriately phased review and decision-making, including NEPA analyses.
Model the competitive processes for limited leases after the Federal Power Act's preliminary permits as described in sections 4(f) and 5 (16 U.S.C. 797 and 798).	We have not adopted this recommendation. We believe that the requirements of EPAct, primarily the competition and the revenue sharing requirements, preclude such an approach.
Allow limited lease holders to sell power to the grid to generate revenue for a project.	We have revised the definition of limited lease to provide for limited lease holders to sell power. Under the revised definition, a limited lessee may be authorized to sell a limited amount of power as specified in the lease. We also state in § 285.505 that we will not charge any operating fee on the sale of power from a limited lease (limited lessees will pay only rent). We also revised the definitions for

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	commercial lease and commercial operations to clarify the distinctions between limited leases and commercial leases. These changes are intended to provide a way for limited lessees to recover some of their expenses by being allowed to sell a small amount of power over a relatively short term (less than 5 years) while testing technology.
Treat commercial leases and limited leases equally or give a preference to limited leases.	We have not adopted this recommendation. The EPAct clearly favors production of renewable energy, which under our proposed approach requires a commercial lease.
§ 285.235: Revise § 285.202 to add the following provision regarding rights associated with limited lease: (a) A limited lease provides the lease holder with an exclusive right to apply for a commercial lease for a project within the area of the limited lease during the term of the limited lease. The limited lease will set forth the conditions under which this preference will be maintained. The interest retained by the limited lease holder will constitute only an interest to preclude other limited lease or commercial lease applications for the area covered by the limited lease during the 5-year period of the limited lease. If a holder of a limited lease submits a request for a commercial lease and a SAP prior to the expiration of the limited lease for development in the area of the limited lease, the commercial lease application will be reviewed through a noncompetitive award process.	We have not adopted this recommendation. As explained in the preamble, we do not support providing a commercial option or preference with a limited lease as recommended, because such rights are available and should be secured with commercial leases. Limited leases are designed to provide limited rights for a short term. However, in response to comments, we discuss in the preamble a possible scenario for issuing a limited lease with a commercial lease preference under certain circumstances.
Clarify that the scope of the environmental analysis required by the NEPA for a limited lease will reflect the limited nature and duration of the authorized activities and will be largely based on existing, available data.	We have adopted this recommendation by providing a more detailed discussion of NEPA procedures in the preamble. Also, such procedures will be outlined in the implementation guidance we intend to issue after the rule is approved.
Grant an RUE for meteorological towers instead of limited leases.	We have not adopted this recommendation because we wish to limit the granting of RUEs to the purposes outlined in the proposed rule. We believe expanding the scope of RUEs at this point in the rulemaking could be confusing, and we think that consideration of simultaneous application for limited and commercial leases, as also recommended by this commenter, would be a preferable approach to timely authorizing meteorological towers.
The MMS also could modify the rules to allow an applicant to apply for a limited lease (§ 285.236) for a met tower at the same time that it applies for a commercial lease.	We have not adopted this recommendation in the text of the rule. We believe that the rule would allow simultaneous limited and commercial lease issuance to facilitate installation of meteorological towers or other data collection devices. We discuss this approach in the preamble and will include such procedures in the implementation guidance we intend to issue after the rule is approved.

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§ 285.211(b)(2) should read "We will evaluate the potential effect of leasing on the human and marine environments, and develop measures to mitigate adverse impacts, including lease stipulations."	We have adopted this recommendation and revised § 285.211(b)(2) to say ". . . human, marine, and coastal. . . ."
The rule needs further clarification as to what the process would be for a lessee that obtains a lease allowing a single use to expand its activities within the lease area to multiple uses.	We have not adopted this recommendation in the text of the rule. We believe the preamble to the proposed rule clearly explained that expanding a single purpose lease to cover other activities would entail issuance of new lease(s) authorizing those activities. We have expanded the discussion of this approach in the preamble to this rule.
Take the necessary steps to ensure that both offshore and onshore activities associated with leases on the OCS do not adversely impact units of the NPS and the special status areas of Assateague Island National Seashore in Maryland and Virginia, Olympic National Park in Washington, and Padre Island National Seashore in Texas.	The rule provides the framework for taking such steps in subparts B and F under the leasing and plan approval processes. We do not believe that it is necessary or desirable to include such specific provisions in the text of the rule, and that it would be more appropriate to outline such steps in relevant MOUs or by other means to be developed in implementing the rule.
Exclude sites (units of the NPS, etc.) - Alternative energy research and development should not necessarily be included in or excluded from these areas, rather such activities must be fully consistent with the respective program regulations.	Section 388 of the EPAct expressly prohibits MMS from offering leases or grants within the boundaries of any unit of the NPS, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.
Designate exclusion zones adjacent to national parks to protect viewsheds zones. (To illustrate the resources and values contained in coastal units of the NPS, the commenter included a summary for two units, Assateague Island National Seashore and Padre Island National Seashore in Texas. The companion map for Assateague underscores the importance of designating exclusion zones adjacent to the park to protect viewsheds.)	We have not adopted this recommendation. We believe that it would be premature to adopt such exclusion zones without knowing the types of renewable energy technologies and structures that might be proposed for use in those areas. Viewshed issues may be considered on a case-by-case project-specific basis under the rule in order to protect scenic values associated with units of the NPS, and we intend to coordinate and consult with stakeholders on such issues in implementing the final rule.
Conduct a project-specific Supplemental EIS after the lease term ends to ensure that newer information regarding impact and advanced technologies with potentially fewer environmental externalities be analyzed and then taken into account in changing the renewed lease or reopen the bid so that others have the chance to apply.	We have clearly stated our intent to comply fully with NEPA and its analytic requirements. Therefore, we will conduct supplemental environmental analysis for authorizing a renewal if it is warranted.
§ 285.231: Revise § 285.231(a): "The MMS will consider unsolicited requests for a lease on a case-by-case basis, <u>but will not process</u> an unsolicited request for a lease under this part that is proposed in an area of the OCS that is scheduled for a lease sale under this part." and § 285.231(e): "If we approve or approve with conditions your SAP or GAP, we <u>will offer you</u>	We have not adopted these recommendations. We wish to retain the discretion not to consider unsolicited requests in areas proposed for competitive leasing and to issue or not issue a lease.

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a noncompetitive lease unless we conclude that the requested area is not suitable for leasing for reasons that would be equally applicable to leasing on a competitive basis."	
Start the operating fee when actual revenues are obtained from the sale of electric power.	We have adopted this recommendation and revised subpart E (§ 285.503) to require payment of the operating fee to commence with the commercial generation of electricity.
Utilize an electronic system for the notification of lease availability and information requests similar to the FedBizOps Web site in addition to the Federal Register.	Use of such notification systems will be possible under the rule.
Give consideration to technology-specific calls for interest and bidding processes.	This rule allows this approach.
If awardees choose not to progress towards construction, then it would be appropriate to introduce a requirement for findings for noncommercial site appraisal to be made available publicly.	The rule's diligence requirements provide for forfeiture of leases that do not progress toward construction and production. Section 285.113 of the rule provides that all information from terminated leases and grants will be made available to the public.
Any areas that meet the definition of a Marine Protected Area contained in E.O. 13158 should be excluded (65 FR 34909 Conservative Law Foundation: "Defending the Law of the Land" - 5- (May 26, 2000)("any area of the marine environment that has been reserved by Federal, State, territorial, tribal or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein").	The rule provides for compliance with applicable Federal requirements including E.O. 13158.
The MMS should seek to work with the relevant Federal and State agencies to facilitate, to the extent practicable, "one-stop shopping" for permit reviews. The BLM has had great success in streamlining permit approvals for Federal oil and gas leases in the pilot project offices established under section 365 of EPAct. The MMS should consider a similar approach for AEAU permit reviews and approvals.	We support such an approach, and the rule would allow it. Detailed procedures will be provided in the implementation guidance that we intend to issue after the rule is approved.
Temporarily delay the commercial lease acquisition process for areas adjacent to Oregon's territorial sea and consider only issuing the short-term limited lease (5-year) for site assessment and technology testing purposed - Oregon is currently in the initial stages of reviewing its TSP, with the intention of amending it specifically for designating areas deemed appropriate for wave energy facility development, and have not yet amended the TSP to designate those special use areas.	The rule will allow such an approach. We believe that the rule's coordination and consultation provisions will allow stakeholders to consider such issues and make appropriate determinations and decisions.
Reserve the rights to easements to authorized lessees without further competition.	We have not adopted this recommendation, because EPAct mandates competition for all leases, easements, and ROWs unless we determine that

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	there is no competitive interest.
If subsection (3) of this section is intended to include certification of coastal consistency, it should be so stated.	All actions under the rule that require CZMA consistency are identified in subpart F. Also, we have added detailed discussion of the CZMA requirements to the preamble.
Unless intended by list item (a), information should include identification of any known unique site characteristics, specifically environmental or other resource information, that would impose potential constraints or require mitigation.	Such information would be covered under § 285.211(a). Also, such information would be considered under the requirements of NEPA.
Gather regional information regarding overall suitability factors (such as existing ocean uses and sensitive resources) prior to issuing commercial leases.	The rule allows this approach, and we intend to coordinate and consult with stakeholders in this manner. Also, such information would be considered under the requirements of NEPA.
Establish a rule and schedule that help facilitate and expedite the infrastructure development process for a broad range of offshore wind development interests, and avoid prohibitive operating fees that could deter many companies from moving forward with offshore wind farms.	We believe the rule provides a suitable process for authorizing wind development that strikes an appropriate balance for assuring a fair return to the Federal Government through operating fees while assuring that such fees are not prohibitive.
Create a prescribed leasing plan for each region of the OCS - otherwise, the proposed site-specific cumulative analyses will be conducted in a vacuum, with no material information on how much of the surrounding region may potentially be developed in the future.	The rule allows the creation of such regional plans. While this might be a viable approach, we believe that proper cumulative analyses can be conducted in the absence of such plans.
Describe areas available for leasing with the latitude and longitude coordinates, water depth, bathymetry conditions, ecological conditions, and distance from shore.	The rule provides for describing lease areas by leasing maps and official protraction diagrams. Ancillary descriptive data such as those recommended may also be used under the rule. Such information would be considered under the requirements of NEPA.
Include the following in the information provided to identify interest in general areas of the OCS: the type of energy device to be installed, a general description of the necessary infrastructure, the basic facility components, a description of device performance in similar areas or conditions, device test data, a general project schedule, anticipated power production figures, and likely power purchasers.	We have not adopted this recommendation in the text of the rule. We believe the information suggested is captured under §§ 285.213 and 285.230. We have expanded the discussion in the preamble to discuss this information, and it also will be included in the implementation guidance that we intend to issue after the rule is approved.
Expand the lease types to provide for and require more phased development.	We have not adopted this recommendation. We believe that the rule provides the necessary flexibility to allow phased development. We do not believe that phased development should be mandated by the rule.
The leasing process does not allow adequate time for preparation and review of environmental documentation requirements and State and Federal consistency determinations.	We believe the leasing process in the rule provides ample time for preparation and review of NEPA and CZMA documentation.
The proposed process is insufficient for obtaining public input on unsolicited	We have adopted this recommendation and added public review provisions to § 285.231.

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applications. The rule needs to clearly specify how- both procedurally and temporally- public input will be obtained and considered.	
The MMS should increase the time available for reviewing and commenting on proposed developments at all stages of development.	We believe the timeframes in the rule are adequate.
The final rule should require the MMS to hold public hearings so that the process of leasing is made as transparent as possible and the public is given ample opportunity to voice concerns and opinions.	We have not adopted this recommendation. Public hearings will be possible under the rule when warranted and appropriate. We do not believe it is necessary for the rule to require hearings for all proposed leasing actions, and believe that such a requirement would be overly burdensome.
New approaches to competitive leasing are also needed to avoid unnecessary costs to newly developing energy entrepreneurs that are backed by investors and may not be in the same position as oil corporations to shell out bonus payments, large or small, prior to knowledge that the project passes environmental review.	The EPAct mandates for competition and receipt of fair return prohibit us from eliminating auctions and waiving all fees. However, we have revised the rule in § 285.220 and other relevant sections to provide for multiple-factor bidding processes, which we believe is responsive to concerns about the expense of securing rights for renewable energy development on the OCS. This approach could be attractive to lower capitalized developers that seek leasing opportunities on the OCS.
The preamble discussion for § 285.200(c) states that MMS may waive the rental fees for acreage when the lease is developed in phases. This section should clarify that MMS will waive the rental in such cases. Alternatively, MMS should explain the standards it will consider in deciding whether to grant a waiver of rentals.	Section 285.510 gives the Director the discretion to reduce or waive the rental or operating fee if the information provided by a lessee in its application sufficiently demonstrates that the project would be uneconomic otherwise or that a reduction or waiver is necessary to encourage additional activities. The Director may require additional information, such as the efficacy of operations, the value of maintaining operations, and findings that there are no other operators that could take over operations and run them effectively. More specific criteria for any waiver would inadvertently, but almost certainly, interfere with the desirable efforts to nurture an industry where there is a lack of historical operational information. The MMS may subsequently standardize this process, much like it does for oil and natural gas projects, following implementation and experience with this new program.
§ 285.212: Change the first sentence of proposed § 285.212 to read: "Potential lessees who respond to a Request for Information or a Call are encouraged to provide the information identified in paragraphs (a) through (g) of this section." This would avoid (1) ambiguity as to whether responses to requests and calls are mandatory and (2) overly burdensome information demands.	We have not adopted this recommendation. The rule does not attempt to make responses mandatory. However, a respondent must furnish the information listed in § 285.213 to receive our consideration. We have added some discussion on this point in the preamble and will address it in the implementation guidance that we intend to issue after the rule is approved.
§ 285.238: Apply a cross-reference to the criteria that govern the issuance of leases at § 285.102 to the leasing of the OCS for DOE	We have revised § 285.238 to include more details on proceeding under that section. § 285.204 applies to all leasing activities, including those under

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managed alternative energy projects. The only criteria that § 285.238 (c) notes as germane for issuing a lease is whether there is a lack of competitive interest in the area. This section should make clear that the lands off limits to leasing under § 285.204 also applies to the location of DOE managed alternative energy projects.	§ 285.238.
§ 285.238: Make it clear that the Director will make areas available to coastal States to conduct research activities and without the requirement or expectation that States must seek DOE approval or coordination. Rules should provide a mechanism for cooperation with coastal States that may wish to work with MMS and DOE to establish such a testing area in State waters. (A joint Federal-State test facility, sited on adjoining State submerged lands and OCS areas, for example, has potential to provide a broader and more diverse area for research and testing as well as a host of related benefits).	We have expanded the scope of § 285.238 to include States.
The rule does not detail the process or terms under which it would work with the DOE to establish one or more DOE-managed alternative energy research and testing areas on the OCS. Rules should make it plain that environmental and natural resources standards would not be unduly compromised to accommodate the DOE.	We have revised § 285.238 to include more details on proceeding with research activities on leases issued to Federal agencies or States.
Although it is questionable whether MMS has authority under Section 388 of EPAct for such a delegation to DOE, the commenter does not oppose this proposal provided: (1) MMS publishes notice of any such intention in the Federal Register with a request for commercial interest in the area; and (2) MMS only designates such areas where there is no expression of commercial interest in development.	The rule provides for this approach and requires the recommended actions.
Engage in a limited scope of marine spatial planning to identify "high impact" and "low impact" OCS development areas, and incorporate this into the agency's bidding process.	Such an approach would be possible under the rule and we would consider such an approach if recommended by stakeholders through coordination and consultation processes in implementing the final rule.
Use an ecosystem-based spatial planning approach in selecting appropriate areas for leasing and granting RUEs, ROWs and Alternate Use RUEs.	Such an approach would be possible under the rule and would be considered in coordinating and consulting with stakeholders.
§ 285.201: Revise § 285.201 to read "...we will issue leases noncompetitively as provided under § 285.231(d) through (f)." The current language references provisions that describe the entire proposed procedure for securing a lease through an unsolicited request.	We have not adopted this recommendation. We believe it is preferable to cite all of § 285.231 because we think the entire procedure is relevant and provides necessary context for the provisions cited by the commenter.

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§ 285.201: Replace the term "appropriate" with "relevant" under subsection (b) of this section, where it states that MMS will coordinate with "appropriate Federal agencies" to identify areas for environmental analysis.	We have not accepted this recommendation. We believe that the term appropriate is interchangeable with the term relevant that is used in EPAct.
The timeline for the project site selection through the lease sale process is aggressive and offers minimal opportunity for the State and other stakeholders to respond. It is unclear what happens during the area identification process or how long that period may extend prior to the Proposed Sale Notice. This is a critical period where potential user-conflict issues may be avoided or resolved, and it occurs simultaneously with MMS performing the NEPA and CZMA review which have their own separate timelines.	We have expanded discussions of the procedures and timelines for the leasing process and associated NEPA and CZMA review processes in subparts B, C, and F. More explanation will be provided in the implementation guidance that we intend to issue after the rule is approved.
Allow for/require the creation of transmission corridors that would allow multiple projects to use the same easements or ROW/RUE grants, thereby minimizing environmental impacts.	Such an approach would be possible under the rule. We do not believe such corridors should be required by rule at this time. We will be open to considering them as we implement the final rule.
Provide flexibility in choosing easements and right-of-way routes for transmission lines and cabling associated with the lease activity.	We believe the rule provides the necessary flexibility to accommodate route adjustments.
The proposed types of leases do not adequately address the need for the wave energy industry to advance in stages. The costs of applying for and acquiring a commercial lease-especially if issued competitively- are prohibitive to small developers in this sector. Eliminating or waiving financial criteria, such as the proposed bidding and auction processes, would allow wave energy developers to grow their financial abilities as the industry establishes itself.	The EPAct mandates for competition and receipt of fair return prohibit us from eliminating auctions and waiving all fees. However, there is flexibility in the rule to allow some less financially burdensome approaches to leasing for ocean wave and current energy projects, and we intend to work with stakeholders to that end. Also, adoption of a multiple-factor process in §§ 285.220 and 285.221 is responsive to this comment.

SUBPART C—RIGHTS-OF-WAY GRANTS AND RIGHTS-OF-USE AND EASEMENT GRANTS FOR RENEWABLE ENERGY ACTIVITIES	
Comment	**Response**
Please clarify that MMS may not issue ROWs, RUEs, or easements within units of the NPS. Lessees, grantees, etc., should be required to evaluate the potential impacts that their facilities could have on units of the NPS and on special status areas over which the NPS has some programmatic responsibilities, and should be required to implement measures to avoid or mitigate such impacts.	We have not adopted this recommendation. The language of EPAct expressly excludes from consideration of any area on the OCS within the exterior boundaries of any unit of the NPS. This is also noted in the preamble to subpart C. The MMS is obligated to comply with Federal laws that require an evaluation of such potential impacts, such as the NEPA.
Modify subparts B and C to include review by the agencies implementing each State's CZM Program. The CZMA should be added in both subparts as one of the applicable Federal acts.	The rule provides for State CZMA review, and we expect such review will be conducted by appropriate State implementing agencies. We do not believe it is necessary to cite all individually applicable Federal laws.
The provision for project easements and	Such an approach would be allowable under the rule.

SUBPART C—RIGHTS-OF-WAY GRANTS AND RIGHTS-OF-USE AND EASEMENT GRANTS FOR RENEWABLE ENERGY ACTIVITIES	
Comment	**Response**
ROW/RUE grants should take into account minimizing the footprint of cables, pipelines, and other structures. The rules should allow for or require the creation of transmission corridors that would allow multiple projects to use the same easements or grants.	We agree that combining transmission projects, where feasible, is desirable, and we wish to preserve the flexibility to consider transmission planning and approval on a case-by-case basis.
We recommend that MMS take a more proactive role by providing for the establishment of standing committees to address any unidentified or incidental issues that arise.	We have not adopted this recommendation. We believe that establishing standard committees in the rule would be premature and inefficient. The recommended committees would be possible under the rule and MMS will consider such means to resolve issues in implementing the rule.
Please clarify whether an ROW grant would include a corridor extending through State waters for the purpose of transmitting energy produced at an OCS facility. We potentially would have the same concerns about the siting of structures subject to ROW and RUE grants within designated resource areas as with regard to leased facilities.	An ROW grant would not include a corridor extending through State waters. Such an area would fall under the applicable State's jurisdiction.
Please clarify why ROW and RUE grants issued competitively would be considered direct Federal actions, while those issued noncompetitively would be considered Federal licenses or permits.	This distinction is drawn to comply with the requirements of the CZMA.
Federal consistency and early coordination provisions are also applicable to access and/or ROW easements needed for power transmission cables. Cables that transit the States territorial sea are regulated by the State's enforceable policies.	The rule provides for early coordination and Federal consistency.
The rule should address the overlapping permitting and licensing responsibilities of MMS and FERC, and offer a procedure for coordinating the MMS and FERC processes.	The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects.
The ROW and RUE grants have virtually unlimited project life spans with poorly defined environmental controls.	The rule outlines measures to ensure that ROW/RUE grants are not misused. Examples include: the ability of MMS to include strict requirements in the grant document, civil penalties provisions to ensure that applicants are complying with the terms of the ROW and RUE grants and the GAPs, and MMS's authority to terminate a ROW or RUE grant if the associated activities are not properly maintained. Also, the requirements of NEPA apply to the issuance, management, and termination and decommissioning of the grants.
Please clarify whether a facility partially used by an Alternative Energy Project (AEP) and partially by a nonAEP would be regulated under this subpart and, if so, how. Because facilities,	The MMS will authorize Renewable Energy (REn) ROWs for transmission of renewable energy from sources other than oil and gas and will not issue REn ROWs in support of transmitting energy from oil or

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particularly transmission cables, can be used by AEPs as well as nonAEPs, it will be important to know whether the Rule applies only to facilities exclusively used by AEPs.	gas sources. The MMS will consider, on a case-by-case basis, REn ROWs supporting a "source mix," provided that renewable energy generated from sources other than oil or gas is primarily what is being transmitted.
If facilities under this subpart can jointly be used by AEPs and nonAEPs, then payments should be adjusted to reflect the percentage used by an AEP.	The owner of the ROW will be held responsible for all payments.
The MMS should establish criteria for evaluating ROW and RUE grant requests that do not have a competitive interest.	We have not adopted this recommendation. At this time, the MMS has no basis for establishing such criteria. The MMS will look to the information that has been submitted by the applicant at the time that no competitive interest is determined.
This subpart should specify timelines for issuing public notice, evaluating comments from notice, or determining level of competitive interest.	We have not adopted this recommendation. As discussed in the preamble, MMS considers it very unlikely that there will be much, if any, ROW/RUE grant competition. Thus, MMS has determined that specifying timelines in § 285.307 is unnecessary and perhaps premature.
The terms and conditions of the grant are considered nonnegotiable. This has the potential of rendering projects not financeable. Some flexibility should be built in concerning the grant terms and conditions to ensure they are financeable.	This issue is addressed in § 285.306. If MMS determines that there is no competitive interest in an ROW or RUE grant, we will consult with the applicant to establish terms and conditions for the grant. The applicant can raise any concerns about the ability to finance the project during the consultation process.
This subpart should set up a timeline for issuing a noncompetitive ROW or RUE grant.	We have not adopted this recommendation. Given the uncertainties that may arise during the ROW/RUE grant issuance process, MMS has decided against setting up specific timing requirements.
It is unclear whether competitive interest includes only interest in an ROW or RUE grant or whether it also includes interest in the same area for a potential lease. The regulations should clearly explain what determines competitive interest in these cases.	We have not adopted this recommendation. We believe the rule provides clearly for considering multiple competing uses and projects in subparts B and C. We will address the competitive relationship between leases and grants in more detail in the implementation guidance that we intend to issue after the rule is approved.
This subpart should require applicants to demonstrate that they are technically and financially qualified to undertake the activities of this subpart.	Under the rule, MMS may require the submission of information regarding an applicant's technical and financial capabilities early in the process to ensure that only qualified applicants may undertake the activities of this subpart.

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Comment	**Response**
§ 285.405: The MMS should utilize a different approach for approving a change in operators. Operators should be permitted to provide MMS with 30 days advanced notice of a change in operators. If MMS doesn't object to the change	We have not adopted this recommendation. We prefer to actively review and approve operators. We believe this is a better approach to keeping track of leases and activities that would avoid any omissions or oversights that could occur under the presumptive

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of operators, the change will become effective. The MMS has proposed this approach in other sections of the regulations.	approach recommended by the commenter.
§ 285.436: The MMS's ability to contract a lease area will serious jeopardize developer's ability to secure project financing, as no serious investor will tolerate a contingent property interest as the basis for an electric power project. The MMS should give consideration before implementing its powers since some developers may seek to engage in phased lease development.	The provisions governing contraction give the lessee the opportunity to make its case against contraction and the right to appeal an MMS contraction decision. The rule provides flexibility and recognizes that phased development may be pursued.
§ 285.408: The proposed provisions for lease assignment should be sufficient. The only possible issue with this provision is whether or not this will be an avenue for speculators to acquire large areas of the OCS and then assign it for a profit.	We believe that the extensive diligence and financial assurance provisions in the rule will prevent improper speculative lease acquisitions and assignments.
§ 285.425: Clearer guidelines need to be established for the renewal of a lease, particularly if there is potential for reuse of the site with similar equipment and minor changes to the mooring and cabling. This will reduce project financing and lower the development risk to all stakeholders, including utility ratepayers. The MMS should specify in proposed § 285.427 the principal factors the agency will consider to set the renewal term for an OCS lease or grant. It should also consider granting a renewal term that exceeds the original term if warranted by particular circumstances. Criteria that should be applied to evaluate a request for renewal of an existing OCS lease or grant include the following: (1) design life of existing technology; (2) availability and feasibility of new technology; (3) environmental and safety record of the lessee; (4) operational and financial compliance record of the lessee; and (5) competitive interest and fair return considerations. These criteria should be used to evaluate a lease or grant renewal request. Further, MMS should consider, where applicable, the relative significance in terms of generation capacity and reliability of the OCS electric power generation facility within the regional transmission system that receives the electric power output from the facility.	We have adopted the recommendation to grant longer renewal terms and have revised § 285.427 to provide for commercial lease renewals of 25 years or longer if negotiated by applicable parties. We have added detailed criteria for lease renewal at § 285.429. We also have added discussion of these issues to the preamble and will address them in the implementation guidance that we intend to issue after the rule is approved. We believe the rule provides necessary discretion and flexibility to allow longer or shorter terms, as appropriate, on a case-by-case basis.
§ 285.425: The MMS should not unnecessarily limit renewed lease terms. The MMS should allow for longer subsequent leases to take into account such circumstances.	We have adopted the recommendation to grant longer renewal terms and have revised § 285.427 to provide for commercial lease renewals of 25 years or longer if negotiated by applicable parties. We have added detailed criteria for lease renewal at

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	§ 285.429. We also have added discussion of these issues to the preamble and will address them in the implementation guidance that we intend to issue after the rule is approved. We believe the rule provides necessary discretion and flexibility to allow longer or shorter terms, as appropriate, on a case-by-case basis.
§ 285.425 As an alternative to open-ended lease terms, a lease or grant should be for an initial term that is subject to automatic renewal for one or more consecutive terms provided that the lease holder continues to satisfy certain conditions, such as the lease holder continuing to have a good operating record and providing any required financial assurance.	We have not adopted this recommendation. As explained in the preamble to the proposed rule, we believe that open-ended leases and automatic renewals would perpetuate inefficient or obsolete operations.
§ 285.425: Lease renewal should not be automatic, nor have an open-ended term, but should be available in shorter terms. Evaluation of the site and project(s) should occur to ensure the project is still within the scope of the original lease.	We do not agree that leases should be renewed in shorter terms. We believe that the plans and agreements for production of power (e.g., power purchase agreements) should govern the length of renewal. We agree that site and project evaluation should be conducted when reviewing renewal requests, and such evaluation is possible under the rule.
§ 285.415: Requests for lease or grant suspensions should be granted only for good cause, particularly if the request is due to the failure to meet timelines for the submission of a SAP, GAP, or COP.	We agree and have designed the suspension provisions accordingly in §§ 285.415 through 285.421.
§ 285.437: Under subsection (c), MMS should add provisions that inform lessees of the nature of the compensation the Federal Government will owe them in the event a lease is terminated. This information will inform potential lessees that compensation will be limited. Too often lessees seek inflated awards when the Federal Government needs to cancel leases for a variety of legitimate reasons, including the protection of natural resources.	We have not adopted this recommendation. We believe flexibility is needed to consider cancellations and negotiate compensation on a case-by-case basis.
The rule should allow States or other Federal agencies to appeal to MMS for termination of a lease. The rule proposes several good criteria that may cause a termination, such as serious harm or damage to "environment, life or property" or failure to comply with terms and conditions of lease. However, these conditions can affect resources that the State and other Federal agencies manage.	The rule does not prevent affected States, relevant Federal agencies, or other interested or affected parties to recommend termination of a lease. Although there is no expressed provision or process addressing this issue in the rule the parties would be able to make such recommendations, and MMS would be able to consider those recommendations in light of the cancellation provisions in § 285.437. We have added discussion of this issue to the preamble, and it will be addressed in the implementation guidance that we plan to issue after approval of the rule.
The rule needs clarification added regarding specific deadlines by which specific action should be undertaken; clear termination of	We have added deadlines in the rule where we believe they are appropriate. We believe the termination and suspension provisions in the rule are

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authorized rights when a party does not perform; and narrow authority to MMS to suspend commitments and extend termination.	appropriate. We will provide further explanation of these provisions in the implementation guidance that we intend to issue after the rule is approved.
The MMS proposed rules may not provide sufficient guarantees to developers that would allow them to obtain financing. Specifically, there is concern that the MMS could suspend or revoke a firm's development rights through events and circumstances that are out of the developer's control – particularly in regards to complying with environmental regulations. In order to encourage the development of large-scale offshore projects, the MMS should consider provisions modeled after current State Public Utility Commission issuance of Certificate of Public Convenience and Necessity.	We believe that the rule's suspension provisions are necessary and will not prevent obtainment of financing. These provisions are analogous to those that have been implemented under other DOI programs and have not proved to be an obstacle to financing. As lessor, MMS must have such provisions to protect the resources and environmental values of the OCS.
§ 285.408: Clarification is needed in the rule on whether a marine renewables company that merges or is acquired by a larger company must assign or transfer leases to the new corporate entity.	We have adopted this recommendation and added a new subsection (e) to § 285.408 to clarify.
The MMS should enter into tailored negotiations with each applicant to ensure the lease instrument effectuates the business purposes of the applicant. The MMS suggests it will solicit comments from the States and public about the content of proposed leases and will publish lease terms prior to the time of signature. The MMS should be flexible in its approach and must be willing to negotiate suitable lease terms which meet the objectives of the lessor and the lessee.	Such an approach is possible under the rule. We intend to be flexible in establishing lease terms.
§ 285.400: The MMS is urged to act flexibly in requiring corrective action of developers and in imposing penalties or cessation orders.	The rule provides us necessary flexibility in this regard.
§ 285.400: The proposed noncompliance actions are well-founded and should be effective in ensuring proper execution of lease and grant terms. However, the proposed actions could be too stringent for this emerging industry, as it will encounter "growing pains" as it matures.	We do not believe that the rule's measures for dealing with noncompliance are overly stringent, and we believe they provide necessary flexibility for regulating emerging industries.
Subpart D needs further clarification with regard to MMS mechanisms for enforcement. The threat of lease or grant cancellation seems to be the main enforcement mechanism for MMS. Subpart D, especially parts 2 and 3, could be interpreted so that grantees are almost never found to be in violation. For example, the regulations fail to define "serious harm or damage" or to provide examples as guidance. There is no definition of what an "acceptable" decrease in damage within a "reasonable" time might be. Finally, there is absolutely no guidance in how MMS should balance the	The rule's cancellation provisions are based on analogous provisions in the OCS oil and gas regulations. We believe they provide necessary discretion, and we do not favor adding the details and definitions cited in this comment. We will provide further explanation of these provisions in the implementation guidance that we intend to issue after the rule is approved.

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advantages of cancellation against the advantages of continuing the lease.	
The rule should clearly state that any mitigation in the form of financial compensation for impacts to affected uses or resources be treated as revenue eligible for sharing. Further, the additional "revenues" should be distributed to affected States on a basis proportionate to the impacts.	We have not adopted this recommendation. The EPAct does not require or authorize financial compensation for impacts to affected uses or resources, and we do not include such requirements in the rule.
To the extent feasible, a cessation order should require discontinuation of only those lease or grant activities that form the basis of the noncompliance addressed in the cessation order. MMS should revise § 285.402(a) to state that a cessation order should require discontinuation of only those activities that form the basis of the noncompliance addressed in the cessation order, unless the specific circumstances warrant cessation of all lease or grant activities.	We have not adopted this recommendation. We wish to maintain full discretion on the scope of activities to be ceased. In § 285.402(a), MMS will specify all activities that must cease, as well as all activities that may continue. We have revised the explanation in the preamble to clarify.
This section does not identify the process for terminating or lifting the order where the lessee, grantee, or operator timely satisfies of satisfies before the deadline all requirements of the order. The MMS should revise § 285.402(b) to either (1) specify the process for termination or lifting of a cessation order where the lessee, grantee or operator has satisfied all requirements of the order, or (2) state that a cessation order must include the requirements and process for terminating or lifting the order on or before the end of the period specified in the order.	We have adopted this recommendation and have revised § 285.401(b) to state that a cessation order will include the requirements and process for terminating the order.
The MMS should revise § 285.405(e) to specify the time period, following the occurrence of a change in the designated operator, within which written notice of the change must be provided to MMS, e.g., within 72 hours following the assumption by the new operator of its responsibilities under the lease or grant.	We have adopted this recommendation and have revised § 285.405(e) to provide 72 hours for receiving written notification of a change in designated operator.
§ 285.405: In order to avoid unnecessary delays in the review and approval of a new operator notice, MMS should identify in § 285.405 the information that the lease or grant holder must include in a written notice of change of a designated operator. Also, MMS should specify in § 285.405(e) a time period within which MMS must issue written notice of its approval or denial of the new operator designation, e.g., within 30 days after receipt of written notice of a new operator designation.	We have adopted the recommendation that MMS identify the information in a written notice of change of operator and have revised § 285.405(e) to specify that such notification be on a form approved by MMS. We have not adopted the recommendation to set a 30-day time limit for approval on MMS, because we generally do not intend to impose regulatory time requirements on ourselves.
§ 285.408: There should be a time period for action on an assignment application in order to avoid delays in processing and taking action on assignment applications and to minimize	We have not adopted this recommendation because we generally do not intend to impose regulatory time requirements on ourselves.

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commercial uncertainty where an assignment application is pending.	
§ 285.417: Section 285.417(b) should be revised to clarify that the site-specific study shall not automatically be required to comply with NEPA and/or the NHPA unless the proposed lifting of the suspension order independently warrants such an analysis. It is unclear whether MMS would require that this study follow NEPA guidelines for preparing an EA or EIS or, for studies related to sites, structures, or objects of historical or archaeological significance, the requirements under Section 106 of the NHPA. It could be interpreted to require automatic preparation of a NEPA or NHPA analysis to support the lifting of a suspension order regardless of whether such an analysis otherwise is warranted by the proposed action. In addition, the process for MMS review of the study is not clear, i.e. whether a draft study would be subject to public notice and comment requirements or whether MMS would issue the final study together with its decision to lift, modify, or sustain the suspension order. In addition, the final rule should specify the process for review of a site-specific study.	We have not adopted these recommendations. We believe there is nothing in § 285.417 that could be interpreted to require automatic preparation of NEPA or NHPA analysis in site-specific studies relating to suspensions. Also, we do not wish to specify processes for these studies in the regulatory text and prefer to maintain Government discretion, especially at the outset of a new program on the OCS. We have added discussion of this issue in the preamble, and we will include more details in the implementation guidance that we intend to issue after the rule is approved.
The MMS should revise § 285.418 of the final rule to provide a time period within which MMS must issue a decision (either oral or written) on a suspension request.	We have not adopted this recommendation because we generally do not intend to impose regulatory time requirements on ourselves.
§ 285.420: Section 285.420(b) does not clarify the circumstances under which a suspension of the payment obligation may be warranted where MMS has approved a request for a suspension order submitted pursuant to § 285.416. The MMS should provide for an automatic waiver of the payment obligation where MMS has approved a suspension request submitted by a lease or grant holder. This approach would be consistent with the automatic waiver of the payment obligation provided under § 285.420(c) where MMS has issued a suspension request. Alternatively, MMS should clarify in § 285.420(b) the criteria it will consider in determining whether to waive the payment obligation for an approved lease or grant suspension under § 285.416.	We have not adopted this recommendation. Section 285.420 provides for a waiver of payments when suspensions are necessitated by events that generally are beyond the control of the lessee or grantee, and we do not wish to extend such waivers automatically to suspensions requested by the lessee or grantee. We wish to reserve maximum discretion to the Government for determining when continued payments should be required and do not favor adding criteria in the rule of the text. We have added discussion of this issue in the preamble, and we will address it in the implementation guidance that we intend to issue after the rule is approved.
§ 285.421: The MMS should revise § 285.421(b) of the proposed rule to allow for up to a 5-year suspension, where justified by the particular circumstances.	We have not adopted this recommendation. We wish to limit development delays as best we can and believe the 2-year period serves this purpose in a reasonable way.
The MMS should clarify that the intention of the lease holder to upgrade or replace wind turbine	This approach is possible under the rule. We have added discussion of this issue to the preamble, and

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equipment before the end of the lease term would not require the lease holder to file a new application for an OCS lease for the site. Given the likelihood of technological developments during the term of an OCS lease, there may be circumstances where a lease holder would seek to upgrade or replace the wind turbine structures (excluding the marine foundations) at an OCS wind turbine generation facility at or near the end of the original lease term, and continue to operate the OCS wind turbine generation facility under a renewal lease. Technological improvements in turbine design could make replacement advantageous, if lease renewal were available, as early as 15 years into the operating term. The original lease holder under such circumstances will be allowed to apply for a lease renewal under the lease or grant renewal provisions.	we will address it in the implementation guidance that we intend to issue after the rule is approved.
§ 285.426: The MMS should include in § 285.426 the time period within which the agency must take action on a renewal request, whether to grant, grant with conditions, or deny the request. The MMS also should clarify § 285.427(a) to state that the timely filing of a renewal request allows the lease or grant holder to continue activities under the original lease or grant terms until MMS takes action on the renewal request, regardless of whether the original lease or grant term has expired.	We have adopted the recommendation to state that timely filing entitles the lessee to continue activities for as long as the request is pending decision by MMS (§ 285.428(a)). We have not adopted the recommendation for a deadline for MMS action because we generally do not intend to impose regulatory time requirements on ourselves.
§ 285.428: The MMS should revise subsection (a) of § 285.428 to allow for circumstances where a lease or grant renewal request is pending before MMS as of the termination date for the original lease or grant.	We have adopted this recommendation and revised § 285.432(a) to provide for leases or grants to continue while renewal requests are pending decision by MMS.
There may be circumstances where the development and operation of a project does not require use of the entire lease or grant area issued to the holder. Where MMS proposes contraction of a lease or grant, it is provided that the lease or grant holder should have the opportunity to submit information to justify the need for the entire or some portion of the lease or grant area, in an effort to refute the proposed contraction. Nonetheless, the authority of MMS to seek contraction of a lease or grant area has significant potential consequences for the offshore wind power generation industry, and § 285.436 does not clarify the scope of the information that MMS will consider in making an initial decision to notify a lease or grant holder of a proposed lease or grant contraction. The MMS should specify in proposed § 285.436	We have not adopted this recommendation in the text of the rule. We believe it should be clear in the context of this section that MMS will initiate inquiries relating to contraction based on relevant information and situations (e.g., failure to develop a significant portion of a lease). Also, the rule provides the lessee or grantee ample opportunity to respond to such an inquiry and make its case against contraction, as well as the right to appeal contraction decisions. We have added discussion of this issue to the preamble and will address it in the implementation guidance that we intend to issue after the rule is approved.

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the information that MMS would be required to consider as part of such an area "review" before making a decision to notify a lease or grant holder of a proposed contraction, i.e. at a minimum, by taking into consideration all information submitted by the lease or grant holder in its application for an OCS lease or grant, as well as all other information and plans submitted by the holder following issuance of the lease or grant.	
§ 285.426: A 2-year notice for a commercial lease renewal is excessive, and a 1-year notice should be sufficient.	We believe that 2 years is a suitable timeframe for processing a renewal request, especially in light of associated NEPA and CZMA analyses that are likely to be required. No change to the final regulations has been made in response to this comment.
§ 285.437: In any situation where MMS has the right to terminate the lease (e.g., § 285.437), a lessee should have notice and an opportunity to cure the issue because of the substantial investment the lessee will be making in the project.	We believe the cancellation provisions give a lessee ample opportunity to remedy issues leading to cancellation. Section 285.437(a) provides for cancellation due to fraudulent or misrepresentative lease acquisition but includes opportunity for a hearing. Section 285.437(b) explains that for all other situations leading to cancellation, except national security or defense and premature termination of commercial operations, the lessee will have an opportunity for a hearing and for remedying the situation. We have not changed the final rule in response to this comment.
Is there clarification as to whether the current proposed rule envisions and allows the lessee to sublet a lease? If so, are there any additional rules for subleases, or are they governed by the exact same provisions as the original lease? Must the "sublet" be for the same type of activity as originally licensed--i.e., could a lessee with a license for a wind project sublet the leased area to an ocean thermal energy conversion (OTEC) or wave generation project?	Section 285.408 will allow the assignment of aliquot portion(s) of the lease and would govern all activities on all parts of the lease. The preamble to the rule explains in the discussion of § 285.202 that leases may be issued for single purposes (e.g., wind power generation) or multiple purposes (e.g., wind and wave power generation). Any aliquot portion of a lease that is assigned would carry the right(s) conveyed originally in the lease (i.e., either for a single purpose or multiple purposes, as stated in the lease instrument).
§ 285.400: The proposed noncompliance actions are well-founded and should be effective in ensuring proper execution of lease and grant terms. However, the proposed actions could be too stringent for this emerging industry, as it will encounter "growing pains" as it matures.	We believe the provisions governing noncompliance in §§ 285.400 through 285.402, along with minor modifications discussed previously, will be appropriate. We have not changed the final rule in response to this comment.
§ 285.408: The proposed provisions for lease assignment should work fine. The only possible issue is whether or not this will be an avenue for speculators to acquire large areas of the OCS and the assign it for a profit?	We believe the assignment provisions, along with the various diligence requirements, will discourage improper speculation.
§ 285.425: Lease renewal should not be automatic, nor have an open-ended term, but should be available for shorter terms.	We have adopted the recommendation to grant longer renewal terms and have revised § 285.427 to provide for commercial lease renewals of 25 years or longer if negotiated by applicable parties. We have

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	added detailed criteria for lease renewal at § 285.429. We also have added discussion of these issues to the preamble and will address them in the implementation guidance that we intend to issue after the rule is approved. We believe the rule provides necessary discretion and flexibility to allow longer or shorter terms, as appropriate, on a case-by-case basis.

SUBPART E—PAYMENTS AND FINANCIAL ASSURANCE REQUIREMENTS	
Comment	**Response**
Economic viability assessments should be undertaken on all prospective projects, and those deemed uneconomic should not be approved for development.	We have not adopted this recommendation. The EPAct does not require MMS to conclusively determine the economic viability of a project.
§ 285.503: The greatest single obstacle to the financial and economic viability of alternative energy development on the OCS is the proposal for a commercial lease rental fee of $3/acre/year in § 285.503. In establishing rate levels, the California Public Utility Commission determines if a utility's investments are prudent. Under this regulatory structure (and different from an oil and gas exploration business), a utility in California does not enjoy the potential of achieving an unbridled return on its investment should a project turn out to be successful. A project with extremely high lease costs only serves to increase the cost of energy to a utility's customers and may prevent the project from being economically viable.	No changes to the final regulation have been made in response to this comment (see detailed explanation in the preamble at § 285.503). The MMS has determined that the $3/acre fee is a reasonable level for renewable energy development projects on the OCS. However, MMS can reduce or waive the rental fee, as provided in § 285.510.
§ 285.505: The annual operating fee formula in § 285.505 is acceptable. It is not clear, however, that MMS will apply it in such a way as to maximize the revenue for the US Treasury.	Section 388 of the EPAct (43 U.S.C. 1337(p)(2)) does not require MMS to maximize the revenue for the U.S. Treasury, perhaps in part because renewable energy generation provides positive externalities to the public beyond monetary value. No changes to the final regulation have been made in response to this comment.
§ 285.500 The MMS should bear in mind that renewable energy projects use public space, but do not use finite, depletable public energy stores like the oil and gas industry upon which MMS's fee proposal appears to be based. The MMS should revise its fee proposal in § 285.500 to be more reasonable, reflecting a rental concept rather than payment for extraction of resources, particularly since operating fees are inappropriate while marine renewables remain in their nascence and must reflect the realities of renewable energy project development.	The MMS understands that renewable energy projects do not use a depletable resource, but they do occupy public land to the exclusion of other potential uses. Therefore, MMS has adopted rental and operating fees that are much lower than those MMS charges the oil and natural gas industries for extraction on the OCS. In terms of the annual operating fee in § 285.506, the operating fee formula, which is based on the formula that BLM employs for onshore wind energy, is capacity based, and therefore, is primarily determined by a readily observed objective measure - the size of the project that a lessee develops using public land that falls within MMS's jurisdiction. No changes to the final regulation have been made in response to this

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	comment.
§ 285.506: The approach in § 285.506 for calculating annual operating fees is unnecessarily complex. The proposed formula for calculating annual operating fees is based on such statistics as the average retail power price in the State where an offshore alternative energy project's transmission cable makes landfall, as well as a capacity factor that MMS will select based upon present and future domestic and foreign projects that operate in comparable conditions and on comparable scales.	The MMS believes that the annual operating fee formula in § 285.506 is a transparent and equitable approach using easily referenced components, such as the power price as reported by EIA. For a discussion of other approaches considered, see the explanation in the preamble at § 285.506 Additionally, while a fee based on net revenues promises some potential theoretical benefits, it introduces some practical problems along with added program costs associated with the need to estimate or audit cost streams. A gross revenue basis also removes much of the uncertainty associated with the potential for conflict over results of these measurement activities. No changes to the final regulation have been made in response to this comment.
§ 285.506: The MMS should reconsider basing their revenue calculations and operating fees in § 285.506 on the gross capital costs of the project developers. The MMS should calculate these figures on a net basis instead.	Calculation of revenues on a net basis, such as through financial statements, would increase the complexity of such a calculation as a number of additional components to a project's pro forma would need to be considered. While a net basis promises theoretical benefits, it introduces more significant practical problems such as the need to estimate or audit cost streams. A gross basis removes the uncertainty associated with the potential for conflict over results of these activities. No changes to the final regulation have been made in response to this comment.
§ 285.506: The operating fee in § 285.506 should commence when the project is actually operating or when actual revenues are obtained from the sale of electricity, as the operating fee would be burdensome during construction when there is no revenue stream and the cost of capital is high. The positive externalities associated with marine renewable projects, as well as the nascent nature of the industry, should also be considered. A more practical approach would be to impose operating fees after a project has been in commercial operations for at least 1 year.	We have amended § 285.505 to state that MMS will begin collecting operating fees on a commercial lease beginning at the time that the generating facility starts producing electricity commercially during the operations term. Alternative forms of due diligence, such as continuing to charge a rental during the construction phase and adopting a deadline for starting the operating fee, will balance the encouragement of development through a more reasonable fiscal approach while providing the safeguards against potentially manipulative lessee behavior.
§ 285.506: The fee on imputed revenues in § 285.506 should commence when actual revenues are obtained from the sale of electric power. Due to financial and operating constraints, a more practical approach would be to start imposing operating fees after the project has been in commercial operation for 1 year and some level of output from the facility has been subscribed. Until revenues are earned by commercial operation, the project will not have a revenue stream from which to pay the fee and will instead be forced to finance the operating	The MMS considered these recommendations and agrees with the commenter that operating fees should not be charged until after production. However, we do not believe we should wait until 1 year after production starts to charge an operating fee. We have amended the regulations at § 285.506 to charge the annual operating fee at the time the project begins generating electricity. Other forms of due diligence, such as continuing to charge a rental during the construction phase and adopting a deadline for starting the operating fee, will balance the encouragement of development through a more

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fee. The carrying costs of the project at the early stage, given the high cost of capital and the revenue stream uncertainty, will be significant and are a sufficient incentive to ensure the developer will pursue successful commercial operation in a timely and diligent manner. Also, given the benefits of marine renewable in terms of energy security, climate change, air quality and comparative wildlife impacts (as compared to conventional means of electricity generation), MMS should defer the collection of royalties until such time as the marine renewable energy facility is actually operating. Additionally, charging operating fees in the infancy of a newly constructed project puts an undue burden on developers at a time when capital costs are high and revenue is uncertain. The MMS should consider delaying the collection of operating fees until at least 1 year after completion of construction and initiation of operations.	reasonable fiscal approach while providing the safeguards against potentially manipulative behavior.
It should be noted that as currently proposed in § 285.506, the Government does not obtain any fair return from additional revenue streams such as the sale of renewable energy credits (RECs) or the sale of air emissions credits for cap and trade systems.	The wholesale power price, which is a component of the formula used in § 285.506, generally does reflect the cost of RECs and emission allowances on a system-wide basis. With the majority of regional energy markets deregulated, the wholesale power price in a given region represents, by and large, the marginal unit in the generation stack in terms of cost of generation. Therefore, revenue streams from the sale of RECs or the sale of air emissions credits for cap and trade systems will be indirectly accounted for in the annual operating fee, and so the Government will obtain a fair return. No changes to the final regulation have been made in response to this comment.
It should not be assumed that the State where a transmission cable makes landfall is the same State where the project's output is sold. Also, it is not unusual for power purchase agreements to be negotiated with two purchasers, which may be located in two different States, neither of which are necessarily the State where the cable makes landfall.	Given the transmission grid and congestion issues, it is likely that the project's output will ultimately serve the State where the transmission cable makes landfall as these load zones and the corresponding load requirements are in close proximity to the coasts. In the interest of avoiding excessive complexity, MMS has chosen a straightforward and transparent fee mechanism. It is unlikely that the electricity generated on the OCS would be used to serve load in States further away, given the current transmission grid and congestion issue as well as increases in transmission losses and wheeling charges the longer that electricity is transmitted. No changes to the final regulation have been made in response to this comment.
§ 285.506: The formula in § 285.506 for	The final rule was amended to use wholesale rates

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calculating the operating fee should be based on wholesale rates. Basing the operating fee on retail rates does not make much sense since the lessee will not be receiving the retail rate for the power it produces, and since retail rates will reflect only in small part of the cost of purchasing the offshore alternative energy output.	instead of retail rates. The MMS recognizes, however, that there are limitations in that wholesale rates are published on a regional (multi-state) basis as specified by the North American Reliability Council and are of an older vintage. The MMS will employ the wholesale rate initially as the basis for its valuation, but retains the authority to adjust that published value to better reflect variations by State within a region as well as market conditions of more recent vintage that may be better captured in the published retail power price, given the information provided by EIA. The MMS also retains the flexibility to use more timely or disaggregated wholesale price indices, where applicable, as appropriate information becomes available.
§ 285.506: The proposed definition of "P" in the imputed revenue formula in § 285.506 is inappropriate to measure the wholesale value of the power from an offshore project since it represents a retail end-user price that includes distribution and transmission charges. It also should be noted that EIA published Statewide average retail prices that includes averages for the residential, commercial, industrial, and transportation end use sectors. The use of actual project revenues is a far superior measure of revenues. However, if MMS wants to use imputed revenues, a more suitable (but imperfect) measure would be the average standard offer service or default service rate in $/MWh for electric power suppliers in the State that supplies wholesale power requirements (or if there are not, the average wholesale cost of power supplied to or by the utility in question). If an imputed revenues measure is used, lessees have the ability to reduce their payments if actual revenues are significantly lower than imputed revenues.	As previously stated, MMS has considered this recommendation and will make use of a readily available wholesale power price index, as opposed to the retail power price, as a more appropriate power price to use in the annual operating fee formula. The wholesale power price may be representative of a State or regional power price based on available public data and corresponding adjustments that MMS could make to account for local variations and market conditions, as discussed in section 285.506. Given that MMS adopts the use of wholesale power prices, the commenter's recommendation to use the standard offer service or default service rate, which are alternatives representing retail power prices, is no longer germane. The use of actual project revenues for computing the operating fee introduces costly accounting and audit obligations that are largely absent in the case of an imputed, market-based proxy for project revenues. Moreover, there is no compelling evidence that a simple market-authenticated measure of wholesale value cannot be employed in a generally equitable manner. Accordingly, MMS has not made any changes in the final regulation in response to this comment regarding the use of actual project revenues.
§ 285.506: The capacity factor in § 285.506 should be based on meteorological data at the existing site, not on MMS evaluation of "comparable" sites. Sites can differ tremendously based on location and, as long as site-specific data are available for a site, there seems to be no good reason why precise capacity factors should not be used. Furthermore, the capacity factor should be discounted by a percentage from the measured data to account for	The MMS can set the initial estimate of the capacity factor based on meteorological data at the existing site from information collected during the SAP term. To account for fluctuations, the rule allows for adjustment of the capacity factor after the first year of commercial operations and for every 5-year period thereafter, which will also allow for averaging of the capacity factor once an operational history of the project is established. No changes to the final regulation have been made in response to

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annual fluctuations.	this comment.
§ 285.506: The calculation and payment of an operating fee after 1 full year of commercial operation will avoid the need to establish hypothetical capacity factors, which are not directly related to a particular project's operations. Rather than impose an initial capacity factor which has a significant potential of being too high, MMS should base its operating fee on real data compiled during the first year of commercial operation. To this end, § 285.505 should be amended to state that the first payment will be based on the first full year of commercial operation.	The MMS believes that the estimate of the capacity factor to be used in the annual operating fee formula in § 285.506 is appropriate and reasonable because it is based on lessee provided data. The MMS recognizes that actual commercial operations may be different than estimates and therefore has provided that the capacity factor may be adjusted after the first year of commercial operations and for every 5-year period thereafter. No changes to the final regulation have been made in response to this comment.
§ 285.506: As the rule is currently written in § 285.506, MMS would have to wait by as much as 5 years to capture the monetary benefits of projects that are able to improve their operational capacity factor.	Current experience in renewable technologies points to underperformance issues as opposed to improvements in capacity factors. The 5-year period by which MMS would evaluate the capacity factor of a project also would allow for averaging of historic performance, which would account for higher or lower than normal operating years. The MMS believes the experimental character and social benefits of the new technology justify any risk in giving a renewable energy project certainty on its fiscal obligations for up to a 5-year period. No changes to the final regulation have been made in response to this comment.
§ 285.506: The rule should clarify in § 285.506 that the operating fee set during the term of a lease will not be adjusted unless it is based on a formula negotiated with the lessee and incorporated into the executed lease. Entities need to be able to model the costs of a long-term project. It is not realistic or fair to raise operating fees based on some post-hoc exercise of MMS's discretion. To avoid such financial uncertainty and the concomitant risk to project viability, MMS should disavow the potential approach suggested at 73 FR 39413, and should affirm that an operating fee can only be adjusted based on a formula mutually agreed upon by the parties and included within the lease.	The power price component of the operating fee will be adjusted on an annual basis using information from an independent outside source, EIA, to reflect prevailing market conditions. The possibility of adjustment within this impartial structure is essential to restore the intended financial shares in the event of unforeseen changes in the expected operating conditions. Such changes could work to the detriment of either party, so this flexibility protects both parties. Accordingly, there will be no unexpected changes in fiscal terms mandated by MMS that would contribute to destabilizing the underlying profitability of the venture. The other components of the annual operating fee formula cannot be changed, nor can other provisions such as rental fees, after issuance of the lease instrument. No changes to the final regulation have been made in response to this comment.
The MMS should consider "investing" in the short term growth cycle of the industry to reap benefits over the long term. Perhaps the first 200 MW installed nationally could be free from operating charges and benefit from reduced lease charges. Clearly this would have implications for any competitive bidding processes. In light of prevailing energy prices in the United States	Section 388 of the EPAct specifically charges MMS with ensuring a fair return for AE leases on the OCS, and this mandate does not allow MMS to permanently waive the annual operating fee for some group of projects. The rule does have provisions under § 285.510 for temporary reduction or waivers of the annual operating fee for no more than 6 years if the lessee demonstrates that the

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and the absence of production tax credits for wave energy output, it is unlikely that any bids would be made in any revenue-based competitive process in the short term in any case. In Europe, wave energy projects are only now starting to get off the ground, even with enablement mechanisms yielding kWh payments in the high 30-cents range. No such mechanisms exist in the United States, so it is difficult to see where such bid payments could originate. The MMS should waive fees for early stage developers of new renewable technologies that may be deployed for clean, renewable energy generation purposes on the OCS. Pre-commercial testing and device demonstration projects should be granted fee waivers for a short time period of 1-2 years.	project would be uneconomic, or if the reduction or waiver is needed to encourage additional activities. Also, MMS will consider waivers for fees associated with limited leases under § 285.103. With the ocean wave and current industry just starting on the OCS, it is likely that only a small number of companies will have the necessary resources and technological expertise to develop renewable energy ocean projects in the near term. In addition to the reduction and waiver provisions previously mentioned, the rule addresses this issue in subpart B, which provides applicants with a number of different options including competitive and noncompetitive lease offerings as well as commercial and limited leases. Further, the U.S. energy markets are much different from those in Europe, and enablement mechanism, such as feed-in tariffs that essentially provide a subsidy to developers of AE projects, do not fall within the scope of section 388 of the EPAct. No changes to the final regulation have been made in response to this comment.
It is not appropriate to model offshore renewable energy regulations directly after the oil and gas framework, nor would it be effective in supporting the growth of this critical emerging industry. Further, the financial requirements for offshore renewable energy projects need to reflect the actual economic conditions of the industry, not hypothetical models. The economic analysis models MMS used to establish financial criteria in § 285.506 of the proposed rule do not reflect the emerging nature of the wave energy industry. The proposed operating fee rate of 1-2 percent of the retail value of power is much too high for this nascent industry.	The rule's annual operating fee formula in § 285.506 is based on comparable systems onshore, such a those employed by BLM for renewable energy leases, and constitute much lower fiscal terms than that in the oil and gas industry. Consequently, an operating fee rate of 1-2 percent of the retail value of power should be a reasonable rate for this nascent industry. However, as provided for in § 285.506(c), MMS will specify operating fee parameters in the Final Sale Notice for commercial leases issued competitively and in the lease for those issued noncompetitively—thus taking into consideration the emerging nature of wave energy industry. Additionally, MMS maintains the flexibility to adjust the operating fee rate from the 2 percent on a lease-specific basis in addition to the provisions in the rule that allow for the reduction or waiver of the annual operating fee temporarily on a case-by-case basis. No changes to the final regulation have been made in response to this comment.
§§ 285.506 and 285.510: The MMS should create a predictable and fair fee process, and eliminate the waiver provision in § 285.510 for fees and revenues and the sliding operator fee scale in § 285.506. All projects should have the same standard of financial responsibility to the Federal Government and the State for the use of public trust land.	To facilitate the development of renewable energy projects on the OCS, MMS retains the flexibility to reduce or waive the rental and annual operating fee, at the discretion of the Director, if the lessee is able to demonstrate though an application that there is such a need despite its good faith efforts and through no fault of its own (§§ 285.103 and 285.510). No changes to the final regulation have been made in response to this comment.
The provision in section § 285.509 that permits	Comment noted. The MMS believes the provision

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MMS to reduce or waive the rental or operating fee when the Director determines that it is necessary to encourage continued or additional activities is a good provision and should remain unchanged in the final regulations.	for reduction and waivers of rental or operating fees is appropriate and will give the agency flexibility to encourage develop of offshore renewable energy projects, particularly as this industry is growing.
The MMS should add a new provision to section § 285.509 as follows: (f) MMS shall reduce or waive rental or operating fees in an appropriate amount: (1) if there is no federal production tax credit in place for the project, or (2) for projects that have the potential to significantly advance technology development or the infrastructure capability of alternative energy resources on the OCS in situations where the successful demonstration of the commercial viability of the particular activity or technology has not been adequately established.	Section 285.510 is clear with regard to the reasons whereby the Director may reduce or waive the rental or operating fee: (i) continued activities would be uneconomic without the requested reduction or waiver or (ii) a reduction or waiver is necessary to encourage additional activities. Both of the stated grounds for reduction in the comment fall within the existing provisions in § 285.510. No changes to the final regulation have been made in response to this comment.
§ 285.509: The section giving the Director the ability to waive all payments with no accountability or guidance at all should either be removed entirely or substantially expanded. Additional requirements should be added relating to the efficacy of operations, the value of maintaining operations, and findings that there are no other operators that could take over operations and run them effectively. In the event that the final rule retains significant operating fee charges based on imputed rather than actual revenues, proposed § 285.509 should be revised to include the following: "(c) No holder of a lease or grant will obtain full waivers of operating fees covering more than 6 years of the relevant operations term under subsection (a) of this section. (d) The MMS Director shall reduce the operating fee for a commercial lessee under this subpart if the lessee demonstrates that estimated revenues for its operations (that is, the product of the M, H, c and P factors defined in section 505(a) of this part) exceed actual revenues by 20 percent or more. A lessee that qualifies for relief under this section shall pay operating fees on revenues equal to 120 percent of actual revenues. (e) When requesting a reduction or waiver under subsection (d) of this section, you must submit an application to us that includes all of the following: (1) The number of the lease involved; (2) Name of each lessee of record; (3) Name of each operator; (4) Documentation of actual power sale revenues derived from operations under the lease; and (5) Any other information required by the Director."	Section 285.510 gives the Director the discretion to reduce or waive the rental or operating fee if the information provided by the lessee in its application sufficiently demonstrates that the project would be uneconomic otherwise or a reduction or waiver is necessary to encourage additional activities. Under the rule, the Director may require additional information, including those highlighted in the comments. However while we may standardize this process, much like we do for oil and natural gas projects, following implementation and experience with this new program, we have chosen not to include such criteria as regulatory requirements. No changes to the final regulation have been made in response to this comment.

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Discretionary authority to reduce or waive operating fees is helpful, particularly if it is exercised liberally "to encourage continued or additional activities." However, the reservation of such purely discretionary authority will not adequately address the serious threat that MMS's proposed operating fee formula poses to project finances. Prospective investors in offshore wind projects will not accept the possibility of partial discretionary administrative relief as an answer to the risks posed by operating fee liabilities that are both unbounded and decoupled from actual project revenues. The operating fee rate for competitive auctions in § 285.506 should be lowered to 1 percent, and MMS should assess these fees against actual rather than imputed power revenues. If MMS rejects both these recommendations, it should, at a minimum, provide assured, as opposed to discretionary relief, for lessees whose actual revenues are sharply lower than the revenues imputed to them under the operating fee regulations.	As discussed in the preamble to the rule regarding MMS's analysis of various payment scenarios in the fiscal cost-benefit analysis, the results indicate that payments, including those in the high case scenario, do not have a significant impact on the economic viability of potential renewable energy projects, particularly those that are truly feasible economically. Therefore, MMS does not adopt the commenters lower operating fee rate recommendation of 1 percent for the entire term of the lease. However, MMS does recognize that, in the near term, offshore AE projects may be considered marginally economic and has provided waivers in §§ 285.103 and 285.510, and can specify operating fee parameters (such as the operating rate) in the Final Sale Notice for commercial leases issued competitively and in the lease for those issued noncompetitively—thus taking into consideration sale- or project-specific economic considerations (§ 285.506(c)). Additionally, we have amended § 285.506 to state MMS will begin collecting operating fees on a commercial lease beginning at the time that the generating facility starts generating electricity for commercial distribution during the operations term.
§ 285.517: Balance bond amounts in § 285.517 appear to be prohibitive to would-be speculators but within the realms of affordability by serious project proponents - perhaps other, nonfinancial, stipulations could be introduced in lieu of capital.	The MMS does not take into consideration the motives of the operator when it sets bond amounts. The MMS will determine bond amounts using the criteria in § 285.516 of the rule. The amounts will be determined by lease or grant obligations, including estimated decommissioning costs. No changes to the final regulation have been made in response to this comment.
§ 285.526: The MMS needs to allow for a broader array of credit support and performance assurance beyond the costly options specified in the proposed rule. The proposed requirement to obtain financial assurance specified in § 285.526(a) will require applicants to incur significant and generally unnecessary costs, particularly companies which are able to provide financial assurances in other, far less expensive ways. It is wasteful to have a creditworthy company tie up financial resources for 30 years. Surety bonds and the alternate forms of financial assurance are expensive (usually around one percent of face value) and could significantly impact the commercial viability of a project.	The financial assurance requirements are necessary to protect the Government from losses in the event a lessee or grantee failed to perform its obligations. We have revised § 285.526 of the final rule to allow even more instruments to meet the financial assurance requirement that may be less expensive for operators than surety bonds. A lessee may consider negotiable government bonds or securities, investment-grade securities, and insurance. The final regulation also allows the demonstration of financial strength and reliability as well as the use a of a third-party guaranty to satisfy the bonding requirement.
§ 285.540: Revenue sharing under § 285.540 should accrue to the State where a project's power transmission cable makes landfall, regardless of the project's distance offshore. This is not the revenue sharing provision that is	The revenue sharing provision of section 388 of the EPAct specifically states that a project that is located wholly or partially within the area that is 3 nautical miles seaward of State submerged lands are qualified for State revenue sharing, and

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in section 388 of the EPAct, and it would require a new act of Congress to change this revenue sharing provision.	payments shall be distributed to States whose coastline falls within 15 miles of the geographic center of the project. However, the commenter notes that revenue sharing should not be limited to the 8(g) zone, but should apply to all energy production on the OCS. As the commenter notes, changes to the State revenue sharing provision would require a new act of Congress. No changes to the final regulation have been made in response to this comment.
§ 285.517: The MMS should clarify how the calculations conducted to determine amounts required for bonding under § 285.517 will consider costs associated with removal, cleanup, and mitigation of damages to adjacent areas.	In determining the amount required for bonding at § 285.516, MMS will consider projected amounts of rents and other payments due to the Government over the next 12 months; any past due rents or other payments; and the costs of lease abandonment and cleanup. No changes to the final regulation have been made in response to this comment.
Business certainly is key for investors. The rule needs an orderly, simple, and predictable bonding schedule where the level of Government fees is known in advance of the final permit. Further, the regulations should be crafted in a way that ensures the final bonding costs will remain within reason and are carefully reviewed to cover only the necessary costs.	The methods to ensure financial assurance have been expanded. The rule has been revised at § 285.516 and § 285.521 to allow a decommissioning bond that could be staged to ensure that the amount of financial assurance matches the expected decommissioning costs. The MMS will work to ensure that the financial assurance it requires will be only that which is necessary to cover lessee or grantee obligations.
The rule should make clear that no decommissioning coverage will be required until construction actually begins. As the operating term proceeds, the level and type of financial assurance that is required should be linked to actual default risks.	The rule (§ 285.516(a)(4)) has been revised to allow a separate decommissioning bond that could be staged to ensure that the amount of financial assurance matches the expected decommissioning costs. As the operating term proceeds, the level of financial assurance that is required will be reflected in the schedule for providing the appropriate level of financial assurance that must be approved by MMS.
The MMS should separate financial assurance for decommissioning costs from financial assurance for other regulatory obligations.	The financial assurance for decommissioning costs has been separated from other regulatory obligations (see §§ 285.516 and 285.521). Financial assurance for decommissioning may be staged over the life of the project on a schedule approved by MMS.

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Surety bonds can only provide protection for a 25-year operating term if they are consistently renewed. A lessee or operator that was unwilling or unable to renew a surety bond during the closing years of its operating term would leave MMS with no guaranteed funding for decommissioning costs.	The regulations adequately cover the situation where a lessee fails to comply with the conditions of the lease or grant (see Subpart D). The MMS will call for forfeiture of the bond or other form of financial assurance. The final regulations allow for staged amounts of financial assurance for decommissioning obligations. The MMS may periodically review § 285.517(c)(1) estimates of decommissioning obligations to ensure that those obligations are covered by the level of financial assurance. The regulations at § 285.517(c)(2) also allow the lessee to request a reduced level of financial assurance if a review shows the reduced level covers the estimated decommissioning obligation. We have revised the regulations at §§ 285.516 and 285.521 to clearly allow a separate bond to cover decommissioning costs. The financial assurance obligations of lessees will change over time, including the obligation after the lease term ends. The MMS will periodically review estimates of decommissioning obligations to ensure that those obligations are covered by the level of financial assurance. The rule has been revised § 285.526 to allow other forms of financial assurance. This should allow all lessees to obtain appropriate financial assurance for renewable energy projects.
Alternatives used elsewhere in the OCS program should be adopted for financial assurance in the final rule, including in the MMS Notice to Lessees, 2003-N06.31. This policy removes the requirement for maintaining a supplemental bond where the applicant can demonstrate financial strength and reliability through providing audited financial statements. A creditworthy lessee should be allowed to satisfy any financial assurance requirement by providing its audited financial statements, evidence of investment grade credit ratings, or other satisfactory evidence of its financial strength. Alternatively, MMS should permit lessees to supply a parent company guarantee.	We have revised the regulations at § 285.527 to allow a lessee to satisfy the financial assurance requirement by demonstrating financial strength and reliability. The regulations at § 285.528 also allow the use of a third-party guaranty. These forms of financial assurance are used in the OCS oil and gas program.
The MMS should consider allowing use of a power purchase agreement, sale agreement, or similar instrument with suitable financial assurances by the power purchaser to serve as financial assurances under this section. Since utilities will most likely be the purchasers of power generated by these projects under some	The final rule includes new forms of financial assurance at § 285.526. We did not include the use of a power purchase or sales agreement in the rule. However, a utility could play a role in financial assurance by becoming a third-party guaranty. No changes to the final regulation have been made in response to this comment.

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form of contract, this mechanism would meet the financial assurance requirements of this section.	
Although the proposed financial assurance generally track existing financial assurance rules for oil and gas or sulfur leases, the proposed rule conspicuously omits authorization for alternative energy developers to use the third-party guarantees that developers of oil and gas and sulfur deposits can provide in place of bonds.	We have added the use of a third-party guaranty to the final rule. See § 285.528.
In considering which additional financial assurance options should be made available to wind farm lessees and operators, MMS should review its rules governing financial assurances for supplemental oil spill liability. Those rules allow oil and gas lessees to guarantee payment using insurance, self-insurance (with an appropriate showing of adequate assets), and "alternative method[s]" approved by the Director.	We have included additional forms of financial assurance to the final rule, including insurance, at § 285.526.
The MMS should include other requirements in the lease process, such as bonds or investment portfolios, to provide greater financial assurance and reduce speculation during lease sales. It is clear that MMS intends to eventually require lessees to obtain financial assurances through bonding, but not clear when in the process.	The final rule is clear about the requirements and timing of financial assurance requirements for each stage of a lease or grant (§§ 285.516 and 285.520). No changes to the final regulation have been made in response to this comment.
§ 285.540: The MMS should consider providing affected States with a bonus revenue payment or other incentives under § 285.540 if a State pledges, through agreements, guidelines, or other means, to use a portion of the shared project revenues for activities related to advancing access and responsible development of alternative energy projects on the OCS.	Section 388 of the EPAct specifically provides for 27 percent of revenues to be shared with affected States. The MMS is not permitted to allocate funds, such as bonus revenue payments or other incentives, through regulation not authorized by statute. No changes to the final regulation have been made in response to this comment.
Basing revenue-sharing calculations for eligible projects solely on the proximity from the project center under § 285.540 is not the best allocation method. This approach assumes that most projects will be somewhat regular in geometric shape. In some situations however, alternative energy projects might assume irregular shapes so as to follow seabed contours or higher current velocities. It is possible that under the proposed distribution protocol, one State may qualify for the majority of shared revenue because of its proximity to the project "center," but in fact be subject to less of the actual project area.	Section 388 of the EPAct specifically states that equitable distribution of State revenue sharing be determined for States whose coastlines are located within 15 miles of the geographic center of the project. Further, geospatial software can be used to determine the geographic center of a project regardless of whether the project footprint is "regular" in shape. No changes to the final regulation have been made in response to this comment.
§ 285.540: The distribution protocol in § 285.540 should be amended to capture the disproportionate effects that a project may have on a more distant State's uses or resources. Because the revenue sharing focuses on proximity, the proposed rule for revenue sharing	Section 388 of the EPAct specifically states that equitable distribution of State revenue sharing funds will use a formula that is based on a State's proximity to the project. Consideration of sites for transmission cables and other off-lease infrastructure in the revenue sharing formula is not authorized by

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at § 285.540 does not account for possible disproportionate adverse effects. Proximity may be a useful surrogate in many cases, but there are readily identifiable situations where the impacts of a project would have greater effects on one State's uses or resources. The distribution protocol in § 285.540 should be amended to capture this important concept. Additionally, the rule at § 285.540 should be revised to share project revenue with any State where a cable or other infrastructure from the alternative energy facility is landed.	the statute. The MMS considered but rejected the option of defining a special project area that differs from the lease area to try to account for situations when proximity might not be a good surrogate. We concluded that it is better is to be vigilant in adjusting lease acreage to the evolution of a project.
§ 285.542: The rule at § 285.542 should clarify State revenue sharing for beyond 15 miles from the coastline and sharing of revenue with States for projects located on OCS adjacent to their State. The MMS has provided examples of revenue sharing for projects beyond 20 miles of a State's shoreline. Yet, the language of the rule appears to limit the sharing of revenue to projects that are within 15 miles of a State's coastline. Federal law does not seem to provide any restrictions for the MMS to share revenue for projects beyond 15 miles. States can be impacted by projects anywhere on the OCS adjacent to the State, and thus, should receive revenues from these projects as well. The regulations, as currently written, are very confusing with regard to State eligibility for project revenue sharing. The confusion results from the use of the term "qualified project." Without specific knowledge that there is a definition for "qualified project," it appears that a State becomes eligible for revenue sharing if a project is either or both of the following is true: the project is located within the 8(g) area or the project is within 15 miles of a State's coastline. Language should be added to this section to point the reader to the definition of "qualified project," or the definition needs to be integrated into the wording of this section.	Section 388 of the EPAct, specifically states that equitable distribution of State revenue sharing be determined for States whose coastlines are located within 15 miles of the geographic center of the project. The EPAct revenue sharing language does not provide for revenue sharing based on projects' impacts. Any change to the revenue sharing provision requires a new act by Congress. Section 285.541 explains what is meant by a "qualified project" for revenue sharing, and § 285.542 explains when a State is eligible for payment of revenues.
The rule should clarify how damages would be included in revenue sharing, if at all. Would mitigation and financial compensation for natural resource damages or loss be included in revenue sharing payments, or excluded? It is apparent from the calculations for revenue sharing that they are flexible, and can change based upon (1) proximity to qualified coastal States, (2) financial situation of the applicant, and (3) changing condition of the market. If this is correct, a clear mechanism is needed outside of revenue sharing that will address the loss or	The MMS collects payment as bonuses, acquisition fees, rentals, and operating fees (which are like royalties) for the value of the national interest in the OCS renewable energy resource and property. Other revenues do not qualify under the AEAU Program just as they do not qualify as payments. These other revenues include, but are not necessarily limited to, a forfeited bond or surety, cost recovery fees, and civil penalties. The MMS may assess civil penalties as authorized by section 24 of the OCS Lands Act and referenced in § 285.400(f) of this regulation. Any civil penalty levied for

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damage to any natural resources adjacent to State waters, or affected State waters or land. It is suggested that this issue can be addressed when the developer applies for a use authorization for State-owned aquatic lands.	noncompliance of lease obligations, including civil penalties for environmental damage, would be excluded under the State revenue sharing provision since they are not revenue from payments related to the Government's property interest in the lease. The EPAct does not require or authorize MMS to provide or require developers to provide compensation for mitigating adverse impacts to the States or local areas.
§ 285.540: The currently proposed "inverse distance" formula for revenue sharing in § 285.540(c) may result in an inequitable distribution of funds since the character and magnitude of impacts to affected fisheries users and resources and to other wildlife and their habitats may vary among States, regardless of distance from the proposed project. Consequently, we request that the formula be amended to expressly take into account, in addition to the proximity of the project, the proportionate resource impacts of the project on the affected States.	Section 388 of the EPAct specifically states that equitable distribution of State revenue sharing be based on a formula that is based on the proximity of the project. Changes to the distribution protocol, as suggested by the comment, would introduce less objective and transparent measures than proximity and would need a new legislative act by Congress. No changes to the final regulation have been made in response to this comment.
§ 285.540: The formula in § 285.540(c) used to determine the eligibility of States to participate in revenue sharing under various geographic circumstances appears to indicate that, if an AE producing facility is located outside the 8(g) zone and more than 15 miles from the coastline of any State, no State would be eligible to receive revenue. We seek clarification as to whether this interpretation is correct, and if so, how States that are, by this reasoning, not eligible for revenue sharing but might be affected by such alternative energy development activities would be compensated.	Section 388 of the EPAct specifically states that a project must be located wholly or partially within the area extending 3 nautical miles from State submerged land to be qualified for the State revenue sharing provision. Any changes to the revenue sharing provision will require a new act by Congress. The basis for our interpretation is found in the preamble discussion covering subpart E. No changes to the final regulation have been made in response to this comment.
§ 285.540: The term "project area" in § 285.540 with regard to revenue-sharing should be clarified, as it is unclear how it is different from a lease area. This should be clarified prior to adoption.	Project area means the geographic surface leased, or granted, for the purpose of a specific project. To avoid distortions in the calculation of the geometric center of the project area, project easements issued under this part are not considered part of the qualified project's area, but rent received from a project easement are included in calculating the revenue to be shared.
§ 285.540 The proposed revenue-sharing protocol in § 285.540 fails to account for distinctions in project timing like phase-in of production.	As stated in § 285.540, the MMS will base State revenue sharing eligibility and specific shares on the objective measure of the lease area active at the end of the fiscal year in which MMS collects the sharable revenue. Regardless of when, during that year, a change may have occurred in the lease or project area, the configuration of the area on the last day of the fiscal year will be used to determine State payments for that year. This procedure combines

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	the objective basis for revenue sharing with a dynamic process for adjusting to changes in project area over the life cycle of a project.
It is important that MMS recognize the need/requirement to assess "economic viability." In reviewing the discussion on 73 FR 39408, it appears MMS is conducting appropriate analysis of prospective projects. Nevertheless, these rules must make it clear that MMS has a fiduciary responsibility to protect public assets from frivolous exploitation. And if MMS states economic viability is a critical criterion, then to maintain credibility, MMS needs to enforce this for all projects.	With regard to the preamble discussion in the Federal Register, the discussion of economic viability, as referenced to the fiscal cost-benefit study, relates to the magnitude and appropriateness of the proposed fee payments in subpart E of the rule, and is not to be construed as critical criterion for screening potential projects. Results from the MMS economic evaluations would not serve as a formal profitability forecast suitable for private investment decisions, and hence would not be used to endorse or condemn a prospective project. The rule also provides due diligence provisions that addresses nonperformance issues, including financial assurances and lease relinquishment or cancellation in response to events that negatively affect the operations of a project. No changes to the final regulation have been made in response to this comment.

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General subpart F comment. Concerning coordination on various biological components of the proposed rule, such as surveys and migratory bird consultation, the proposed rule does not discuss or reference MMS's responsibilities regarding the Migratory Bird Treaty Act.	The final rule addresses the protection of migratory birds in several major ways. As described in the preamble, all NEPA reviews must examine biological resources including marine birds. In the rule, NEPA reviews occur at the lease issuance stage as well as for site assessment, construction and operations, and decommissioning stages. In addition, the rule requires that biological surveys, which include descriptions of the presence of sea birds, be submitted with the SAP, COP, GAP and decommissioning application Further, we are working with FWS on a Memorandum of Understanding to implement E.O. 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds" (January 10, 2001).
General subpart F comment. The proposed rule does not mention the FWCA which applies to water resource development projects. Although a 1982 Solicitor's Opinion states that the FWCA does not apply to mineral development or oil and gas projects on the OCS, the Service believes the proposed alternative energy development program in the OCS, which is the subject of MMS rule, would be the type of project to which the FWCA would apply.	We have reviewed the 1982 Solicitor's Opinion, "the Fish and Wildlife Coordination Act Does not Apply to OCS leases and Permits Issued by the Secretary," and have concluded that it is also applicable to leases and grants issued for Renewable Energy and Alternate Use activities.
General subpart F comment. Subparts F and H need to be better integrated and coordinated to more clearly indicate to the applicant what environmental documentation is required to be	Subpart H has been revised to inform operators of their requirements for conducting activities under an approved plan. The MMS has revised subpart H, § 285.801 through 804, by moving items relating to

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completed while submitting GAP, SAP, and COP plans for approval.	requirements for plans to subpart F. The air quality requirements in proposed in § 285.807 were also moved to subpart F, § 285.659, since they apply to information requirements for plans. The information requirements will be further described in guidance to be issued after the rule is published.
General subpart F comment. The rule should clearly state the MMS decision process for plans in relation to consistency decisions by State CZM agencies.	The MMS decision process for plans in relation to consistency decisions by State CZM agencies is discussed in the rule's preamble under the CZMA Compliance for Plans. We have not made any changes to the rule.
General subpart F comment. The MMS should explain how it will determine an "affected" coastal state for the purpose of CZMA review?	The MMS will coordinate proposed activities with the appropriate CZM agencies to make that determination. The use of regional task forces could assist in this process including which States are affected. We did not make any changes to the rule.
General subpart F comment. The MMS should conduct consultation and coordination with stakeholders.	The MMS will conduct coordination and consultation with appropriate Federal, State, and local governments. The requirement for coordination and consultation is required by subsection 8(p) of the OCS Lands Act and is reflected in the rule (see § 285.102(e)). Additionally, MMS may establish task forces with Federal, State, local, and tribal governments at any time. The MMS is committed to this requirement.
General subpart F comment. The MMS should clarify in the rule which agencies will have the lead for other Federal reviews (e.g., Endangered Species Act, Clean Air Act, Clean Water Act).	The MMS will be the lead for the technical and NEPA reviews for the activities conducted on the OCS under subsection 8(p) of the OCS Lands Act on leases issued by MMS. The MMS and FERC finalized an MOU in April 2009, clarifying jurisdictional understandings regarding renewable energy projects on the OCS to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. We did not make any changes to the rule based on this comment.
General subpart F comment. Applicants should be permitted to prepare draft environmental documents for MMS.	Section 285.111(b)(3) allows applicants to request approval from MMS to perform portions of or complete NEPA analyses themselves, or to directly pay a contractor to perform such analyses.
General subpart F comment. The MMS should adopt a phased approach to environmental documentation.	The MMS envisions a phased approach to environmental documentation under this program. The MMS published a Final PEIS in 2007 which considered the potential environmental effects of and mitigation for offshore renewable energy activities over a 5-year period (2007-2012), including the generic impacts of site assessment, construction, operations, and decommissioning on a national basis. When the MMS holds a lease sale, MMS will prepare an EIS for that proposed lease sale. This document will cover the potential effects of offshore REn activities including site assessment, construction, operations, and decommissioning,

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	based on hypothetical scenarios on a more localized area than the large-scale PEIS. Subsequent plans submitted under leases issued from these lease sales may tier-off both the PEIS and lease sale EIS, adopting the impact analyses and mitigation measures where appropriate. The NEPA documentation for a SAP and GAP would cover the specific activities proposed in those respective plans, including site-specific impacts and consideration of project-specific mitigation measures. The NEPA documentation for a COP would include the most detailed information about development at the project location and would assess site-specific impacts and consider project-specific mitigation measures. We did not make any changes to the regulation based on this comment. Also, § 285.629 states that an applicant may request in their COP the development of a lease in phases, requiring an applicant to provide details as to what portions of the lease will be initially developed for commercial operations, and what portions of the lease will be reserved for subsequent phased development
General subpart F comment. In order for States and local governments to use the MMS NEPA documents for their "equivalent" environmental process, specific information and analyses should be required in the rule.	The MMS will work closely with affected States and local governments to coordinate and consult on activities proposed under this program to ensure efficient preparation of environmental reviews and to ensure project-specific information and analyses are included, as appropriate. These reviews could be conducted jointly by MMS and the responsible agency or separately. We did not make any changes to the regulation based on this comment.
General subpart F comment. The MMS needs to consider the cumulative impacts of OCS AE projects.	The MMS will work closely with Federal agencies, affected States, local governments, and other stakeholders to coordinate and consult on activities proposed under this program and to identify critical issues including cumulative effects. Cumulative issues will be assessed at each stage of the environmental review of projects, including lease sales, in order to identify effects and to recommend appropriate mitigation measures and monitoring. We did not make any changes to the regulation based on this comment.
General subpart F comment. The rule is unclear as to the process available to States or other stakeholders to address and remedy disagreements arising from the content of the SAP, GAP, or COP, other than that offered by the comment review process. Particular concern was expressed over disagreements on projects that have ROWs through State waters.	The MMS will work closely with affected States and local governments to coordinate and consult on activities proposed under this program to ensure that there is a mechanism to raise issues and concerns. For competitive leases, MMS would address potential subsea cable route impacts through State waters in the NEPA documentation for lease sales and plans. The MMS is open to doing environmental reviews jointly with the affected State in a joint environmental document. Since MMS's authority is limited to the OCS (outside of State waters), the

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	affected State would have full authority to decide on access issues within a State's territorial sea. We did not make any changes to the regulation based on this comment.
General subpart F comment. The MMS should meaningfully incorporate the requirement of adaptive management into the rule.	The structure of these regulations is based on adaptive management. Operating companies are required to demonstrate and validate their performance. The MMS will set forth terms and conditions to be incorporated into plans and will determine when to require adjustments to mitigation and monitoring activities based on operating experience. Operating companies are required to certify compliance with certain of those terms and conditions. We did not make any changes to the regulation based on this comment.
General subpart F comment. The proposed rule does not state a reliable approach to protection of environmental quality.	The MMS will prepare NEPA documents and decisions pursuant to the regulations for implementing NEPA at 40 CFR parts 1500-1508. Review of lease issuances, plans, and other activities will be subject to all relevant Federal environmental statutes (e.g., ESA, MMPA, NHPA, MSA, etc.). Also see § 285.102(a) for additional requirements. We did not make any changes to the regulation based on this comment.
General subpart F comment. The MMS should develop standardized biological monitoring, mitigation, and restoration guidelines for inclusion within a project-specific EA or EIS. The regulations include standardized monitoring and mitigation guidelines for birds, bats, marine mammals, sea turtles, and fisheries; and the guidelines stipulate a minimum of 2 years of pre-construction avian monitoring data.	The MMS will use the NEPA process to develop appropriate monitoring, mitigation, and restoration guidelines on a case-by-case basis. Some of these requirements may be developed during the leasing process and incorporated into leases. Other requirements will be identified through the plan review process and incorporated into plans as conditions of approval. We did not make any changes to the regulation based on this comment.
General subpart F comment. Early permitted projects and leased areas should be closely monitored for their overall impacts on the environment, both beneficial and adverse. This information and data should be used by MMS to inform future phases of lease sales consistent with monitoring results.	We agree and will use information gained from early projects in the evaluation of future lease sales and proposed projects. We did not make any changes to the regulation based on this comment.
General subpart F comment. There is concern about potential safety and environmental risks from routine and accidental events posed by OCS AE facilities on commercial and recreational users of the territorial sea and ocean shore, and on the marine biological resources.	Using the coordination mechanisms within this rule and those in NEPA, the MMS will work with appropriate tribal, local, State, and Federal agencies, and interested public to identify concerns and issues associated with OCS REn activities. The MMS will identify, require, and enforce appropriate mitigating measures and operating conditions for all approved activities. We did not make any changes to the regulation based on this comment.
§ 285.601: The MMS should combine both the SAP and COP into one step or plan, thereby reducing the burden on developers.	Section 285.601 states that you may submit your COP with your SAP. The NEPA analyses and other required reviews could be performed on both submittals simultaneously, which could reduce the

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	burden on developers. This option was available in the proposed rule; therefore, no change to the rule is necessary.
§ 285.601: It is unclear why MMS has proposed to give the applicant only 60 days to prepare the SAP/GAP and all required environmental documentation for a noncompetitive lease while applicants for competitive leases are given 6 months to produce this documentation.	Since the unsolicited request for a noncompetitive lease is initiated by the applicant, MMS believes that 60 days after the publication of a notice of no competitive interest provides sufficient time to prepare the SAP/GAP. The applicant should have sufficient time to gather information prior to application for a lease and during the time it takes MMS to make a determination of no competitive interest. However, § 285.416(c) of the rule allows for an applicant to request a suspension to extend the term of a lease or grant for submission of a plan. We did not make any changes to the rule based on this comment.
§§ 285.601, 285.605, 285.610, 285.625, 285.640, and 285.645. The review and application time for projects is too long and burdensome. The MMS should reduce the time it takes for an applicant to receive approvals.	We have revised the rule to remove the MMS approval of the conduct of geophysical and geological surveys and baseline surveys (e.g., biological, archaeological) and the requirement to describe the survey designs in the SAP, COP, or GAP (§§ 285.605, 285.610, 285.625, 285.645). Applicants may now conduct these surveys pre- or post-lease under the verification of the ACOE Nationwide Permit program and pursuant to other applicable law. However, MMS strongly encourages applicants to coordinate any pre-lease or post-lease survey activities with MMS and the ACOE prior to their conduct. Applicants will now be required to submit the results of the surveys in the SAP, COP, or GAP (§§ 285.610(b), 285.626(a), 285.645(a)). The data collected from these surveys must meet the technical requirements that MMS will set forth in guidance to be issued after the rule is final. Any construction activities (e.g., installation of a meteorological tower, a meteorological buoy, technology testing) need to be proposed in the appropriate plan. We have also reduced the number of NEPA and CZMA reviews for a commercial lease issued competitively from 3 to 2 by combining the lease sale and site assessment activities into one review. This, in combination with the elimination of MMS approval of site assessment surveys, should greatly reduce the review time for commercial leases issued competitively. The MMS may review the effects of site assessment surveys (e.g., geophysical, geological, archaeological, biological) in the NEPA process for the lease sale. Additionally, § 285.601(d) states that you may submit your COP with your SAP. The NEPA analyses and other required reviews could be performed on both submittals simultaneously, which could reduce the time it takes for an applicant to receive approvals.

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§§ 285.605 and 285.640: The State CZM agency should make a determination of whether geophysical and geological surveys should be reviewed under the CZMA.	After the proposed rule was published, MMS determined that geophysical and geological surveys conducted for the purpose of preparing SAPs, COPs, and GAPs are covered under the verification of the ACOE's Nationwide Permit Program. Therefore, MMS will not take any action to approve or disapprove these surveys (§§ 285.605, 285.610, 285.625, 285.645). The MMS strongly encourages applicants to coordinate any pre-lease or post-lease survey activities with MMS and the ACOE prior to their conduct to determine CZMA applicability under the ACOE action.
§§ 285.605, 285.610, 285.640, and 285.645: The proposed environmental documentation requirements are too cumbersome, and the activities normally conducted under a GAP or SAP should not require an EIS or EA and instead should qualify for a categorical exclusion under NEPA.	After the proposed rule was published, MMS determined that geophysical and geological surveys conducted for the purpose of preparing SAPs, COPs, and GAPs are covered under the verification of the ACOE Nationwide Permit Program. Therefore, MMS will not take any action to approve or disapprove these surveys, and we will not require any environmental review of these surveys in a plan. This is reflected in the revised rule. However, bottom-founded activities, such as installation of a meteorological towers, meteorological buoys, current meters, technology testing, would need to be described in a SAP (see §§ 285.605 and 285.610) or GAP (see §§ 285.640 and 285.645), with technical and environmental review by MMS and other appropriate agencies. This type of activity is not categorically excluded. The MMS will make a determination of the level of NEPA review required for each action, based on a review of the proposed activity. As the program matures, MMS will review the impacts from the program and make a determination whether we can recommend categorical exclusions to the Council on Environmental Quality.
§§ 285.605 and 285.640: The construction of two or three identical meteorological towers should not trigger additional requirements, as stated in the rule, which will add significantly to the time and expense of plan submission.	The MMS has revised the rule to clarify the requirement by stating "if you propose to construct a facility or combination of facilities which MMS determines to be complex or significant, you must also comply with the requirements of subpart G. See §§ 285.605(d) and 285.645(c).
§§ 285.606, 285.621, and 285.641: The MMS should not require the strict language "Best Available and Safest Technology."	We kept the requirement of "Best Available and Safest Technology" in the rule, as it is authorized for activities conducted pursuant to the OCS Lands Act and it is important to ensure safety in the conduct of such activities.
§§ 285.606, 285.621, and 285.641: The MMS should publish the applicable best management practices in a specific guidance document to reflect adaptive management strategies, technology development, and monitoring results from early projects. The MMS should consider	The MMS prepared a Record of Decision (ROD) in December 2007 for its EIS on the AEAU Program. The ROD identified initial mitigation measures for the new program by adopting 15 interim policies and 52 initial best management practices. The ROD is published at:

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providing a regulatory incentive for the use and compliance of best management practices.	http://ocsenergy.anl.gov/documents/docs/OCS_PEIS_ROD.PDF. New measures will be identified as appropriate. The MMS will incorporate appropriate best management practices into the authorizing instruments and monitor and enforce compliance with the terms and condition of the lease or grant instrument. After the final rule is published, MMS will provide guidance to applicants that will include best management practices. Sections 285.606(a)(6), 285.621(f), and 285.641(f) require applicants to demonstrate in their SAP, COP, or GAP that they use best management practices. We did not make any changes to the regulation based on this comment.
§§ 285.610 and 285.626: These sections need to clarify how the applicant must demonstrate in the COP or SAP the items described, including not causing undue harm or damage to natural resources; life; property; or the marine, coastal, or human environment. The applicant should show compliance with the terms and conditions.	Sections 285.105, 285.606, and 285.621 set forth the general environmental protection requirements for these plans. The rule requires compliance with all applicable laws, regulations, and lease provisions (§§ 285.606(a)(1) and 285.621(a)). Certification of compliance with certain terms and conditions as identified by the MMS is also required (§§ 285.615(c) and 285.633(b)). The plans are subject to NEPA review and other reviews under all relevant Federal laws. No change to the rule is needed.
§ 285.610: Alternate deconstruction plans should not be part of the "conceptual decommissioning plans" in a SAP, expressing concern that MMS will give the perception of consent to an alternate deconstruction plan 30 years prior to the event.	The proposed rule states in § 285.902(c) that the approval of the decommissioning concept in the SAP, COP, or GAP is not an approval of a decommissioning application and, thus, not an approval of an alternate deconstruction plan. Section 285.902(b) requires that an applicant submit a decommissioning application and receive approval from MMS before actual decommissioning. We did not make any changes to the rule based on this comment.
§§ 285. 285.611, 285.627, and 285.646: The MMS should include specific requirements for environmental information in the rule.	We revised the rule at §§ 285.611, 285.627, and 285.646. After the final rule is published, MMS will issue guidance for the preparation of the required plans.
§§ 285.612, 285.627, and 285.647: The MMS should provide specific guidance to States and energy developers prior to promulgation of the rule that includes a full description and rationale of CZMA compliance for the proposed rule, including all of the MMS lease or grant pathways, decommissioning actions, and other related subjects such as determinations, certifications, and necessary data and information. The MMS also should identify in consultation with the States which activities are "Federal activities" that require consistency to the maximum extent practicable, or a "Federal permit or license" requiring full consistency.	The MMS disagrees with this comment that the final rule should be withheld until after MMS issues implementation guidance. The MMS will issue guidance after the final rule is published and hold workshops to discuss the final rule, including CZMA compliance issues. Additionally, MMS will provide for early coordination of proposed activities with the appropriate CZM agencies. The use of regional task forces would assist in this process as well. We have revised the rule at §§ 285.612, 285.627(b), and 285.647 to clarify the CZMA processes we will follow.
§ 285.612: A completeness determination of the	The MMS will follow the requirements of 15 CFR

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SAP and other included information should be made within a certain defined timeframe (e.g., 30 days). The MMS's determination of the completeness of the SAP should not delay MMS's submission of the CZMA certification to the State, so the State may start the consistency clock.	part 930, as appropriate. We did not change the rule to include timeframes for MMS to make a completeness determination. While such timeframes are required for the OCS oil and gas program, no such requirements exist under subsection 8(p) of the OCS Lands Act. We do not believe that establishing timeframes will be appropriate until we have actual experience in processing SAPs and making determinations regarding their completeness.
§ 285.612: One copy of the consistency certification, as stated in the proposed rule, may not be the appropriate number for all State CZM agencies; therefore, it is recommended that the number of copies be deleted.	The MMS will forward a copy and an electronic copy of the consistency certification and the plan to the State CZM agency (e.g., § 285.612(a)). The electronic copy should be sufficient to provide copies to the CZM State agency. We did not make any changes to the regulation based on this comment.
§§ 285.613, 285.628, and 285.648: The MMS should prescribe in the rule specific time periods for review of the SAP, COP, and GAP, including time for public review. Ample time should be given for environmental review.	The MMS has not set a review time period for a plan in the final regulation. After the final rule is published, MMS will issue guidance which shows targets for MMS processes. The MMS will conduct a NEPA review of the proposed activities to address all issues and concerns. The proposed activity will be subject to all relevant Federal laws and requirements, including public review.
§§ 285.613, 285.628, and 285.648: The MMS should share data and information collected at various stages of process with States, tribes, and Federal agencies.	The final rule states at §§ 285.613(c), 285.628(d), and 285.648(c) that, when appropriate, we will coordinate and consult with relevant State and Federal agencies and affected Indian tribes and provide to other local, State, and Federal agencies and affected Indian tribes relevant nonproprietary data and information pertaining to proposed activities in SAPs, COPs, and GAPs. Other than including Indian tribes to those government entities with which MMS will coordinate and consult, we did not make any changes to the regulation based on this comment.
§§ 285.613 and 285.628: What form of document will MMS issue as its final decision on a SAP or COP?	The MMS will issue decision letters for a SAP, COP, and GAP. In cases where EISs are prepared on the plan, a ROD will be prepared in addition. In situations where EAs are prepared, MMS will issue a Finding of No Significant Impact if there are no significant impacts, and a decision letter. In cases where there are significant impacts, an EIS would be prepared, and a decision letter. We did not make any changes to the regulation based on this comment.
§ 285.615, 285.633, and 285.653: The MMS received a comment applauding the requirement for lessees to submit certifications of compliance and summary reports that demonstrate compliance.	Comment noted. No change to the rule is required.
§§ 285.615, 285.633, 285.653, and 285.659: The reporting requirements in the proposed rule appear to oblige projects to report to MMS exclusively. The MMS should broaden this	The MMS will coordinate proposed activities and resultant reporting with the appropriate State CZM agencies. We did not make any changes to the regulation based on this comment.

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requirement to include affected State CZM agencies.	
§§ 285.616, 285.634, and 285.655: There is no explicit requirement or standards for commercial lease applicants to incorporate a response and recovery plan as a mandatory component of the SAP, GAP or COP.	The MMS revised the rule so that the applicant will be required to submit to MMS a revised SAP, COP, or GAP when there is a structural failure of one or more facilities to describe their response to the specific activity (see revisions at §§ 285.616(c)(7), 285.634(c)(7), and 285.655(c)(7)).
§ 285.617: The MMS should specify that a revised SAP will be required only for major changes to the original SAP.	Based on the changes proposed for a SAP, MMS will make a case-by-case determination whether the changes are authorized under the existing SAP or require a revised SAP (see § 285.617). We did not make any changes to the regulation based on this comment.
§§ 285.620 to 285.626: The applicant needs to identify the exact project location before the COP is submitted to MMS. The actual location affects the potential impacts of the project and Federal consistency determinations.	The final rule at § 285.626 requires the lessee submit project-specific information including, a location plat. Also, the MMS will begin its environmental analysis on the COP activities only after determining that the COP contains all the required information necessary to conduct our technical and environmental reviews, including those required under NEPA and CZMA (§ 285.626). We did not make any changes to the regulation based on this comment.
§§ 285.620 to 627: The COP should contain detailed information about a proposed AE facility for analysis of impacts.	Sections 285.620, 285.621, 285.625, 285.626, and 285.627 of the final rule do require the COP to contain detailed information about a proposed renewable energy facility. After the final rule is published, MMS will issue guidance for the preparation of the required plans to ensure the level of detail is adequate to analyze potential impacts. Section 285.627 was revised to clarify the information required for environmental review.
§ 285.626: The general decommissioning plans should be submitted as part of the COP that includes the estimated lifespan of the project and estimated costs for full site restoration.	Section 285.626 requires a discussion of the general concepts and methodologies for decommissioning and site clearance procedures that must be submitted as part of the COP. The MMS will use this and other information to ensure that an applicant meets the necessary financial assurance requirements. We did not make any changes to the regulation based on this comment.
§§ 285.627 and 647: The MMS should clarify what subsection of the CZMA regulations applies to noncompetitive leases.	A competitive lease sale is a Federal agency activity and must comply with 15 CFR part 930, subpart C. A noncompetitive lease issuance with decision on a SAP or GAP is a nonfederal activity that requires a Federal license or permit and must comply with 15 CFR part 930, subpart D. Under the CZMA and its implementing regulations, an OCS plan is any plan for the exploration or development of, or production from, any area leased under the OCS Lands Act that is submitted to the DOI which describes in detail Federal license or permit activities. Since, for leases issued noncompetitively, the lease and SAP or GAP

SUBPART F—PLANS AND INFORMATIONS REQUIREMENTS	
Comment	**Response**
	will be processed simultaneously (before the area has been leased), the SAP or GAP cannot qualify as an "OCS Plan" under the CZMA implementing regulations. For leases issued competitively, the GAP will be submitted and processed after the lease has been issued, and in those instances, the COP or GAP would be processed as an "OCS Plan" (as defined by 15 CFR 930.73), and follow the requirements of subsection 307(c)(3)(B) of the CZMA and 15 CFR part 930, subpart E. For competitive commercial leases, MMS will prepare a consistency determination for the lease sale and site assessment activities. However, if new information from the SAP submittal showed changes in impacts identified at the lease sale stage, the SAP could be subjected to further review. We revised the rule at §§ 285.612, 285.627(b), and 285.647 to clarify these issues.
§ 285.628: Clarify the process for MMS to coordinate with States, tribal, and local governments in adapting permits and conditions and adjusting mitigation and monitoring requirements. It is not clear to what extent MMS will coordinate with these other entities regarding permit approval conditions and updates, if needed. How will adaptive management processes work for projects?	States, tribal, and local governments will have the opportunity to provide input through the plan review and NEPA process. The MMS will coordinate with appropriate agencies prior to approving mitigation measures. The process is detailed in the regulation (e.g., see § 285.628(f)(1)). We did not make any changes to the regulation based on this comment.
§ 285.628: Applicants who decide to first pursue a limited lease or a lease under the Interim Policy and then later decide to pursue a commercial lease on the same site should not be required to produce the same environmental documentation twice.	The MMS will review the information submitted by an applicant to determine if it is current and meets the requirements for plan submittal (see § 285.628). It is possible that the applicant could meet the requirements for a commercial lease with the use of information previously submitted to MMS.
§ 285.632: The MMS should review and approve the Facility Design Report and Fabrication and Installation Report (see § 285.632) in parallel with MMS's preparation of the EIS and review of the COP.	The Facility Design Report and Fabrication and Installation Report are not needed in the preparation of an EIS or for the review of the COP.
§ 285.640: The proposed rule is unclear on when exactly a SAP and COP versus a GAP is required.	The MMS has amended the final rule to clearly state the requirements for submitting the appropriate plan for a lease, easement, or ROW.

SUBPART G—FACILITY DESIGN, FABRICATION, AND INSTALLATION	
Comment	**Response**
General design comment. The MMS should consider regional standards, given the difference in regional conditions and extreme weather events. For example, with regard to cables, sediment types vary nationally. However, in regions where sediments are such that burial can be accomplished, burial should be required, and cables should be routed around pockets of areas where burial is not feasible.	There are no regional or national standards at this time. Standards for the offshore renewable energy industry are being written by industry and class standards organizations. When these standards are completed, MMS will review them. It is highly likely that regional weather and seafloor conditions will be factored into the standards documents. The MMS will review these standards when available and will consider incorporating them through

	rulemaking and the public comment process into the regulations at that time. No change to the final regulation has been made in response to this comment.
General design comment. The offshore wind industry in Europe has developed criteria for certifying offshore wind farms and has successfully implemented approval strategies using standards developed by entities referenced by MMS, including the International Electrotechnical Commission, Det Norske Veritas, and Germanischer Lloyds. The offshore wind industry in Europe has nearly two decades of experience building and operating offshore wind farms (which now number more than two dozen) without major incident relating to structural or safety issues.	Comment noted.
General design comment. Safety and failure tolerances should reflect the inherently safe and environmentally benign nature of wind turbines. To do otherwise would work against the economics of this important, inherent feature of wind energy.	Industrial uses of the OCS, such as the installation of wind turbines, must be designed to pose as little environmental or safety risk as possible, as well as limit conflicts with other users of the OCS. In addition, § 285.701 requires lessees to establish that their proposed facility will not pose a risk, and MMS believes that these requirements will allow us to establish that projects are developed responsibly. No changes to the final regulation were necessary in response to this comment.
General design comment. Since no standards are specified in the proposed MMS rule, offshore wind developers will not have a design target, yet must still satisfy MMS that "accepted" engineering and industry practices and standards are being followed. The result is a subjective process that raises significant budgeting and scheduling concerns for projects under development.	Under § 285.705, a developer must design a project to accepted engineering and industry practices, and the design, fabrication and installation must have a third-party review (unless MMS grants a waiver under § 285.705(c)). This is the process MMS will use until there are recognized standards that cover all applications. Budget and schedule issues may be significant factors as the renewable energy industry develops early projects on the OCS. No change to the final regulation has been made in response to this comment.
General design comment. In adopting any new standards for offshore wind project certification, MMS should take into consideration that all offshore wind turbines are unmanned during normal operation and should be classified as such so that only necessary structural safety, commensurate with unmanned structures with only economic failure consequences, is mandated.	We will consider all the consequences associated with the failure of an unmanned wind turbine as we review design, fabrication, and installation reports submitted under §§ 285.701 and 285.702. We will also take these factors into account when we review new standards for incorporation in our regulations through rulemaking. No change to the final regulation has been made in response to this comment.
General design comment. A phased approach may be warranted. It would allow the offshore alternative energy industry to continue to grow and take advantage of the momentum that has been building in recent years. At the same time, by using the valuable information and knowledge embedded in existing standards, with which the CVAs will already be familiar, this phased approach can advance MMS's policies, including	The phased approach to using and adopting standards is a reasonable approach. This is essentially the approach that MMS has taken to this point. The MMS will review new standards when available and will consider incorporating them into the regulations through rulemaking at that time. No change to the final regulation has been made in response to this comment.

safety and reliability goals, without impeding the growth of the industry. Under the two-phase approach, MMS would (1) rely on existing standards that have been developed and successfully applied overseas to ensure safe and efficient development of the U.S. industry, while (2) pressing ahead with its analysis of those existing standards and other work required to determine the need for and, if necessary, formulate U.S.-specific standards.	
General design comment. Existing standards are, as new standards will need to be, comprehensive in the sense of applying to the entire generating plant and its operations. For example, it is not advisable or even feasible for one standard to apply to the foundation and support structure of a wind turbine and another to the turbine itself. While wind turbines do receive "Type" certification, such certification is in itself not sufficient to meet the needs of the MMS in this regulation.	Comment noted. The MMS will review new standards when available and will consider incorporating them into the regulations through rulemaking at that time. No change to the final regulation has been made in response to this comment.
General design comment. The MMS should expedite the necessary analysis of existing standards and current European practices and adopt a transparent certification plan that can be immediately implemented to serve projects that are already in the pre-construction design phase.	The MMS continues to assess how existing standards would apply to the characteristic regional environments (wind, wave, and current) that are representative of nearshore Gulf of Mexico and North East coasts through both analysis and the use of two major case studies. The MMS believes that adopting a certification plan before this regulation has been finalized and before the first designs for OCS facilities have been submitted is premature and thus beyond the scope of this rulemaking. No change to the final regulation has been made in response to this comment.
General design comment. Safety and failure tolerances should reflect the inherently safe and environmentally benign nature of wind turbines. To do otherwise would work against the economics of this important, inherent feature of wind energy.	Industrial uses of the OCS, such as the installation of wind turbines, must be designed to pose as little environmental or safety risk as possible, as well as limit conflicts with other users of the OCS. Lessees have a burden of proof to establish that their proposed facility will not pose a risk, and MMS believes that these requirements will allow us to establish that projects are developed responsibly.
General design and CVA comment. The MMS should use the following approach to certification. Upon issuance of the final rule, the CVA will be required to certify the project to one of the existing standards cited in the preamble to the proposed rule. The standard to which the project will be certified will be proposed by the developer when the CVA is nominated. The MMS would review the proposed standard in conjunction with its review of the CVA nomination.	The MMS did not adopt any of the standards cited in the preamble of the proposed rule. The regulations allow the developer and the CVA to use various industry standards provided the standards conform with accepted engineering practices. The regulations would allow a developer or a CVA to use an approach similar to the one described in the comment. We expect that lessees and MMS will have many discussions concerning the design of structure associated with this new program. No change to the final regulation has been made in response to this comment.
General CVA comment. CVAs will have access to considerable detail of the project's engineering, and this detail will often be competitive in nature.	Comment noted. Only general structural and design information (§ 285.701) must be submitted to MMS with your COP. The CVA will examine

Furthermore, CVAs will work for multiple project developers, and these developers will likely be competitors with one another. Much of the detailed information that a CVA will have access to is not actually needed by the MMS in order to perform its duties. The MMS should not require confidential data needed by the CVA to be released to MMS, but rather MMS should accept the findings of the CVA based on their analysis of the confidential data.	detailed design and construction plans and report to MMS on their adequacy. No change to the final regulation has been made in response to this comment.
General CVA comment. The MMS should include and expedite a training program to educate prospective CVA organizations and offshore developers in the United States and orient them to the MMS expectations so developers will not be delayed because of a CVA review that is not consistent with the expectations of MMS, or that is based on differing interpretations of MMS regulations.	A training program to educate prospective CVAs concerning MMS expectations is beyond the scope of this rulemaking. The regulation provides adequate notice of CVA roles and responsibilities. Furthermore, CVAs may discuss expectations with MMS when they are selected to verify a project. We did not make any changes to the final regulation in response to this comment.
285.700: The MMS should be obligated under the regulations to inform the lessee that reports (e.g., Facilities Design Report, Facilities Fabrication and Installation Report, etc.) have been received and deemed acceptable before a lessee can commence construction.	The MMS will respond to the applicant with any objections within the stated 60-day timeframe. We did not make any changes to the regulation based on this comment.
§ 285.701: Early projects need to know the standards immediately, and have those standards apply for the duration of the project, in order not to further delay projects and make them uneconomic.	Early projects will rely on sound engineering principles and judgment. The use of a CVA to assist in ensuring and verifying that lessees and operators used sound engineering principles and judgment will help move these projects through MMS's regulatory review. No change to the final regulation has been made in response to this comment.
§ 285.701: The offshore wind power is an internationally oriented industry. In order to facilitate U.S. participation in this global industry, the United States must adopt internationally accepted standards whenever possible.	The MMS will review any standards, including internationally developed standards when available, and will consider incorporating them into our regulations through rulemaking, as appropriate. We are not adopting any AE specific standards at this time. No change to the final regulation has been made in response to this comment.
§§ 285.701 and 285.702: The Facility Design Documents and Fabrication and Installation Reports cited in this section should be considered proprietary.	The final regulation at §§ 285.701(e) and 258.702(d) have been amended to clarify that MMS will treat this information as proprietary information. The amended sections state that MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA.
§§ 285.705 to 285.713: The required use of a CVA is expensive and redundant where such design, fabrication, installation, repairs and modifications are done under the direction of a licensed engineer. Further, since most projects will be developed under a project-financing structure, the lender will have already had its independent engineer review the wind farm	The purpose of the CVA in subpart G is to provide MMS with the assurance that an independent assessment has been conducted on the design, fabrication, and installation of the facility. This independent assessment will help assure that public lands and resources are both protected and used properly. Decisions by outside parties such as a lender's use of independent engineers to verify

design and construction.	design, fabrication and installation activities do not satisfy MMS's obligation under these regulations. A prudent lessee or operator will not have two different independent parties verify the same project. However, we have amended this section to allow MMS to waive the requirement for a CVA in cases where the lessee proposes to utilize facilities of a standardized design that have previously been successfully deployed in a similar offshore environment. Paragraph (b) of this section describes when MMS will waive CVA requirements.
§ 285.705: The MMS should delete CVA sections entirely or reserve such a requirement for particularly high-impact or higher-risk offshore energy activities and justify the necessity for such an unprecedented requirement in such instances.	The MMS believes that the services of a CVA are extremely important when utilizing new technology on public lands. The use of a CVA for new technologies is not unprecedented. The MMS has required the use of a CVA for many years for unique designs and facilities located in frontier areas. Most, if not all, AE projects will be unique in the areas they are located. The impacts and risks associated with these projects are unknown at this time, so MMS is not adopting the suggestion in the comment to eliminate the CVA requirement. However, we have amended this section to allow MMS to waive the requirement for a CVA in cases where the lessee proposes to utilize facilities of a standardized design that have previously been successfully deployed in a similar offshore environment. Paragraph (b) of the final regulation at § 285.705 describes when MMS will waive CVA requirements.
§§ 285.705 through 285.713: We have concerns about the potential unnecessary costs and delays. It would be appropriate for existing third-party verifications to be accepted as validation, and for any future validations to be carried out in such a way as to be applicable over a range of generic conditions and project formats.	As discussed in a previous response, we amended the final rule to allow MMS to waive the requirement for a CVA in cases where the lessee proposes to utilize facilities of a standardized design that have previously been successfully deployed in a similar offshore environment.
§§ 285.705 through 285.713: As the offshore wave and current industries have not yet established generally accepted technology and engineering guidelines, it is not clear to what standard CVAs would compare individual projects. Moreover, there is no governing body approving design standards for these projects, which could result in a high degree of variability between CVA inspection results. If the MMS keeps the CVA requirement, MMS must provide training and certification to companies interested in becoming CVAs so that expectations are clear, particularly in the absence of any standards.	Under § 285.705, a CVA will use best engineering practices and relevant engineering standards when reviewing offshore wave and current proposals. Standards for offshore wave and current engineering and technology will develop and grow as the AE industry grows. The concept of a third-party review or use of a CVA is not new. The offshore oil and gas industry has been using CVAs for many years. A qualified CVA will understand the expectations and requirements that are in these regulations. No MMS training is needed. No change to the final regulation has been made in response to this comment.
§§ 285.705 through 285.713. We agree with the use of a CVA because it should help ensure that facilities possess structural integrity and stability. However, MMS should carefully consider the implementation of the CVA requirements in a	As previously discussed, we amended § 285.705 to allow the waiver of the CVA requirement where the lessee proposes to utilize facilities of a standardized design that have previously been successfully deployed in a similar offshore environment.

manner that does not place undue financial burden on developers. The MMS should consider allowing a developer to certify a system design that would be approved by a CVA, but would not require recertification for unique installations.	However, the financial burden of having a CVA does not factor in MMS's decision to waive the CVA requirement. We will review the need for a CVA on a case-by-case basis and will follow the criteria describe in paragraph (b) of the final regulation in § 285.705 in deciding whether a waiver is appropriate.
§ 285.706: The CVAs should not be allowed to also be consultants to other competing developers (as opposed to being a CVA), nor should CVAs be allowed to be developers themselves. The CVAs will have access to considerable detail of the project's engineering, and this detail will often be competitive in nature. Furthermore, CVAs will work for multiple project developers, and these developers will likely be competitors with one another.	The final rule, at § 285.706, requires that individuals or organizations acting as a CVA must not function in any capacity that would create a conflict of interest or the appearance of a conflict of interest. Lessee or developer concerns about CVAs having access to proprietary information on multiple projects are beyond the scope and responsibility of this rulemaking. No change to the final regulation has been made in response to this comment.
§ 285.708: This section requires a CVA to "make periodic onsite inspections while fabrication is in progress." There is no guidance on the term "periodic." The MMS should revise this section to either define periodic or include a "not less than" limitation on the number of visits or time between them.	The MMS has chosen not to define the term "periodic" for purposes of the final regulation. The CVA will determine how often to schedule onsite inspections on a case-by-case basis. The CVA must inspect often enough to verify requirements found in §§ 285.709 and 285.710. The regulation, as written, allows maximum flexibility. No change to the final regulations has been made in response to this comment.
§§ 285.708 through 285.710: The proposed regulations require the CVA to "verify, witness, survey, or check" nearly every aspect of the installation process. Given the repetitive nature of installing numerous, identical structures, and given the information that will be available to the CVA both before and after the installation (e.g., geotechnical data or the ability to test bolt tensions), requiring the CVA to "verify, witness, survey, or check" most if not all of the installation is beyond what is necessary to ensure correct installation and could become economically challenging. Further, observing the installation process may not always be a particularly effective way to determine correct installation.	The primary responsibility of the CVA in §§ 285.708 through 285.710 during the fabrication and installation phase is to ensure that the facility is built and installed according to the approved procedures documented in the Fabrication and Installation Report. Observing the installation process is an important part of the verification process as well as periodic onsite inspections and as record checks. There is no requirement that the fabrication of every structure and every installation procedure must be witnessed. The CVA must use good engineering judgment that periodic onsite inspections are sufficient to ensure to the MMS that the fabrication and installation meet the approved standards. We believe that periodic inspections are an effective way to assess installation of facilities.

SUBPART H—ENVIRONMENTAL AND SAFETY MANAGEMENT, INSPECTIONS, AND FACILITY ASSESMENTS	
Comment	**Response**
General subpart H. A special section addressing protection of units of the NPS should be added to subpart H.	We did not add a section to address protection of units in the NPS because section 388 of the EPAct of 2005 expressly prohibits MMS from offering lease for AE within the boundaries of a unit of the NPS.
§ 285.800: Recommend that the applicable Occupational Safety and Health Administration (OSHA) requirements should be referenced here.	The OSHA regulations do not apply to activities on the OCS if the working conditions are regulated by the MMS and the US Coast Guard (USCG). The MMS is responsible for working conditions directly associated with AE production activities. The USCG is

SUBPART H—ENVIRONMENTAL AND SAFETY MANAGEMENT, INSPECTIONS, AND FACILITY ASSESMENTS	
Comment	**Response**
	responsible for working conditions associated with safe access/egress, personal protective equipment, housekeeping, guarding of deck areas, lifesaving devices and equipment, lifeboats, firefighting equipment, fire extinguishers and systems, emergency communications equipment, and commercial diving. Activities that must follow OSHA regulations are outside of the scope of these regulations. These regulations do not cover any activities that are governed by OSHA. No changes to the final regulations have been made in response to this comment.
§§ 285.800 through 285.804: Recommend that MMS use consistent terminology to describe the objective of having lessees and grantees avoid and/or minimize adverse effects to natural resources in coastal and marine environments.	We revised sections §§ 285.800 through 285.804 to use consistent terminology.
§ 285.801: Request MMS remove the consultation requirements included in § 285.801(d), (e), and (f), barring major changes to the ESA section 7 consultation requirements.	We retained the consultation requirements in §§ 285.801(d), (e), and (f) to address events that may involve threatened or endangered species or critical habitat that could occur while the lessee or grantees conducting activities in accordance with an MMS-approved plan. The MMS does not have the authority to remove the consultation requirements. No changes to the final regulations have been made in response to this comment.
§§ 285.801 through 285.804: The environmental documentation requirements in §§ 285.801 through 285.806 are confusing and redundant because the ESA, MMPA, NHPA, and MSFCM apply to activities covered by a lease, and all associated information requirements are found in subpart F.	Subpart H provides for the environmental compliance review and application of terms, conditions, stipulations, and other operating requirements for lease and grant plans (SAP, COP, or GAP). However we removed paragraph (c) in § 285.801 and all of § 285.802 because requirements were redundant with the requirements in subpart F.
§ 285.803: It is unclear why MMS would be incurring costs and what the boundaries of "carrying out preservation responsibilities" might be. Request that MMS clarify the authority under which the applicant may be required to reimburse the costs discussed (§ 285.803(d)).	Section 110(g) of the NHPA allows Federal agencies to charge "... reasonable costs ... to Federal licensees and permittees as a condition to the issuance of [a] license or permit." The MMS may incur such costs under the NHPA for which reimbursement would be required under § 285.803(d) if, for example, MMS had to conduct activities that the applicant failed to conduct in a timely manner. No changes to the final regulations have been made in response to this comment.
§ 285.807: Recommend MMS require lessees and grantees to hire third-party monitors similar to the model set forth in § 285.705 on hiring "certified verification agents" to monitor the construction of facilities under a COP.	The regulations will not require lessees and operators to hire third-party inspectors because MMS has its own inspectors. The MMS will inspect OCS facilities and vessels engaged in OCS activities to ensure that lessees and operators comply with the requirements in 30 CFR part 285. The MMS will conduct scheduled and periodic inspections as described in §§ 285.820 and 285.821.

SUBPART H—ENVIRONMENTAL AND SAFETY MANAGEMENT, INSPECTIONS, AND FACILITY ASSESMENTS	
Comment	**Response**
§ 285.810: Require Safety and Environmental Management System plans to be developed before, not after an event occurs and include recovery plans. Applicants should be able to predict reasonably foreseeable events, such as loss of equipment due to storms or equipment malfunction, and plan for their recovery in advance. The specific plan can include contingencies and be revised based on actual conditions, but there should be a plan in place to ensure quick action as needed.	The regulation at § 285.810 requires the lessee to submit a description of the Safety Management System (SMS) they will use with their COP. The implied intent of this requirement was that the lessee or operator would conduct all activities in accordance with the described SMS. We have added new § 285.811 to clarify that the lessee or operator is required to conduct all activities described in the approved COP, SAP, or GAP in accordance with the described SMS. The SMS will address emergency response procedures and foreseeable events. This new section will require that the SMS be prepared before events occur.
§ 285.810: It appears elements of the SMS plan are essentially emergency accident response procedures. However, none of these elements adequately address the possibility of a large-scale structural failure of the facility, brought about by extreme climate conditions, a tectonic geologic event, or a navigational error by a large vessel. Recommend that a distinct recovery plan be a mandatory component of the COP rather than a general description of operating procedures in case of emergencies.	The SMS covers more than emergency response. Both § 285.810(a) and § 285.810(b) address nonemergency conditions. The SMS must describe how the lessee will approach all of the elements in routine and emergency situations. We agree that the SMS is not the appropriate place for a distinct recovery plan in the event of large scale damage or failure of a facility. A more appropriate place to address a recovery plan is in a revised COP as suggested. A revised COP requires a detailed description of types of activities a lessee would conduct to deal with the failed structure. We have added language to § 285.815(b) that identifies what equipment and facility repairs must be reported to MMS. This section also states that MMS may require you to submit a revised COP depending on the magnitude of the damage to facilities. A revised COP will describe how the operator will address the damage or failed structure.
§ 285.813: The definition of "safety equipment" in § 285.813 is unclear. As written, it could apply to a personal flotation device, which would make these requirements onerous.	We revised § 285.813 by clarifying what equipment must be reported when removed from service. Under the final regulations, the lessee/operator must report the removal of equipment that is necessary for implementing the approved plan. A personal floatation device would not have to be reported because it is not a piece of equipment that is necessary for implementing the approved plan.
§ 285.815: In many cases, equipment failure (e.g., failure of a component) may not be noticeable from an environmental standpoint. The 3-day notification requirement should be restated to include equipment damage or failure which poses a significant risk to the environment, personnel, or property.	The notification of environmental damage resulting from equipment damage or failure is covered in § 285.831. That section requires immediate notification. The 3-day notification requirement in § 285.815(b) was for the completion of repairs, not for notification of the incident. No changes to the final regulations have been made in response to this comment.
§ 285.815: Suggest that the notice of repairs should be for emergencies or major repairs only. Section 285.815(b) requires lessees to notify MMS within 3 business days of	We have amended this section to clarify what repairs a lessee must report. The 3-day repair notification was removed from this section because it was redundant with reporting requirements found in § 285.711. The

SUBPART H—ENVIRONMENTAL AND SAFETY MANAGEMENT, INSPECTIONS, AND FACILITY ASSESMENTS	
Comment	**Response**
repairing any facility associated with the lease. This requirement may not be appropriate for routine repairs and may be better suited to repairs that are undertaken on an emergency basis or that will require environmental documentation.	requirements in § 285.711 address major repairs, so routine repairs do not have to be reported.
§§ 285.816: The MMS should require the facility operator to notify the appropriate State fish and wildlife agencies if environmental or other conditions adversely affect a cable, pipeline, or facility so as to endanger the safety or the environment, and should require the MMS to consult with such State agencies in determining the adequacy of the corrective action plan and the follow-up report, including seeking input on any required mitigation.	The MMS has not adopted the suggestion of requiring the operator to notify State or other Federal agencies in addition to the requirement of notifying MMS under § 285.816 after an incident occurs. The MMS will notify and coordinate with State and Federal agencies, as appropriate, after receiving a plan of corrective action. The MMS will also consult with appropriate State and Federal agencies on the adequacy of the corrective action plan. No changes to the final regulations have been made in response to this comment.
§ 285.816: Amend § 285.816(a) and (b) to state that the respective plan and follow-up report be submitted within 30 calendar days "or sooner, as directed by the MMS."	This section allows, but does not require at the direction of MMS, the submittal of the corrective action plan and the report of remedial action sooner than 30 days. We do not believe it is necessary to provide that MMS may require a shorter time period. No changes to the final regulations have been made in response to this comment.
§§ 285.820 and 821: Offshore AE facilities, like wind turbines, have few opportunities to produce pollution, and will likely be unmanned. Also, these are potentially dangerous facilities to approach and board, so unscheduled and unaccompanied inspections may create significant safety and liability concerns for a lessee. The 24-hour shoreside monitoring station would be more appropriate for unscheduled inspections.	As stated in § 285.821, all offshore facilities, whether manned or unmanned, and associated shoreside monitoring stations should be prepared for unscheduled inspections by MMS personnel, whether conducted in person or by plane or boat. No changes to the final regulations have been made in response to this comment. The MMS will coordinate with the company for inspections of unmanned facilities.
§ 285.830(b) could be interpreted to cover incidents that occur at the substation or onshore transmission line, to which OSHA regulations would apply. Suggest revising the language as follows: (b) These reporting requirements apply to incidents that occur on the area covered by your lease or grant under this part and that are related to activities, up to mean high water on the OCS, resulting from the exercise of your rights under your lease or grant under this part.	Under § 285.830(b), a lessee is required to report specific incidents that occur on activities that are covered by a plan approved by MMS. Incidents associated with onshore transmission lines or substations are not part of MMS plan requirements so such incidents do not need to be reported to the MMS. No changes to the final regulations have been made in response to this comment.

SUBPART I – DECOMMISSIONING	
Comment	**Response**
§ 285.901: The decommissioning obligation for a meteorological tower should not accrue at a minimum until after the development lease is awarded and MMS approves the plan. It does	We added a new section § 285.904 to clarify the circumstances when a lessee or grantee may request a departure from the decommissioning requirements under § 285.103. Under the new § 285.904, the

not make sense to require automatic decommissioning of a facility upon expiration of a data collection lease when there is a good possibility that the meteorological tower may continue to be of some use to the holder of the development lease, whether the holder is the prior lessee or a new developer. The MMS should not trigger decommissioning until a reasonable period has passed to determine whether a development lease will be sought and awarded, and the development lessee disclaims any interest in the continued operation of the meteorological tower.	lessee or grantee could request a departure from decommissioning requirements when a limited leaseholder installs a meteorological tower or other equipment, then the lessee acquires a commercial lease that encompasses the limited lease area.
§ 285.902: Include a requirement for the development site to be returned to the ecological baseline that existed prior to installation of the energy project. "Removing" materials as outlined in requirement (1), and "clearing the seafloor of all obstructions," per requirement (2), should be retained.	The MMS will consider decommissioning facilities on a case-by-case basis. Decisions under § 285.902 regarding complete restoration of the development site (i.e., to the "ecological baseline" as the comment suggests) will be based on a variety of factors, including evidence that the alternative does not increase adverse environmental effects or risks to human safety. No changes to the final regulations have been made in response to this comment.
§§ 285.902, 285.906, 285.907, and 285.910: Revise standards for decommissioning to incorporate a presumption that all facilities, cables, and obstructions will be removed. Submarine cables pose a long-term obstruction for much of the fishing gear used on the OCS, particularly clam dredges. Even if buried when installed, cables are subject to exposure over time due to weather conditions and sediment movement. Limited removal impacts due to short-term disturbance should not be sufficient cause to leave facilities in place. Generally a 6-foot restoration depth should be sufficient, and decommissioning should require removal to this depth.	The regulations at § 285.902 clearly require that the seafloor be cleared of all obstructions. We will not revise the standards to require the removal of everything. The decision on what facilities, cables, or pipelines may remain will be made on a case-by-case basis during the review of the decommissioning application. The MMS will consider other uses during that review. The regulations at § 285.910 require facilities to be removed to depth of 15 feet below the mudline. This removal depth has worked for OCS oil and gas activities for over 50 years. The MMS may approve an alternate removal depth on a case-by-case basis.
§ 285.903: The term of decommissioning should be a case-by-case determination in the COP based on site-specific circumstances, such as the size of the facility, the existence of seasonal restrictions on decommissioning activity, and other appropriate considerations. This should be decided when the COP is approved rather than having a one-size-fits-all requirement in the rule regardless of significantly varying circumstances. To the extent the rule continues to provide a target duration, the expectation should be at least a 2-year decommissioning period to account for larger facilities or those in more sensitive environmental areas.	The MMS disagrees with determining the decommissioning timeframe on a case-by-case basis or when the COP is approved. However, MMS agrees with the need for a longer time period and has amended the language of § 285.902 the final regulations to increase the period for decommissioning facilities regulated under this part from 1 year to 2 years. Two years is sufficient time for lessees to decommission facilities.
§§ 285.903 and 285.909: It may be desirable for components of offshore AE facilities, particularly cables, portions of turbine foundations, and scour protection to remain in	Based on our experience with the offshore oil and natural gas industry, we believe requiring removal of facilities is reasonable, technologically sound, and appropriate. However, the final regulation allows for

place. Currently, there is very little experience with decommissioning offshore wind farms. Removal of the electric cables from beneath the seafloor would create unnecessary marine disturbances. Oil and gas decommissioning regulations allow the decommissioning of certain equipment without removal. Finally, removal would be very expensive. If removal is required, it should be limited to the foundations, which should be cut off at a depth that is: (1) based on site-specific seabed conditions, (2) consistent with offshore wind standards in Europe, and (3) significantly shallower than 15 feet. The common removal depth for offshore wind projects in Europe is no more than 2 meters (6 feet).	departures at § 285.103 and provisions for allowing facilities to remain in place at § 285.909. We also added a new section in subpart I (§ 285.904) to clarify that MMS may approve departures from the decommissioning requirements under § 285.103. The MMS will consider requests to allow facilities to remaining in place following termination of a lease or grant on a case-by-case basis (§ 285.909(b)).
§ 285.906: Section 285.906 requires descriptions of removal methods and site-clearance activities, transportation and disposal plans, environmental analysis, and mitigation measures. Because of the extensive requirements of the decommissioning application, 90 days after termination of a lease or grant is not a sufficient amount of time to develop a complete decommissioning plan. Change § 285.905(d) "(d) 90 calendar days" to "(d) 180 calendar days."	The MMS disagrees that the 90-day timeframe in § 285.905(d) is insufficient to provide the required information. Lease cancellations, relinquishments, and terminations are generally not unforeseen events. The lessee or grant holder can begin planning the decommissioning when it is evident that the lease may be canceled, relinquished, or terminated. No changes have been made to the final regulations.
§ 285.907: Modify this section to require CZMA review as part of the decommissioning application.	The MMS will require CZMA reviews as required by laws and regulations. We did not make any changes to the regulations in response to this comment.
§ 285.908: Decommissioning of facilities by the MMS warrants consultation with the State. The rule should expressly require that any decommissioning notice to the MMS be sent to the appropriate State fish and wildlife agencies at the same time, that the State also be provided the decommissioning application and the after-action report concurrent with the MMS, and that the MMS consult with the State at each step in the decommissioning process, including on any mitigation.	The MMS will require CZMA reviews as required by laws and regulations and as required by the States involved. The MMS will consult with State and local agencies and tribal governments, as required by EPAct. The information that we share with various State agencies will depend on the nature of the action. For example, decommissioning a cable that crosses into State waters would require significant involvement of that State's fish and wildlife agencies, while decommissioning a meteorological tower that is 10 miles offshore may not require the involvement of those agencies. However, if State law requires the submission of such an application, the lessee or grantee would have to comply. We did not make any changes to the regulations in response to this comment.
§ 285.909: The MMS PEIS acknowledges the possibility "that all or some of the [wind park] facilities could remain in place and be used for other purposes (e.g., artificial fishing reefs)." Likewise, restoring a site to its "original condition" is not required for oil and gas facilities on the OCS and may cause more environmental harm than having structures	The MMS will consider requests for the decommissioning plan under § 285.909. To specify only partial removal or allowing structures to remain for use as artificial reefs on a case-by-case basis, we will base the decision on a number of factors including whether leaving any portion of the structure in place causes adverse environmental effects or risks to human safety. No changes to the

remain as artificial reefs or be removed just below the seafloor.	final regulations have been made in response to this comment.
§ 285.909: Because of high costs, the decommissioning standard needs to be carefully considered. Setting it too high could create financial disincentives to offshore wind energy development, with no additional enhancements of other characteristics or uses of the OCS environment.	Comment noted. The MMS will consider decommissioning facilities on a case-by-case basis, rather than enacting a set standard.
§ 285.909: With regard to facilities that lie on or beneath the ocean floor, there will often be less environmental impact if MMS allows the facilities to be decommissioned in place rather than requiring them to be dug up, removed and transported back to shore to be landfilled. Platforms, for example, often become useful artificial reefs which can benefit sea life. Our recommendation is consistent with MMS's pipeline regulations which authorize pipelines to be decommissioned in place provided they do not present a hazard to navigation or have adverse environmental effects. The regulations should provide the flexibility to allow decommissioning in place, especially where these facilities may have environmental benefit. Moreover, if MMS has decided to approve decommissioning in place for some foundations or pipelines, the applicant's decommissioning liability should be terminated for such facilities.	This rulemaking already provides for the approval of decommissioning in place under § 285.909. However, MMS does not believe it should terminate liability for such facilities in all cases. Section 285.909 provides that the former lessee or grantee may transfer the liability to another party, provided that the party that assumes the responsibility has adequate financial assurances. No changes to the final regulations have been made in response to this comment.
The proposed rule removes the phrase "or other use" from the introductory paragraph of § 250.1730, but makes no other changes. As such, it is our understanding that partial structure removal or toppling in place for conversion to an artificial reef would remain under the State's Artificial Reef Program as permitted by the ACOE, not under a program administered by the ACOE. If this is indeed the case, it is important to note that the existing California Artificial Reef Plan does not include platforms as an allowed artificial reef structure. Amendments to state law and the California Artificial Reef Program neither allows platforms to be used as artificial reefs, nor is it authorized to operate in Federal waters.	The comment refers to a program administered by a State. It would be inappropriate to include in regulatory text State-specific terms. In this case, the status of artificial reefs in California waters is a factual matter that does not depend on this rule and that is subject to change outside of MMS control. The MMS removed the phrase "or other use" from § 250.1730 because the EPAct amended the OCS Lands Act (43 U.S.C. 1337(p)(1)(D)) to give DOI authority to allow the use of OCS oil and gas platforms for other authorized marine-related purposes. This authority was delegated by the Secretary to MMS. Therefore, for uses that MMS authorizes, the structure would no longer need to meet the original requirements of § 250.1730(a).

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Consider defining a programmatic set term for Alternate Use RUEs, and allow renewal contingent on continued use consistent with the terms and conditions of the RUE. Consider specifying payment and surety levels in alternate use subpart.	The MMS does not believe it appropriate to establish through regulation a defined term for conducting approved alternate use activities, or to set specific payment or surety levels. We would like to be flexible in its regulatory framework to accommodate potential alternate use proposals, and

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	therefore believes it most appropriate to consider specific operating terms on a case-by-case basis considering the specifics of any project proposal. No changes have been made to the final regulations.
In proposed § 285.1006, clarify to acknowledge that there will be purposes of the public good under which it is appropriate to issue an Alternate Use RUE that inhibits or restrains mineral or energy resource development. The door should not be conclusively closed on this option.	The MMS believes that the language included in the proposed § 285.1006 clearly describes when the issuance of an Alternate Use RUE is appropriate. The provision is intended to explain that MMS will not authorize an Alternate Use RUE in a particular location if such proposed activities would unreasonably inhibit or restrain ongoing, planned, or proposed energy or mineral resource development in the same location.
The MMS abdicates responsibility and limits opportunity by allowing the owner of an existing OCS facility a disproportionately large degree of control over the selection of an alternate use project in subpart J.	Subsection 8(p) of OCS Lands Act requires that MMS consider proposed alternate use activities on a competitive basis if such competitive interest exists. In § 285.1007, MMS has set forth a process for awarding Alternate Use RUEs competitively (and at the agency's sole discretion), while respecting the fact that such existing OCS platforms are owned by the existing lessee or operator. Therefore, while MMS completes a comprehensive evaluation of potential alternate use proposals, and selects those that are permissible under § 285.1006, the owner of the existing OCS facility makes the ultimate decision regarding whether such activities will be permitted on its property. No changes to the final regulations have been made in response to this comment.
Opening the door to a boundless range of nonenergy-related alternate uses at OCS facilities could rapidly shackle MMS with administrative responsibility far beyond its resources and expertise, which could compromise or undermine its primary duty of responsible and environmentally sound development of U.S. public trust mineral resources.	The MMS will consider such concerns when it evaluates any proposal for alternate use of an existing OCS facility under § 285.1006, and will not authorize any alternate use proposal in contravention of its responsibilities under the OCS Lands Act. No changes have been made to the final regulations.
The MMS should maintain the position articulated in the ANPR and clarify that the Energy Policy Act of 2005 does not give the MMS authority to regulate "marine related" activities until those activities have already been authorized by another agency or statute.	The MMS has authority to issue leases, easements, or rights-of-way for activities on the OCS not otherwise authorized by law pursuant to the OCS Lands Act. Those activities include the use, for energy-related purposes or for other authorized marine-related purposes, of facilities currently or previously used for activities authorized under the OCS Lands Act. Consequently, MMS has the authority to issue such leases for "marine related" activities. The interpretation of EPAct, which amended the OCS Lands Act, by the commenter is inconsistent with the terms of the statute.
The MMS lacks authority under subsection 8(p) of OCS Lands Act to permit mariculture activities, and regulating such activities on the	The MMS does not intend to implement an OCS aquaculture program involving the use of existing OCS facilities. The statutory language in section

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OCS raises significant environmental and economic concerns.	388 of the EPAct, amending section 8 of the OCS Lands Act was intended to provide the Department broad discretion in considering activities that involve the alternate use of an OCS facility. If MMS were to receive an application for an alternate use right of use and easement (RUE) for aquaculture activity, we *may* consider that application in light of engineering, environmental, adjudication, and other issues relating to MMS responsibility over the OCS facilities proposed for this use, but a different agency would be responsible for permitting and managing actual aquaculture activity under any RUE that is granted. The aforementioned notwithstanding, the DOI has supported legislation previously proposed in Congress that would grant the Department of Commerce regulatory authority for evaluating and authorizing aquaculture activities, including aquaculture activities that would involve use of existing OCS platforms and facilities. Should this or similar legislation become law, the DOI would reconsider whether aquaculture activities are appropriately regulated under this subpart.
Alternate Use RUE determinations should be augmented by comprehensive marine spatial planning and decision-making.	In evaluating any alternate use proposal under subpart J, MMS will consider all existing marine spatial data within its possession in evaluating any proposal for an Alternate Use RUE.
The proposed process for awarding Alternative Use RUEs on existing OCS platforms appears to lengthen the term of existing oil/gas leases. The process should be changed to require either a new lease or a revised lease, with current terms and stipulations that do not put the U.S. Government in jeopardy of a breach of contract if and when it complies with current laws and regulations.	An Alternate Use RUE does not extend the term of an existing OCS mineral lease. If an OCS mineral lease expires during the term of an Alternate Use RUE, MMS may defer the mineral lessee's obligation to decommission the platform for so long as the Alternate Use RUE remains in effect (see § 250.1725). No changes to the regulatory provisions of this subpart are necessary.
The specific substantive criteria for evaluating competing applications should be set forth in this subpart.	The MMS does not believe it appropriate to establish through regulation substantive criteria for evaluating competing applications. Substantive criteria for evaluating competing applications submitted under subpart J will be set on case-by-case basis considering the uniqueness of the existing OCS facility, its location on the OCS, and other pertinent factors. No changes have been made to the final regulations.
The MMS should hold public hearings addressing alternate use in the proposed rule.	The MMS hosted several public workshops on this proposed rule, including three workshops held on the West Coast (Seattle, WA; Portland, OR; and San Francisco, CA), one workshop in the Gulf of Mexico area (New Orleans, LA), and four workshops on the East Coast (Savannah, GA; Fort

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	Lauderdale, FL; Newton, MA; and Monmouth, NJ).
This subpart should limit the term "existing" facilities for Alternate Use to only those facilities that are currently in place as of the time of publication of this proposed rule. Future alternative energy facilities should not be eligible for reuse in marine-related activities as is currently allowed by the proposed rule.	The MMS disagrees with the commenter that Congress intended such a limited reading of the alternate use authority in the OCS Lands Act. No change has been made to the final regulation.
All three options presented in subpart J for allocation of decommissioning liability should remain as options in the final regulations. Most commenters stated a preference for option 2, which would allow owners of existing OCS platforms to transfer such liability to the holder of an Alternative Use RUE. Option 1. Joint responsibility for the decommissioning obligations associated with approved alternate use activities. Option 2. Holder of the Alternative Use RUE would assume either primary or joint responsibility for all decommissioning obligations, including those associated with the existing OCS facility. Option 3. A regulatory option that divided equitably the responsibilities for decommissioning and necessary financial assurance between the existing lessee and/or operator and the holder of the Alternative Use RUE, and where the existing lessee/operator would retain responsibility for decommissioning the existing OCS facility.	The MMS will not alter its provisions for allocation of decommissioning liability as originally set forth in the proposed rule. The MMS is not offering the Alternate Use RUE as a means for existing lessees and operators to shed their decommissioning obligations under the OCS Lands Act and pertinent MMS regulations. Most alternate use proponents will not be as well capitalized as existing oil and gas operators and lessees. In the course of private negotiations between the platform owner and alternate use proponent, the parties are free to negotiate any provisions between themselves regarding apportionment of platform decommissioning liability (e.g., contractual indemnity or set-aside account).
Paragraphs (d) and (e) of proposed § 285.1013 are confusing in their treatment of liability allocation between the assignor and assignee following an assignment	The MMS believes the language in § 285.1013 is clear and consistent with other MMS regulatory precedent (see 30 CFR 256.62(d) & (e)). The intent of these provisions is to make clear that assignment does not relieve the assignor of any liability accrued by the assignor prior to the date of the assignment. If the assignee, or any subsequent assignee, fails to satisfy any obligation that originated during the assignor's period of liability, MMS could look to that original assignor to satisfy the accrued obligation.
The MMS should consult with States on the type of proposed alternate use activities to ensure consistency with State coastal programs, and other Federal regulatory authorities.	Comment noted. The MMS will address consistency of proposed alternate use activities with State coastal programs and other authorities through compliance with section 307 of the CZMA. The MMS will comply with all other pertinent Federal laws and regulations. No changes to the final regulations have been made in response to this comment.
The rule does not currently require MMS to prepare an EIS for individual permits, instead	This subpart makes clear that any alternate use proposal will be subject to review under the NEPA.

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determining whether an EIS would be needed on a case-by-case basis.	The MMS determines the level of environmental review under NEPA based on the details of any particular project. Determining the level of environmental review on a project-specific basis is consistent with Council on Environmental Quality regulations at 40 CFR subparts 1500 through 1508. No change has been made to the final regulations.
Section 285.1006 should be revised to include, among the considerations for approval, the benefits of restoring the lease area to uses, such as fishing, that pre-dated construction of the OCS facility that is under consideration for reuse.	The final rule requires decommissioning of all facilities returning the lease area to pre-lease conditions. However, the final regulation allows for departures at § 285.103 and provisions for allowing facilities to remain in place at § 285.909. We also added a new section in subpart I (§ 285.903) to address when MMS will approve departures from the decommissioning requirements. The MMS will consider these requests on a case-by-case basis (§ 285.909(b)). No changes to the final regulations have been made in response to this comment.
The MMS should drop this case-by-case approach that offers little opportunity for public comment. The rule provides far too limited opportunity for notice and public comment. Section 388 requires "public notice and comment on any proposal submitted for a lease, easement, or right of way . . . ." The MMS's proposed rule flaunts this requirement for alternate uses. Apart from those proposals that MMS determines need an EIS, MMS's proposal only indicates that it will provide notice in the Federal Register so that members of the public can comment on whether "there is a competitive interest in using the proposed facility for alternate use activities." But section 388 requires notice and an opportunity to comment on "any" proposal; therefore, the opportunity to comment should be provided regardless of commenters' potential competitive interests. Adhering to the terms of the statute would enable those members of the public who are adversely affected by the proposal – not just those have the capital to fund a competing alternate use – to comment on MMS's proposed issuance of a RUE.	The process set forth in this subpart provides ample opportunity for public review and comment. Through the required determination of competitive interest, MMS will publish a notice informing the public of any proposed alternate use activity on the OCS. This public notice will provide an opportunity to the public to comment on any proposal. In addition, in connection with the required environmental analysis under NEPA, MMS may solicit and receive public comment on any alternate use proposal. No changes were made to the final rule in response to this comment.
Subpart J should be separated from the balance of the proposed rule, and promulgated as its own independent rule.	The MMS does not see any need to separate subpart J from the remainder of this rulemaking.
§ 285.1016: The MMS should modify § 285.1016 to add that owners of the Alternate Use RUE shall be given notice that their operations have caused an adverse impact, and then afforded the opportunity to correct or mitigate the impact before MMS cancels the RUE.	The MMS agrees with this comment, and has made the appropriate revisions in the final rule text of § 285.1016.

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Specific Comment Areas Identified in the Proposed Rule

The preamble of the proposed rule (73 FR 39440) requested public comments or all aspects of the proposed rule. In addition, the preamble requested comments on specific areas in the proposed rule that were of particular interest to MMS and to the regulated

community and other interested parties. We planned to use the comments on these specific areas as the starting place for responding to comments. However, we found that very few commenters responded directly to the specific areas identified in the preamble. Instead, the vast majority of commenters provided comments on a subpart-by-subpart and section-by-section basis. All comments that touched on the issues raised by the specific areas we identified are addressed in our response to comments in the comment table. In addition, any changes to the rule as a result of comments are discussed in the subpart-by-subpart and section-by-section discussions.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866. We have made the assessments required by E.O. 12866, and the results are as follows:

(1) The final rule will not have an annual effect on the economy of $100 million or more for the first 15 years or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The final regulations are made necessary by compelling public need in that they will be used to oversee the nascent offshore renewable energy industry consistent with the EPAct.

The final rule does two things: (1) It sets forth clear regulatory requirements; and (2) it institutes payments to the Government as a fair return for use of public lands. Discussions between MMS and OMB resulted in a determination that the appropriate analysis of the rulemaking is one that focuses on the financial impacts of the rule over a 20-year period (2008–2027). While financial revenues (i.e., the revenues the Federal Government will receive due to economic activity that occurs under this rule) are traditionally considered a transfer payment, in this analysis they are treated as a ''benefit.'' The cost side of the analysis comprises the Federal Government's costs to implement the program that will administer the rules. While the program will generate new receipts for the U.S. Government primarily in the form of cash bonuses, acquisition fees, rentals, and operating fees, the aggregate annual amounts of these payments, as estimated in the fiscal cost-benefit study supporting this rulemaking, were found to be below $100 million for at least the next 15 years, and then slightly above that level only in intermediate and high case scenarios. Any projections beyond that time horizon should be considered highly speculative given the early stage of development in this industry on the OCS. Any economic effects characterized by the EA are predicated upon the assumption that there is available transmission capacity to carry the energy generated on the OCS to demand centers. The payments to Federal agencies represent a transfer of money from one set of entities to another, not the anticipated effect of the regulations on real resources in the economy. The MMS finds that the benefits of this rule, when weighed against the potential payments that may exceed $100 million, justify this regulation because it will establish a new regulatory program intended to encourage safe, efficient, and environmentally sound development of renewable energy sources on the OCS. The MMS included a detailed discussion of the results of the Final Technical report on the ''Fiscal Cost-Benefit Analysis to Support the Rulemaking Process for 30 CFR Part 285 Governing Alternative Energy Production and Alternate Uses of Existing Facilities on the Outer Continental Shelf,'' MMS 2007–050, February 2008, by Industrial Economics, Incorporated, in the NPR, published in the **Federal Register** on July 9, 2008 (73 FR 39376). The NPR and the Final Technical report are available on the Regulations.gov Web site.

(2) The rule will not create a serious inconsistency or otherwise interfere with the actions taken or planned by any other agency. Until March 2009, regulatory uncertainty existed regarding which Federal agencies had authority to regulate wave and current energy development on the outer Continental Shelf (OCS). Both MMS and the Federal Energy Regulatory Commission (FERC) claimed this authority based on differing interpretations of Part I of the Federal Power Act (FPA) and section 8(p) of OCSLA, as amended by EPAct. However, on March 17, 2009, the Secretary of the Interior and the Acting Chairman of the Federal Energy Regulatory Commission issued a joint statement on the development of renewable energy resources on the OCS. In this joint statement, the Secretary and the Acting Commissioner requested that MMS and FERC staff prepare a Memorandum of Understanding (MOU) to describe the process by which authorizations related to renewable energy resources in offshore waters will be developed.

The MMS and FERC finalized this MOU on April 09, 2009. This agreement clarifies jurisdictional understandings regarding renewable energy projects on the OCS in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic energy projects. Specifically, the MOU recognizes that (1) MMS has exclusive jurisdiction with regard to the production, transportation, or transmission of energy from non-hydrokinetic alternative energy projects on the OCS, including renewable energy sources such as wind and solar; (2) MMS has exclusive jurisdiction to issue leases, easements, and rights-of-way regarding OCS lands for hydrokinetic projects; and (3) the Commission has exclusive jurisdiction to issue licenses and exemptions for hydrokinetic projects located on the OCS.

Under this new agreement, those entities interested in operating a hydrokinetic project on the OCS must first obtain a lease from MMS. The MMS will issue a public notice to determine whether competitive interest exists in the area, and will proceed with either the competitive or noncompetitive lease issuance process depending on responses received to this public notice. The MMS will conduct the NEPA analysis necessary for the lease issuance and any site assessment activities that will occur on the lease. After an applicant acquires a lease from MMS, FERC may issue a license or exemption for the hydrokinetic project, and conduct any necessary NEPA analysis. After a license is issued, construction and operations of the project may begin as per the terms of the license. To facilitate efficient processing of the lease and license applications, it may be helpful for potential lessees to apprise both MMS and FERC of their interest in hydrokinetic development at the start of the process.

Further, the MOU states that MMS and FERC will work together to the extent practicable to develop policies and regulations with respect to OCS hydrokinetic projects, and coordinate to ensure that hydrokinetic projects meet the public interest, including the adequate protection, mitigation, and enhancement of fish, wildlife, and marine resources and other beneficial public uses. The MOU ensures that the interests of both agencies are adequately represented and that the process of developing renewable energy on the OCS happens efficiently, in an environmentally responsible manner, and with appropriate benefit to the people of the United States.

Importantly, the agreement addresses the issue of potential site-banking by developers on the OCS by eliminating redundant regulatory processes for acquiring use of OCS lands. In addition, by eliminating dual regulatory processes, the agreement addresses the potential for granting conflicting awards of OCS sites to developers by the two agencies. Specifically, FERC has agreed not to issue preliminary permits for hydrokinetic activities on the OCS, and MMS has agreed that FERC will have the primary responsibility to issue licenses for these activities. The Federal Government has effectively eliminated the opportunity for abuse by entities seeking to reserve, block, or acquire for speculative purposes large portions of the OCS. These concerns were raised by many commenters on the REAU rulemaking. The DOI/FERC MOU creates a unified, coherent process for the authorization of hydrokinetic activities on the OCS, ensuring that U.S. resources on the OCS will not be subject to a ''land rush,'' and will be developed in the most efficient manner possible.

(3) This final rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. The rule does not contain any requirements or regulations that will alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This final rule raises novel legal or policy issues because the rulemaking establishes a new regulatory program for the development of renewable energy on the OCS and to allow for alternate uses of existing OCS facilities. For these reasons, OMB determined that this is a significant rule.

Prior to the passage of the EPAct, the Federal Government lacked the authority to oversee all aspects of renewable energy project development on the OCS, including siting, construction, operation, and decommissioning. Additionally, prior to the passage of the EPAct, the Federal Government lacked the authority to seek payments from private interests for use of our Nation's OCS for purposes other than oil and gas production. These regulations will provide the framework for MMS's management of the Alternative Energy-Alternate Use Program. This program will create a system that provides a degree of regulatory certainty to those proposing, planning, or potentially financing an offshore renewable energy project on the OCS, as it will address lease and grant issuance, activity authorization, payment collection, financial assurance, and project decommissioning.

As described previously, MMS conducted an economic (''benefit-cost'') analysis of this rulemaking because it was determined to be a significant regulatory action, as defined in E.O. 12866. Discussions between MMS and OMB resulted in a determination that the appropriate analysis of the rulemaking is one that focuses on the financial impacts of the rule over a 20-year period (2008–2027). While financial revenues (i.e., the revenues the Federal Government will receive due to economic activity that occurs under this rule) are traditionally considered a transfer payment, in this analysis they are treated as a ''benefit.'' The cost side of the analysis comprises the Federal Government's costs to implement the program that will administer the rules. In addition, as required by the Regulatory Flexibility Act (RFA) of 1980 (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) and E.O. 13272 (''Proper Consideration of Small Entities in Agency Rulemaking''), this analysis considers whether the financial payments made by the developers of regulated projects to MMS will significantly affect a substantial number of small entities. The MMS included a detailed discussion of the analysis in the NPR published in the **Federal Register** on July 9, 2008 (73 FR 39376). The NPR is available on the Regulations.gov Web site.

Regulatory Flexibility Act (RFA)

Under the requirements of the RFA (5 U.S.C. 601 *et seq.*), as amended by the SBREFA and E.O. 13272, Federal agencies must consider the potential distributional impact of new rules on small businesses, small governmental jurisdictions, and small organizations. The MMS prepared an initial regulatory flexibility analysis to determine the impacts of this regulation on small entities. Based on this analysis, we concluded that these regulations will impact a substantial number of small entities; however, the regulations would not have a significant economic impact on these small entities when compared to the economic impact the regulations will have on large entities. The MMS included a detailed discussion of the RFA analysis in the NPR published in the **Federal Register** on July 9, 2008 (73 FR 39376). The NPR is available on the Regulations.gov Web site. We did not receive any comments on the RFA section of the NPR.

Discussion of the Regulatory Flexibility Act Analysis

Number of Small Entities to Which the Rule Will Apply

The North American Industry Classification System (NAICS) code for the industry affected by the rule is 221119 (Other Electric Power Generation). The definition for this code is:

> This U.S. industry comprises establishments primarily engaged in operating electric power generation facilities (except hydroelectric, fossil fuel, nuclear). These facilities convert other forms of energy, such as solar, wind, or tidal power, into electrical energy. The electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems.

An entity within this classification is ''small'' if it is ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed four million megawatt hours'' (MWh). Some new companies may be created solely to develop one or more offshore renewable energy projects that combined will not have a total electric output greater than 4 million MWh. Some companies, either through a combination of projects or through the incorporation of offshore renewable energy projects into a larger portfolio of electricity generating stations, will exceed the 4 million MWh threshold.

Given the newness of the offshore renewable energy industry, it is difficult to develop an accurate count of the number of entities that will or may be subject to this rule in order to determine whether the rule will affect a ''substantial'' number of small entities. Several companies have formally or informally expressed interest in being granted access to the OCS for electricity generation purposes. At least 40 to 50 entities are identifiable as potential project or technology developers with a focus on utilizing offshore wind, wave, or ocean current resources. The U.S. Census Bureau's 2002 Economic Census reported 411 entities within NAICS Code 221119. However, for the purposes of this analysis MMS assumes that most of the relevant entities will be considered ''small,'' and therefore, can conclude that a substantial number of small entities will be affected.

It is possible that the final rule may eventually govern hydrogen production, affecting entities that fall under NAICS Code 325120, Industrial Gas Manufacturing. The definition for this code is:

This industry comprises establishments primarily engaged in manufacturing industrial organic and inorganic gases in compressed, liquid, and solid forms.

However, it is unlikely that hydrogen will be produced on the OCS in significant amounts during the next 20 years, given the lack of proposals for projects that would produce hydrogen, and MMS has no means to predict what kinds of entities would likely be involved in OCS hydrogen production.

Impacts of This Rule on Small Businesses

We believe that most affected companies will be small businesses according to the size standard. While large power/energy companies may engage in offshore renewable energy, we do not see that company size plays a factor in the economic impact of our rulemaking.

Both large and small business will be subject to the same regulations because we do not believe it is necessary to have different regulations for large and small companies.

For example, the payments for a commercial lease are rentals and operating fees. Rentals (during the preliminary and site assessment terms) are based on the size of the leased area. The operating fee is based on the potential generation capacity of a commercial project. The lease area needed will be determined by the size of the project, and the operating fee is determined by capacity of the actual installed project. The applicant determines the project size. As a result, the applicant's project size determines the fee the applicant pays without respect to its business size. Both small and large entities bear the equal burden of selecting a project for MMS' consideration and submitting all appropriate payments. The greater the project's ability to produce, the greater the fee, but also the greater the potential income from the project to the developer.

One factor that could influence a company's ability to deal with these new regulations will be its experience and knowledge in working in the offshore environment. This knowledge is not size dependent, as evidenced by the size of the companies that own leases and operate oil and gas facilities on the OCS. The vast majority of companies that operate oil and gas facilities on the OCS (70 percent) are considered to be small companies according the size standards.

Due to the significant costs involved to develop, construct, and produce energy in the offshore environment, a project would need to generate a significant amount of electricity or energy to be economical. There are provisions in the rule for short-term leases that would allow a company to do preliminary site work and research without the same level of commitment as a commercial production lease. This is one way a small company could approach offshore development without committing extensive resources to a project.

In addition, the costs of operating in an offshore environment are significantly higher than the costs of complying with this regulation. For example, this final rule will require the use of CVAs, in some cases. Although this is an additional cost to project developers, the cost of the CVA is small in comparison to the cost of designing and engineering the projects. In addition, we added a provision to the final rule that will allow a project developer to request a waiver of the CVA requirement. Much of the data required for this final rule will need to be gathered by the project developers anyway (i.e., site surveys). The rule requires the data be provided to MMS to ensure protection of the environment and endangered species.

The MMS also has provisions that allow for departures from the requirements in this rule. The MMS can evaluate, on a case-by-case basis, if any part of this final regulation places an unnecessary burden on a small business and can make adjustments to the requirements, as appropriate. However, MMS cannot waive requirements to comply with other Federal laws, such as NEPA and CZMA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The final rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This final rule:

a. Will not have an annual effect on the economy of $100 million or more, as discussed previously under the Regulatory Planning and Review section.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will allow greater production of energy from the OCS and will make more energy available in the United States.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the U.S. OCS is limited to residents of the United States or companies incorporated in the United States under this final rule. This final rule will encourage competition, employment, investment, productivity, and innovation, and will not have an adverse impact on the ability of U.S.-based companies to compete with foreign-based enterprises. This rule will allow production of energy (e.g., electricity) in areas where there is no production at this time. It will encourage companies to explore new avenues for generating electricity and other energy from sources other than oil and gas. The final rule includes a competitive process for leasing. New developments and projects will create new jobs and investment. Since this is a nascent industry in the United States, it will also encourage the development of new technology.

The MMS received a comment on the NPR requesting that we consider reducing or waiving civil penalties for small businesses regulated under this part. If a civil penalty is assessed, the company may submit a request to modify the payment schedule to the Office of Financial Management, with the Mineral Revenue Management Program of the MMS. This did not require any changes to the final rule.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. The final rule is not a governmental action capable of interference with constitutionally protected property rights. There are not, at present, any property rights in renewable energy facilities. Further, the rule on alternate use of existing facilities will require consent of the owner of the existing facility to any RUE that MMS might issue. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this final rule does not have sufficient federalism implications. This final rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent

that State and local governments have a role in OCS activities, this rule will affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it may have substantial effects on federally recognized Indian tribes. Although there are no Indian or tribal lands on the OCS, tribes occupy land on or near the shoreline that may be impacted. The final rule provides opportunities for MMS to coordinate with affected tribes related to all activities that the rule covers. The provisions are the same as provisions we have for coordination with affected States and local communities.

Paperwork Reduction Act (PRA)

This rule contains new information collection (IC) requirements; therefore, a submission to OMB under the PRA is required. The OMB has approved the IC for the final rulemaking and assigned OMB Control Number 1010–0176, expiration 4/30/2012, for a total of 31,124 burden hours and $3,816,000 non-hour cost burdens.

The title of the collection of information is ''30 CFR 285—Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.'' Respondents primarily will be an estimated 15–25 Federal OCS companies that submit unsolicited proposals, lessees and designated operators, and ROW or RUE grant holders. Other potential respondents are companies or States and local governments that submit information or comments relative to renewable energy-related uses of the OCS; CVAs; and surety or third-party guarantors. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory or are required to obtain or retain a benefit. The MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552), its implementing regulations (43 CFR part 2), and 30 CFR 285.112 through 285.114.

Between the proposed and final rule, there have been some changes to the numbering of sections requiring the collection of information, as well as some clarifications. The final regulations also are more specific with respect to several reporting requirements. The changes were all based on comments received, approximately seven that affected IC, and were included in the subsequent information collection submission that OMB approved. The comments are addressed in detail in the preamble of this rulemaking.

The following is a description of the revisions to the IC in the final rule:

- § 285.223(a)—Revised section eliminates a reporting requirement for tied bidders who will now be allowed to resubmit revised bids (−4 burden hours).
- § 285.506(c)(4)—Added requirement to allow MMS the ability to verify that the numbers we use in our formula are accurate to determine the operating fee (+1 burden hour).
- § 285.516(a)(4)—Added requirement to provide a separate decommissioning bond or other financial assurance (+3 burden hours).
- § 285.526(c)—Added annual reporting requirement for new option to allow more choices for financial assurance security instruments (+1 burden hour).
- § 285.527—Added options to allow respondents to demonstrate financial strength and reliability instead of submitting a bond (+10 burden hours).
- § 285.528—Added option to allow a third-party guaranty to meet financial assurance requirements (+10 burden hours).
- § 285.612(b)—Clarified CZMA process (+4 burden hours).
- § 285.614—Removed requirement as the activities may be conducted under U.S. Army Corps of Engineers regulations (−180 burden hours).
- § 285.705(b)—Added option to allow respondents to request a CVA requirement waiver (+40 burden hours).
- § 285.802(a), (b)—Revised section eliminates a reporting requirement on the protection of archaeological resources (−10 burden hours).
- § 285.815(b)—Revised section eliminates requirement to report equipment and facility repairs to MMS (−2 burden hours).

The following table provides a breakdown of the hour burden and non-hour cost estimates.

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Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
	Subpart A – General Provisions			
102; 105; 110	These sections contain general references to submitting comments, requests, applications, plans, notices, reports, and/or supplemental information for MMS approval--burdens covered under specific requirements.			0
102(e)	State and local governments enter into task force or joint planning or coordination agreement with MMS.	1	6 agreements	6
103; 903	Request general departures not specifically covered elsewhere in part 285.	2	6 requests	12
105(c)	Make oral requests or notifications and submit written followup within 3 business days not specifically covered elsewhere in part 285.	1	8 requests	8
106; 107; 212(f); 230(f); 302(a); 408(b)(7); 409(c); 1005(c); 1007(c); 1013(b)(7)	Submit evidence of qualifications to hold a lease or grant, provide required information and supporting information.	2	20 evidence submissions	40
106(b)(1)	Request exception from exclusion or disqualification from participating in transactions covered by Federal nonprocurement debarment and suspension system.	1	1 exception	1
106(b)(2), (3); 225; 527(c); 705(b)(2); 1016	Request reconsideration and/or hearing.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
108; 530(b)	Notify MMS within 3-business days after learning of any action filed alleging respondent is insolvent or bankrupt.	1	1 notice	1
109	Notify MMS in writing of merger, name change, or change of business form no later than 120 days after earliest of either the effective date or filing date.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
111	Within 30 days of receiving bill, submit processing fee payments for MMS document or study preparation to process applications and requests.	.5	4 fee submissions	2
		4 MMS payments x $4,000 = $16,000		

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
111(b)(2), (3)	Submit comments on proposed processing fee or request approval to perform or directly pay contractor for all or part of any document, study, or other activity, to reduce MMS processing costs.	2	4 processing fee comments or reduction requests	8
111(b)(3)	Perform, conduct, develop, etc., all or part of any document, study, or other activity, and provide results to MMS to reduce MMS processing fee.	19,000	1 submission	19,000
111(b)(3)	Pay contractor for all or part of any document, study, or other activity, and provide results to MMS to reduce MMS processing costs.	3 contractor payments x $950,000 = $2,850,000		
111(b)(7); 118(a); 436(c)	Appeal MMS estimated processing costs, decisions, or orders pursuant to 30 CFR part 290.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
113(b)	Respondents submit agreement to allow MMS to disclose the data and information exempt from disclosure under the Freedom of Information Act.	4	1 agreement	4
115(c)	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1	1 request	1
116	The Director may occasionally request information to administer and carry out the offshore alternative energy program via Federal Register Notices.	4	25	100
118(c); 225(b)	Within 15 days of bid rejection, request reconsideration of bid decision or rejection.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			**78 responses**	**19,183 hours**
			$2,866,000 non-hour costs	
Subpart B – Issuance of OCS Renewable Energy Leases				
200; 224; 231; 235; 236; 238	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
210; 211(a), (b), (c); 213 thru 216	Submit comments in response to Federal Register notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and the Proposed Sale Notice.	4	16 comments	64
211(d); 216; 220 thru 223; 231(c)(2)	Submit bid, payments, and required information in response to Federal Register Final Sale Notice.	5	12 bids	60

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
224	Within 10 business days, execute 3 copies of lease form and return to MMS with required payments, including evidence that agent is authorized to act for bidder; if applicable, submit information to support delay in execution.	1	5 lease executions	5
230; 231(a)	Submit unsolicited request and acquisition fee for a commercial or limited lease.	5	5 unsolicited requests	25
231(b)	Submit comments in response to Federal Register notice regarding interest of unsolicited request for a lease.	4	4 unsolicited requests	16
231(g), (h)	Submit decision to accept or reject terms and conditions of noncompetitive lease.	2	4 lease decisions	8
235(b); 236(b)	Request additional time to extend preliminary or site assessment term of commercial or limited lease, including revised schedule for SAP, COP, or GAP submission.	1	2 requests	2
237(b)	Request lease be dated and effective 1st day of month in which signed.	1	1 request	1
	Subtotal		**49 responses**	**181 hours**
Subpart C – Rights-of-Way Grants and Right-of-Use and Easement Grants for Renewable Energy Activities				
306; 309; 315; 316	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
302(a); 305; 306	Submit 1 paper copy and 1 electronic version of a request for a new or modified ROW or RUE and required information, including qualifications to hold a grant.	5	1 ROW/RUE request	5
307; 308(a)(1)	Submit comments on competitive interest in response to Federal Register notice of proposed ROW or RUE grant area or comments on notice of grant auction.	4	2 comments	8
308(a)(2), (b); 315; 316	Submit bid and payments in response to Federal Register Notice of auction for an ROW or RUE grant.	5	1 bid	5
309	Submit decision to accept or reject terms and conditions of noncompetitive ROW or RUE grant.	2	1 grant decision	2
	Subtotal		**5 responses**	**20 hours**
Subpart D – Lease and Grant Administration				
400; 401; 402; 405; 409; 416, 433	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
401(b)	Take measures directed by MMS in cessation order and submit reports in order to resume activities.	100	1 cessation measures report	100
405(d)	Submit written notice of change of address.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
405(e)	If designated operator (DO) changes, notify MMS and identify new DO for MMS approval.	1	1 new DO notice	1
408 thru 411	Within 90 days after last party executes a transfer agreement, submit 1 paper copy and 1 electronic version of a lease or grant assignment application, including originals of each instrument creating or transferring ownership of record title, eligibility and other qualifications; and evidence that agent is authorized to execute assignment.	1	2 assignment requests/ instruments submissions	2
415(a)(1); 416; 420(a), (b); 428(b)	Submit request for suspension and required information no later than 90 days prior to lease or grant expiration.	10	2 suspension requests	20
417(b)	Conduct and, if required, pay for site-specific study to evaluate cause of harm or damage; and submit 1 paper copy and 1 electronic version of study and results.	100	1 study/ submission	100
		1 study x $950,000 = $950,000		
425 thru 428; 652(a)	Request lease or grant renewal no later than 180 days before termination date of your limited lease or grant, or no later than 2 years before termination date of operations term of commercial lease.	6	2 renewal requests	12
435; 658(c)(2)	Submit 1 paper copy and 1 electronic version of application to relinquish lease or grant.	1	2 relinquish applications	2
436; 437	Provide information for reconsideration of MMS decision to contract or cancel lease or grant area.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			**11 responses**	**237 hours**
			$950,000	
Subpart E – Payments and Financial Assurance Requirements				
An * indicates the primary cites for providing bonds or other financial assurance, and the burdens include any previous or subsequent references throughout part 285 to furnish, replace, or provide additional bonds, securities, or financial assurance. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
500 thru 509; 1011	Submit payor information, payments and payment information, and maintain auditable records according to subchapter A regulations or guidance.	Burdens covered by information collections approved for 30 CFR subchapter A.		0
506(c)(4)	Submit documentation of the gross annual generation of electricity produced by the generating facility on the lease - use same form as authorized by the EIA (burden covered under DOE/EIA OMB Control Number 1905-0129 to gather information and fill out form. The MMS's burden is for submitting a copy).	10 min	6 forms	1
510	Submit application and required information for waiver or reduction of rental or other payment.	1	1 waiver or rental reduction	1

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
* 515; 516(a)(1), (b); 525(a) thru (f)	Execute and provide $100,000 minimum lease-specific bond or other approved security; or increase bond level if required.	1	6 base-level lease bonds or other security	6
* 516(a)(2), (3), (b); 517; 525(a) thru (f)	Execute and provide SAP and COP commercial lease bonds in amounts determined by MMS.	1	5 SAP and COP bonds	5
516(a)(4); 521(c)	Execute and provide decommissioning bond or other financial assurance; schedule for providing the appropriate amount.	1	3 decommis-sioning bonds	3
517(c)(1)	Submit comments on proposed adjustment to bond amounts.	1	3 adjustment comments	3
517(c)(2)	Request bond reduction and submit evidence to justify.	5	2 reduction requests	10
* 520; 521; 525(a) thru (f)	Execute and provide $300,000 minimum limited lease or grant-specific bond, or increase financial assurance if required.	1	1 base-level ROW/RUE bond	1
525(g)	Surety notice to lessee or ROW/RUE grant holder and MMS within 5 business days after initiating insolvency or bankruptcy proceeding, or Treasury decertifies surety.	1	1 surety notice	1
* 526	In lieu of surety bond, pledge other types of securities, including authority for MMS to sell and use proceeds.	2	1 other security pledge	2
526(c)	Provide annual certified statements describing the nature and market value, including brokerage firm statements/reports.	1	1 statement	1
* 527	Demonstrate financial worth/ability to carry out present and future financial obligations, annual updates, and related or subsequent actions/records/reports, etc.	10	1	10
528	Provide third-party indemnity, financial information/statements, additional bond information, executed guarantor agreement, and supporting information/documentation.	10	1	10
528(c)(6); 532(b)	Guarantor/surety requests MMS terminate period of liability and notifies lessee or ROW/RUE grant holder, etc.	1	1 request	1
* 529	In lieu of surety bond, request authorization to establish decommissioning account, including written authorizations and approvals associated with account.	2	1 decommis-sioning account	2
530	Notify MMS promptly of lapse in bond or other security/action filed alleging lessee, surety, or guarantor et al. is insolvent or bankrupt.	1	1 notice	1
533(a)(2)(ii), (iii)	Provide agreement from surety issuing new bond to assume all or portion of outstanding liabilities.	3	1 surety agreement	3

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
536(b)	Within 10 business days following MMS notice, lessee, grant holder, or surety agrees to and demonstrates to MMS that lease will be brought into compliance.	16	1 agreement demonstration	16
Subtotal			**37 responses**	**77 hours**
Subpart F – Plans and Information Requirements				
Two ** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 285 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
** 600(a); 601(a), (b), (c); 605 thru 613	Within 6 months after issuance of a competitive lease or grant, or within 60 days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a SAP, including information to assist MMS to comply with NEPA, such as hazard information, air quality, and all required information, certifications, etc.	240	6 SAPs	1,440
** 600(b); 601(c), (d)(1); 606(b); 618; 620 thru 629; 633	If requesting an operations term for commercial lease, at least 6 months before the end of site assessment term, submit 1 paper copy and 1 electronic version of a COP, including information to assist MMS to comply with NEPA, such as hazard information, air quality, and all required information, surveys and/or their results, reports, certifications, project easements, supporting data and information, etc.	1,000	3 COPs	3,000
** 600(c); 601(a), (b); 640 thru 648	Within 6 months after issuance of a competitive lease or grant, or within 60 days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a GAP, including information to assist MMS to comply with NEPA, such as hazard information, air quality, and all required information, surveys and reports, certifications, project easements, etc.	240	1 GAP	240
** 601(d)(2); 622; 628(f); 632(b); 634	Submit revised or modified COPs, including project easements, and all required additional information.	50	1 revised or modified COP	50
602[1]	Until MMS releases financial assurance, respondents must maintain, and provide to MMS if requested, all data and information related to compliance with required terms and conditions of SAP, COP, or GAP.	2	9 records maintenance/ submissions	18
** 613(d), (e); 616	Submit revised or modified SAPs and required additional information.	50	1 revised or modified SAP	50

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
612(b); 647(b)	Noncompetitive leases must submit copy of SAP or GAP consistency certification and supporting documentation.	1	4 leases	4
614(a)	Notify MMS in writing within 30 days of completion of construction and installation activities under SAP.	1	5 completion construction notices	5
614(b)	Submit annual report summarizing findings from site assessment activities.	30	8 annual reports	240
614(c)	Submit annual, or at other time periods as MMS determines, SAP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	40	8 compliance certifications	320
617(a)	Notify MMS in writing before conducting any activities not approved, or provided for, in SAP; provide additional information if requested.	10	1 notice before activity	10
627(c)	Include oil spill response plan as required by part 254.	Burden covered 30 CFR part 254, 1010-0091.		0
631	Request deviation from approved COP schedule.	2	1 deviation request	2
633(b)	Submit annual, or at other time periods as MMS determines, COP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	80	9 compliance certifications	720
634(a)	Notify MMS in writing before conducting any activities not approved or provided for in COP, and provide additional information if requested.	10	1 notice before activity	10
635	Notify MMS any time commercial operations cease without an approved suspension.	1	1 termination notice	1
636(a)	Notify MMS in writing no later than 30 days after commencing activities associated with placement of facilities on lease area.	1	3 commence notices	3
636(b)	Notify MMS in writing no later than 30 days after completion of construction and installation activities.	1	3 completion notices	3
636(c)	Notify MMS in writing at least 7 days before commencing commercial operations.	1	3 initial ops notices	3
** 642(b); 648(e); 655; 658(c)(3)	Submit revised or modified GAPs and required additional information.	50	1 revised or modified GAP	50
651	Before beginning construction of OCS facility described in GAP, complete survey activities identified in GAP and submit initial findings. This only includes the time involved in submitting the findings; it does not include the survey time, as these surveys would be conducted as good business practice.	30	5 surveys/ reports	150
653(a)	Notify MMS in writing within 30 days of completing installation activities under the GAP.	1	5 completion notices	5
653(b)	Submit annual report summarizing findings from activities conducted under approved GAP.	30	8 annual reports	240

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
653(c)	Submit annual, or at other time periods as MMS determines, GAP compliance certification, recommendations, reports, etc.	40	8 compliance certifications	320
655(a)	Notify MMS in writing before conducting any activities not approved or provided for in GAP, and provide additional information if requested.	10	1 notice before activity	10
656	Notify MMS if at any time approved GAP activities cease without an approved suspension.	1	1 termination notice	1
658(c)(1)	If after construction, cable or pipeline deviate from approved COP or GAP, notify affected lease operators and ROW/RUE grant holders of deviation, and provide MMS evidence of such notices.	3	1 deviation notice/MMS evidence	3
659	Determine appropriate air quality modeling protocol, conduct air quality modeling, and submit 3 copies of air quality modeling report and 3 sets of digital files as supporting information to plans.	70	10 air quality modeling reports/ information	700
Subtotal			**108 responses**	**7,598 hours**
Subpart G – Facility Design, Fabrication, and Installation				
Three *** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
***700(a)(1), (b), (c); 701	Submit Facility Design Report, including 1 paper copy and 1 electronic copy of the cover letter, certification statement, and all required information (1-3 paper or electronic copies, as specified).	200	3 Facility Design Reports	600
***700(a)(2), (b), (c); 702	Submit 1 paper copy and 1 electronic copy of a Fabrication and Installation Report, certification statement, and all required information.	160	3 Fabrication & Installation Reports	480
705(a)(3); 707; 712	The CVA conducts independent assessment of the facility design and submits reports to lessee or grant holder and MMS -- interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100	3 CVA design interim reports	300
		100	3 CVA final reports	300
705(a)(3); 708; 709; 710; 712	CVA conducts independent assessments on the fabrication and installation activities, informs lessee or grant holder if procedures are changed or design specifications are modified, and submits reports to lessee or grant holder and MMS -- interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100	3 CVA interim reports	300
		100	3 CVA final reports	300
705(a)(3); *** 711; 712	CVA/project engineer monitors major project modifications and repairs and submits reports to lessee or grant holder and MMS -- interim	20	1 CVA interim report	20

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
	reports if required, and 1 electronic copy and 1 paper copy of the final report.	15	1 CVA final report	15
705(b)	Request waiver of CVA requirement in writing; lessee must demonstrate standard design and best practices.	40	1 waiver	40
706	Submit for approval, with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination, and required information.	16	13 new CVA nominations	208
708(b)(2)	Lessee or grant holder must notify MMS if modifications identified by CVA/project engineer are accepted.	1	1 notice	1
709(a)(14); 710(a)(2), (e)[1]	Make fabrication quality control, installation towing, and other records available to CVA/project engineer for review (retention required by § 285.714).	1	3 records retention	3
713(a)	Notify MMS within 10 business days after commencing commercial operations.	1	2 commence notices	2
714;[1]	Until MMS releases financial assurance, compile, retain, and make available to MMS and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, inspection results, and records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction.	100	3 lessees	300
Subtotal			**43 responses**	**2,869 hours**
Subpart H – Environmental and Safety Management, Inspections, and Facility Assessments				
801(c), (d)	Notify MMS if endangered or threatened species, or their designated critical habitat, may be in the vicinity of the lease or grant or may be affected by lease or grant activities.	1	2 notices	2
801(e), (f)	Submit information to ensure proposed activities will be conducted in compliance with the ESA and MMPA; including, agreements and mitigating measures designed to avoid or minimize adverse effects and incidental take of endangered species or critical habitat.	6	2 ESA/MMPA submissions	12
802; 902(e)	Notify MMS of archaeological resource within 72 hours of discovery.	3	1 archaeo-logical notice	3
802(b)	If requested, conduct further archaeological investigations and submit report.	10	1 archaeo-logical report	10
803(d)	If applicable, submit payment for MMS costs in carrying out NHPA responsibilities.	.5	1 payment	.5
804(b), (c)	If required, conduct additional surveys to define boundaries and avoidance distances and submit report.	15	2 survey/ report	30

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
810	Submit safety management system description with the SAP, COP, or GAP.	35	10 safety management systems	350
813(b)(1)	Report within 24 hours when any required safety equipment taken out of service for more than 12 hours; provide written confirmation if oral report.	.5	3 safety equipment reports	1.5
813(b)(2)	Submit written confirmation when equipment removed from service for greater than 60 days.	1	1 written confirmation	1
813(b)(3)	Notify MMS when equipment returned to service; provide written confirmation if oral notice.	.5	3 return to service notices	1.5
815(c)	When required, analyze cable, pipeline, or facility damage or failures to determine cause and, as soon as available, submit comprehensive written report.	1.5	1 analysis report	1.5
816	Submit plan of corrective action report on observed detrimental affects on cable, pipeline, or facility within 30 days of discovery; take remedial action and submit report of remedial action within 30 days after completion.	2	1 corrective action plan and report	2
822(a)(2)(iii), (b); 824(a)[1]	Until MMS releases financial assurance, maintain records of design, construction, operation, maintenance, repairs, and investigation on or related to lease or ROW/RUE area; make available to MMS for inspection.	1	4 records retention	4
823	Request reimbursement within 90 days for food, quarters, and transportation provided to MMS representatives during inspection.	2	1 reimburse-ment request	2
824(a)	Develop annual self inspection plan covering all facilities; retain with records, and make available to MMS upon request.	24	4 self assess-ment plans	96
824(b)	Conduct annual self inspection and submit report by November 1.	36	4 annual reports	144
825	Perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to MMS upon request.	60	4 assess-ments and mitigation actions	240
830(a), (b), (c); 831 thru 833	Immediately report incidents to MMS via oral communications, submit written followup report within 15 business days after the incident, and submit any required additional information.	Oral .5	6 incidents	3
		Written 4	1 incident	4
830(d)	Report oil spills as required by part 254.	Burden covered by 1010-0091, 30 CFR part 254.		0
Subtotal			**52 responses**	**908 hours**
Subpart I – Decommissioning				

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
Four **** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				
**** 902(b), (c), (d), (f); 905, 906; 907; 908(c); 909	Submit for approval 1 paper copy and 1 electronic copy of the decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 days after completion of activities; or 90 days after cancellation, relinquishment, or other termination of lease or grant. Include documentation of coordination efforts with States, local, or tribal governments regarding requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information requested or modify and resubmit application.	20	1 decommissioning application	20
902(d); 908;	Notify MMS at least 60 days before commencing decommissioning activities.	1	1 decommissioning notice	1
910	Within 60 days after removing a facility, verify to MMS that site is cleared.	1	1 removal verification	1
912	Within 60 days after removing a facility, cable, or pipeline, submit a written report.	8	1 removal report	8
We don't anticipate decommissioning activities for at least 5 years so the requirements have been given a minimal burden.				
	Subtotal		**4 responses**	**30 hours**
Subpart J – Right-of-Use and Easement for Energy and Marine-Related Activities Using Existing OCS Facilities				
1004, 1005, 1006	Contact owner of existing facility and/or lessee of the area to reach preliminary agreement to use facility and obtain concurring signatures; submit request to MMS for an alternate use RUE, including all required information/modifications.	1	1 request for RUE to use existing facility	1
1007(a), (b), (c)	Submit indication of competitive interest in response to Federal Register Notice.	4	1 response	4
1007(c)	Submit description of proposed activities and required information in response to Federal Register Notice of competitive offering.	5	1 submission	5
1007(f)	Lessee or owner of facility submits decision to accept or reject proposals deemed acceptable by MMS.	1	1 decision	1
1010(c)	Request renewal of Alternate Use RUE.	6	1 renewal request	6
1012; 1016(b)	Provide financial assurance as MMS determines in approving RUE for an existing facility, including additional security if required.	1	1 bond or other security	1

Section(s) in 30 CFR 285	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
			Non-hour Cost Burdens	
1013	Submit request for assignment of an Alternate Use RUE for an existing facility, including all required information.	1	1 RUE assignment request	1
1015	Request relinquishment of RUE for an existing facility.	1	1 RUE relinquish	1
Subtotal			**8 responses**	**20 hours**
30 CFR Parts 250 & 290 Proposed Revisions				
250.1730	Request departure from requirement to remove a platform or other facility.	No change to burden covered by 1010-0142, 30 CFR part 250, subpart Q.		0
250.1731(c)	Request deferral of facility removal subject to RUE issued under this subpart.	1	1 deferral request	1
250.290.2	Request reconsideration of an MMS decision concerning a lease bid.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal			**1 response**	**1 hour**
Total Burden			**396 Responses**	**31,124 Hours**
			$3,816,000 Non-Hour Cost Burdens	

[1] Retention of these records is usual and customary business practice; the burden is primarily to make them available to MMS and CVAs.

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An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy of the IC burden in this rule and may submit any comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

National Environmental Policy Act (NEPA) of 1969

The MMS has analyzed this rule under the criteria of the National Environmental Policy Act. This rule meets the criteria set forth in 516 Departmental Manual 3.2 A for the preparation of an "Environmental Assessment." The MMS prepared an EA analyzing the regulations for the MMS Alternative Energy and Alternate Use program. The EA incorporates by reference the PEIS, *Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement, October 2007.*

Based on the analysis in the EA, and the PEIS that it tiers off of, we have determined that the rule would not significantly affect the quality of the human environment (40 CFR 1508.27) and will not cause "undue or serious harm or damage to the human, marine, or coastal environment." Therefore, the MMS has made a determination that results in a Finding of No Significant Impact. The EA and the PEIS are available on the MMS Web site at: *http://www.mms.gov/offshore/AlternativeEnergy/RegulatoryInformation.htm.*

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C section 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

While this final rule is a significant regulatory action under E.O. 12866, the final rule will not have a significant adverse effect on the supply, distribution, or use of energy. In fact, this rule is expected to have a positive effect on the production, supply, and distribution of energy because the rule would establish a framework for allowing the development and production of new energy sources on the OCS. Furthermore, the Administrator of the Office of Information and Regulatory Affairs, OMB, has not designated this final rule a significant energy action. Therefore, this final rule is not a significant energy action and does not require a Statement of Energy Effects. Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. According to E.O. 13211, a significant energy action means any action by an agency that promulgates or is expected to lead to promulgation of a final rule or regulations that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Public lands—rights-of-way, Reporting and recordkeeping requirement.

30 CFR Part 285

Bonding, Coastal zone, Continental shelf, Electric power, Energy, Environmental impact statements, Environmental protection, Incorporation by Reference, Marine resources, Natural resources, Payments, Public lands, Public lands—rights-of-way, Reporting and recordkeeping requirements, Revenue sharing, Solar energy.

30 CFR Part 290

Administrative practice and procedure.

Dated: April 21, 2009.

Richard T. Cardinale,

Acting Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR chapter II as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 2. Amend § 250.1703 by revising paragraph (c) to read as follows:

§ 250.1703 What are the general requirements for decommissioning?

* * * * *

(c) Remove all platforms and other facilities, except as provided in sections 1725(a) and 1730.

* * * * *

■ 3. Amend § 250.1725 by adding a third and fourth sentence to the introductory text of paragraph (a), and adding new paragraphs (a)(1) and (a)(2) to read as follows:

§ 250.1725 When do I have to remove platforms and other facilities?

(a) * * * Other activities include those supporting OCS oil and gas production and transportation, as well as other energy-related or marine-related uses (including LNG) for which adequate financial assurance for decommissioning has been provided to a Federal agency which has given MMS a commitment that it has and will exercise authority to compel the performance of decommissioning within a time following cessation of the new use acceptable to MMS. The approval will specify:

(1) Whether you must continue to maintain any financial assurance for decommissioning; and

(2) Whether, and under what circumstances, you must perform any decommissioning not performed by the new facility owner/user.

* * * * *

§ 250.1730 [Amended]

■ 4. In § 250.1730, amend the introductory text by removing the words ''or other use''.

■ 5. Add § 250.1731, to read as follows:

§ 250.1731 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

(a) The holder of an Alternate Use RUE issued under part 285 of this subchapter is responsible for all decommissioning obligations that accrue following the issuance of the Alternate Use RUE and which pertain to the Alternate Use RUE. See 30 CFR part 285, subpart J, for additional information concerning the decommissioning responsibilities of an Alternate Use RUE grant holder.

(b) The lessee under the lease originally issued under 30 CFR part 256 will remain responsible for decommissioning obligations that accrued before issuance of the Alternate Use RUE, as well as for decommissioning obligations that accrue following issuance of the Alternate Use RUE to the extent associated with continued activities authorized under this part.

(c) If a lease issued under 30 CFR part 256 is cancelled or otherwise terminated under any provision of this subchapter, the lessee, upon our approval, may defer removal of any OCS facility within the lease area that is subject to an Alternate Use RUE. If we elect to grant such a deferral, the lessee remains responsible for removing the facility upon termination of the Alternate Use RUE and will be required to retain sufficient bonding or other financial assurances to ensure that the structure is removed or otherwise decommissioned in accordance with the provisions of this subpart.

■ 6. Add 30 CFR part 285 to subchapter B to read as follows:

PART 285—RENEWABLE ENERGY ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

Subpart A—General Provisions

Sec.
285.100 Authority.
285.101 What is the purpose of this part?
285.102 What are MMS's responsibilities under this part?
285.103 When may MMS prescribe or approve departures from these regulations?
285.104 Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?
285.105 What are my responsibilities under this part?
285.106 Who can hold a lease or grant under this part?
285.107 How do I show that I am qualified to be a lessee or grant holder?
285.108 When must I notify MMS if an action has been filed alleging that I am insolvent or bankrupt?
285.109 When must I notify MMS of mergers, name changes, or changes of business form?
285.110 How do I submit plans, applications, reports, or notices required by this part?
285.111 When and how does MMS charge me processing fees on a case-by-case basis?
285.112 Definitions.
285.113 How will data and information obtained by MMS under this part be disclosed to the public?
285.114 Paperwork Reduction Act statements—information collection.
285.115 Documents incorporated by reference.
285.116 Requests for information on the state of the offshore renewable energy industry.
285.117 [Reserved]
285.118 What are my appeal rights?

Subpart B—Issuance of OCS Renewable Energy Leases

General Lease Information

285.200 What rights are granted with a lease issued under this part?
285.201 How will MMS issue leases?
285.202 What types of leases will MMS issue?
285.203 With whom will MMS consult before issuance of a lease?
285.204 What areas are available for leasing consideration?
285.205 How will leases be mapped?
285.206 What is the lease size?
285.207–285.209 [Reserved]

Competitive Lease Process

285.210 How does MMS initiate the competitive leasing process?
285.211 What is the process for competitive issuance of leases?
285.212 What is the process MMS will follow if there is reason to believe that competitors have withdrawn before the Final Sale Notice is issued?
285.213 What must I submit in response to a Request for Interest or a Call for Information and Nominations?
285.214 What will MMS do with information from the Requests for Information or Calls for Information and Nominations?
285.215 What areas will MMS offer in a lease sale?
285.216 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?
285.217–285.219 [Reserved]

Competitive Lease Award Process

285.220 What auction format may MMS use in a lease sale?

285.221 What bidding systems may MMS use for commercial leases and limited leases?
285.222 What does MMS do with my bid?
285.223 What does MMS do if there is a tie for the highest bid?
285.224 What happens if MMS accepts my bid?
285.225 What happens if my bid is rejected, and what are my appeal rights?
285.226–285.229 [Reserved]

Noncompetitive Lease Award Process

285.230 May I request a lease if there is no Call?
285.231 How will MMS process my unsolicited request for a noncompetitive lease?
285.232 May I acquire a lease noncompetitively after responding to a Request for Interest or Call for Information and Nominations under § 285.213?
285.233–285.234 [Reserved]

Commercial and Limited Lease Terms

285.235 If I have a commercial lease, how long will my lease remain in effect?
285.236 If I have a limited lease, how long will my lease remain in effect?
285.237 What is the effective date of a lease?
285.238 Are there any other renewable energy research activities that will be allowed on the OCS?

Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities

ROW Grants and RUE Grants

285.300 What types of activities are authorized by ROW grants and RUE grants issued under this part?
285.301 What do ROW grants and RUE grants include?
285.302 What are the general requirements for ROW grant and RUE grant holders?
285.303 How long will my ROW grant or RUE grant remain in effect?
285.304 [Reserved]

Obtaining ROW Grants and RUE Grants

285.305 How do I request an ROW grant or RUE grant?
285.306 What action will MMS take on my request?
285.307 How will MMS determine whether competitive interest exists for ROW grants and RUE grants?
285.308 How will MMS conduct an auction for ROW grants and RUE grants?
285.309 When will MMS issue a noncompetitive ROW grant or RUE grant?
285.310 What is the effective date of an ROW grant or RUE grant?
285.311–285.314 [Reserved]

Financial Requirements for ROW Grants and RUE Grants

285.315 What deposits are required for a competitive ROW grant or RUE grant?
285.316 What payments are required for ROW grants or RUE grants?

Subpart D—Lease and Grant Administration

Noncompliance and Cessation Orders

285.400 What happens if I fail to comply with this part?
285.401 When may MMS issue a cessation order?
285.402 What is the effect of a cessation order?
285.403–285.404 [Reserved]

Designation of Operator

285.405 How do I designate an operator?
285.406 Who is responsible for fulfilling lease and grant obligations?
285.407 [Reserved]

Lease or Grant Assignment

285.408 May I assign my lease or grant interest?
285.409 How do I request approval of a lease or grant assignment?
285.410 How does an assignment affect the assignor's liability?
285.411 How does an assignment affect the assignee's liability?
285.412–285.414 [Reserved]

Lease or Grant Suspension

285.415 What is a lease or grant suspension?
285.416 How do I request a lease or grant suspension?
285.417 When may MMS order a suspension?
285.418 How will MMS issue a suspension?
285.419 What are my immediate responsibilities if I receive a suspension order?
285.420 What effect does a suspension order have on my payments?
285.421 How long will a suspension be in effect?
285.422–285.424 [Reserved]

Lease or Grant Renewal

285.425 May I obtain a renewal of my lease or grant before it terminates?
285.426 When must I submit my request for renewal?
285.427 How long is a renewal?
285.428 What effect does applying for a renewal have on my activities and payments?
285.429 What criteria will MMS consider in deciding whether to renew a lease or grant?
285.430–285.431 [Reserved]

Lease or Grant Termination

285.432 When does my lease or grant terminate?
285.433 What must I do after my lease or grant terminates?
285.434 [Reserved]

Lease or Grant Relinquishment

285.435 How can I relinquish a lease or a grant or parts of a lease or grant?

Lease or Grant Contraction

285.436 Can MMS require lease or grant contraction?

Lease or Grant Cancellation

285.437 When can my lease or grant be canceled?

Subpart E—Payments and Financial Assurance Requirements

Payments

285.500 How do I make payments under this part?
285.501 What deposits must I submit for a competitively issued lease, ROW grant, or RUE grant?
285.502 What initial payment requirements must I meet to obtain a noncompetitive lease, ROW grant, or RUE grant?
285.503 What are the rent and operating fee requirements for a commercial lease?
285.504 How are my payments affected if I develop my lease in phases?
285.505 What are the rent and operating fee requirements for a limited lease?
285.506 What operating fees must I pay on a commercial lease?
285.507 What rent payments must I pay on a project easement?
285.508 What rent payments must I pay on ROW grants or RUE grants associated with renewable energy projects?
285.509 Who is responsible for submitting lease or grant payments to MMS?
285.510 May MMS reduce or waive my lease or grant payments?
285.511–285.514 [Reserved]

Financial Assurance Requirements for Commercial Leases

285.515 What financial assurance must I provide when I obtain my commercial lease?
285.516 What are the financial assurance requirements for each stage of my commercial lease?
285.517 How will MMS determine the amounts of the supplemental and decommissioning financial assurance requirements associated with commercial leases?
285.518–285.519 [Reserved]

Financial Assurance for Limited Leases, ROW Grants, and RUE Grants

285.520 What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant?
285.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?
285.522–285.524 [Reserved]

Requirements for Financial Assurance Instruments

285.525 What general requirements must a financial assurance instrument meet?
285.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?
285.527 May I demonstrate financial strength and reliability to meet the financial assurance requirement for lease or grant activities?
285.528 May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities?
285.529 Can I use a lease- or grant-specific decommissioning account to meet the financial assurance requirements related to decommissioning?

Changes in Financial Assurance

285.530 What must I do if my financial assurance lapses?
285.531 What happens if the value of my financial assurance is reduced?
285.532 What happens if my surety wants to terminate the period of liability of my bond?
285.533 How does my surety obtain cancellation of my bond?
285.534 When may MMS cancel my bond?
285.535 Why might MMS call for forfeiture of my bond?
285.536 How will I be notified of a call for forfeiture?
285.537 How will MMS proceed once my bond or other security is forfeited?
285.538–285.539 [Reserved]

Revenue Sharing With States

285.540 How will MMS equitably distribute revenues to States?
285.541 What is a qualified project for revenue sharing purposes?
285.542 What makes a State eligible for payment of revenues?
285.543 Example of how the inverse distance formula works.

Subpart F—Plans and Information Requirements

285.600 What plans and information must I submit to MMS before I conduct activities on my lease or grant?
285.601 When am I required to submit my plans to MMS?
285.602 What records must I maintain?
285.603–285.604 [Reserved]

Site Assessment Plan and Information Requirements for Commercial Leases

285.605 What is a Site Assessment Plan (SAP)?
285.606 What must I demonstrate in my SAP?
285.607 How do I submit my SAP?
285.608–285.609 [Reserved]

Contents of the Site Assessment Plan

285.610 What must I include in my SAP?
285.611 What information must I submit with my SAP to assist MMS in complying with NEPA and other relevant laws?
285.612 How will my SAP be processed for Federal consistency under the Coastal Zone Management Act?
285.613 How will MMS process my SAP?

Activities Under an Approved SAP

285.614 When may I begin conducting activities under my approved SAP?
285.615 What other reports or notices must I submit to MMS under my approved SAP?
285.616 [Reserved]
285.617 What activities require a revision to my SAP, and when will MMS approve the revision?
285.618 What must I do upon completion of approved site assessment activities?
285.619 [Reserved]

Construction and Operations Plan for Commercial Leases

285.620 What is a Construction and Operations Plan (COP)?
285.621 What must I demonstrate in my COP?
285.622 How do I submit my COP?
285.623–285.625 [Reserved]

Contents of the Construction and Operations Plan

285.626 What must I include in my COP?
285.627 What information and certifications must I submit with my COP to assist the MMS in complying with NEPA and other relevant laws?
285.628 How will MMS process my COP?
285.629 May I develop my lease in phases?
285.630 [Reserved]

Activities Under an Approved COP

285.631 When must I initiate activities under an approved COP?
285.632 What documents must I submit before I may construct and install facilities under my approved COP?
285.633 How do I comply with my COP?
285.634 What activities require a revision to my COP, and when will MMS approve the revision?
285.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?
285.636 What notices must I provide MMS following approval of my COP?
285.637 When may I commence commercial operations on my commercial lease?
285.638 What must I do upon completion of my commercial operations as approved in my COP or FERC license?
285.639 [Reserved]

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

285.640 What is a General Activities Plan (GAP)?
285.641 What must I demonstrate in my GAP?
285.642 How do I submit my GAP?
285.643–285.644 [Reserved]

Contents of the General Activities Plan

285.645 What must I include in my GAP?
285.646 What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws?
285.647 How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?
285.648 How will MMS process my GAP?
285.649 [Reserved]

Activities Under an Approved GAP

285.650 When may I begin conducting activities under my GAP?
285.651 When may I construct complex or significant OCS facilities on my limited lease or any facilities on my project easement proposed under my GAP?
285.652 How long do I have to conduct activities under an approved GAP?
285.653 What other reports or notices must I submit to MMS under my approved GAP?
285.654 [Reserved]
285.655 What activities require a revision to my GAP, and when will MMS approve the revision?
285.656 What must I do if I cease activities approved in my GAP before the end of my term?
285.657 What must I do upon completion of approved activities under my GAP?

Cable and Pipeline Deviations

285.658 Can my cable or pipeline construction deviate from my approved COP or GAP?
285.659 What requirements must I include in my SAP, COP, or GAP regarding air quality?

Subpart G—Facility Design, Fabrication, and Installation

Reports

285.700 What reports must I submit to MMS before installing facilities described in my approved SAP, COP, or GAP?
285.701 What must I include in my Facility Design Report?
285.702 What must I include in my Fabrication and Installation Report?
285.703 What reports must I submit for project modifications and repairs?
285.704 [Reserved]

Certified Verification Agent

285.705 When must I use a Certified Verification Agent (CVA)?
285.706 How do I nominate a CVA for MMS approval?
285.707 What are the CVA's primary duties for facility design review?
285.708 What are the CVA's or project engineer's primary duties for fabrication and installation review?
285.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?
285.710 When conducting onsite installation inspections, what must the CVA or project engineer do?
285.711 [Reserved]
285.712 What are the CVA's or project engineer's reporting requirements?
285.713 What must I do after the CVA or project engineer confirms conformance with the Fabrication and Installation Report on my commercial lease?
285.714 What records relating to SAPs, COPs, and GAPs must I keep?

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Authority: 43 U.S.C. 1331 *et seq.,* 43 U.S.C. 1337.

Subpart A—General Provisions

§ 285.100 Authority.

The authority for this part derives from amendments to subsection 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337), as set forth in section 388(a) of the Energy Policy Act of 2005 (EPAct) (Pub. L. 109–58). The Secretary of the Interior delegated to the Minerals Management Service (MMS) the authority to regulate activities under section 388(a) of the EPAct. These regulations specifically apply to activities that:

(a) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

(b) Use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

§ 285.101 What is the purpose of this part?

The purpose of this part is to:

(a) Establish procedures for issuance and administration of leases, right-of-way (ROW) grants, and right-of-use and easement (RUE) grants for renewable energy production on the Outer Continental Shelf (OCS) and RUEs for the alternate use of OCS facilities for energy or marine-related purposes;

(b) Inform you and third parties of your obligations when you undertake activities authorized in this part; and

(c) Ensure that renewable energy activities on the OCS and activities involving the alternate use of OCS facilities for energy or marine-related purposes are conducted in a safe and environmentally sound manner, in conformance with the requirements of subsection 8(p) of the OCS Lands Act, other applicable laws and regulations, and the terms of your lease, ROW grant, RUE grant, or Alternate Use RUE grant.

(d) This part will not convey access rights for oil, gas, or other minerals.

§ 285.102 What are MMS's responsibilities under this part?

(a) The MMS will ensure that any activities authorized in this part are carried out in a manner that provides for:

(1) Safety;

(2) Protection of the environment;

(3) Prevention of waste;

(4) Conservation of the natural resources of the OCS;

(5) Coordination with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts);

(6) Protection of national security interests of the United States;

(7) Protection of the rights of other authorized users of the OCS;

(8) A fair return to the United States;

(9) Prevention of interference with reasonable uses (as determined by the Secretary or Director) of the exclusive economic zone, the high seas, and the territorial seas;

(10) Consideration of the location of and any schedule relating to a lease or

grant under this part for an area of the OCS, and any other use of the sea or seabed;

(11) Public notice and comment on any proposal submitted for a lease or grant under this part; and

(12) Oversight, inspection, research, monitoring, and enforcement of activities authorized by a lease or grant under this part.

(b) The MMS will require compliance with all applicable laws, regulations, other requirements, and the terms of your lease or grant under this part and approved plans. The MMS will approve, disapprove, or approve with conditions any plans, applications, or other documents submitted to MMS for approval under the provisions of this part.

(c) Unless otherwise provided in this part, MMS may give oral directives or decisions whenever prior MMS approval is required under this part. The MMS will document in writing any such oral directives within 10 business days.

(d) The MMS will establish practices and procedures to govern the collection of all payments due to the Federal Government, including any cost recovery fees, rents, operating fees, and other fees or payments. The MMS will do this in accordance with the terms of this part, the leasing notice, the lease or grant under this part, and applicable Minerals Revenue Management regulations or guidance.

(e) The MMS will provide for coordination and consultation with the Governor of any State or the executive of any local government or Indian tribe that may be affected by a lease, easement, or ROW under this subsection. The MMS may invite any affected State Governor, representative of an affected Indian tribe, and affected local government executive to join in establishing a task force or other joint planning or coordination agreement in carrying out our responsibilities under this part.

§ 285.103 When may MMS prescribe or approve departures from these regulations?

(a) The MMS may prescribe or approve departures from these regulations when departures are necessary to:

(1) Facilitate the appropriate activities on a lease or grant under this part;

(2) Conserve natural resources;

(3) Protect life (including human and wildlife), property, or the marine, coastal, or human environment; or

(4) Protect sites, structures, or objects of historical or archaeological significance.

(b) Any departure approved under this section and its rationale must:

(1) Be consistent with subsection 8(p) of the OCS Lands Act;

(2) Protect the environment and the public health and safety to the same degree as if there was no approved departure from the regulations;

(3) Not impair the rights of third parties; and

(4) Be documented in writing.

§ 285.104 Do I need an MMS lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?

Except as otherwise authorized by law, it will be unlawful for any person to construct, operate, or maintain any facility to produce, transport, or support generation of electricity or other energy product derived from a renewable energy resource on any part of the OCS, except under and in accordance with the terms of a lease, easement, or ROW issued pursuant to the OCS Lands Act.

§ 285.105 What are my responsibilities under this part?

As a lessee, applicant, operator, or holder of a ROW grant, RUE grant, or Alternate Use RUE grant, you must:

(a) Design your projects and conduct all activities in a manner that ensures safety and will not cause undue harm or damage to natural resources, including their physical, atmospheric, and biological components to the extent practicable; and take measures to prevent unauthorized discharge of pollutants including marine trash and debris into the offshore environment.

(b) Submit requests, applications, plans, notices, modifications, and supplemental information to MMS as required by this part;

(c) Follow up, in writing, any oral request or notification you made, within 3 business days;

(d) Comply with the terms, conditions, and provisions of all reports and notices submitted to MMS, and of all plans, revisions, and other MMS approvals, as provided in this part;

(e) Make all applicable payments on time;

(f) Comply with the DOI's nonprocurement debarment regulations at 2 CFR part 1400;

(g) Include the requirement to comply with 2 CFR part 1400 in all contracts and transactions related to a lease or grant under this part;

(h) Conduct all activities authorized by the lease or grant in a manner consistent with the provisions of subsection 8(p) of the OCS Lands Act;

(i) Compile, retain, and make available to MMS representatives, within the time specified by MMS, any data and information related to the site assessment, design, and operations of your project; and

(j) Respond to requests from the Director in a timely manner.

§ 285.106 Who can hold a lease or grant under this part?

(a) You may hold a lease or grant under this part if you can demonstrate that you have the technical and financial capabilities to conduct the activities authorized by the lease or grant and you are a(n):

(1) Citizen or national of the United States;

(2) Alien lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(3) Private, public, or municipal corporations organized under the laws of any State of the United States, the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction;

(4) Association of such citizens, nationals, resident aliens, or corporations;

(5) Executive Agency of the United States as defined in section 105 of Title 5 of the U.S. Code;

(6) State of the United States; and

(7) Political subdivision of States of the United States.

(b) You may not hold a lease or grant under this part or acquire an interest in a lease or grant under this part if:

(1) You or your principals are excluded or disqualified from participating in transactions covered by the Federal nonprocurement debarment and suspension system (2 CFR part 1400), unless MMS explicitly has approved an exception for this transaction;

(2) The MMS determines or has previously determined after notice and opportunity for a hearing that you or your principals have failed to meet or exercise due diligence under any OCS lease or grant; or

(3) The MMS determines or has previously determined after notice and opportunity for a hearing that you:

(i) Remained in violation of the terms and conditions of any lease or grant issued under the OCS Lands Act for a period extending longer than 30 days (or such other period MMS allowed for compliance) after MMS directed you to comply; and

(ii) You took no action to correct the noncompliance within that time period.

§ 285.107 How do I show that I am qualified to be a lessee or grant holder?

(a) You must demonstrate your technical and financial capability to construct, operate, maintain, and terminate/decommission projects for

which you are requesting authorization. Documentation can include:

(1) Descriptions of international or domestic experience with renewable energy projects or other types of electric-energy-related projects; and

(2) Information establishing access to sufficient capital to carry out development.

(b) An individual must submit a written statement of citizenship status attesting to U.S. citizenship. It does not need to be notarized nor give the age of individual. A resident alien may submit a photocopy of the Immigration and Naturalization Service form evidencing legal status of the resident alien.

(c) A corporation or association must submit evidence, as specified in the table in paragraph (d) of this section, acceptable to MMS that:

(1) It is qualified to hold leases or grants under this part;

(2) It is authorized to conduct business under the laws of its State;

(3) It is authorized to hold leases or grants on the OCS under the operating rules of its business; and

(4) The persons holding the titles listed are authorized to bind the corporation or association when conducting business with MMS.

(d) Acceptable evidence under paragraph (c) of this section includes, but is not limited to the following:

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Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. Prtnsp.	Gen. Prtnsp.	LLC	Trust
(1) Original certificate or certified copy from the State of incorporation stating the name of the corporation exactly as it must appear on all legal documents.	XX				
(2) Certified statement by Secretary/ Assistant Secretary over corporate seal, certifying that the corporation is authorized to hold OCS leases.	XX				
(3) Evidence of authority of titled positions to bind corporation, certified by Secretary/Assistant Secretary over corporate seal, including the following: (i) Certified copy of resolution of the board of directors with titles of officers authorized to bind corporation. (ii) Certified copy of resolutions granting corporate officer authority to issue a power of attorney. (iii) Certified copy of power of attorney or certified copy of resolution granting power of attorney.	XX				
(4) Original certificate or certified copy of partnership or organization paperwork registering with the appropriate State official.		XX	XX	XX	
(5) Copy of articles of partnership or organization evidencing filing with appropriate Secretary of State, certified by Secretary/Assistant Secretary of partnership or member or manager of LLC.		XX	XX	XX	
(6) Original certificate or certified copy evidencing State where partnership or LLC is registered. Statement of authority to hold OCS leases, certified by Secretary/Assistant Secretary, OR original paperwork registering with the appropriate State official.		XX	XX	XX	
(7) Statements from each partner or LLC member indicating the following: (i) If a corporation or partnership, statement of State of organization and authorization to hold OCS leases, certified by Secretary/Assistant Secretary over corporate seal, if a corporation. (ii) If an individual, a statement of citizenship.		XX	XX	XX	
(8) Statement from general partner, certified by Secretary/Assistant Secretary that: (i) Each individual limited partner is a U.S. citizen and; (ii) Each corporate limited partner or other entity is incorporated or formed and organized under the laws of a U.S. State or territory.		XX			
(9) Evidence of authority to bind partnership or LLC, if not specified in partnership agreement, articles of organization, or LLC regulations, i.e.,		XX	XX	XX	

Requirements to qualify to hold leases or grants on the OCS:	Corp.	Ltd. Prtnsp.	Gen. Prtnsp.	LLC	Trust
certificates of authority from Secretary/Assistant Secretary reflecting authority of officers.					
(10) Listing of members of LLC certified by Secretary/Assistant Secretary or any member or manager of LLC.				XX	
(11) Copy of trust agreement or document establishing the trust and all amendments, properly certified by the trustee with reference to where the original documents are filed.					XX
(12) Statement indicating the law under which the trust is established and that the trust is authorized to hold OCS leases or grants.					XX

BILLING CODE 4310–MR–C

(e) A local, state, or Federal executive entity must submit a written statement that:

(1) It is qualified to hold leases or grants under this part; and

(2) The person(s) acting on behalf of the entity is authorized to bind the entity when conducting business with us.

(f) The MMS may require you to submit additional information at any time considering your bid or request for a noncompetitive lease.

§ 285.108 When must I notify MMS if an action has been filed alleging that I am insolvent or bankrupt?

You must notify MMS within 3 business days after you learn of any action filed alleging that you are insolvent or bankrupt.

§ 285.109 When must I notify MMS of mergers, name changes, or changes of business form?

You must notify MMS in writing of any merger, name change, or change of business form. You must notify MMS as soon as practicable following the merger, name change, or change in business form, but no later than 120 days after the earliest of either the effective date, or the date of filing the change or action with the Secretary of the State or other authorized official in the State of original registry.

§ 285.110 How do I submit plans, applications, reports, or notices required by this part?

(a) You must submit all plans, applications, reports, or notices required by this part to MMS at the following address: Associate Director, OEMM, Minerals Management Service, MS–4001, 381 Elden Street, Herndon, VA 20170.

(b) Unless otherwise stated, you must submit one paper copy and one electronic copy of all plans, applications, reports, or notices required by this part.

§ 285.111 When and how does MMS charge me processing fees on a case-by-case basis?

(a) The MMS will charge a processing fee on a case-by-case basis under the procedures in this section with regard to any application or request under this part if we decide at any time that the preparation of a particular document or study is necessary for the application or request and it will have a unique processing cost, such as the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

(1) Processing costs will include contract oversight and efforts to review and approve documents prepared by contractors, whether the contractor is paid directly by the applicant or through MMS.

(2) We may apply a standard overhead rate to direct processing costs.

(b) We will assess the ongoing processing fee for each individual application or request according to the following procedures:

(1) Before we process your application or request, we will give you a written estimate of the proposed fee based on reasonable processing costs.

(2) You may comment on the proposed fee.

(3) You may:

(i) Ask for our approval to perform, or to directly pay a contractor to perform, all or part of any document, study, or other activity according to standards we specify, thereby reducing our costs for processing your application or request; or

(ii) Ask to pay us to perform, or contract for, all or part of any document, study, or other activity.

(4) We will then give you the final estimate of the processing fee amount with payment terms and instructions after considering your comments and any MMS-approved work you will do.

(i) If we encounter higher or lower processing costs than anticipated, we will re-estimate our reasonable processing costs following the procedures in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section, but we will not stop ongoing processing unless you do not pay in accordance with paragraph (b)(5) of this section.

(ii) Once processing is complete, we will refund to you the amount of money that we did not spend on processing costs.

(5)(i) Consistent with the payment and billing terms provided in the final estimate, we will periodically estimate what our reasonable processing costs will be for a specific period and will bill you for that period. Payment is due to us 30 days after you receive your bill. We will stop processing your document if you do not pay the bill by the date payment is due.

(ii) If a periodic payment turns out to be more or less than our reasonable processing costs for the period, we will adjust the next billing accordingly or make a refund. Do not deduct any amount from a payment without our prior written approval.

(6) You must pay the entire fee before we will issue the final document or take final action on your application or request.

(7) You may appeal our estimated processing costs in accordance with the regulations in 43 CFR part 4. We will not process the document further until the appeal is resolved, unless you pay

the fee under protest while the appeal is pending. If the appeal results in a decision changing the proposed fee, we will adjust the fee in accordance with paragraph (b)(5)(ii) of this section. If we adjust the fee downward, we will not pay interest.

§ 285.112 Definitions.

Terms used in this part have the meanings as defined in this section:

Affected local government means with respect to any activities proposed, conducted, or approved under this part, any locality—

(1) That is, or is proposed to be, the site of gathering, transmitting, or distributing electricity or other energy product, or is otherwise receiving, processing, refining, or transshipping product, or services derived from activities approved under this part;

(2) That is used, or is proposed to be used, as a support base for activities approved under this part; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part.

Affected State means with respect to any activities proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be, the site of gathering, transmitting, or distributing energy or is otherwise receiving, processing, refining, or transshipping products, or services derived from activities approved under this part;

(2) That is used, or is scheduled to be used, as a support base for activities approved under this part; or

(3) In which there is a reasonable probability of significant effect on land or water uses from activities approved under this part.

Alternate Use refers to the energy- or marine-related use of an existing OCS facility for activities not otherwise authorized by this subchapter or other applicable law.

Alternate Use RUE means a right-of-use and easement issued for activities authorized under subpart J of this part.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest (i.e., which are capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation).

Best available and safest technology means the best available and safest technologies that MMS determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Best management practices mean practices recognized within their respective industry, or by Government, as one of the best for achieving the desired output while reducing undesirable outcomes.

Certified Verification Agent (CVA) means an individual or organization, experienced in the design, fabrication, and installation of offshore marine facilities or structures, who will conduct specified third-party reviews, inspections, and verifications in accordance with this part.

Coastline means the same as the term ''coast line'' in section 2 of the Submerged Lands Act (43 U.S.C. 1301(c)).

Commercial activities mean, for renewable energy leases and grants, all activities associated with the generation, storage, or transmission of electricity or other energy product from a renewable energy project on the OCS, and for which such electricity or other energy product is intended for distribution, sale, or other commercial use, except for electricity or other energy product distributed or sold pursuant to technology-testing activities on a limited lease. This term also includes activities associated with all stages of development, including initial site characterization and assessment, facility construction, and project decommissioning.

Commercial lease means a lease issued under this part that specifies the terms and conditions under which a person can conduct commercial activities.

Commercial operations mean the generation of electricity or other energy product for commercial use, sale, or distribution on a commercial lease.

Decommissioning means removing MMS-approved facilities and returning the site of the lease or grant to a condition that meets the requirements under subpart I of this part.

Director means the Director of MMS of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

Distance means the minimum great circle distance.

Eligible State means a coastal State having a coastline (measured from the nearest point) no more than 15 miles from the geographic center of a qualified project area.

Facility means an installation that is permanently or temporarily attached to the seabed of the OCS. Facilities include any structures; devices; appurtenances; gathering, transmission, and distribution cables; pipelines; and permanently moored vessels. Any group of OCS installations interconnected with walkways, or any group of installations that includes a central or primary installation with one or more satellite or secondary installations, is a single facility. The MMS may decide that the complexity of the installations justifies their classification as separate facilities.

Geographic center of a project means the centroid (geometric center point) of a qualified project area. The centroid represents the point that is the weighted average of coordinates of the same dimension within the mapping system, with the weights determined by the density function of the system. For example, in the case of a project area shaped as a rectangle or other parallelogram, the geographic center would be that point where lines between opposing corners intersect. The geographic center of a project could be outside the project area itself if that area is irregularly shaped.

Governor means the Governor of a State or the person or entity lawfully designated by or under State law to exercise the powers granted to a Governor.

Grant means a right-of-way, right-of-use and easement, or alternate use right-of-use and easement issued under the provisions of this part.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Income, unless clearly specified to the contrary, refers to the money received by the project owner or holder of the lease or grant issued under this part. The term does not mean that project receipts exceed project expenses.

Lease means an agreement authorizing the use of a designated portion of the OCS for activities allowed under this part. The term also means the area covered by that agreement, when the context requires.

Lessee means the holder of a lease, an MMS-approved assignee, and, when describing the conduct required of parties engaged in activities on the lease, it also refers to the operator and all persons authorized by the holder of the lease or operator to conduct activities on the lease.

Limited lease means a lease issued under this part that specifies the terms and conditions under which a person

may conduct activities on the OCS that support the production of energy, but do not result in the production of electricity or other energy product for sale, distribution, or other commercial use exceeding a limit specified in the lease.

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Miles mean nautical miles, as opposed to statute miles.

MMS means the Minerals Management Service of the Department of the Interior.

Natural resources include, without limiting the generality thereof, renewable energy, oil, gas, and all other minerals (as defined in section 2(q) of the OCS Lands Act), and marine animal and marine plant life.

Operator means the individual, corporation, or association having control or management of activities on the lease or grant under this part. The operator may be a lessee, grant holder, or a contractor designated by the lessee or holder of a grant under this part.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means, in addition to a natural person, an association (including partnerships and joint ventures); a Federal agency; a State; a political subdivision of a State; a Native American tribal government; or a private, public, or municipal corporation.

Project, for the purposes of defining the source of revenues to be shared, means a lease ROW, RUE, or Alternate Use RUE on which the activities authorized under this part are conducted on the OCS. The term ''project'' may be used elsewhere in this rule to refer to these same authorized activities, the facilities used to conduct these activities, or to the geographic area of the project, i.e., the project area.

Project area means the geographic surface leased, or granted, for the purpose of a specific project. If OCS acreage is granted for a project under some form of agreement other than a lease (i.e., a ROW, RUE, or Alternate Use RUE issued under this part), the Federal acreage granted would be considered the project area. To avoid distortions in the calculation of the geometric center of the project area, project easements issued under this part are not considered part of the qualified project's area.

Project easement means an easement to which, upon approval of your Construction and Operations Plan (COP) or General Activities Plan (GAP), you are entitled as part of the lease for the purpose of installing, gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease.

Renewable Energy means energy resources other than oil and gas and minerals as defined in 30 CFR part 280. Such resources include, but are not limited to, wind, solar, and ocean waves, tides, and current.

Revenues mean bonuses, rents, operating fees, and similar payments made in connection with a project or project area. It does not include administrative fees such as those assessed for cost recovery, civil penalties, and forfeiture of financial assurance.

Right-of-use and easement (RUE) grant means an easement issued by MMS under this part that authorizes use of a designated portion of the OCS to support activities on a lease or other use authorization for renewable energy activities. The term also means the area covered by the authorization.

Right-of-way (ROW) grant means an authorization issued by MMS under this part to use a portion of the OCS for the construction and use of a cable or pipeline for the purpose of gathering, transmitting, distributing, or otherwise transporting electricity or other energy product generated or produced from renewable energy, but does not constitute a project easement under this part. The term also means the area covered by the authorization.

Secretary means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

Significant archaeological resource means an archaeological resource that meets the criteria of significance for eligibility for listing in the National Register of Historic Places, as defined in 36 CFR 60.4 or its successor.

Site assessment activities mean those initial activities conducted to characterize a site on the OCS, such as resource assessment surveys (e.g., meteorological and oceanographic) or technology testing, involving the installation of bottom-founded facilities.

You and *your* refer to an applicant, lessee, the operator, a designated agent of the lessee(s) or designated operator, ROW grant holder, RUE grant holder, or Alternate Use RUE grant holder under this part, or the possessive of each, depending on the context.

We, us, and *our* refer to the Minerals Management Service of the Department of the Interior, or its possessive, depending on the context.

§ 285.113 How will data and information obtained by MMS under this part be disclosed to the public?

(a) The MMS will make data and information available in accordance with the requirements and subject to the limitations of the Freedom of Information Act (FOIA) (5 U.S.C. 552), the regulations contained in 43 CFR part 2 (Records and Testimony).

(b) The MMS will not release such data and information that we have determined is exempt from disclosure under exemption 4 of FOIA. We will review such data and information and objections of the submitter by the following schedule to determine whether release at that time will result in substantial competitive harm or disclosure of trade secrets.

If you have a...	Then MMS will review data and information for possible release:
(1) Commercial lease,	At the earlier of: (i) 3 years after the initiation of commercial generation or (ii) 3 years after the lease terminates.
(2) Limited lease,	At 3 years after the lease terminates.
(3) ROW or RUE grant,	At the earliest of: (i) 10 years after the approval of the grant; (ii) Grant termination; or (iii) 3 years after the completion of construction activities.

(c) After considering any objections from the submitter, if we determine that release of such data and information will result in:

(1) No substantial competitive harm or disclosure of trade secrets, then the data and information will be released.

(2) Substantial competitive harm or disclosure of trade secrets, then the data and information will not be released at that time but will be subject to further review every 3 years thereafter.

§ 285.114 Paperwork Reduction Act statements—information collection.

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in 30 CFR part 285 under 44 U.S.C. 3501, *et seq.,* and assigned OMB Control Number 1010–0176. The table in paragraph (e) of this section lists the subpart in the rule requiring the information and its title, summarizes the reasons for collecting the information, and summarizes how MMS uses the information.

(b) Respondents are primarily renewable energy applicants, lessees, ROW grant holders, RUE grant holders, Alternate Use RUE grant holders, and operators. The requirement to respond to the information collection in this part is mandated under subsection 8(p) of the OCS Lands Act. Some responses are also required to obtain or retain a benefit, or may be voluntary.

(c) The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires us to inform the public that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) Comments regarding any aspect of the collections of information under this part, including suggestions for reducing the burden should be sent to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 5438, 1849 C Street, NW., Washington, DC 20240.

(e) The MMS is collecting this information for the reasons given in the following table:

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30 CFR 285 subpart, title, and/or MMS Form (OMB Control No.)	Reasons for collecting information and how used.
(1) Subpart A – General Provisions.	To inform MMS of actions taken to comply with general operational requirements on the OCS. To ensure that operations on the OCS meet statutory and regulatory requirements, are safe and protect the environment, and result in diligent development on OCS leases.
(2) Subpart B – Issuance of OCS Renewable Energy Leases.	To provide MMS with information needed to determine when to use a competitive process for issuing a renewable energy lease, to identify auction formats and bidding systems and variables that we may use when that determination is affirmative, and to determine the terms under which we will issue renewable energy leases.
(3) Subpart C – ROW Grants and RUE Grants for Renewable Energy Activities.	To issue ROW grants and RUE grants for OCS renewable energy activities that are not associated with an MMS-issued renewable energy lease.
(4) Subpart D – Lease and Grant Administration.	To ensure compliance with regulations pertaining to a lease or grant; assignment and designation of operator; and suspension, renewal, termination, relinquishment, and cancellation of leases and grants.
(5) Subpart E – Payments and Financial Assurance Requirements.	To ensure that payments and financial assurance payments for renewable energy leases comply with subpart E.
(6) Subpart F – Plans and Information Requirements.	To enable MMS to comply with the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), and other Federal laws and to ensure the safety of the environment on the OCS.
(7) Subpart G – Facility Design, Fabrication, and Installation.	To enable MMS to review the final design, fabrication, and installation of facilities on a lease or grant to ensure that these facilities are designed, fabricated, and installed according to appropriate standards in compliance with MMS regulations, and where applicable, the approved plan.
(8) Subpart H – Environmental and Safety Management, Inspections, and Facility Assessments.	To ensure that lease and grant operations are conducted in a manner that is safe and protects the environment. To ensure compliance with other Federal laws, these regulations, the lease or grant, and approved plans.
(9) Subpart I – Decommissioning.	To determine that decommissioning activities comply with regulatory requirements and approvals. To ensure that site clearance and platform or pipeline removal are properly performed to protect marine life and the environment and do not conflict with other users of the OCS.
(10) Subpart J – RUEs for Energy and Marine-Related Activities Using Existing OCS Facilities.	To enable MMS to review information regarding the design, installation, and operation of RUEs on the OCS, to ensure that RUE operations are safe and protect the human, marine, and coastal environment. To ensure compliance with other Federal laws, these regulations, the RUE grant, and, where applicable, the approved plan.

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§ 285.115 Documents incorporated by reference.

(a) The MMS is incorporating by reference the documents listed in the table in paragraph (e) of this section. The Director of the Federal Register has approved this incorporation by

reference according to 5 U.S.C. 552(a) and 1 CFR part 51.

(1) The MMS will publish, as a rule, any changes in the documents incorporated by reference in the **Federal Register.**

(2) The MMS may amend by rule the list of industry standards incorporated by reference of the document effective without prior opportunity for public comment when MMS determines that the revisions to a document result in safety improvements or represent new industry standard technology and do not impose undue costs on the affected parties; and

(3) The MMS may make a rule, effective immediately, amending the list of industry standards incorporated by reference if it determines good cause exists for doing so under 5 U.S.C. 553.

(b) The MMS is incorporating each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition, or specific edition and supplement, or specific addition and addendum cited in this section.

(c) You may comply with a later edition of a specific document incorporated by reference, only if:

(1) You show that complying with the later edition provides a degree of protection, safety, or performance equal to or better than what would be achieved by compliance with the listed edition; and

(2) You obtain the prior written approval for alternative compliance from the authorized MMS official.

(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia, 703–787–1605; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* You may obtain the documents from the publishing organizations at the addresses given in the following table:

For...	Write to...
API Recommended Practices	American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005-4070; 202-682-8000; http://www.api.org/publications/

(e) This paragraph lists documents incorporated by reference. To easily reference text of the corresponding sections with the list of documents incorporated by reference, the list is in alphanumerical order by organization and document.

Title of documents.	Incorporated by reference at...
API RP 2A-WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design; Twenty-first Edition, December 2000; Errata and Supplement 1, December 2002; Errata and Supplement 2, September 2005; Errata and Supplement 3, October 2007; Product No. G2AWSD.	§ 285.825

§ 285.116 Requests for information on the state of the offshore renewable energy industry.

(a) The Director may, from time to time, and at his discretion, solicit information from industry and other relevant stakeholders (including State and local agencies), as necessary, to evaluate the state of the offshore renewable energy industry, including the identification of potential challenges or obstacles to its continued development. Such requests for information may relate to the identification of environmental, technical, regulatory, or economic matters that promote or detract from continued development of renewable energy technologies on the OCS. From the information received, the Director may evaluate potential refinements to the OCS Alternative Energy Program that promote development of the industry in a safe and environmentally responsible manner, and that ensure fair value for use of the Nation's OCS.

(b) The MMS may make such requests for information on a regional basis, and may tailor the requests to specific types of renewable energy technologies.

(c) The MMS will publish such requests for information by the Director in the **Federal Register**.

§ 285.117 [Reserved]

§ 285.118 What are my appeal rights?

(a) Any party adversely affected by an MMS official's final decision or order issued under the regulations of this part may appeal that decision or order to the Interior Board of Land Appeals. The appeal must conform with the procedures found in 30 CFR part 290 and 43 CFR part 4, subpart E. Appeal of a final decision for bid acceptance is covered under paragraph (c) of this section.

(b) A decision will remain in full force and effect during the period in which an appeal may be filed and during an appeal, unless a stay is granted pursuant to 43 CFR part 4.

(c) Our decision on a bid is the final action of the Department, except that an unsuccessful bidder may apply for reconsideration by the Director.

(1) A bidder whose bid we reject may file a written request for reconsideration with the Director within 15 days of the date of the receipt of the notice of rejection, accompanied by a statement of reasons, with one copy to us. The Director will respond in writing either affirming or reversing the decision.

(2) The delegation of review authority given to the Office of Hearings and Appeals does not apply to decisions on high bids for leases or grants under this part.

Subpart B—Issuance of OCS Renewable Energy Leases

General Lease Information

§ 285.200 What rights are granted with a lease issued under this part?

(a) A lease issued under this part grants the lessee the right, subject to obtaining the necessary approvals, including but not limited to those required under the FERC hydrokinetic licensing process, and complying with all provisions of this part, to occupy, and install and operate facilities on, a designated portion of the OCS for the purpose of conducting:

(1) Commercial activities; or

(2) Other limited activities that support, result from, or relate to the production of energy from a renewable energy source.

(b) A lease issued under this part confers on the lessee the right to one or more project easements without further competition for the purpose of installing gathering, transmission, and distribution cables; pipelines; and appurtenances on the OCS as necessary for the full enjoyment of the lease.

(1) You must apply for the project easement as part of your COP or GAP, as provided under subpart F of this part; and

(2) The MMS will incorporate your approved project easement in your lease as an addendum.

(c) A commercial lease issued under this part may be developed in phases, with MMS approval as provided in § 285.629.

§ 285.201 How will MMS issue leases?

The MMS will issue leases on a competitive basis, as provided under §§ 285.210 through 285.225. However, if we determine after public notice of a proposed lease that there is no competitive interest, we will issue leases noncompetitively, as provided under §§ 285.230 and 285.232. We will issue leases on forms approved by MMS and will include terms, conditions, and stipulations identified and developed through the process set forth in §§ 285.211 and 285.231.

§ 285.202 What types of leases will MMS issue?

The MMS may issue leases on the OCS for the assessment and production of renewable energy and may authorize a combination of specific activities. We may issue commercial leases or limited leases.

§ 285.203 With whom will MMS consult before issuance of a lease?

For leases issued under this part, through either the competitive or noncompetitive process, MMS prior to issuing the lease, will coordinate and consult with relevant Federal agencies (including, in particular, those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS, including multifaceted spatial planning efforts), the Governor of any affected State, the executive of any affected local government, and any affected Indian tribe, as directed by subsections 8(p)(4) and (7) of the OCS Lands Act or other relevant Federal laws. Federal statutes that require us to consult with or respond to findings include the Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

§ 285.204 What areas are available for leasing consideration?

The MMS may offer any appropriately platted area of the OCS, as provided in § 285.205, for a renewable energy lease, except any area within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, National Marine Sanctuary System, or any National Monument.

§ 285.205 How will leases be mapped?

The MMS will prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each lease will be in accordance with the appropriate leasing map or official protraction diagram.

§ 285.206 What is the lease size?

(a) The MMS will determine the size for each lease based on the area required to accommodate the anticipated activities. The processes leading to both competitive and noncompetitive issuance of leases will provide public notice of the lease size adopted. We will delineate leases by using mapped OCS blocks or portions, or aggregations of blocks.

(b) The lease size includes the minimum area that will allow the lessee sufficient space to develop the project and manage activities in a manner that is consistent with the provisions of this part. The lease may include whole lease blocks or portions of a lease block.

§§ 285.207—285.209 [Reserved]

Competitive Lease Process

§ 285.210 How does MMS initiate the competitive leasing process?

The MMS may publish in the **Federal Register** a public notice of Request for Interest to assess interest in leasing all or part of the OCS for activities authorized in this part. The MMS will consider information received in response to a Request for Interest to determine whether there is competitive interest for scheduling sales and issuing leases. We may prepare and issue a national, regional, or more specific schedule of lease sales pertaining to one or more types of renewable energy.

§ 285.211 What is the process for competitive issuance of leases?

The MMS will use auctions to award leases on a competitive basis. We will publish details of the process to be employed for each lease sale auction in the **Federal Register**. For each lease sale, we will publish a Proposed Sale Notice and a Final Sale Notice. Individual lease sales will include steps such as:

(a) *Call for Information and Nominations (Call).* The MMS will publish in the **Federal Register** Calls for Information and Nominations for leasing in specified areas. The comment period following issuance of a Call will be 45 days. In this document, we may:

(1) Request comments on areas which should receive special consideration and analysis;

(2) Request comments concerning geological conditions (including bottom hazards); archaeological sites on the seabed or nearshore; multiple uses of the proposed leasing area (including navigation, recreation, and fisheries); and other socioeconomic, biological, and environmental information; and

(3) Suggest areas to be considered by the respondents for leasing.

(b) *Area Identification.* The MMS will identify areas for environmental analysis and consideration for leasing. We will do this in consultation with appropriate Federal agencies, States, local governments, affected Indian tribes, and other interested parties.

(1) We may consider for lease those areas nominated in response to the Call for Information and Nominations, together with other areas that MMS determines are appropriate for leasing.

(2) We will evaluate the potential effect of leasing on the human, marine, and coastal environments, and develop measures to mitigate adverse impacts, including lease stipulations.

(3) We will consult to develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environment; and

(4) We may hold public hearings on the environmental analysis after appropriate notice.

(c) *Proposed Sale Notice.* The MMS will publish the Proposed Sale Notice in the **Federal Register** and send it to the Governor of any affected State and the executive of any local government that

might be affected. The comment period following issuance of a Proposed Sale Notice will be 60 days.

(d) *Final Sale Notice.* The MMS will publish the Final Sale Notice in the **Federal Register** at least 30 days before the date of the sale.

§ 285.212 What is the process MMS will follow if there is reason to believe that competitors have withdrawn before the Final Sale Notice is issued?

The MMS may decide to end the competitive process before the Final Sale Notice if we have reason to believe that competitors have withdrawn and competition no longer exists. We will issue a second public notice of Request for Interest and consider comments received to confirm that there is no competitive interest.

(a) If, after reviewing comments in response to the notice of Request for Interest, MMS determines that there is no competitive interest in the lease area, and one party wishes to acquire a lease, we will discontinue the competitive process and will proceed with the noncompetitive process set forth in § 285.231(d) through (i). Under the noncompetitive process, the acquisition fee specified in § 285.502(a) must be submitted with the Site Assessment Plan (SAP) or GAP.

(b) If, after reviewing comments in response to the notice of Request for Interest, MMS determines that competitive interest in the lease area continues to exist, we will continue with the competitive process set forth in § 285.211 through 285.225.

§ 285.213 What must I submit in response to a Request for Interest or a Call for Information and Nominations?

If you are a potential lessee, when you respond to a Request for Interest or a Call, your response must include the following items:

(a) The area of interest for a possible lease.

(b) A general description of your objectives and the facilities that you would use to achieve those objectives.

(c) A general schedule of proposed activities, including those leading to commercial operations.

(d) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in § 285.113.

(e) Documentation showing that you are qualified to hold a lease, as specified in § 285.107.

(f) Any other information requested by MMS in the **Federal Register** notice.

§ 285.214 What will MMS do with information from the Requests for Information or Calls for Information and Nominations?

The MMS will use the information received in response to the Requests or Calls to:

(a) Identify the lease area;

(b) Develop options for the environmental analysis and leasing provisions (stipulations, payments, terms, and conditions); and

(c) Prepare appropriate documentation to satisfy applicable Federal requirements, such as NEPA, CZMA, the ESA, and the MSA.

§ 285.215 What areas will MMS offer in a lease sale?

The MMS will offer the areas for leasing determined through the process set forth in § 285.211 of this part. We will not accept nominations after the Call for Information and Nominations closes.

§ 285.216 What information will MMS publish in the Proposed Sale Notice and Final Sale Notice?

For each competitive lease sale, MMS will publish a Proposed Sale Notice and a Final Sale Notice in the **Federal Register**. In the Proposed Sale Notice, we will request public comment on the items listed in this section. We will consider all public comments received in developing the final lease sale terms and conditions. We will publish the final terms and conditions in the Final Sale Notice. The Proposed Sale Notice and Final Sale Notice will include, or describe the availability of, information pertaining to:

(a) The area available for leasing.

(b) Proposed and final lease provisions and conditions, including, but not limited to:

(1) Lease size;

(2) Lease term;

(3) Payment requirements;

(4) Performance requirements; and

(5) Site-specific lease stipulations.

(c) Auction details, including:

(1) Bidding procedures and systems;

(2) Minimum bid;

(3) Deposit amount;

(4) The place and time for filing bids and the place, date, and hour for opening bids;

(5) Lease award method; and

(6) Bidding or application instructions.

(d) The official MMS lease form to be used or a reference to that form.

(e) Criteria MMS will use to evaluate competing bids or applications and how the criteria will be used in decision-making for awarding a lease.

(f) Award procedures, including how and when MMS will award leases and how MMS will handle unsuccessful bids or applications.

(g) Procedures for appealing the lease issuance decision.

(h) Execution of the lease instrument.

§§ 285.217–285.219 [Reserved]

Competitive Lease Award Process

§ 285.220 What auction format may MMS use in a lease sale?

(a) Except as provided in § 285.231, we will hold competitive auctions to award renewable energy leases and will use one of the following auction formats, as determined through the lease sale process and specified in the Proposed Sale Notice and in the Final Sale Notice:

Type of auction	Bid variable	Bidding Process
(1) Sealed bidding.	A cash bonus or an operating fee rate.	One sealed bid per company per lease or packaged bidding unit.
(2) Ascending bidding.	A cash bonus or an operating fee rate.	Continuous bidding per lease.
(3) Two-stage bidding (combination of ascending and sealed bidding).	An operating fee rate in one, both, or neither stage and a cash bonus in one, both, or neither stage.	Ascending or sealed bidding until: (i) Only two bidders remain, or (ii) More than one bidder offers to pay the maximum bid amount. Stage-two sealed or ascending bidding commences at some predetermined time after the end of stage-one bidding.
(4) Multiple-factor bidding.	Factors may include, but are not limited to: technical merit, timeliness, financing and economics, environmental considerations, public benefits, compatibility with State and local needs, cash bonus, rental rate, and an operating fee rate.	One proposal per company per lease or packaged bidding unit.

(b) You must submit your bid and a deposit as specified in §§ 285.500 and 285.501 to cover the bid for each lease area, according to the terms specified in the Final Sale Notice.

§ 285.221 What bidding systems may MMS use for commercial leases and limited leases?

(a) For commercial leases, we will specify minimum bids in the Final Sale Notice and use one of the following bidding systems, as specified in the Proposed Sale Notice and in the Final Sale Notice:

Bid System.	Bid Variable.
(1) Cash bonus with a constant fee rate (decimal).	Cash bonus.
(2) Constant operating fee rate with fixed cash bonus.	A fee rate used in the formula found in § 285.506 to set the operating fee per year during the operations term of your lease.
(3) Sliding operating fee rate with a fixed cash bonus.	A fee rate used in the formula in § 285.506 to set the operating fee for the first year of the operations term of your lease. The fee rate for subsequent years changes by a mathematical function we specify in the Final Sale Notice.
(4) Cash bonus and constant operating fee rate.	Cash bonus and operating fee rate as stated in paragraph (2) of this section (two-stage auction format only).
(5) Cash bonus and sliding operating fee rate.	Cash bonus and operating fee rate as stated in paragraph (3) of this section (two-stage auction format only).
(6) Multiple-factor combination of nonmonetary and monetary factors.	The MMS will identify bidding variables in the Final Sale Notice. Variables may include: (i) Nonmonetary (e.g., technical merit) factors and (ii) Monetary (e.g., cash bonus, rental rate, fee rate) factors.

(b) For limited leases, the bid variable will be a cash bonus, with a minimum bid as we specify in the Final Sale Notice.

§ 285.222 What does MMS do with my bid?

(a) If sealed bidding is used:

(1) We open the sealed bids at the place, date, and hour specified in the Final Sale Notice for the sole purpose of publicly announcing and recording the bids. We do not accept or reject any bids at that time.

(2) We reserve the right to reject any and all high bids, including a bid for any proposal submitted under the multiple-factor bidding format, regardless of the amount offered or bidding system used. The reasons for the rejection of a winning bid may include, but are not necessarily limited to, insufficiency, illegality, anti-competitive behavior, administrative error, and the presence of unusual bidding patterns. We intend to accept or reject all high bids within 90 days, but we may extend that time if necessary.

(b) If we use ascending bidding, we may, in the Final Sale Notice, reserve the right to accept the winning bid solely based on its being the highest bid submitted by a qualified bidder (qualified to be an OCS lessee under § 285.107).

(c) If we use two-stage bidding and the auction concludes with

(i) an ascending bidding stage, the winning bid will be determined as stated in paragraph (b) of this section; or

(ii) a sealed bidding stage, the winning bid will be determined as stated in paragraph (a) of this section.

(d) If we use multiple-factor bidding, determination of the winning bid for any proposal submitted will be made by a panel composed of members selected by MMS. The details of the process will be described in the Final Sale Notice.

(e) We will send a written notice of our decision to accept or reject bids to all bidders whose deposits we hold.

§ 285.223 What does MMS do if there is a tie for the highest bid?

(a) Unless otherwise specified in the Final Sale Notice, except in the first stage of a two-stage bidding auction, if more than one bidder on a lease submits the same high bid amount, the winning bidder will be determined by a further round or stage of bidding as described in the Final Sale Notice.

(b) The winning bidder will be subject to final confirmation following determination of bid adequacy.

§ 285.224 What happens if MMS accepts my bid?

If we accept your bid, we will send you a notice with three copies of the lease form.

(a) Within 10 business days after you receive the lease copies, you must:

(1) Execute the lease;

(2) File financial assurance as required under §§ 285.515 through 285.537; and

(3) Pay the balance of the bonus bid as specified in the lease sale notice.

(b) Within 45 days after you receive the lease copies, you must pay the first 6 months rent as required in § 285.503.

(c) When you execute three copies of the lease and return the copies to us, we will execute the lease on behalf of the United States and send you one fully executed copy.

(d) You will forfeit your deposit if you do not execute and return the lease within 10 business days of receipt, or otherwise fail to comply with applicable regulations or terms of the Final Sale Notice.

(e) We may extend the 10 business day time period for executing and returning the lease if we determine the delay to be caused by events beyond your control.

(f) We reserve the right to withdraw an OCS area in which we have held a lease sale before you and MMS execute the lease in that area. If we exercise this right, we will refund your bid deposit, without interest.

(g) If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder must submit, along with the executed lease, written evidence that the agent is authorized to act on behalf of the bidder.

(h) The MMS will consider the highest submitted qualified bid to be the winning bid when bidding occurs under the systems described in §§ 285.221(a)(1) through (5). We will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel as specified in § 285.222(d) when the bidding system under § 285.221(a)(6) is used. We will refund the deposit on all other bids.

§ 285.225 What happens if my bid is rejected, and what are my appeal rights?

(a) If we reject your bid, we will provide a written statement of the reasons and refund any money deposited with your bid, without interest.

(b) You may ask the MMS Director for reconsideration, in writing, within 15 business days of bid rejection, under § 285.118(c)(1). We will send you a written response either affirming or reversing the rejection.

§§ 285.226–285.229 [Reserved]

Noncompetitive Lease Award Process

§ 285.230 May I request a lease if there is no Call?

You may submit an unsolicited request for a commercial lease or a limited lease under this part. Your unsolicited request must contain the following information:

(a) The area you are requesting for lease.

(b) A general description of your objectives and the facilities that you would use to achieve those objectives.

(c) A general schedule of proposed activities including those leading to commercial operations.

(d) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in § 285.113.

(e) If available from the appropriate State or local government authority, a statement that the proposed activity conforms with State and local energy planning requirements, initiatives, or guidance.

(f) Documentation showing that you meet the qualifications to become a lessee, as specified in § 285.107.

(g) An acquisition fee, as specified in § 285.502(a).

§ 285.231 How will MMS process my unsolicited request for a noncompetitive lease?

(a) The MMS will consider unsolicited requests for a lease on a case-by-case basis and may issue a lease noncompetitively in accordance with this part. We will not consider an unsolicited request for a lease under this part that is proposed in an area of the OCS that is scheduled for a lease sale under this part.

(b) The MMS will issue a public notice of a request for interest relating to your proposal and consider comments received to determine if competitive interest exists.

(c) If MMS determines that competitive interest exists in the lease area:

(1) The MMS will proceed with the competitive process set forth in §§ 285.210 through 285.225;

(2) If you submit a bid for the lease area in a competitive lease sale, your acquisition fee will be applied to the deposit for your bonus bid; and

(3) If you do not submit a bid for the lease area in a competitive lease sale, MMS will not refund your acquisition fee.

(d) If MMS determines that there is no competitive interest in a lease:

(1) We will publish a notice, in the **Federal Register,** of such determination; and

(2) You must submit within 60 days of the date of the notice to MMS:

(i) For a commercial lease, a SAP, as described in §§ 285.605 through 285.613; or

(ii) For a limited lease, a GAP, as described in §§ 285.640 through 285.648.

(e) The MMS will coordinate and consult with affected Federal agencies, State, and local governments, and affected Indian tribes in the review of noncompetitive lease requests and associated plans.

(f) If we approve or approve with conditions your SAP or GAP, we may offer you a noncompetitive lease.

(g) If you accept the terms and conditions of the lease, then we will issue the lease, and you must comply with all terms and conditions of your lease and all applicable provisions of this part. If we issue you a lease, we will send you a notice with 3 copies of the lease form.

(1) Within 10 business days after you receive the lease copies you must:

(i) Execute the lease;

(ii) File financial assurance as required under §§ 285.515 through 285.537; and

(2) Within 45 days after you receive the lease copies, you must pay the first 6-months rent, as required in § 285.503.

(h) The MMS will publish in the **Federal Register** a notice announcing the issuance of your lease.

(i) If you do not accept the terms and conditions, MMS will not issue a lease, and we will not refund your acquisition fee.

§ 285.232 May I acquire a lease noncompetitively after responding to a Request for Interest or Call for Information and Nominations under § 285.213?

(a) If you submit an area of interest for a possible lease and MMS receives no competing submissions in response to the RFI or Call, we may inform you that there does not appear to be competitive interest, and ask if you wish to proceed with acquiring a lease.

(b) If you wish to proceed with acquiring a lease, you must submit your acquisition fee as specified in § 285.502(a).

(c) After receiving the acquisition fee, MMS will follow the process outlined in § 285.231(b) through (i).

§§ 285.233–285.234 [Reserved]

Commercial and Limited Lease Terms

§ 285.235 If I have a commercial lease, how long will my lease remain in effect?

(a) For commercial leases, the lease terms and applicable automatic extensions are as shown in the following table:

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Lease Term	Automatic Extensions	Requirements
(1) Each commercial lease issued competitively will have a preliminary term of 6 months to submit: (i) a SAP; or (ii) a combined SAP and COP. The preliminary term begins on the effective date of the lease. A commercial lease issued noncompetitively does not have a preliminary term.	If we receive a SAP that satisfies the requirements of §§ 285.605 through 285.613 or a SAP/COP that satisfies the requirements of §§ 285.605 through 285.613 and §§ 285.620 through 285.629, the preliminary term will be extended for the time necessary for us to conduct technical and environmental reviews of the SAP or SAP/COP.	The SAP must meet the requirements of §§ 285.605 through 285.613. The SAP/COP must meet the requirements of §§ 285.605 through 285.613 and §§ 285.620 through 285.629.
(2) A commercial lease will have a site assessment term of 5 years to conduct site assessment activities and to submit a COP, if a SAP/COP has not been submitted. Your site assessment term begins when MMS approves your SAP or SAP/COP.	If we receive a COP that satisfies the requirements of §§ 285.620 through 285.629, the site assessment term will be automatically extended for the period of time necessary for us to conduct technical and environmental reviews of the COP.	The COP must meet the requirements of §§ 285.620 through 285.629 of this part.
(3) A commercial lease will have an operations term of 25 years, unless a longer term is negotiated by applicable parties. A request for lease renewal must be submitted 2 years before the end of the operations term. If you submit a COP, your operations term begins on the date that we approve the COP. If you submit a SAP/COP, your operations term begins 5 years after the date we approve the SAP/COP, or when fabrication and installation commence, whichever is earlier.		The lease renewal request must meet the requirements, as provided in §§ 285.425 through 285.429.
(4) A commercial lease may have additional time added to the operations term through a lease renewal. The term of the lease renewal will not exceed the original term of the lease, unless a longer term is negotiated by applicable parties. The lease renewal term begins upon expiration of the original operations term.		We may order or grant a suspension of the operations term, as provided in §§ 285.415 through 285.421.

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(b) If you do not timely submit a SAP, COP, or SAP/COP, as appropriate, you may request additional time to extend the preliminary or site assessment term of your commercial lease that includes a revised schedule for submission of the plan, as appropriate.

§ 285.236 If I have a limited lease, how long will my lease remain in effect?

(a) For limited leases, the lease terms are as shown in the following table:

Lease Term	Extension or Suspension	Requirements
(1) Each limited lease issued competitively has a preliminary term of 6 months to submit a GAP. The preliminary term begins on the effective date of the lease.	If we receive a GAP that satisfies the requirements of §§ 285.640 through 285.648 of this part, the preliminary term will be automatically extended for the period of time necessary for us to conduct a technical and environmental review of the plans.	The GAP must meet the requirements of §§ 285.640 through 285.648.
(2) The operations term begins when MMS approves your GAP and issues your lease. A limited lease issued noncompetitively does not have a preliminary term.		You must submit and MMS must approve your GAP before we will issue a lease. The GAP must meet the requirements of §§ 285.640 through 285.648.
(3) Each limited lease has an operations term of 5 years for conducting site assessment, technology testing, or other activities. The operations term begins on the date that we approve your GAP.	We may order or grant a suspension of the operations term as provided in §§ 285.415 through 285.421.	

(b) If you do not timely submit a GAP, you may request additional time to extend the preliminary term of your limited lease that includes a revised schedule for submission of a GAP.

§ 285.237 What is the effective date of a lease?

(a) A lease issued under this part must be dated and becomes effective as of the first day of the month following the date a lease is signed by the lessor.

(b) If the lessee submits a written request and MMS approves, a lease may be dated and become effective the first day of the month in which it is signed by the lessor.

§ 285.238 Are there any other renewable energy research activities that will be allowed on the OCS?

(a) The Director may issue OCS leases, ROW grants, and RUE grants to a Federal agency or a State for renewable energy research activities that support the future production, transportation, or transmission of renewable energy.

(b) In issuing leases, ROW grants, and RUE grants to a Federal agency or a State on the OCS for renewable energy research activities under this provision, MMS will coordinate and consult with other relevant Federal agencies, any other affected State(s), affected local government executives, and affected Indian tribes.

(c) The MMS may issue leases, RUEs, and ROWs for research activities managed by a Federal agency or a State only in areas for which the Director has determined, after public notice and opportunity to comment, that no competitive interest exists.

(d) The Director and the head of the Federal agency or the Governor of a requesting State, or their authorized representatives, will negotiate the terms and conditions of such renewable energy leases, RUEs, or ROWs under this provision on a case-by-case basis. The framework for such negotiations, and standard terms and conditions of such leases, RUEs, or ROWs may be set forth in a memorandum of agreement (MOA) or other agreement between MMS and a Federal agency or a State. The MOA must include the agreement of the head of the Federal agency or the Governor to assure that all subcontractors comply with these regulations, other applicable laws, and terms and conditions of such leases or grants.

(e) Any lease, RUE, or ROW that MMS issues to a Federal agency or to a State that authorizes access to an area of the OCS for research activities managed by a Federal agency or a State must include:

(1) Requirements to comply with all applicable Federal laws; and

(2) Requirements to comply with these regulations, except as otherwise provided in the lease or grant.

(f) The MMS will issue a public notice of any lease, RUE, ROW issued to a Federal agency or to a State, or an approved MOA for such research activities.

(g) The MMS will not charge any fees for the purpose of ensuring a fair return for the use of such research areas on the OCS.

Subpart C—Rights-of-Way Grants and Rights-of-Use and Easement Grants for Renewable Energy Activities

ROW Grants and RUE Grants

§ 285.300 What types of activities are authorized by ROW grants and RUE grants issued under this part?

(a) An ROW grant authorizes the holder to install on the OCS cables, pipelines, and associated facilities that involve the transportation or transmission of electricity or other energy product from renewable energy projects.

(b) An RUE grant authorizes the holder to construct and maintain facilities or other installations on the OCS that support the production, transportation, or transmission of electricity or other energy product from any renewable energy resource.

(c) You do not need an ROW grant or RUE grant for a project easement authorized under § 285.200(b) to serve your lease.

§ 285.301 What do ROW grants and RUE grants include?

(a) An ROW grant:

(1) Includes the full length of the corridor on which a cable, pipeline, or associated facility is located;

(2) Is 200 feet (61 meters) in width, centered on the cable or pipeline, unless safety and environmental factors during construction and maintenance of the associated cable or pipeline require a greater width; and

(3) For the associated facility, is limited to the area reasonably necessary for a power or pumping station or other accessory facility.

(b) An RUE grant includes the site on which a facility or other structure is located and the areal extent of anchors, chains, and other equipment associated with a facility or other structure. The specific boundaries of an RUE will be determined by MMS on a case-by-case basis and set forth in each RUE grant.

§ 285.302 What are the general requirements for ROW grant and RUE grant holders?

(a) To acquire an ROW grant or RUE grant you must provide evidence that you meet the qualifications as required in § 285.107.

(b) An ROW grant or RUE grant is subject to the following conditions:

(1) The rights granted will not prevent the granting of other rights by the United States, either before or after the granting of the ROW or RUE, provided that any subsequent authorization issued by MMS in the area of a previously issued ROW grant or RUE grant may not unreasonably interfere with activities approved or impede existing operations under such a grant; and

(2) The holder agrees that the United States, its lessees, or other ROW grant or RUE grant holders may use or occupy any part of the ROW grant or RUE grant not actually occupied or necessarily incident to its use for any necessary activities.

§ 285.303 How long will my ROW grant or RUE grant remain in effect?

Your ROW grant or RUE grant will remain in effect for as long as the associated activities are properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant.

§ 285.304 [Reserved]

Obtaining ROW Grants and RUE Grants

§ 285.305 How do I request an ROW grant or RUE grant?

You must submit to MMS one paper copy and one electronic copy of a request for a new or modified ROW grant or RUE grant. You must submit a separate request for each ROW grant or RUE grant you are requesting. The request must contain the following information:

(a) The area you are requesting for a ROW grant or RUE grant.

(b) A general description of your objectives and the facilities that you would use to achieve those objectives.

(c) A general schedule of proposed activities.

(d) Pertinent information concerning environmental conditions in the area of interest.

§ 285.306 What action will MMS take on my request?

The MMS will consider requests for ROW grants and RUE grants on a case-by-case basis and may issue a grant competitively, as provided in § 285.308, or noncompetitively if we determine after public notice that there is no competitive interest. The MMS will coordinate and consult with relevant Federal agencies, with the Governor of any affected State, and the executive of any affected local government.

(a) In response to an unsolicited request for a ROW grant or RUE grant, the MMS will first determine if there is competitive interest, as provided in § 285.307.

(b) If MMS determines that there is no competitive interest in a ROW grant or RUE grant, we will:

(1) In consultation with you, establish the terms and conditions for the grant;

(2) Require you to submit a GAP, as described in §§ 285.640 through 285.648, within 60 days of the determination of no competitive interest; and

(3) Evaluate your request for a noncompetitive grant and GAP simultaneously.

(c) If we award your ROW grant or RUE grant competitively, you must submit and receive MMS approval of your GAP, as provided in §§ 285.640 through 285.648.

§ 285.307 How will MMS determine whether competitive interest exists for ROW grants and RUE grants?

To determine whether or not there is competitive interest:

(a) We will publish a public notice, describing the parameters of the project, to give affected and interested parties an opportunity to comment on the proposed ROW grant or RUE grant area.

(b) We will evaluate any comments received on the notice and make a determination of the level of competitive interest.

§ 285.308 How will MMS conduct an auction for ROW grants and RUE grants?

(a) If MMS determines that there is competitive interest, we will:

(1) Publish a notice of each grant auction in the **Federal Register** describing auction procedures, allowing interested persons 30 days to comment; and

(2) Conduct a competitive auction for issuing the ROW grant or RUE grant. The auction process for ROW grants and RUE grants will be conducted following the same process for leases set forth in §§ 285.211 through 285.225.

(b) If you are the successful bidder in an auction, you must pay the first year's rent, as provided in § 285.316.

§ 285.309 When will MMS issue a noncompetitive ROW grant or RUE grant?

If we approve or approve with conditions your GAP, we may offer you a noncompetitive grant.

(a) If you accept the terms and conditions of the grant, then we will issue the grant, and you must comply with all terms and conditions of your grant and all applicable provisions of this part.

(b) If you do not accept the terms and conditions, MMS will not issue a grant.

§ 285.310 What is the effective date of an ROW grant or RUE grant?

Your ROW grant or RUE grant becomes effective on the date established by MMS on the ROW grant or RUE grant instrument.

§§ 285.311–285.314 [Reserved]

Financial Requirements for ROW Grants and RUE Grants

§ 285.315 What deposits are required for a competitive ROW grant or RUE grant?

(a) You must make a deposit, as required in § 285.501(a), regardless of whether the auction is a sealed-bid, oral, electronic, or other auction format. The MMS will specify in the sale notice the official to whom you must submit the payment, the time by which the official must receive the payment, and the forms of acceptable payment.

(b) If your high bid is rejected, we will provide a written statement of reasons.

(c) For all rejected bids, we will refund, without interest, any money deposited with your bid.

§ 285.316 What payments are required for ROW grants or RUE grants?

Before we issue the ROW grant or RUE grant, you must pay:

(a) Any balance on accepted high bids to MMS, as provided in the sale notice.

(b) An annual rent for the first year of the grant, as specified in § 285.508.

Subpart D—Lease and Grant Administration

Noncompliance and Cessation Orders

§ 285.400 What happens if I fail to comply with this part?

(a) The MMS may take appropriate corrective action under this part if you fail to comply with applicable provisions of Federal law, the regulations in this part, other applicable regulations, any order of the Director, the provisions of a lease or grant issued under this part, or the requirements of an approved plan or other approval under this part.

(b) The MMS may issue to you a notice of noncompliance if we determine that there has been a violation of the regulations in this part, any order of the Director, or any provision of your lease, grant or other approval issued under this part. When issuing a notice of noncompliance, MMS will serve you at your last known address.

(c) A notice of noncompliance will tell you how you failed to comply with this part, any order of the Director, and/or the provisions of your lease, grant or other approval, and will specify what you must do to correct the noncompliance and the time limits within which you must act.

(d) Failure of a lessee, operator, or grant holder under this part to take the actions specified in a notice of noncompliance within the time limit specified provides the basis for MMS to issue a cessation order as provided in § 285.401, and/or a cancellation of the lease or grant as provided in § 285.437.

(e) If the MMS determines that any incident of noncompliance poses an imminent threat of serious or irreparable damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance, MMS may include with its notice of noncompliance an order directing you to take immediate remedial action to alleviate threats and to abate the violation and, when appropriate, a cessation order.

(f) The MMS may assess civil penalties, as authorized by section 24 of the OCS Lands Act, if you fail to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part, after notice of such failure and expiration of any reasonable period allowed for corrective action. Civil penalties will be determined and assessed in accordance with the procedures set forth in 30 CFR part 250, subpart N.

(g) You may be subject to criminal penalties as authorized by section 24 of the OCS Lands Act.

§ 285.401 When may MMS issue a cessation order?

(a) The MMS may issue a cessation order during the term of your lease or grant when you fail to comply with an applicable law; regulation; order; or provision of a lease, grant, plan, or other MMS approval under this part. Except as provided in § 285.400(e), MMS will allow you a period of time to correct any noncompliance before issuing an order to cease activities.

(b) A cessation order will set forth what measures you are required to take, including reports you are required to prepare and submit to MMS, to receive approval to resume activities on your lease or grant.

§ 285.402 What is the effect of a cessation order?

(a) Upon receiving a cessation order, you must cease all activities on your lease or grant, as specified in the order. The MMS may authorize certain activities during the period of the cessation order.

(b) A cessation order will last for the period specified in the order or as otherwise specified by MMS. If MMS determines that the circumstances giving rise to the cessation order cannot be resolved within a reasonable time period, the Secretary may initiate cancellation of your lease or grant, as provided in § 285.437.

(c) A cessation order does not extend the term of your lease or grant for the period you are prohibited from conducting activities.

(d) You must continue to make all required payments on your lease or grant during the period a cessation order is in effect.

§§ 285.403–285.404 [Reserved]

Designation of Operator

§ 285.405 How do I designate an operator?

(a) If you intend to designate an operator who is not the lessee or grant holder, you must identify the proposed operator in your SAP (under § 285.610(a)(3)), COP (under § 285.626(b)(2)), or GAP (under § 285.645(b)(3)), as applicable. If no operator is designated in a SAP, COP, or GAP, MMS will deem the lessee or grant holder to be the operator.

(b) An operator must be designated in any SAP, COP, or GAP if there is more than one lessee or grant holder for any individual lease or grant.

(c) Once approved in your plan, the designated operator is authorized to act on your behalf and required to perform activities necessary to comply with the OCS Lands Act, the lease or grant, and the regulations in this part.

(d) You, or your designated operator, must immediately provide MMS with a written notification of change of address of the lessee or operator.

(e) If there is a change in the designated operator, you must provide written notice to MMS and identify the new designated operator within 72 hours on a form approved by MMS. The lessee(s) or grantee(s) is the operator and responsible for compliance until MMS approves designation of the new operator.

(f) Designation of an operator under any lease or grant issued under this part does not relieve the lessee or grant holder of its obligations under this part or its lease or grant.

(g) A designated operator performing activities on the lease must comply with all regulations governing those activities and may be held liable or penalized for any noncompliance during the time it was operator, notwithstanding its subsequent resignation.

§ 285.406 Who is responsible for fulfilling lease and grant obligations?

(a) When you are not the sole lessee or grantee, you and your co-lessee(s) or co-grantee(s) are jointly and severally responsible for fulfilling your obligations under the lease or grant and the provisions of this part, unless otherwise provided in these regulations.

(b) If your designated operator fails to fulfill any of your obligations under the lease or grant and this part, MMS may require you or any or all of your co-lessees or co-grantees to fulfill those obligations or other operational obligations under the OCS Lands Act, the lease, grant, or the regulations.

(c) Whenever the regulations in this part require the lessee or grantee to conduct an activity in a prescribed manner, the lessee or grantee and operator (if one has been designated) are jointly and severally responsible for complying with the regulations.

§ 285.407 [Reserved]

Lease or Grant Assignment

§ 285.408 May I assign my lease or grant interest?

(a) You may assign all or part of your lease or grant interest, including record title, subject to MMS approval under this subpart. Each instrument that creates or transfers an interest must describe the entire tract or describe by officially designated subdivisions the interest you propose to create or transfer.

(b) You may assign a lease or grant interest by submitting one paper copy and one electronic copy of an assignment application to MMS. The assignment application must include:

(1) The MMS-assigned lease or grant number;

(2) A description of the geographic area or undivided interest you are assigning;

(3) The names of both the assignor and the assignee, if applicable;

(4) The names and telephone numbers of the contacts for both the assignor and the assignee;

(5) The names, titles, and signatures of the authorizing officials for both the assignor and the assignee;

(6) A statement that the assignee agrees to comply with and to be bound by the terms and conditions of the lease or grant;

(7) The qualifications of the assignee to hold a lease or grant under § 285.107; and

(8) A statement on how the assignee will comply with the financial assurance requirements of §§ 285.515 through 285.537. No assignment will be approved until the assignee provides the required financial assurance.

(c) If you submit an application to assign a lease or grant, you will continue to be responsible for payments that are or become due on the lease or grant until the date MMS approves the assignment.

(d) The assignment takes effect on the date MMS approves your application.

(e) You do not need to request an assignment for mergers, name changes, or changes of business form. You must notify MMS of these events under § 285.109.

§ 285.409 How do I request approval of a lease or grant assignment?

(a) You must request approval of each assignment on a form approved by MMS, and submit originals of each instrument that creates or transfers ownership of record title or certified copies thereof within 90 days after the last party executes the transfer agreement.

(b) Any assignee will be subject to all the terms and conditions of your original lease or grant, including the requirement to furnish financial assurance in the amount required in §§ 285.515 through 285.537.

(c) The assignee must submit proof of eligibility and other qualifications specified in § 285.107.

(d) Persons executing on behalf of the assignor and assignee must furnish evidence of authority to execute the assignment.

§ 285.410 How does an assignment affect the assignor's liability?

As assignor, you are liable for all obligations, monetary and nonmonetary, that accrued under your lease or grant before MMS approves your assignment. Our approval of the assignment does not relieve you of these accrued obligations. The MMS may require you to bring the lease or grant into compliance to the extent the obligation accrued before the effective date of your assignment if your assignee or subsequent assignees fail to perform any obligation under the lease or grant.

§ 285.411 How does an assignment affect the assignee's liability?

(a) As assignee, you are liable for all lease or grant obligations that accrue after MMS approves the assignment. As assignee, you must comply with all the terms and conditions of the lease or grant and all applicable regulations, remedy all existing environmental and operational problems on the lease or grant, and comply with all decommissioning requirements under subpart I of this part.

(b) Assignees are bound to comply with each term or condition of the lease or grant and the regulations in this subchapter. You are jointly and severally liable for the performance of all obligations under the lease or grant and under the regulations in this part with each prior and subsequent lessee who held an interest from the time the obligation accrued until it is satisfied, unless this part provides otherwise.

§§ 285.412–285.414 [Reserved]

Lease or Grant Suspension

§ 285.415 What is a lease or grant suspension?

(a) A suspension is an interruption of the term of your lease or grant that may occur:

(1) As approved by MMS at your request, as provided in § 285.416; or

(2) As ordered by MMS, as provided in § 285.417.

(b) A suspension extends the term of your lease or grant for the length of time the suspension is in effect.

(c) Activities may not be conducted on your lease or grant during the period of a suspension except as expressly authorized by MMS under the terms of the suspension.

§ 285.416 How do I request a lease or grant suspension?

You must submit a written request to MMS that includes the following information no later than 90 days prior to the expiration of your appropriate lease or grant term:

(a) The reasons you are requesting suspension of your lease or grant term, and the length of additional time requested.

(b) An explanation of why the suspension is necessary in order to ensure full enjoyment of your lease or grant and why it is in the lessor's or grantor's interest to approve the suspension.

(c) If you do not timely submit a SAP, COP, or GAP, as required, you may request a suspension to extend the preliminary or site assessment term of your lease or grant that includes a revised schedule for submission of a SAP, COP, or GAP, as appropriate.

(d) Any other information MMS may require.

§ 285.417 When may MMS order a suspension?

(a) The MMS may order a suspension under the following circumstances:

(1) When necessary to comply with judicial decrees prohibiting some or all activities under your lease;

(2) When continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; or

(3) When the suspension is necessary for reasons of national security or defense.

(b) If MMS orders a suspension under paragraph (a)(2) of this section, and if you wish to resume activities, we may require you to conduct a site-specific study that evaluates the cause of the harm, the potential damage, and the available mitigation measures. Other requirements and actions may occur:

(1) You may be required to pay for the study;

(2) You must furnish one paper copy and one electronic copy of the study and results to us;

(3) We will make the results available to other interested parties and to the public; and

(4) We will use the results of the study and any other information that become available:

(i) To decide if the suspension order can be lifted; and

(ii) To determine any actions that you must take to mitigate or avoid any damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance.

§ 285.418 How will MMS issue a suspension?

(a) The MMS will issue a suspension order orally or in writing.

(b) The MMS will send you a written suspension order as soon as practicable after issuing an oral suspension order.

(c) The written order will explain the reasons for its issuance and describe the effect of the suspension order on your lease or grant and any associated activities. The MMS may authorize certain activities during the period of the suspension, as set forth in the suspension order.

§ 285.419 What are my immediate responsibilities if I receive a suspension order?

You must comply with the terms of a suspension order upon receipt and take any action prescribed within the time set forth therein.

§ 285.420 What effect does a suspension order have on my payments?

(a) While MMS evaluates your request for a suspension under § 285.416, you must continue to fulfill your payment obligation until the end of the original term of your lease or grant. If our evaluation goes beyond the end of the original term of your lease or grant, the term of your lease or grant will be extended for the period of time necessary for MMS to complete its evaluation of your request, but you will not be required to make payments during the time of the extension.

(b) If MMS approves your request for a suspension, as provided in § 285.416, we may suspend your payment obligation, as appropriate for the term that is suspended, depending on the reasons for the requested suspension.

(c) If MMS orders a suspension, as provided in § 285.417, your payments, as appropriate for the term that is suspended, will be waived during the suspension period.

§ 285.421 How long will a suspension be in effect?

A suspension will be in effect for the period specified by MMS.

(a) The MMS will not approve a suspension request pursuant to § 285.416 for a period longer than 2 years.

(b) If MMS determines that the circumstances giving rise to a suspension ordered under § 285.417 cannot be resolved within 5 years, the Secretary may initiate cancellation of the lease or grant, as provided in § 285.437.

§§ 285.422–285.424 [Reserved]

Lease or Grant Renewal

§ 285.425 May I obtain a renewal of my lease or grant before it terminates?

You may request renewal of the operations term of your lease or the original authorized term of your grant. The MMS, at its discretion, may approve a renewal request to conduct substantially similar activities as were originally authorized under the lease or grant. The MMS will not approve a renewal request that involves development of a type of renewable energy not originally authorized in the lease or grant. The MMS may revise or adjust payment terms of the original lease, as a condition of lease renewal.

§ 285.426 When must I submit my request for renewal?

(a) You must request a renewal from MMS:

(1) No later than 180 days before the termination date of your limited lease or grant.

(2) No later than 2 years before the termination date of the operations term of your commercial lease.

(b) You must submit to MMS all information we request pertaining to your lease or grant and your renewal request.

§ 285.427 How long is a renewal?

The MMS will set the term of a renewal at the time of renewal on a case-by-case basis.

(a) For commercial leases, a renewal term will not exceed the original operations term unless a longer term is negotiated by the applicable parties.

(b) For limited leases, a renewal term will not exceed the original operations term.

(c) For RUE and ROW grants, a renewal will continue for as long as the associated activities are conducted and facilities properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated.

§ 285.428 What effect does applying for a renewal have on my activities and payments?

If you timely request a renewal:

(a) You may continue to conduct activities approved under your lease or grant under the original terms and conditions for as long as your request is pending decision by MMS.

(b) You may request a suspension of your lease or grant, as provided in § 285.416, while we consider your request.

(c) For the period MMS considers your request for renewal, you must continue to make all payments in accordance with the original terms and conditions of your lease or grant.

§ 285.429 What criteria will MMS consider in deciding whether to renew a lease or grant?

The MMS will consider the following criteria in deciding whether to renew a lease or grant:

(a) Design life of existing technology.

(b) Availability and feasibility of new technology.

(c) Environmental and safety record of the lessee or grantee.

(d) Operational and financial compliance record of the lessee or grantee.

(e) Competitive interest and fair return considerations.

(f) Effects of the lease or grant on generation capacity and reliability within the regional electrical distribution and transmission system.

§§ 285.430–285.431 [Reserved]

Lease or Grant Termination

§ 285.432 When does my lease or grant terminate?

Your lease or grant terminates on whichever of the following dates occurs first:

(a) The expiration of the applicable term of your lease or grant, unless your term is automatically extended under §§ 285.235 or 285.236, a request for renewal of your lease or grant is pending a decision by MMS, or your lease or grant is suspended or renewed as provided in this subpart;

(b) A cancellation, as set forth in § 285.437; or

(c) Relinquishment, as set forth in § 285.435.

§ 285.433 What must I do after my lease or grant terminates?

(a) After your lease or grant terminates, you must:

(1) Make all payments due, including any accrued rentals and deferred bonuses; and

(2) Perform any other outstanding obligations under the lease or grant within 6 months.

(b) Within 2 years following termination of a lease or grant, you must remove or dispose of all facilities, installations, and other devices permanently or temporarily attached to the seabed on the OCS in accordance with a plan or application approved by MMS under subpart I of this part.

(c) If you fail to comply with your approved decommissioning plan or application:

(1) The MMS may call for the forfeiture of your financial assurance; and

(2) You remain liable for removal or disposal costs and responsible for

accidents or damages that might result from such failure.

§ 285.434 [Reserved]

Lease or Grant Relinquishment

§ 285.435 How can I relinquish a lease or a grant or parts of a lease or grant?

(a) You may surrender the lease or grant, or an officially designated subdivision thereof, by filing one paper copy and one electronic copy of a relinquishment application with MMS. A relinquishment takes effect on the date we approve your application, subject to the continued obligation of the lessee and the surety to:

(1) Make all payments due on the lease or grant, including any accrued rent and deferred bonuses;

(2) Decommission all facilities on the lease or grant to be relinquished to the satisfaction of MMS; and

(3) Perform any other outstanding obligations under the lease or grant.

(b) Your relinquishment application must include:

(1) Name;

(2) Contact name;

(3) Telephone number;

(4) Fax number;

(5) E-mail address;

(6) The MMS-assigned lease or grant number, and, if applicable, the name of any facility;

(7) A description of the geographic area you are relinquishing;

(8) The name, title, and signature of your authorizing official (the name, title, and signature must match exactly the name, title, and signature in MMS qualification records); and

(9) A statement that you will adhere to the requirements of subpart I of this part.

(c) If you have submitted an application to relinquish a lease or grant, you will be billed for any outstanding payments that are due before the relinquishment takes effect, as provided in paragraph (a) of this section.

Lease or Grant Contraction

§ 285.436 Can MMS require lease or grant contraction?

At an interval no more frequent than every 5 years, the MMS may review your lease or grant area to determine whether the lease or grant area is larger than needed to develop the project and manage activities in a manner that is consistent with the provisions of this part. The MMS will notify you of our proposal to contract the lease or grant area.

(a) The MMS will give you the opportunity to present orally or in writing information demonstrating that you need the area in question to manage lease or grant activities consistent with these regulations.

(b) Prior to taking action to contract the lease or grant area, MMS will issue a decision addressing your contentions that the area is needed.

(c) You may appeal this decision under § 285.118 of this part.

Lease or Grant Cancellation

§ 285.437 When can my lease or grant be canceled?

(a) The Secretary will cancel any lease or grant issued under this part upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee or grant holder.

(b) The Secretary may cancel any lease or grant issued under this part when:

(1) The Secretary determines after notice and opportunity for a hearing that, with respect to the lease or grant that would be canceled, the lessee or grantee has failed to comply with any applicable provision of the OCS Lands Act or these regulations; any order of the Director; or any term, condition or stipulation contained in the lease or grant, and that the failure to comply continued 30 days (or other period MMS specifies) after you receive notice from MMS. The Secretary will mail a notice by registered or certified letter to the lessee or grantee at its record post office address;

(2) The Secretary determines after notice and opportunity for a hearing that you have terminated commercial operations under your COP, as provided in § 285.635, or other approved activities under your GAP, as provided in § 285.656;

(3) Required by national security or defense; or

(4) The Secretary determines after notice and opportunity for a hearing that continued activity under the lease or grant:

(i) Would cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(ii) That the threat of harm or damage would not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or grant in force.

Subpart E—Payments and Financial Assurance Requirements

Payments

§ 285.500 How do I make payments under this part?

(a) For acquisition fees or the initial 6-months rent paid for the preliminary term of your lease, you must make credit card or automated clearing house payments through the *Pay.gov* Web site, and you must include one copy of the *Pay.gov* confirmation receipt page with your unsolicited request or signed lease instrument. You may access the *Pay.gov* Web site through links on the MMS Offshore Web site at: *http://www.mms.gov/offshore* or directly through *Pay.gov* at: *https://www.pay.gov/paygov/*.

(b) For rent during the preliminary term, subsequent to the first 6-months rent, or the site assessment term; or operating fees during the operations term, you must make your payments as required in § 218.51 of this chapter.

(c) This table summarizes payments you must make for leases and grants, unless otherwise specified in the Final Sale Notice:

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	Payment	Amount	Due Date	Payment Mechanism	Section Reference
Initial payments for leases					
(1) If your lease is issued competitively	Bid Deposit	As set in Final Sale Notice/depends on bid	With bid	Pay.Gov	§ 285.501
	Bonus Balance		Lease issuance	§ 218.51	
(2) If your lease is issued noncompetitively	Acquisition Fee	$0.25 per acre, unless otherwise set by the Director	With application	Pay.gov	§ 285.502
(3) All leases	Initial Rent	$3 per acre per year	45 days after lease issuance	Pay.gov	§ 285.503
Subsequent payments for leases and project easements					
(4) All leases	Subsequent Rent	$3 per acre per year	Annually	§ 218.51	§§ 285.503 and 285.504
(5) If you have a project easement	Rent	Greater of $5 per acre per year or $450 per year	When operations term for associated lease starts, then annually	§ 218.51	§ 285.507
(7) If your commercial lease is producing	Operating Fee	Determined by the formula in § 285.506	Annually	§ 218.51	§ 285.506
Payments for ROW grants and RUE grants[1]					
(8) All ROW grants and RUE grants	Initial Rent	$70 per statute mile, and the greater of $5 per acre per year or $450 per year	Grant Issuance	Pay.gov	§ 285.508
	Subsequent Rent		Annually or in 5-year batches	§ 218.51	

[1]There is no acquisition fee for ROW grants or RUE grants.

BILLING CODE 4310–MR–C

§ 285.501 What deposits must I submit for a competitively issued lease, ROW grant, or RUE grant?

(a) For a competitive lease or grant that we offer through sealed bidding, you must submit a deposit of 20 percent of the total bid amount, unless some other amount is specified in the Final Sale Notice.

(b) For a competitive lease that we offer through ascending bidding, you must submit a deposit as established in the Final Sale Notice.

(c) You must pay any balances on accepted high bids in accordance with the Final Sale Notice, this part, and your lease or grant instrument.

(d) The deposit will be forfeited for any successful bidder who fails to execute the lease within the prescribed time, or otherwise does not comply with the regulations concerning acquisition of a lease or grant or stipulations in the Final Sale Notice.

§ 285.502 What initial payment requirements must I meet to obtain a noncompetitive lease, ROW grant, or RUE grant?

When requesting a noncompetitive lease, you must meet the initial payment (acquisition fee) requirements of this section, unless specified otherwise in your lease instrument. No initial payment is required when requesting noncompetitive ROW grants and RUE grants.

(a) If you request a noncompetitive lease, you must submit an acquisition fee of $0.25 per acre, unless otherwise set by the Director, as provided in § 285.500.

(b) If MMS determines there is no competitive interest, we will then:

(1) Retain your acquisition fee if we issue you a lease; or

(2) Refund your acquisition fee, without interest, if we do not issue your requested lease.

(c) If we determine that there is a competitive interest in an area you requested, then we will proceed with a competitive lease sale process provided for in subpart B of this part, and we will:

(1) Apply your acquisition fee to the required deposit for your bid amount if you submit a bid;

(2) Apply your acquisition fee to your bonus bid if you acquire the lease; or

(3) Retain your acquisition fee if you do not bid for or acquire the lease.

§ 285.503 What are the rent and operating fee requirements for a commercial lease?

(a) The rent for a commercial lease is $3 per acre per year, unless otherwise established in the Final Sale Notice or lease.

(1) You must pay the first 6-months rent, as provided in § 285.500, 45 days after we issue your lease.

(2) You must pay rent at the beginning of each subsequent 1-year period in accordance with the regulations at § 218.51 of this chapter for the entire lease area until the facility begins to generate commercially, as specified in § 285.506 or as otherwise specified in the Final Sale Notice or lease instrument:

(i) For leases issued competitively, the MMS will specify in the Final Sale Notice and lease any adjustment to the rent fee to take effect during the operations term and prior to the commercial generation.

(ii) For leases issued noncompetitively, the MMS will specify in the lease any adjustment to the rent fee to take effect during the operations term and prior to the commercial generation.

(3) You must pay the rent for a project easement in addition to the lease rent, as provided in § 285.507. You must commence rent payments for your project easement upon our approval of your COP or GAP.

(b) After your lease begins commercial generation of electricity or on the date specified by MMS, you must pay operating fees in the amount specified in § 285.506:

(1) For leases issued competitively, MMS will specify in the Final Sale Notice and lease the date when operating fees commence; and

(2) For leases issued noncompetitively, MMS will specify in the lease the date when operating fee commences.

§ 285.504 How are my payments affected if I develop my lease in phases?

If you develop your commercial lease in phases, as approved by us in your COP under § 285.629, you must pay:

(a) Rent on the portion of the lease that is not authorized for commercial operations.

(b) Operating fees on the portion of the lease that is authorized for commercial operations, in the amount specified in § 285.506 and as described in § 285.503(b).

(c) Rent for a project easement in addition to lease rent, as provided in § 285.507. You must commence rent payments for your project easement upon our approval of your COP.

§ 285.505 What are the rent and operating fee requirements for a limited lease?

(a) The rent for a limited lease is $3 per acre per year, unless otherwise established in the Final Sale Notice and your lease instrument.

(b) You must pay the first 6-months rent when MMS issues your limited lease, as provided in § 285.500.

(c) You must pay rent at the beginning of each subsequent 1-year period on the entire lease area for the duration of your operations term in accordance with the regulations at § 218.51 of this chapter.

(d) The MMS will not charge an operating fee for the authorized sale of power from a limited lease.

§ 285.506 What operating fees must I pay on a commercial lease?

If you are generating electricity, you must pay operating fees on your commercial lease when you begin commercial generation, as described in § 285.503.

(a) The MMS will determine the annual operating fee for activities relating to the generation of electricity on your lease based on the following formula,

F = M * H * c * P * r, where:

(1) F is the dollar amount of the annual operating fee;

(2) M is the nameplate capacity expressed in megawatts;

(3) H is the number of hours in a year, equal to 8,760, used to calculate an annual payment;

(4) c is the ''capacity factor'' representing the anticipated efficiency of the facility's operation expressed as a decimal between zero and one;

(5) P is a measure of the annual average wholesale electric power price expressed in dollars per megawatt hour, as provided in paragraph (c)(2) of this section; and

(6) r is the operating fee rate expressed as a decimal between zero and one.

(b) The annual operating fee formula relating to the value of annual electricity generation is restated as:

$$\underset{\text{(annual operating fee)}}{F} = \underset{\text{(nameplate capacity)}}{M} * \underset{\text{(hours per year)}}{H} * \underset{\text{(capacity factor)}}{c} * \underset{\text{(power price)}}{P} * \underset{\text{(operating fee rate)}}{r}$$

(c) The MMS will specify operating fee parameters in the Final Sale Notice for commercial leases issued competitively and in the lease for those issued noncompetitively.

(1) Unless MMS specifies otherwise, in the operating fee rate, (r) is 0.02 for each year the operating fee applies when you begin commercial generation of electricity. We may apply a different fee rate for new projects (i.e., a new generation based on new technology) after considering factors such as program objectives, state of the industry, project type, and project potential. Also, we may agree to reduce or waive the fee rate under § 285.510.

(2) The power price (P), for each year when the operating fee applies, will be determined annually. The process by which the power price will be determined will be specified in the Final Sale Notice and/or in the lease. The MMS:

(i) Will use the most recent annual average wholesale power price in the State in which a project's transmission cables make landfall, as published by the DOE, Energy Information Administration (EIA), or other publicly available wholesale power price indices; and

(ii) May adjust the published average wholesale power price to reflect documented variations by State or within a region and recent market conditions.

(3) The MMS will select the capacity factor (c) based upon applicable analogs drawn from present and future domestic and foreign projects that operate in comparable conditions and on comparable scales.

(i) Upon the completion of the first year of commercial operations on the lease, MMS may adjust the capacity factor as necessary (to accurately represent a comparison of actual production over a given period of time with the amount of power a facility would have produced if it had run at full capacity) in a subsequent year.

(ii) After the first adjustment, MMS may adjust the capacity factor (to accurately represent a comparison of actual generation over a given period of time with the amount of power a facility would have generated if it had run at full capacity) no earlier than in 5-year intervals from the most recent year that MMS adjusts the capacity factor.

(iii) The process by which MMS will adjust the capacity factor, including any calculations (incorporating an average capacity factor reflecting actual operating experience), will be specified in the lease. The operator or lessee may request review and adjustment of the capacity factor under § 285.510.

(4) Ten days after the anniversary date of when you began to commercially generate electricity, you must submit to

MMS documentation of the gross annual generation of electricity produced by the generating facility on the lease. You must use the same information collection form as authorized by the EIA for this information.

(5) For the nameplate capacity (M), MMS will use the total installed capacity of the equipment you install, as specified in your approved COP.

(d) You must submit all operating fee payments to MMS in accordance with the provisions under § 218.51 of this chapter.

(e) The MMS will establish the operating fee in the Final Sale Notice or in the lease on a case-by-case basis for:

(1) Activities that do not relate to the generation of electricity (e.g., hydrogen production), and

(2) Leases issued for hydrokinetic activities requiring a FERC license.

§ 285.507 What rent payments must I pay on a project easement?

(a) You must pay MMS a rent fee for your project easement of $5 per acre, subject to a minimum of $450 per year, unless specified otherwise in the Final Sale Notice or lease:

(1) The size of the project easement area for a cable or a pipeline is the full length of the corridor and a width of 200 feet (61 meters), centered on the cable or pipeline; and

(2) The size of a project easement area for an accessory platform is limited to the aerial extent of anchor chains and other facilities and devices associated with the accessory.

(b) You must commence rent payments for your project easement upon our approval of your COP or GAP:

(1) You must make the first rent payment when the operations term begins, as provided in § 285.500;

(2) You must submit all subsequent rent payments in accordance with the regulations at § 218.51 of this chapter; and

(3) You must continue to pay annual rent for your project easement until your lease is terminated.

§ 285.508 What rent payments must I pay on ROW grants or RUE grants associated with renewable energy projects?

(a) For each ROW grant MMS approves under subpart C of this part, you must pay an annual rent as follows, unless specified otherwise in the Final Sale Notice:

(1) A fee of $70 for each nautical mile or part of a nautical mile of the OCS that your ROW crosses; and

(2) An additional $5 per acre, subject to a minimum of $450 for use of the entire affected area, if you hold a ROW grant that includes a site outside the corridor of a 200-foot width (61 meters), centered on the cable or pipeline. The affected area includes the areal extent of anchor chains, risers, and other devices associated with a site outside the corridor.

(b) For each RUE grant MMS approves under subpart C of this part, you must pay a rent of:

(1) $5 per acre per year; or

(2) A minimum of $450 per year.

(c) You must make the rent payments required by paragraphs (a) and (b) of this section on:

(1) An annual basis;

(2) For a 5-year period; or

(3) For multiples of 5 years.

(d) You must make the first annual rent payment upon approval of your ROW grant or RUE grant request, as provided in § 285.500, and all subsequent rent payments to MMS in accordance with the regulations at § 218.51 of this chapter.

§ 285.509 Who is responsible for submitting lease or grant payments to MMS?

(a) For each lease, ROW grant, or RUE grant issued under this part, you must identify one person who is responsible for all payments due and payable under the provisions of the lease or grant. The responsible person identified is designated as the payor, and you must document acceptance of such responsibilities, as provided in § 218.52 of this chapter.

(b) All payors must submit payments and maintain auditable records in accordance with guidance we issue or any applicable regulations in subchapter A of this chapter. In addition, the lessee or grant holder must also maintain such auditable records.

§ 285.510 May MMS reduce or waive my lease or grant payments?

(a) The MMS Director may reduce or waive the rent or operating fee or components of the operating fee, such as the fee rate or capacity factor, when the Director determines that it is necessary to encourage continued or additional activities.

(b) When requesting a reduction or waiver, you must submit an application to us that includes all of the following:

(1) The number of the lease, ROW grant, or RUE grant involved;

(2) Name of each lessee or grant holder of record;

(3) Name of each operator;

(4) A demonstration that:

(i) Continued activities would be uneconomic without the requested reduction or waiver, or

(ii) A reduction or waiver is necessary to encourage additional activities; and

(5) Any other information required by the Director.

(c) No more than 6 years of your operations term will be subject to a full waiver of the operating fee.

§ 285.511–285.514 [Reserved]

Financial Assurance Requirements for Commercial Leases

§ 285.515 What financial assurance must I provide when I obtain my commercial lease?

(a) Before MMS will issue your commercial lease or approve an assignment of an existing commercial lease, you (or, for an assignment, the proposed assignee) must guarantee compliance with all terms and conditions of the lease by providing either:

(1) A $100,000 minimum, lease-specific bond; or

(2) Another approved financial assurance instrument guaranteeing performance up to $100,000, as specified in §§ 285.526 through 285.529.

(b) You meet the financial assurance requirements under this subpart if your designated lease operator provides a $100,000 minimum, lease-specific bond or other approved financial assurance that guarantees compliance with all terms and conditions of the lease.

(1) The dollar amount of the minimum, lease-specific financial assurance in paragraphs (a)(1) and (b) of this section will be adjusted to reflect changes in the Consumer Price Index-All Urban Consumers (CPI–U) or a substantially equivalent index if the CPI–U is discontinued; and

(2) The first CPI–U-based adjustment can be made no earlier than the 5-year anniversary of the adoption of this rule. Subsequent CPI–U-based adjustments may be made every 5 years thereafter.

§ 285.516 What are the financial assurance requirements for each stage of my commercial lease?

(a) The basic financial assurance requirements for each stage of your commercial lease are as follows:

Before MMS will...	You must provide...
(1) Issue a commercial lease or approve an assignment of an existing commercial lease.	A $100,000 minimum, lease-specific financial assurance.
(2) Approve your SAP.	A supplemental bond or other financial assurance, in an amount determined by MMS, if upon reviewing your SAP, MMS determines that a supplemental bond is required in addition to your minimum lease-specific bond, due to the complexity, number, and location of any facilities involved in your site assessment activities.
(3) Approve your COP.	A supplemental bond or other financial assurance, in an amount determined by MMS based on the complexity, number, and location of all facilities involved in your planned activities and commercial operation. The supplemental financial assurance requirement is in addition to your lease-specific bond and, if applicable, the previous supplement associated with SAP approval.
(4) Allow you to install facilities approved in your COP.	A decommissioning bond or other financial assurance, in an amount determined by MMS based on anticipated decommissioning costs. The MMS will allow you to provide your financial assurance for decommissioning in accordance with the number of facilities installed or being installed. The MMS must approve the schedule for providing the appropriate financial assurance coverage.

(b) Each bond or other financial assurance must guarantee compliance with all terms and conditions of the lease. You may provide a new bond or increase the amount of your existing bond, to satisfy any additional financial assurance requirements.

(c) For hydrokinetic commercial leases, supplemental financial assurance may be required in an amount determined by MMS before FERC issues a license.

§ 285.517 How will MMS determine the amounts of the supplemental and decommissioning financial assurance requirements associated with commercial leases?

(a) The MMS will base the determination for the amounts of the SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations.

(b) We determine the amount of the supplemental and decommissioning financial assurance requirements on a case-by-case basis. The amount of the financial assurance must be no less than the amount required to meet all lease obligations, including:

(1) The projected amount of rent and other payments due the Government over the next 12 months;

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning, as required by subpart I of this part.

(c) If your cumulative potential obligations and liabilities increase or decrease, we may adjust the amount of supplemental or the decommissioning financial assurance.

(1) If we propose adjusting your financial assurance amount, we will notify you of the proposed adjustment and give you an opportunity to comment; and

(2) We may approve a reduced financial assurance amount if you request it and if the reduced amount that you request continues to be greater than the sum of:

(i) The projected amount of rent and other payments due the Government over the next 12 months;

(ii) Any past due rent and other payments;

(iii) Other monetary obligations; and

(iv) The estimated cost of facility decommissioning.

§ 285.518–285.519 [Reserved]

Financial Assurance for Limited Leases, ROW Grants, and RUE Grants

§ 285.520 What financial assurance must I provide when I obtain my limited lease, ROW grant, or RUE grant?

(a) Before MMS will issue your limited lease, ROW grant, or RUE grant, you or a proposed assignee must guarantee compliance with all terms and conditions of the lease or grant by providing either:

(1) A $300,000 minimum, lease- or grant-specific bond; or

(2) Another approved financial assurance instrument of such minimum level as specified in §§ 285.526 through 285.529.

(b) You meet the financial assurance requirements under this subpart if your designated lease or grant operator provides a minimum limited lease-specific or grant-specific bond in an amount sufficient to guarantee compliance with all terms and conditions of the limited lease or grant.

(1) The dollar amount of the minimum, lease- or grant-specific financial assurance in paragraph (a)(1) of this section will be adjusted to reflect changes in the CPI–U or a substantially equivalent index if the CPI–U is discontinued; and

(2) The first CPI–U-based adjustment can be made no earlier than the 5-year anniversary of the adoption of this rule. Subsequent CPI–U-based adjustments may be made every 5 years thereafter.

§ 285.521 Do my financial assurance requirements change as activities progress on my limited lease or grant?

(a) The MMS may require you to increase the level of your financial assurance as activities progress on your limited lease or grant. We will base the determination for the amount of financial assurance requirements on our estimate of the cost to meet all accrued lease or grant obligations, including:

(1) The projected amount of rent and other payments due the Government over the next 12 months;

(2) Any past due rent and other payments;

(3) Other monetary obligations; and

(4) The estimated cost of facility decommissioning.

(b) You may satisfy the requirement for increased financial assurance levels for the limited lease or grant by increasing the amount of your existing bond or replacing your existing bond.

(c) The MMS will authorize you to establish a separate decommissioning bond or other financial assurance for your limited lease or grant.

(1) The separate decommissioning bond or other financial assurance instrument must meet the requirements specified in §§ 285.525 through 285.529.

(2) The MMS will allow you to provide your financial assurance for decommissioning in accordance with the number of facilities installed or being installed. The MMS must approve the schedule for providing the appropriate financial assurance coverage.

§§ 285.522–285.524 [Reserved]

Requirements for Financial Assurance Instruments

§ 285.525 What general requirements must a financial assurance instrument meet?

(a) Any bond or other acceptable financial assurance instrument that you provide must:

(1) Be payable to MMS upon demand; and

(2) Guarantee compliance of all lessees, grant holders, operators, and payors with all terms and conditions of the lease or grant, any subsequent approvals and authorizations, and all applicable regulations.

(b) All bonds and other forms of financial assurance must be on or in a form approved by MMS. You may submit this on an approved form that you have reproduced or generated by use of a computer. If the document you submit omits any terms and conditions that are included on the MMS-approved form, your bond is deemed to contain the omitted terms and conditions.

(c) Surety bonds must be issued by an approved surety listed in the current Treasury Circular 570, as required by 31 CFR 223.16. You may obtain a copy of Circular 570 from the Treasury Web site at *http://www.fms.treas.gov/c570/*.

(d) Your surety bond cannot exceed the underwriting limit listed in the current Treasury Circular 570, except as permitted therein.

(e) You and a qualified surety must execute your bond. When the surety is a corporation, an authorized corporate officer must sign the bond and attest to it over the corporate seal.

(f) You may not terminate the period of liability of your bond or cancel your bond, except as provided in this subpart. Bonds must continue in full force and effect even though an event has occurred that could diminish or terminate a surety's obligation under State law.

(g) Your surety must notify you and MMS within 5 business days after:

(1) It initiates any judicial or administrative proceeding alleging its insolvency or bankruptcy; or

(2) The Treasury decertifies the surety.

§ 285.526 What instruments other than a surety bond may I use to meet the financial assurance requirement?

(a) You may use other types of security instruments, if MMS determines that such security protects MMS to the same extent as the surety bond. The MMS will consider pledges of the following:

(1) U.S. Department of Treasury securities identified in 31 CFR part 225;

(2) Cash in an amount equal to the required dollar amount of the financial assurance, to be deposited and maintained in a Federal depository account of the U.S. Treasury by MMS;

(3) Certificates of deposit or savings accounts in a bank or financial institution organized or authorized to transact business in the United States with:

(i) Minimum net assets of $500,000,000; and

(ii) Minimum Bankrate.com Safe & Sound rating of 3 Stars, and Capitalization, Assets, Equity and Liquidity (CAEL) rating of 3 or less;

(4) Negotiable U.S. Government, State, and municipal securities or bonds having a market value of not less than the required dollar amount of the financial assurance and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the MMS;

(5) Investment-grade rated securities having a Standard and Poor's rating of AAA or an equivalent rating from a nationally recognized securities rating service having a market value of not less than the required dollar amount of the financial assurance and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of MMS; and

(6) Insurance, if its form and function is such that the funding or enforceable pledges of funding are used to guarantee performance of regulatory obligations in the event of default on such obligations by the lessee. Insurance must have an A.M. Best rating of ''superior'' or an equivalent rating from a nationally recognized insurance rating service.

(b) If you use a Treasury security:

(1) You must post 115 percent of your financial assurance amount;

(2) You must monitor the collateral value of your security. If the collateral value of your security as determined in accordance with the 31 CFR part 203 Collateral Margins Table (which can be found at *http://www.treasurydirect.gov)* falls below the required level of coverage, you must pledge additional security to provide 115 percent of the required amount; and

(3) You must include with your pledge authority for us to sell the security and use the proceeds if we determine that you have failed to comply with any of the terms and conditions of your lease or grant, any subsequent approval or authorization, or applicable regulations.

(c) If you use the instruments described in paragraphs (a)(4) or (a)(5) of this section, you must provide MMS by the end of each calendar year a certified statement describing the nature and market value of the instruments maintained in that account, and including any current statements or reports furnished by the brokerage firm to the lessee concerning the asset value of the account.

§ 285.527 May I demonstrate financial strength and reliability to meet the financial assurance requirement for lease or grant activities?

The MMS may allow you to use your financial strength and reliability to meet financial assurance requirements. We will make this determination based on audited financial statements, business stability, reliability, and compliance with regulations.

(a) You must provide the following information if you want to demonstrate financial strength and reliability to meet your financial assurance requirements:

(1) Audited financial statements (including auditor's certificate, balance sheet, and profit and loss sheet) that show you have financial capacity substantially in excess of existing and anticipated lease and other obligations;

(2) Evidence that shows business stability based on 5 years of continuous operation and generation of renewable energy on the OCS or onshore;

(3) Evidence that shows reliability in meeting obligations based on credit ratings or trade references, including names and addresses of other lessees, contractors, and suppliers with whom you have dealt; and

(4) Evidence that shows a record of compliance with laws, regulations, and lease, ROW, or RUE terms.

(b) If we approve your request to use your financial strength and reliability to meet your financial assurance requirements, you must submit annual updates to the information required by paragraph (a) of this section. You must submit this information no later than March 31 of each year.

(c) If the annual updates to the information required by paragraph (a) of

this section do not continue to demonstrate financial strength and reliability or MMS has reason to believe that you are unable to meet the financial assurance requirements of this section, after notice and opportunity for a hearing, MMS will terminate your ability to use financial strength and reliability for financial assurance and require you to provide another type of financial assurance. You must provide this new financial assurance instrument within 90 days after we terminate your use of financial strength and reliability.

§ 285.528 May I use a third-party guaranty to meet the financial assurance requirement for lease or grant activities?

(a) You may use a third-party guaranty if the guarantor meets the criteria prescribed in paragraph (b) of this section and submits an agreement meeting the criteria prescribed in paragraph (c) of this section. The agreement must guarantee compliance with the obligations of all lessees and operators and grant holders.

(b) The MMS will consider the following factors in deciding whether to accept an agreement:

(1) The length of time that your guarantor has been in continuous operation as a business entity. You may exclude periods of interruption that are beyond the guarantor's control by demonstrating, to the satisfaction of the Director, that the interruptions do not affect the likelihood of your guarantor remaining in business during the SAP, COP, and decommissioning stages of activities covered by the indemnity agreement.

(2) Financial information available in the public record or submitted by your guarantor in sufficient detail to show us that your guarantor meets the criterion stated in paragraph (b)(4) of this section. Such detail includes:

(i) The current rating for your guarantor's most recent bond issuance by a generally recognized bond rating service such as Moody's Investor Service or Standard and Poor's Corporation;

(ii) Your guarantor's net worth, taking into account liabilities for compliance with all terms and conditions of your lease, regulations, and other guarantees;

(iii) Your guarantor's ratio of current assets to current liabilities, taking into account liabilities for compliance with all terms and conditions of your lease, regulations, and other guarantees; and

(iv) Your guarantor's unencumbered domestic fixed assets.

(3) If the information in paragraph (b)(2) of this section is not publicly available, your guarantor must submit the information in the following table, to be updated annually within 90 days of the end of the fiscal year (FY) or as otherwise prescribed.

Your guarantor must submit . . .	That . . .
(i) Financial statements for the most recently completed FY,	Include a report by an independent certified public accountant containing the accountant's audit or review opinion of the statements. The report must be prepared in conformance with generally accepted accounting principles and contain no adverse opinion.
(ii) Financial statement for completed quarter in the current FY,	Your guarantor's financial officer certifies to be correct.
(iii) Additional information related to bonds, if requested by the Director,	Your guarantor's financial officer certifies to be correct.

(4) Your guarantor's total outstanding and proposed guarantees must not exceed 25 percent of its unencumbered domestic net worth.

(c) Your guarantor must submit an agreement executed by the guarantor and all parties bound by the agreement. All parties are bound jointly and severally and must meet the qualifications set forth in § 285.107.

(1) When any party is a corporation, two corporate officers authorized to execute the guaranty agreement on behalf of the corporation must sign the agreement.

(2) When any party is a partnership, joint venture, or syndicate, the guaranty agreement must bind each party who has a beneficial interest in your guarantor and provide that, upon MMS demand under your guaranty, each party is jointly and severally liable for compliance with all terms and conditions of your lease(s) or grant(s) covered by the agreement.

(3) When forfeiture of the guaranty is called for, the agreement must provide that your guarantor will either bring your lease(s) or grant(s) into compliance or provide, within 7 days, sufficient funds to permit MMS to complete corrective action.

(4) The guaranty agreement must contain a confession of judgment, providing that, if we determine that you are, or your operator or operating rights owner is, in default, the guarantor must not challenge the determination and must remedy the default.

(5) If you fail, or your operator or operating rights owner fails, to comply with any law, term, or regulation, your guarantor must either take corrective action or provide, within 7 days or other agreed upon time period, sufficient funds for MMS to complete corrective action. Such compliance must not reduce your guarantor's liability.

(6) If your guarantor wants to terminate the period of liability, your guarantor must notify you and us at least 90 days before the proposed termination date, obtain our approval for termination of all or a specified portion of the guarantee for liabilities arising after that date, and remain liable for all your work performed during the period the agreement is in effect.

(7) Each guaranty submitted pursuant to this section is deemed to contain all the above terms, even if they are not actually in the agreement.

(d) Before the termination of your guaranty, you must provide an acceptable replacement in the form of a bond or other security.

§ 285.529 Can I use a lease- or grant-specific decommissioning account to meet the financial assurance requirements related to decommissioning?

(a) In lieu of a surety bond, MMS may authorize you to establish a lease-, ROW grant-, or RUE grant-specific decommissioning account in a federally-insured institution. The funds may not be withdrawn from the account without our written approval.

(1) The funds must be payable to MMS and pledged to meet your lease or grant decommissioning and site clearance obligations; and

(2) You must fully fund the account within the time MMS prescribes to cover all costs of decommissioning including site clearance. The MMS will estimate the cost of decommissioning, including site clearance.

(b) Any interest paid on the account will be treated as account funds unless we authorize in writing that any interest be paid to the depositor.

(c) We may allow you to pledge Treasury securities, payable to MMS on demand, to satisfy your obligation to make payments into the account. Acceptable Treasury securities and their collateral value are determined in accordance with 31 CFR part 203, Collateral Margins Table (which can be found at *http://www.treasurydirect.gov*).

(d) We may require you to commit a specified stream of revenues as payment into the account so that the account will be fully funded, as prescribed in paragraph (a)(2) of this section. The commitment may include revenue from other operations.

Changes in Financial Assurance

§ 285.530 What must I do if my financial assurance lapses?

(a) If your surety is decertified by the Treasury, becomes bankrupt or insolvent, or if your surety's charter or license is suspended or revoked, or if any other approved financial assurance expires for any reason, you must:

(1) Inform MMS within 3 business days about the financial assurance lapse; and

(2) Provide new financial assurance in the amount set by MMS, as provided in this subpart.

(b) You must notify MMS within 3 business days after you learn of any action filed alleging that you, your surety, or third-party guarantor, is insolvent or bankrupt.

§ 285.531 What happens if the value of my financial assurance is reduced?

If the value of your financial assurance is reduced below the required financial assurance amount because of a default or any other reason, you must provide additional financial assurance sufficient to meet the requirements of this subpart within 45 days or within a different period as specified by MMS.

§ 285.532 What happens if my surety wants to terminate the period of liability of my bond?

(a) Terminating the period of liability of a bond ends the period during which surety liability continues to accrue. The surety continues to be responsible for obligations and liabilities that accrued during the period of liability and before the date on which MMS terminates the period of liability under paragraph (b) of this section. The liabilities that accrue during a period of liability include:

(1) Obligations that started to accrue before the beginning of the period of liability and have not been met; and

(2) Obligations that began accruing during the period of liability.

(b) Your surety must submit to MMS its request to terminate the period of liability under its bond and notify you of that request. If you intend to continue activities, or have not met all obligations of your lease or grant, you must provide a replacement bond or alternative form of financial assurance of equivalent or greater value. The MMS will terminate that period of liability within 90 days after MMS receives the request.

§ 285.533 How does my surety obtain cancellation of my bond?

(a) The MMS will release a bond or allow a surety to cancel a bond, and will relieve the surety from accrued obligations only if:

(1) The MMS determines that there are no outstanding obligations covered by the bond; or

(2) The following occurs:

(i) The MMS accepts a replacement bond or an alternative form of financial assurance in an amount equal to or greater than the bond to be cancelled to cover the terminated period of liability;

(ii) The surety issuing the new bond has expressly agreed to assume all outstanding liabilities under the original bond that accrued during the period of liability that was terminated; and

(iii) The surety issuing the new bond has agreed to assume that portion of the outstanding liabilities that accrued during the terminated period of liability that exceeds the coverage of the bond prescribed under §§ 285.515, 285.516, 285.520, or 285.521, and of which you were notified.

(b) When your lease or grant ends, your surety(ies) remain(s) responsible, and MMS will retain any financial assurance as follows:

(1) The period of liability ends when you cease all operations and activities under the lease or grant, including decommissioning and site clearance;

(2) Your surety or collateral financial assurance will not be released until 7 years after the lease ends, or a longer period as necessary to complete any appeals or judicial litigation related to your bonded obligation, or for MMS to determine that all of your obligations under the lease or grant have been satisfied; and

(3) The MMS will reduce the amount of your bond or return a portion of your financial assurance if we determine that we need less than the full amount of the bond or financial assurance to meet any possible future obligations.

§ 285.534 When may MMS cancel my bond?

When your lease or grant ends, your surety(ies) remain(s) responsible, and MMS will retain any pledged security as shown in the following table:

Bond.	The period of liability ends.	Your bond will not be released until.
(a) Bonds for commercial leases submitted under § 285.515.	When MMS determines that you have met all of your obligations under the lease.	Seven years after the lease ends, or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. The MMS will reduce the amount of your bond or return a portion of your security if MMS determines that you need less than the full amount of the bond to meet any possible future obligations.
(b) Supplemental or decommissioning bonds submitted under § 285.516.	When MMS determines that you have met all your decommissioning, site clearance, and other obligations.	(1) Seven years after the lease ends, or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. The MMS will reduce the amount of your bond or return a portion of your security if MMS determines that you need less than the full amount of the bond to meet any possible future obligations; and (2) The MMS determines that the potential liability resulting from any undetected noncompliance is not greater than the amount of the lease base bond.
(c) Bonds submitted under §§ 285.520 and 285.521 for limited leases, ROW grants, or RUE grants.	When MMS determines that you have met all of your obligations under the limited lease or grant.	Seven years after the limited lease, ROW, or RUE grant or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. The MMS will reduce the amount of your bond or return a portion of your security if MMS determines that you need less than the full amount of the bond to meet any possible future obligations.

§ 285.535 Why might MMS call for forfeiture of my bond?

(a) The MMS may call for forfeiture of all or part of the bond, pledged security, or other form of guaranty if:

(1) After notice and demand for performance by MMS, you refuse or fail, within the timeframe we prescribe, to comply with any term or condition of your lease or grant, other authorization or approval, or applicable regulations; or

(2) You default on one of the conditions under which we accepted your bond.

(b) We may pursue forfeiture without first making demands for performance against any co-lessee or holder of an interest in your ROW or RUE, or other person approved to perform obligations under your lease or grant.

§ 285.536 How will I be notified of a call for forfeiture?

(a) The MMS will notify you and your surety, including any provider of financial assurance, in writing of the call for forfeiture and provide the reasons for the forfeiture and the amount to be forfeited. We will base the amount upon an estimate of the total cost of corrective action to bring your lease or grant into compliance.

(b) We will advise you and your surety that you may avoid forfeiture if, within 10 business days:

(1) You agree to and demonstrate in writing to MMS that you will bring your lease or grant into compliance within the timeframe we prescribe, and you do so; or

(2) Your surety agrees to and demonstrates that it will bring your lease or grant into compliance within the timeframe we prescribe, even if the cost of compliance exceeds the face amount of the bond.

§ 285.537 How will MMS proceed once my bond or other security is forfeited?

(a) If MMS determines that your bond or other security is forfeited, we will collect the forfeited amount and use the funds to bring your lease or grant(s) into compliance and correct any default.

(b) If the amount collected under your bond or other security is insufficient to pay the full cost of corrective action, MMS may take or direct action to obtain full compliance and recover all costs in excess of the forfeited bond from you or any co-lessee or co-grantee.

(c) If the amount collected under your bond or other security exceeds the full cost of corrective action to bring your lease or grant(s) into compliance, we will return the excess funds to the party from whom the excess was collected.

§§ 285.538–285.539 [Reserved]

Revenue Sharing With States

§ 285.540 How will MMS equitably distribute revenues to States?

(a) The MMS will distribute among the eligible coastal States 27 percent of the following revenues derived from qualified projects, where a qualified project and qualified project area is determined in § 285.541 and an eligible State is determined in § 285.542, with each term defined in § 285.112. Revenues subject to distribution to eligible States include all bonuses, acquisition fees, rentals, and operating fees derived from the entire qualified project area and associated project easements not limited to revenues attributable to the portion of the project area within 3 miles of the seaward boundary of a coastal State. The revenues to be shared do not include administrative fees such as service fees and those assessed for civil penalties and forfeiture of bond or other surety obligations.

(b) The project area is the area included within a single lease or grant. For each qualified project, MMS will determine and announce the project area and its geographic center at the time it grants or issues a lease, easement, or right-of-way on the OCS. If a qualified project lease or grant's boundaries change significantly due to

actions pursuant to §§ 285.435 or 285.436, MMS will re-evaluate the project area to determine whether the geographic center has changed. If it has, MMS will re-determine State eligibility and shares accordingly.

(c) To determine each eligible State's share of the 27 percent of the revenues for a qualified project, MMS will use the inverse distance formula, which apportions shares according to the relative proximity of the nearest point on the coastline of each eligible State to the geographic center of the qualified project area. If S_i is equal to the nearest distance from the geographic center of the project area to the i = 1, 2, ... nth eligible State's coastline, then eligible State i would be entitled to the fraction F_i of the 27-percent aggregate revenue share due to all the eligible States according to the formula:

$F_i = (1/S_i) \div (\Sigma_{i=1 \ldots n} (1/S_i))$.

§ 285.541 What is a qualified project for revenue sharing purposes?

A qualified project for the purpose of revenue sharing with eligible coastal States is one authorized under subsection 8(p) of the OCS Lands Act, which includes acreage within the area extending 3 nautical miles seaward of State submerged lands. A qualified project is subject to revenue sharing with those States that are eligible for revenue sharing under § 285.542. The entire area within a lease or grant for the qualified project, excluding project easements, is considered the qualified project area.

§ 285.542 What makes a State eligible for payment of revenues?

A State is eligible for payment of revenues if any part of the State's coastline is located within 15 miles of the announced geographic center of the project area of a qualified project. A State is not eligible for revenue sharing if all parts of that State's coastline are more than 15 miles from the announced geographic center of the qualified project area. This is the case even if the qualified project area is located wholly or partially within an area extending 3 nautical miles seaward of the submerged lands of that State or if there are no States with a coastline less than 15 miles from the announced geographic center of the qualified project area.

§ 285.543 Example of how the inverse distance formula works.

(a) Assume that the geographic center of the project area lies 12 miles from the closest coastline point of State A and 4 miles from the closest coastline point of State B. The MMS will round dollar shares to the nearest whole dollar. The proportional share due each State would be calculated as follows:

(1) State A's share = $[(1/12) \div (1/12 + 1/4)] = 1/4$.

(2) State B's share = $[1/4) \div (1/12 + 1/4)] = 3/4$.

(b) Therefore, State B would receive a share of revenues that is three times as large as that awarded to State A, based on the finding that State B's nearest coastline is one-third the distance to the geographic center of the qualified project area as compared to State A's nearest coastline. Eligible States share the 27 percent of the total revenues from the qualified project as mandated under the OCS Lands Act. Hence, if the qualified project generates $1,000,000 of Federal revenues in a given year, the Federal Government would distribute the States' 27-percent share as follows:

(1) State A's share = $270,000 × 1/4 = $67,500.

(2) State B's share = $270,000 × 3/4 = $202,500.

Subpart F—Plans and Information Requirements

§ 285.600 What plans and information must I submit to MMS before I conduct activities on my lease or grant?

You must submit a SAP, COP, or GAP and receive MMS approval as set forth in the following table:

Before you:	you must:
(a) Conduct any site assessment activities on your commercial lease.	Submit and obtain approval for your SAP according to §§ 285.605 through 285.613.
(b) Conduct any activities pertaining to construction of facilities for commercial operations on your commercial lease,	Submit and obtain approval for your COP, according to §§ 285.620 through 285.629.
(c) Conduct any activities on your limited lease, ROW grant, or RUE grant in any OCS area,	Submit and obtain approval for your GAP according to §§ 285.640 through 285.648.

§ 285.601 When am I required to submit my plans to MMS?

Your plan submission requirements depend on whether your lease or grant was issued competitively or noncompetitively under subpart B or subpart C of this part.

(a) If your lease or grant is issued competitively, you must submit your SAP or your GAP within 6 months of issuance.

(b) If you request that a lease or grant be issued noncompetitively, you must submit your SAP or your GAP within 60 days after the Director issues a determination that there is no competitive interest.

(c) If you intend to continue your commercial lease with an operations term, you must submit a COP, or a FERC license application, at least 6 months before the end of your site assessment term.

(d) You may submit your COP or FERC license application with your SAP.

(1) You must provide sufficient data and information with your COP for MMS to complete the needed reviews and NEPA analysis; and

(2) The MMS may need to conduct additional reviews, including NEPA analysis, if significant new information becomes available after you complete your site assessment activities or you revise your COP. As a result of the additional reviews, we may require modification of your COP.

§ 285.602 What records must I maintain?

Until MMS releases your financial assurance under § 285.534, you must maintain and provide to MMS, upon request, all data and information related to compliance with required terms and conditions of your SAP, COP, or GAP.

§§ 285.603–285.604 [Reserved]

Site Assessment Plan and Information Requirements for Commercial Leases

§ 285.605 What is a Site Assessment Plan (SAP)?

(a) A SAP describes the activities (e.g., installation of meteorological towers, meteorological buoys) you plan to perform for the characterization of your commercial lease, including your project easement, or to test technology devices.

(1) Your SAP must describe how you will conduct your resource assessment (e.g., meteorological and oceanographic

data collection) or technology testing activities; and

(2) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in § 285.113.

(b) Your SAP must include data from:

(1) Physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys); and

(2) Baseline environmental surveys (e.g., biological or archaeological surveys).

(c) You must receive MMS approval of your SAP before you can begin any of the approved activities on your lease, as provided in § 285.613.

(d) If you propose to construct a facility or combination of facilities deemed by MMS to be complex or significant, as provided in § 285.613(a)(1), you must also comply with the requirements of subpart G of this part and submit your Safety Management System as required by § 285.810.

§ 285.606 What must I demonstrate in my SAP?

(a) Your SAP must demonstrate that you have planned and are prepared to conduct the proposed site assessment activities in a manner that conforms to your responsibilities listed in § 285.105(a) and:

(1) Conforms to all applicable laws, regulations, and lease provisions of your commercial lease;

(2) Is safe;

(3) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(4) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(5) Uses best available and safest technology;

(6) Uses best management practices; and

(7) Uses properly trained personnel.

(b) You must also demonstrate that your site assessment activities will collect the necessary information and data required for your COP, as provided in § 285.626(a).

§ 285.607 How do I submit my SAP?

You must submit one paper copy and one electronic version of your SAP to MMS at the address listed in § 285.110(a).

§§ 285.608–285.609 [Reserved]

Contents of the Site Assessment Plan

§ 285.610 What must I include in my SAP?

Your SAP must include the following information, as applicable.

(a) For all activities you propose to conduct under your SAP, you must provide the following information:

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Project information:	Including:
(1) Contact information.	The name, address, e-mail address, and phone number of an authorized representative.
(2) The site assessment or technology testing concept.	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(3) Designation of operator, if applicable.	As provided in § 285.405.
(4) Commercial lease stipulations and compliance.	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat.	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances located both offshore and onshore.
(6) General structural and project design, fabrication, and installation.	Information for each type of facility associated with your project.
(7) Deployment activities.	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take, before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart H of this part.
(9) CVA nomination, if required.	CVA nominations for reports in subpart G of this part, as required by § 285.706, or a request to waive the CVA requirement, as required by § 285.705(c).
(10) Reference information.	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to MMS.
(11) Decommissioning and site clearance procedures.	A discussion of methodologies.
(12) Air quality information	Information as described in § 285.659 of this section.
(13) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities on your lease.	A statement indicating whether such authorization or approval has been applied for or obtained.
(14) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(15) Financial assurance information.	Statements attesting that the activities and facilities proposed in your SAP are or will be covered by an appropriate bond or other approved security, as required in §§ 285.515 and 285.516.
(16) Other information.	Additional information as requested by MMS.

(b) You must provide the results of geophysical and geological surveys, hazards surveys, archaeological surveys (if required), and baseline collection studies (e.g., biological) with the supporting data in your SAP:

Information.	Report contents.	Including.
(1) Geotechnical.	The results from the geotechnical survey with supporting data.	A description of all relevant seabed and engineering data and information to allow for the design of the foundation for that facility. You must provide data and information to depths below which the underlying conditions will not influence the integrity or performance of the structure. This could include a series of sampling locations (borings and in situ tests) as well as laboratory testing of soil samples, but may consist of a minimum of one deep boring with samples.
(2) Shallow hazards.	The results from the shallow hazards survey with supporting data.	A description of information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (ii) Slump blocks or slump sediments; (iv) Hydrates; and (v) Ice scour of seabed sediments.
(3) Archaeological resources.	The results from the archaeological survey with supporting data, if required.	(i) A description of the results and data from the archaeological survey; (ii) A description of the historic and prehistoric archaeological resources, as required by the National Historic Preservation Act (NHPA)of 1966, as amended.
(4) Geological survey.	The results from the geological survey with supporting data.	A report that describes the results of a geological survey that includes descriptions of: (i) Seismic activity at your proposed site; (ii) Fault zones; (iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(5) Biological survey.	The results from the biological survey with supporting data.	A description of the results of a biological survey, including descriptions of the presence of live bottoms; hard bottoms; topographic features; and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.

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(c) If you submit your COP or FERC license application with your SAP then:

(1) You must provide sufficient data and information with your COP or FERC license application for MMS and/or FERC to complete the needed reviews and NEPA analysis.

(2) You may need to revise your COP or FERC license application and MMS and/or FERC may need to conduct additional reviews, including NEPA analysis, if new information becomes available after you complete your site assessment activities.

§ 285.611 What information must I submit with my SAP to assist MMS in complying with NEPA and other relevant laws?

(a) You must submit with your SAP detailed information to assist MMS in complying with NEPA and other relevant laws, as appropriate. For a noncompetitive commercial lease, you must submit a SAP that describes those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your SAP.

(b) For competitively issued commercial leases, MMS will have prepared a NEPA document and consistency determination for the lease sale and site assessment activities. However, if you submit a SAP that shows changes in impacts from those identified in the NEPA document or consistency determination prepared for the lease, MMS may determine that your SAP is subject to a new NEPA/CZMA

and other relevant Federal reviews. In that case, MMS will notify you of the determination, and you must submit a SAP that describes those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your SAP, including:

Type of information	Including:
(1) Hazard information.	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality.	Turbidity and total suspended solids from construction.
(3) Biological resources.	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, seagrasses, and plant life.
(4) Threatened or endangered species.	As required by the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 et. seq.).
(5) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, hard bottom habitat, chemosynthetic communities, and calving grounds; barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources.	As required by the NHPA (16 U.S.C. 470 et. seq.), as amended.
(7) Social and economic resources.	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and viewshed.
(8) Coastal and marine uses.	Military activities, vessel traffic, and energy and nonenergy mineral exploration or development.
(9) Consistency Certification	As required by CZMA, as appropriate: (i) 15 CFR part 930, subpart D, for noncompetitive leases; (ii) 15 CFR part 930, subpart E, for competitive leases.
(10) Other resources, conditions, and activities.	As identified by MMS.

§ 285.612 How will my SAP be processed for Federal consistency under the Coastal Zone Management Act?

Your SAP will be processed based on how your commercial lease was issued:

If your commercial lease was issued...	Your SAP will be handled as follows:
(a) Competitively	The MMS will prepare a consistency determination that will cover the lease sale and site assessment activities. However, if you submit a SAP that shows changes in impacts from those identified in the lease sale consistency determination, you may be subject to a new consistency review. In that case, MMS will notify you of the determination and we will forward to the State CZM agency 1 copy and 1 electronic copy of your SAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after MMS has determined that all information requirements for the SAP are met and MMS prepares its NEPA compliance document.
(b) Noncompetitively	You will furnish a copy of your SAP, consistency certification, and necessary data and information pursuant to 15 CFR part 930, subpart D, to the State's CZM agency and MMS at the same time.

§ 285.613 How will MMS process my SAP?

(a) The MMS will review your submitted SAP, and additional information provided pursuant to § 285.611, to determine if it contains the information necessary to conduct our technical and environmental reviews.

(1) We will notify you if we deem your proposed facility or combination of facilities to be complex or significant;

(2) We will notify you if your submitted SAP lacks any necessary information;

(b) The MMS will prepare NEPA analysis, as appropriate.

(c) As appropriate, we will coordinate and consult with relevant Federal and State agencies, executives of relevant local governments, and affected Indian tribes and will provide to other Federal, State, and local agencies and affected Indian tribes relevant nonproprietary data and information pertaining to your proposed activities.

(d) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your SAP.

(e) Upon completion of our technical and environmental reviews and other reviews required by Federal laws (e.g., CZMA), MMS may approve, disapprove, or approve with modifications your SAP.

(1) If we approve your SAP, we will specify terms and conditions to be incorporated into your SAP. You must certify compliance with those terms and conditions required under § 285.615(c); and

(2) If we disapprove your SAP, we will inform you of the reasons and allow you an opportunity to submit a revised plan making the necessary corrections, and may suspend the term of your lease, as appropriate, to allow this to occur.

Activities Under an Approved SAP

§ 285.614 When may I begin conducting activities under my approved SAP?

(a) You may begin conducting the activities approved in your SAP following MMS approval of your SAP.

(b) If you are installing a facility or a combination of facilities deemed by MMS to be complex or significant, as provided in § 285.613(a)(1), you must comply with the requirements of subpart G of this part and submit your Safety Management System required by § 285.810 before construction may begin.

§ 285.615 What other reports or notices must I submit to MMS under my approved SAP?

(a) You must notify MMS in writing within 30 days of completing installation activities approved in your SAP.

(b) You must prepare and submit to MMS a report annually on November 1 of each year that summarizes your site assessment activities and the results of those activities. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and as provided in § 285.113.

(c) You must submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your SAP that MMS identifies under § 285.613(e)(1). Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring methods and their effectiveness. If you identified measures that were not effective, you must include your recommendations for new mitigation measures or monitoring methods.

§ 285.616 [Reserved]

§ 285.617 What activities require a revision to my SAP, and when will MMS approve the revision?

(a) You must notify MMS in writing before conducting any activities not described in your approved SAP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing SAP or require a revision to your SAP. We may request additional information from you, if necessary, to make this determination.

(b) The MMS will periodically review the activities conducted under an approved SAP. The frequency and extent of the review will be based on the significance of any changes in available information and on onshore or offshore conditions affecting, or affected by, the activities conducted under your SAP. If the review indicates that the SAP should be revised to meet the requirements of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your SAP will likely be necessary include:

(1) Activities not described in your approved SAP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Changes in the surface location of a facility or structure;

(4) Addition of a facility or structure not contemplated in your approved SAP;

(5) Changes in the location of your onshore support base from one State to another, or to a new base requiring expansion;

(6) Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision;

(7) Structural failure of one or more facilities; or

(8) Changes to any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and other relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.618 What must I do upon completion of approved site assessment activities?

(a) If, prior to the expiration of your site assessment term, you timely submit a COP meeting the requirements of this subpart, or a complete FERC license application, that describes the continued use of existing facilities approved in your SAP, you may keep such facilities in place on your lease during the time that MMS reviews your COP for approval or FERC reviews your license application for approval.

(b) You are not required to initiate the decommissioning process for facilities that are authorized to remain in place under your approved COP or approved FERC license.

(c) If, following the technical and environmental review of your submitted COP, MMS determines that such facilities may not remain in place, you must initiate the decommissioning process, as provided in subpart I of this part.

(d) If FERC determines that such facilities may not remain in place, you must initiate the decommissioning process as provided in subpart I of this part.

(e) You must initiate the decommissioning process, as set forth in subpart I of this part, upon the termination of your lease.

§ 285.619 [Reserved]

Construction and Operations Plan for Commercial Leases

§ 285.620 What is a Construction and Operations Plan (COP)?

The COP describes your construction, operations, and conceptual decommissioning plans under your commercial lease, including your project easement. The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

(a) Your COP must describe all planned facilities that you will construct and use for your project, including onshore and support facilities and all anticipated project easements.

(b) Your COP must describe all proposed activities including your proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities.

(c) You must receive MMS approval of your COP before you can begin any of the approved activities on your lease.

§ 285.621 What must I demonstrate in my COP?

Your COP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that conforms to your responsibilities listed in § 285.105(a) and:

(a) Conforms to all applicable laws, implementing regulations, lease provisions, and stipulations or conditions of your commercial lease;

(b) Is safe;

(c) Does not unreasonably interfere with other uses of the OCS, including those involved with National security or defense;

(d) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(e) Uses best available and safest technology;

(f) Uses best management practices; and

(g) Uses properly trained personnel.

§ 285.622 How do I submit my COP?

(a) You must submit one paper copy and one electronic version of your COP to MMS at the address listed in § 285.110(a).

(b) You may submit information and a request for any project easement as part of your original COP submission or as a revision to your COP.

§§ 285.623–285.625 [Reserved]

Contents of the Construction and Operations Plan

§ 285.626 What must I include in my COP?

(a) You must submit the results of the following surveys for the proposed site(s) of your facility(ies). Your COP must include the following information:

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Information:	Report contents:	Including:
(1) Shallow hazards.	The results of the shallow hazards survey with supporting data.	Information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (iii) Slump blocks or slump sediments; (iv) Hydrates; or (v) Ice scour of seabed sediments.
(2) Geological survey relevant to the design and siting of your facility.	The results of the geological survey with supporting data.	Assessment of: (i) Seismic activity at your proposed site; (ii) Fault zones; (iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(3) Biological.	The results of the biological survey with supporting data.	A description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, and topographic features, and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.
(4) Geotechnical survey.	The results of your sediment testing program with supporting data, the various field and laboratory test methods employed, and the applicability of these methods as they pertain to the quality of the samples, the type of sediment, and the anticipated design application. You must explain how the engineering properties of each sediment stratum affect the design of your facility. In your explanation, you must describe the uncertainties inherent in your overall testing program, and the reliability and applicability of each test method.	(i) The results of a testing program used to investigate the stratigraphic and engineering properties of the sediment that may affect the foundations or anchoring systems for your facility. (ii) The results of adequate in situ testing, boring, and sampling at each foundation location, to examine all important sediment and rock strata to determine its strength classification, deformation properties, and dynamic characteristics. (iii) The results of a minimum of one deep boring (with soil sampling and testing) at each edge of the project area and within the project area as needed to determine the vertical and lateral variation in seabed conditions and to provide the relevant geotechnical data required for design.
(5) Archaeological resources.	The results of the archaeological resource survey with supporting data.	A description of the historic and prehistoric archaeological resources, as required by the NHPA (16 U.S.C. 470 et. seq.), as amended.
(6) Overall site investigation.	An overall site investigation report for your facility that integrates the findings of your shallow hazards surveys and geologic surveys, and, if required, your subsurface surveys with supporting data.	An analysis of the potential for: (i) Scouring of the seabed; (ii) Hydraulic instability; (iii) The occurrence of sand waves; (iv) Instability of slopes at the facility location; (v) Liquefaction, or possible reduction of sediment strength due to increased pore

Information:	Report contents:	Including:
		pressures; (vi) Degradation of subsea permafrost layers; (vii) Cyclic loading; (viii) Lateral loading; (ix) Dynamic loading; (x) Settlements and displacements; (xi) Plastic deformation and formation collapse mechanisms; and (xii) Sediment reactions on the facility foundations or anchoring systems.

(b) Your COP must include the following project-specific information, as applicable.

Project information:	Including:
(1) Contact information.	The name, address, e-mail address, and phone number of an authorized representative.
(2) Designation of operator, if applicable.	As provided in § 285.405.
(3) The construction and operation concept.	A discussion of the objectives, description of the proposed activities, tentative schedule from start to completion, and plans for phased development, as provided in § 285.629.
(4) Commercial lease stipulations and compliance.	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat.	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances located both offshore and onshore, including all anchor/mooring data.
(6) General structural and project design, fabrication, and installation.	Information for each type of structure associated with your project and, unless MMS provides otherwise, how you will use a CVA to review and verify each stage of the project.
(7) All cables and pipelines, including cables on project easements.	Location, design and installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(8) A description of the deployment activities.	Safety, prevention, and environmental protection features or measures that you will use.
(9) A list of solid and liquid wastes generated.	Disposal methods and locations.
(10) A listing of chemical products used (if stored volume exceeds Environmental Protection Agency (EPA) Reportable Quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that that will be transferred each time.
(11) A description of any vessels, vehicles, and aircraft you will use to support your activities.	An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
(12) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(13) Decommissioning and site clearance procedures.	A discussion of general concepts and methodologies.
(14) A listing of all Federal, State, and local authorizations, approvals, or permits that are required to conduct the proposed activities, including commercial operations.	(i) The U.S. Coast Guard, U.S. Army Corps Of Engineers, and any other applicable authorizations, approvals, or permits, including any Federal, State or local authorizations pertaining to energy gathering, transmission or distribution (e.g., interconnection authorizations). (ii) A statement indicating whether you have applied for or obtained such authorization, approval, or permit.
(15) Your proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.	A description of the measures you will use to avoid or minimize adverse effects and any potential incidental take before you conduct activities on your lease, and how you will mitigate environmental impacts from your proposed activities, including a description of the measures you will use as required by subpart H of this part.
(16) Information you incorporate by reference.	A listing of the documents you referenced.
(17) A list of agencies and persons	Contact information and issues discussed.

Project information:	Including:
with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	
(18) Reference.	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to MMS.
(19) Financial assurance.	Statements attesting that the activities and facilities proposed in your COP are or will be covered by an appropriate bond or security, as required by §§ 285.515 and 285.516.
(20) CVA nominations for reports required in subpart G of this part.	CVA nominations for reports in subpart G of this part, as required by § 285.706, or a request for a waiver under § 285.705(c).
(21) Construction schedule.	A reasonable schedule of construction activity showing significant milestones leading to the commencement of commercial operations.
(22) Air quality information.	As described in § 285.659 of this section.
(23) Other information.	Additional information as required by MMS.

§ 285.627 What information and certifications must I submit with my COP to assist the MMS in complying with NEPA and other relevant laws?

(a) You must submit with your COP detailed information to assist MMS in complying with NEPA and other relevant laws. Your COP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your COP, including:

Type of information:	Including:
(1) Hazard information.	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(2) Water quality.	Turbidity and total suspended solids from construction.
(3) Biological resources.	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, seagrasses, and plant life.
(4) Threatened or endangered species.	As defined by the ESA (16 U.S.C. 1531et. seq.).
(5) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, hard bottom habitat, chemosynthetic communities, and calving grounds; barrier islands, beaches, dunes, and wetlands.
(6) Archaeological resources.	As required by the NHPA (16 U.S.C. 470 et. seq.), as amended.
(7) Social and economic resources.	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and viewshed.
(8) Coastal and marine uses.	Military activities, vessel traffic, and energy and nonenergy mineral exploration or development.
(9) Consistency Certification	As required by the CZMA: (i) 15 CFR part 930, subpart D, for noncompetitive leases. (ii) 15 CFR part 930, subpart E, for competitive leases.
(10) Other resources, conditions, and activities.	As identified by MMS.

(b) You must submit one paper copy and one electronic copy of your consistency certification. Your consistency certification must include:

(1) One copy of your consistency certification under subsection 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76 stating that the proposed activities described in detail in your plans comply with the State(s) approved coastal management program(s) and will be conducted in a manner that is consistent with such program(s); and

(2) "Information," as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2), and "Analysis," as required by 15 CFR 930.58(a)(3).

(c) You must submit your oil spill response plan, as required by part 254 of this subchapter.

(d) You must submit your Safety Management System as required by § 285.810.

§ 285.628 How will MMS process my COP?

(a) The MMS will review your submitted COP, and the information provided pursuant to § 285.627, to determine if it contains all the required information necessary to conduct our technical and environmental reviews. We will notify you if your submitted COP lacks any necessary information.

(b) The MMS will prepare an appropriate NEPA analysis.

(c) The MMS will forward one copy of your COP, consistency certification, and associated data and information under the CZMA to the State's CZM agency after all information requirements for the COP are met.

(d) As appropriate, MMS will coordinate and consult with relevant Federal, State, and local agencies and affected Indian tribes, and provide to them relevant nonproprietary data and information pertaining to your proposed activities.

(e) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your COP.

(f) Upon completion of our technical and environmental reviews and other reviews required by Federal law (e.g., CZMA), MMS may approve, disapprove, or approve with modifications your COP.

(1) If we approve your COP, we will specify terms and conditions to be incorporated into your COP. You must certify compliance with certain of those terms and conditions, as required under § 285.633(b); and

(2) If we disapprove your COP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan addressing the concerns identified, and may suspend the term of your lease, as appropriate, to allow this to occur.

(g) If MMS approves your project easement, MMS will issue an addendum to your lease specifying the terms of the project easement. A project easement may include off-lease areas that:

(1) Contain the sites on which cable, pipeline, or associated facilities are located;

(2) Do not exceed 200 feet (61 meters) in width, unless safety and environmental factors during construction and maintenance of the associated cables or pipelines require a greater width; and

(3) For associated facilities, are limited to the area reasonably necessary for power or pumping stations or other accessory facilities.

§ 285.629 May I develop my lease in phases?

In your COP, you may request development of your commercial lease in phases. In support of your request, you must provide details as to what portions of the lease will be initially developed for commercial operations and what portions of the lease will be reserved for subsequent phased development.

§ 285.630 [Reserved]

Activities Under an Approved COP

§ 285.631 When must I initiate activities under an approved COP?

After your COP is approved, you must commence construction by the date given in the construction schedule required by § 285.626(b)(21), and included as a part of your approved COP, unless MMS approves a deviation from your schedule.

§ 285.632 What documents must I submit before I may construct and install facilities under my approved COP?

(a) You must submit to MMS the documents listed in the following table:

Document:	Requirements are found in:
(1) Facility Design Report.	§ 285.701.
(2) Fabrication and Installation Report.	§ 285.702.

(b) You must submit your Safety Management System, as required by § 285.810 of this part.

(c) These activities must fall within the scope of your approved COP. If they do not fall within the scope of your approved COP, you will be required to submit a revision to your COP, under § 285.634, for MMS approval before commencing the activity.

§ 285.633 How do I comply with my COP?

(a) Based on MMS's environmental and technical reviews, we will specify terms and conditions to be incorporated into your COP.

(b) You must submit a certification of compliance annually (or other frequency as determined by MMS) with certain terms and conditions of your COP that MMS identifies. Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring methods, and their effectiveness. If you identified measures that were not effective, then you must make recommendations for new mitigation measures or monitoring methods.

(c) As provided at § 285.105(i), MMS may require you to submit any supporting data and information.

§ 285.634 What activities require a revision to my COP, and when will MMS approve the revision?

(a) You must notify MMS in writing before conducting any activities not described in your approved COP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing COP or require a revision to your COP. We may request additional information from you, if necessary, to make this determination.

(b) The MMS will periodically review the activities conducted under an approved COP. The frequency and extent of the review will be based on the significance of any changes in available information, and on onshore or offshore conditions affecting, or affected by, the activities conducted under your COP. If the review indicates that the COP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your COP will likely be necessary include:

(1) Activities not described in your approved COP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Change in the surface location of a facility or structure;

(4) Addition of a facility or structure not described in your approved COP;

(5) Change in the location of your onshore support base from one State to another or to a new base requiring expansion;

(6) Changes in the location of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations (e.g., if a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision);

(7) Structural failure of one or more facilities; or

(8) Change in any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.635 What must I do if I cease activities approved in my COP before the end of my commercial lease?

You must notify the MMS, within 5 business days, any time you cease commercial operations, without an approved suspension, under your approved COP. If you cease commercial operations for an indefinite period which extends longer than 6 months, we may cancel your lease under § 285.437, and you must initiate the decommissioning process, as set forth in subpart I of this part.

§ 285.636 What notices must I provide MMS following approval of my COP?

You must notify MMS in writing of the following events, within the time periods provided:

(a) No later than 30 days after commencing activities associated with the placement of facilities on the lease area under a Fabrication and Installation Report.

(b) No later than 30 days after completion of construction and installation activities under a Fabrication and Installation Report.

(c) At least 7 days before commencing commercial operations.

§ 285.637 When may I commence commercial operations on my commercial lease?

If you are conducting activities on your lease that:

(a) Do not require a FERC license (i.e. wind), then you may commence commercial operations 30 days after the CVA or project engineer has submitted to MMS the final Fabrication and Installation Report for the fabrication and installation review, as provided in § 285.708.

(b) Require a FERC license or exemption, then you may commence commercial operations when permitted by the terms of your license or exemption.

§ 285.638 What must I do upon completion of my commercial operations as approved in my COP or FERC license?

(a) Upon completion of your approved activities under your COP, you must initiate the decommissioning process as set forth in subpart I of this part. You must submit your decommissioning application as provided in §§ 285.905 and 285.906.

(b) Upon completion of your approved activities under your FERC license, the terms of your FERC license will govern your decommissioning activities.

§ 285.639 [Reserved]

General Activities Plan Requirements for Limited Leases, ROW Grants, and RUE Grants

§ 285.640 What is a General Activities Plan (GAP)?

(a) A GAP describes your proposed construction, activities, and conceptual decommissioning plans for all planned facilities, including testing of technology devices and onshore and support facilities that you will construct and use for your project, including any project easements for the assessment and development of your limited lease or grant.

(b) You must receive MMS approval of your GAP before you can begin any of the approved activities on your lease or grant. For a ROW grant or RUE grant issued competitively, you must submit your GAP within 6 months of issuance.

§ 285.641 What must I demonstrate in my GAP?

Your GAP must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to all applicable laws, implementing regulations, lease provisions and stipulations;

(b) Is safe;

(c) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense;

(d) Does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(e) Uses best available and safest technology;

(f) Uses best management practices; and

(g) Uses properly trained personnel.

§ 285.642 How do I submit my GAP?

(a) You must submit one paper copy and one electronic version of your GAP to MMS at the address listed in § 285.110(a).

(b) If you have a limited lease, you may submit information on any project easement as part of your original GAP submission or as a revision to your GAP.

§§ 285.643–285.644 [Reserved]

Contents of the General Activities Plan

§ 285.645 What must I include in my GAP?

(a) You must provide the following results of geophysical and geological surveys, hazards surveys, archaeological surveys (if required), and baseline collection studies (e.g., biological) with the supporting data in your GAP:

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Information:	Report contents:	Including:
(1) Geotechnical.	The results from the geotechnical survey with supporting data.	A description of all relevant seabed and engineering data and information to allow for the design of the foundation for that facility. You must provide data and information to depths below which the underlying conditions will not influence the integrity or performance of the structure. This could include a series of sampling locations (borings and in situ tests) as well as laboratory testing of soil samples, but may consist of a minimum of one deep boring with samples.
(2) Shallow hazards.	The results from the shallow hazards survey with supporting data.	A description of information sufficient to determine the presence of the following features and their likely effects on your proposed facility, including: (i) Shallow faults; (ii) Gas seeps or shallow gas; (ii) Slump blocks or slump sediments; (iv) Hydrates; or (v) Ice scour of seabed sediments.
(3) Archaeological resources.	The results from the archaeological survey with supporting data, if required.	(i) A description of the results and data from the archaeological survey; (ii) A description of the historic and prehistoric archaeological resources, as required by NHPA (16 U.S.C. 470 et. seq.), as amended.
(4) Geological survey.	The results from the geological survey with supporting data.	A report that describes the results of a geological survey that includes descriptions of: (i) Seismic activity at your proposed site; (ii) Fault zones; (iii) The possibility and effects of seabed subsidence; and (iv) The extent and geometry of faulting attenuation effects of geologic conditions near your site.
(5) Biological survey.	The results from the biological survey with supporting data.	A description of the results of a biological survey, including the presence of live bottoms, hard bottoms, and topographic features, and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds.

(b) For all activities you propose to conduct under your GAP, you must provide the following information:

Project information:	Including:
(1) Contact information.	The name, address, e-mail address, and phone number of an authorized representative.
(2) The site assessment or technology testing concept.	A discussion of the objectives; description of the proposed activities, including the technology you will use; and proposed schedule from start to completion.
(3) Designation of operator, if applicable.	As provided in § 285.405.
(4) ROW, RUE or limited lease grant stipulations, if known.	A description of the measures you took, or will take, to satisfy the conditions of any lease stipulations related to your proposed activities.
(5) A location plat.	The surface location and water depth for all proposed and existing structures, facilities, and appurtenances located both offshore and onshore.
(6) General structural and project design, fabrication, and installation.	Information for each type of facility associated with your project.
(7) Deployment activities.	A description of the safety, prevention, and environmental protection features or measures that you will use.
(8) A list of solid and liquid wastes generated.	Disposal methods and locations.
(9) A listing of chemical products used (only if stored volume exceeds USEPA Reportable Quantities).	A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that will be transferred each time.
(10) Reference information.	A list of any document or published source that you cite as part of your plan. You may reference information and data discussed in other plans you previously submitted or that are otherwise readily available to MMS.
(11) Decommissioning and site clearance procedures.	A discussion of methodologies.
(12) Air quality information	As described in § 285.659 of this section.
(13) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities on your lease.	A statement indicating whether such authorization or approval has been applied for or obtained.
(14) A list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with your proposed activities.	Contact information and issues discussed.
(15) Financial assurance information.	Statements attesting that the activities and facilities proposed in your GAP are or will be covered by an appropriate bond or other approved security as, required in §§ 285.520 and 285.521.
(16) Other information.	Additional information as requested by MMS.

(c) If you are applying for a project easement or constructing a facility, or a combination of facilities deemed by MMS to be complex or significant, you must provide the following information in addition to what is required in paragraphs (a) and (b) of this section and comply with the requirements of subpart G of this part:

Project information:	Including:
(1) The construction and operation concept.	A discussion of the objectives, description of the proposed activities, and tentative schedule from start to completion.
(2) All cables and pipelines, including cables on project easements.	The location, design, installation methods, testing, maintenance, repair, safety devices, exterior corrosion protection, inspections, and decommissioning.
(3) A description of the deployment activities.	Safety, prevention, and environmental protection features or measures that you will use.
(4) A general description of the operating procedures and systems.	(i) Under normal conditions. (ii) In the case of accidents or emergencies, including those that are natural or manmade.
(5) CVA nominations for reports required in subpart G of this part.	CVA nominations for reports in subpart G of this part, as required by § 285.706, or a request for a waiver under § 285.705(c).
(6) Construction schedule.	A reasonable schedule of construction activity showing significant milestones leading to the commencement of activities.
(7) Other information.	Additional information as required by the MMS.

(d) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure in accordance with the terms of § 285.113.

§ 285.646 What information and certifications must I submit with my GAP to assist MMS in complying with NEPA and other relevant laws?

You must submit with your GAP detailed information to assist MMS in complying with NEPA and other relevant laws. Your GAP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your GAP, including:

Type of information:	Including:
(a) Hazard information.	Meteorology, oceanography, sediment transport, geology, and shallow geological or manmade hazards.
(b) Water quality.	Turbidity and total suspended solids from construction.
(c) Biological resources.	Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, plankton, seagrasses, and plant life.
(d) Threatened or endangered species.	As required by the ESA (16 U.S.C. 1531et. seq.).
(e) Sensitive biological resources or habitats.	Essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, hard bottom habitat, chemosynthetic communities, and calving grounds; barrier islands, beaches, dunes, and wetlands
(f) Archaeological resources.	As required by NHPA (16 U.S.C. 470 et. seq.), as amended.
(g) Social and economic resources.	Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, coastal zone management programs, and viewshed.
(h) Coastal and marine uses.	Military activities, vessel traffic, and energy and nonenergy mineral exploration or development.
(i) Consistency Certification	As required by CZMA: (1) 15 CFR part 930, subpart D, for noncompetitive leases; (2) 15 CFR part 930, subpart E, for competitive leases.
(j) Other resources, conditions, and activities.	As required by MMS.

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§ 285.647 How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?

Your GAP will be processed based on how your limited lease, ROW grant, or RUE grant was issued:

If your limited lease, ROW, or RUE grant was issued:	Your GAP will be processed as follows:
(a) Competitively	The MMS will forward one paper copy and one electronic copy of your GAP, consistency certification, and necessary data and information required under 15 CFR part 930, subpart E, after MMS has determined that all information requirements for the GAP are met and MMS prepares its NEPA compliance document.
(b) Noncompetitively	You will furnish a copy of your GAP, consistency certification, and necessary data and information pursuant to 15 CFR part 930, subpart D, to the State's CZM agency and MMS at the same time.

§ 285.648 How will MMS process my GAP?

(a) The MMS will review your submitted GAP, along with the information and certifications provided pursuant to § 285.646, to determine if it contains all the required information necessary to conduct our technical and environmental reviews.

(1) We will notify you if we deem your proposed facility or combination of facilities to be complex or significant; and

(2) We will notify you if your submitted GAP lacks any necessary information.

(b) The MMS will prepare appropriate NEPA analysis.

(c) When appropriate, we will coordinate and consult with relevant State and Federal agencies and affected Indian tribes and provide to other local, State, and Federal agencies and affected Indian tribes relevant nonproprietary data and information pertaining to your proposed activities.

(d) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process. If you fail to provide the requested information, MMS may disapprove your GAP.

(e) Upon completion of our technical and environmental reviews and other reviews required by Federal law (e.g., CZMA), MMS may approve, disapprove, or approve with modifications your GAP.

(1) If we approve your GAP, we will specify terms and conditions to be incorporated into your GAP. You must certify compliance with certain of those terms and conditions, as required under § 285.653(c); and

(2) If we disapprove your GAP, we will inform you of the reasons and allow you an opportunity to resubmit a revised plan making the necessary corrections, and may suspend the term of your lease or grant, as appropriate, to allow this to occur.

§ 285.649 [Reserved]

Activities Under an Approved GAP

§ 285.650 When may I begin conducting activities under my GAP?

After MMS approves your GAP, you may begin conducting the approved activities that do not involve a project easement or the construction of facilities on the OCS that MMS has deemed to be complex or significant.

§ 285.651 When may I construct complex or significant OCS facilities on my limited lease or any facilities on my project easement proposed under my GAP?

If you are applying for a project easement, or installing a facility or a combination of facilities on your limited lease deemed by MMS to be complex or significant, as provided in § 285.648(a)(1), you also must comply with the requirements of subpart G of this part and submit your Safety Management System required by § 285.810 before construction may begin.

§ 285.652 How long do I have to conduct activities under an approved GAP?

After MMS approves your GAP, you have:

(a) For a limited lease, 5 years to conduct your approved activities, unless we renew the term under §§ 285.425 through 285.429.

(b) For a ROW grant or RUE grant, the time provided in the terms of the grant.

§ 285.653 What other reports or notices must I submit to MMS under my approved GAP?

(a) You must notify MMS in writing within 30 days after completing installation activities approved in your GAP.

(b) You must prepare and submit to MMS annually a report that summarizes the findings from any activities you conduct under your approved GAP and the results of those activities. We will protect the information from public disclosure as provided in § 285.113.

(c) You must annually (or other frequency as determined by MMS) submit a certification of compliance with those terms and conditions of your GAP that MMS identifies under § 285.648(e)(1). Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring methods and their effectiveness. If you identified measures that were not effective, you must include your recommendations for new mitigation measures or monitoring methods.

§ 285.654 [Reserved]

§ 285.655 What activities require a revision to my GAP, and when will MMS approve the revision?

(a) You must notify MMS in writing before conducting any activities not described in your approved GAP, describing in detail the type of activities you propose to conduct. We will determine whether the activities you propose are authorized by your existing GAP or require a revision to your GAP. We may request additional information from you, if necessary, to make this determination.

(b) The MMS will periodically review the activities conducted under an approved GAP. The frequency and extent of the review will be based on the significance of any changes in available information and on onshore or offshore conditions affecting, or affected by, the activities conducted under your GAP. If the review indicates that the GAP should be revised to meet the requirement of this part, we will require you to submit the needed revisions.

(c) Activities for which a proposed revision to your GAP will likely be necessary include:

(1) Activities not described in your approved GAP;

(2) Modifications to the size or type of facility or equipment you will use;

(3) Change in the surface location of a facility or structure;

(4) Addition of a facility or structure not contemplated in your approved GAP;

(5) Change in the location of your onshore support base from one State to another or to a new base requiring expansion;

(6) Changes in the locations of bottom disturbances (anchors, chains, etc.) by 500 feet (152 meters) or greater from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision;

(7) Structural failure of one or more facilities; or

(8) Change to any other activity specified by MMS.

(d) We may begin the appropriate NEPA analysis and any relevant consultations when we determine that a proposed revision could:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal authorizations; or

(3) Involve activities not previously identified and evaluated.

(e) When you propose a revision, we may approve the revision if we determine that the revision is:

(1) Designed not to cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and

(2) Otherwise consistent with the provisions of subsection 8(p) of the OCS Lands Act.

§ 285.656 What must I do if I cease activities approved in my GAP before the end of my term?

You must notify the MMS any time you cease activities under your approved GAP without an approved suspension. If you cease activities for an indefinite period that exceeds 6 months, MMS may cancel your lease or grant

under § 285.437, as applicable, and you must initiate the decommissioning process, as set forth in subpart I of this part.

§ 285.657 What must I do upon completion of approved activities under my GAP?

Upon completion of your approved activities under your GAP, you must initiate the decommissioning process as set forth in subpart I of this part. You must submit your decommissioning application as provided in §§ 285.905 and 285.906.

Cable and Pipeline Deviations

§ 285.658 Can my cable or pipeline construction deviate from my approved COP or GAP?

(a) You must make every effort to ensure that all cables and pipelines are constructed in a manner that minimizes deviations from the approved plan under your lease or grant.

(b) If MMS determines that a significant change in conditions has occurred that would necessitate an adjustment to your ROW, RUE or lease before the commencement of construction of the cable or pipeline on the grant or lease, MMS will consider modifications to your ROW grant, RUE grant, or your lease addendum for a project easement in connection with your COP or GAP.

(c) If, after construction, it is determined that a deviation from the approved plan has occurred, you must:

(1) Notify the operators of all leases (including mineral leases issued under this subchapter) and holders of all ROW grants or RUE grants (including all grants issued under this subchapter) which include the area where a deviation has occurred and provide MMS with evidence of such notification;

(2) Relinquish any unused portion of your lease or grant; and

(3) Submit a revised plan for MMS approval as necessary.

(d) Construction of a cable or pipeline that substantially deviates from the approved plan may be grounds for cancellation of the lease or grant.

§ 285.659 What requirements must I include in my SAP, COP, or GAP regarding air quality?

(a) You must comply with the Clean Air Act (42 U.S.C. 7409) and its implementing regulations, according to the following table.

If your project is located...	you must...
(1) In the Gulf of Mexico west of 87.5° west longitude (western Gulf of Mexico),	Include in your plan any information required for MMS to make the appropriate air quality determinations for your project.
(2) Anywhere else on the OCS,	Follow the appropriate implementing regulations as promulgated by the EPA under 40 CFR part 55.

(b) For air quality modeling that you perform in support of the activities proposed in your plan, you should contact the appropriate regulatory agency to establish a modeling protocol to ensure that the agency's needs are met and that the meteorological files used are acceptable before initiating the modeling work. In the western Gulf of Mexico (west of 87.5° west longitude), you must submit to MMS three copies of the modeling report and three sets of digital files as supporting information. The digital files must contain the formatted meteorological files used in the modeling runs, the model input file, and the model output file.

Subpart G—Facility Design, Fabrication, and Installation

Reports

§ 285.700 What reports must I submit to MMS before installing facilities described in my approved SAP, COP, or GAP?

(a) You must submit the following reports to MMS before installing facilities described in your approved COP (§ 285.632(a)) and, when required by this part, your SAP (§ 285.614(b)) or GAP (§ 285.651):

(1) A Facility Design Report; and

(2) A Fabrication and Installation Report.

(b) You may begin to fabricate and install the approved facilities after MMS notifies you that it has received your reports and has no objections. If MMS receives the reports, but does not respond with objections within 60 days of receipt or 60 days after we approve your SAP, COP, or GAP, if you submitted your report with the plan, MMS is deemed not to have objections to the reports, and you may commence fabrication and installation of your facility or facilities.

(c) If MMS has any objections, we will notify you verbally or in writing within 60 days of receipt of the report. Following initial notification of objections, MMS may follow up with written correspondence outlining its specific objections to the report and request that certain actions be undertaken. You cannot commence activities addressed in such report until you resolve all objections to MMS's satisfaction.

§ 285.701 What must I include in my Facility Design Report?

(a) Your Facility Design Report provides specific details of the design of any facilities, including cables and pipelines, that are outlined in your approved SAP, COP, or GAP. Your Facility Design Report must demonstrate that your design conforms to your responsibilities listed in § 285.105(a). You must include the following items in your Facility Design Report:

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Required documents:	Required contents:	Other requirements:
(1) Cover letter.	(i) Proposed facility designations; (ii) Lease, ROW grant or RUE grant number; (iii) Area; name and block numbers; and (iv) The type of facility.	You must submit 1 paper copy and 1 electronic copy.
(2) Location plat.	(i) Latitude and longitude coordinates, Universal Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection System; (ii) Distances in feet from the nearest block lines. These coordinates must be based on the NAD (North American Datum) 83 datum plane coordinate system; and (iii) The location of any proposed project easement.	Your plat must be drawn to a scale of 1 inch equals 100 feet and include the coordinates of the lease, ROW grant, or RUE grant block boundary lines. You must submit 1 paper copy and 1 electronic copy
(3) Front, Side, and Plan View drawings.	(i) Facility dimensions and orientation; (ii) Elevations relative to Mean Lower Low Water; and (iii) Pile sizes and penetration.	Your drawing sizes must not exceed 11" x 17". You must submit 1 paper copy and 1 electronic copy.
(4) Complete set of structural drawings.	The approved for construction fabrication drawings should be submitted including, e.g., (i) Cathodic protection systems; (ii) Jacket design; (iii) Pile foundations; (iv) Mooring and tethering systems; (v) Foundations and anchoring systems; and (vi) Associated cable and pipeline designs.	Your drawing sizes must not exceed 11" x 17". You must submit 1 paper copy and 1 electronic copy.
(5) Summary of environmental data used for design.	A summary of the environmental data used in the design or analysis of the facility. Examples of relevant data include information on: (i) Extreme weather; (ii) Seafloor conditions; and (iii) Waves, wind, current, tides, temperature, snow and ice effects, marine growth, and water depth.	You must submit 1 paper copy and 1 electronic copy. If you submitted these data as part of your SAP, COP, or GAP, you may reference the plan.
(6) Summary of the engineering design data.	(i) Loading information (e.g., live, dead, environmental); (ii) Structural information (e.g., design-life; material types; cathodic protection systems; design criteria; fatigue life; jacket design; deck design; production component design; foundation pilings and templates, and mooring or tethering systems; fabrication and installation guidelines); and (iii) Location of foundation boreholes and foundation piles; and (iv) Foundation information (e.g., soil stability, design criteria).	You must submit 1 paper copy and 1 electronic copy.
(7) A complete set of design calculations.	Self-explanatory	You must submit 1 paper copy and 1 electronic copy.
(8) Project-specific studies used in the facility design or installation.	All studies pertinent to facility design or installation, e.g., oceanographic and soil reports including the results of the surveys required in §§ 285.610(b), 285.627(a), or 285.645(a).	You must submit 1 paper copy and 1 electronic copy.

Required documents:	Required contents:	Other requirements:
(9) Description of the loads imposed on the facility.	(i) Loads imposed by jacket; (ii) Decks; (iii) Production components; (iv) Foundations, foundation pilings and templates, and anchoring systems; and (v) Mooring or tethering systems.	You must submit 1 paper copy and 1 electronic copy.
(10) Geotechnical Report.	A list of all data from borings and recommended design parameters.	You must submit 1 paper copy and 1 electronic copy.

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(b) For any floating facility, your design must meet the requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity). The design must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

(c) You must provide the location of records, as required in § 285.714(c).

(d) If you are required to use a CVA, the Facility Design Report must include one paper copy of the following certification statement: ''The design of this structure has been certified by a MMS approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP as appropriate. The certified design and as-built plans and specifications will be on file at (given location).''

(e) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

§ 285.702 What must I include in my Fabrication and Installation Report?

(a) Your Fabrication and Installation Report must describe how your facilities will be fabricated and installed in accordance with the design criteria identified in the Facility Design Report; your approved SAP, COP, or GAP; and generally accepted industry standards and practices. Your Fabrication and Installation Report must demonstrate how your facilities will be fabricated and installed in a manner that conforms to your responsibilities listed in § 285.105(a). You must include the following items in your Fabrication and Installation Report:

Required documents:	Required contents:	Other requirements:
(1) Cover letter.	(i) Proposed facility designation, lease, ROW grant, or RUE grant number; (ii) Area, name, and block number; and (iii) The type of facility.	You must submit 1 paper copy and 1 electronic copy.
(2) Schedule.	Fabrication and installation.	You must submit 1 paper copy and 1 electronic copy.
(3) Fabrication information.	The industry standards you will use to ensure the facilities are fabricated to the design criteria identified in your Facility Design Report.	You must submit 1 paper copy and 1 electronic copy.
(4) Installation process information.	Details associated with the deployment activities, equipment, and materials, including onshore and offshore equipment and support, and anchoring and mooring patterns.	You must submit 1 paper copy and 1 electronic copy.
(5) Federal, State, and local permits (e.g., EPA, Army Corps of Engineers).	Either 1 copy of the permit or information on the status of the application.	You must submit 1 paper copy and 1 electronic copy.
(6) Environmental information.	(i) Water discharge; (ii) Waste disposal; (iii) Vessel information; and (iv) Onshore waste receiving treatment or disposal facilities.	You must submit 1 paper copy and 1 electronic copy. If you submitted these data as part of your SAP, COP, or GAP, you may reference the plan.
(7) Project easement.	Design of any cables, pipelines, or facilities. Information on burial methods and vessels.	You must submit 1 paper copy and 1 electronic copy.

(b) You must provide the location of records, as required in § 285.714(c).

(c) If you are required to use a CVA, the Fabrication and Installation Report must include one paper copy of the following certification statement: "The fabrication and installation of this structure has been certified by a MMS approved CVA to be in accordance with accepted engineering practices and the approved SAP, GAP, or COP as appropriate. The certified design and as-built plans and specifications will be on file at (given location)."

(d) The MMS will withhold trade secrets and commercial or financial information that is privileged or confidential from public disclosure under exemption 4 of the FOIA and in accordance with the terms of § 285.113.

§ 285.703 What reports must I submit for project modifications and repairs?

(a) You must verify and, in a report to us, certify that major repairs and major modifications to the project conform to accepted engineering practices.

(1) A major repair is a corrective action involving structural members affecting the structural integrity of a portion of or all the facility.

(2) A major modification is an alteration involving structural members affecting the structural integrity of a portion of or all the facility.

(b) The report must also identify the location of all records pertaining to the major repairs or major modifications, as required in § 285.714(c).

(c) The MMS may require you to use a CVA for project modifications and repairs.

§ 285.704 [Reserved]

Certified Verification Agent

§ 285.705 When must I use a Certified Verification Agent (CVA)?

You must use a CVA to review and certify the Facility Design Report, the Fabrication and Installation Report, and the Project Modifications and Repairs Report.

(a) You must use a CVA to:

(1) Ensure that your facilities are designed, fabricated, and installed in conformance with accepted engineering practices and the Facility Design Report and Fabrication and Installation Report;

(2) Ensure that repairs and major modifications are completed in conformance with accepted engineering practices; and

(3) Provide MMS immediate reports of all incidents that affect the design, fabrication, and installation of the project and its components.

(b) The MMS may waive the requirement that you use a CVA if you can demonstrate the following:

If you demonstrate that...	Then MMS may waive the requirement for a CVA for the following:
(1) The facility design conforms to a standard design that has been used successfully in a similar environment, and the installation design conforms to accepted engineering practices.	The design of your structure(s).
(2) The manufacturer has successfully manufactured similar facilities, and the facility will be fabricated in conformance with accepted engineering practices.	The fabrication of your structure(s).
(3) The installation company has successfully installed similar facilities in a similar offshore environment, and your structure(s) will be installed in conformance with accepted engineering practices.	The installation of your structure(s).
(4) Repairs and major modifications will be completed in conformance with accepted engineering practices.	The repair or major modification of your structure(s).

(c) You must submit a request to waive the requirement to use a CVA to MMS in writing, along with your SAP under § 285.610(a)(9), COP under § 285.626(b)(20), or GAP under § 285.645(c)(5).

(1) The MMS will review your request to waive the use of the CVA and notify you of our decision along with our decision on your SAP, COP, or GAP.

(2) If MMS does not waive the requirement for a CVA, you may file an appeal under § 285.118.

(3) If MMS waives the requirement that you use a CVA, your project engineer must perform the same duties and responsibilities as the CVA, except as otherwise provided.

§ 285.706 How do I nominate a CVA for MMS approval?

(a) As part of your COP (as provided in § 285.626(b)(20) and, when required by this part, your SAP (§ 285.610(a)(9)) or GAP (§ 285.645(c)(5)), you must nominate a CVA for MMS approval. You must specify whether the nomination is for the Facility Design Report, Fabrication and Installation Report, Modification and Repair Report, or for any combination of these.

(b) For each CVA that you nominate, you must submit to MMS a list of documents used in your design that you will forward to the CVA and a qualification statement that includes the following:

(1) Previous experience in third-party verification or experience in the design, fabrication, installation, or major modification of offshore energy facilities;

(2) Technical capabilities of the individual or the primary staff for the specific project;

(3) Size and type of organization or corporation;

(4) In-house availability of, or access to, appropriate technology (including computer programs, hardware, and testing materials and equipment);

(5) Ability to perform the CVA functions for the specific project considering current commitments;

(6) Previous experience with MMS requirements and procedures, if any; and

(7) The level of work to be performed by the CVA.

(c) Individuals or organizations acting as CVAs must not function in any capacity that will create a conflict of interest, or the appearance of a conflict of interest.

(d) The verification must be conducted by or under the direct supervision of registered professional engineers.

(e) The MMS will approve or disapprove your CVA as part of its review of the COP or, when required, of your SAP or GAP.

(f) You must nominate a new CVA for MMS approval if the previously approved CVA:

(1) Is no longer able to serve in a CVA capacity for the project; or

(2) No longer meets the requirements for a CVA set forth in this subpart.

§ 285.707 What are the CVA's primary duties for facility design review?

If you are required to use a CVA:

(a) The CVA must use good engineering judgment and practices in conducting an independent assessment of the design of the facility. The CVA must certify in the Facility Design Report to MMS that the facility is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location.

(b) The CVA must conduct an independent assessment of all proposed:

(1) Planning criteria;

(2) Operational requirements;

(3) Environmental loading data;

(4) Load determinations;

(5) Stress analyses;

(6) Material designations;

(7) Soil and foundation conditions;

(8) Safety factors; and

(9) Other pertinent parameters of the proposed design.

(c) For any floating facility, the CVA must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity), have been met. The CVA must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

§ 285.708 What are the CVA's or project engineer's primary duties for fabrication and installation review?

(a) The CVA or project engineer must do all of the following:

(1) Use good engineering judgment and practice in conducting an independent assessment of the fabrication and installation activities;

(2) Monitor the fabrication and installation of the facility as required by paragraph (b) of this section;

(3) Make periodic onsite inspections while fabrication is in progress and verify the items required by § 285.709;

(4) Make periodic onsite inspections while installation is in progress and satisfy the requirements of § 295.710; and

(5) Certify in a report that project components are fabricated and installed in accordance with accepted engineering practices; your approved COP, SAP, or GAP (as applicable); and the Fabrication and Installation Report.

(i) The report must also identify the location of all records pertaining to fabrication and installation, as required in § 285.714(c); and

(ii) You may commence commercial operations or other approved activities 30 days after MMS receives that certification report, unless MMS notifies you within that time period of its objections to the certification report.

(b) To comply with paragraph (a)(5) of this section, the CVA or project engineer must monitor the fabrication and installation of the facility to ensure that it has been built and installed according to the Facility Design Report and Fabrication and Installation Report.

(1) If the CVA or project engineer finds that fabrication and installation procedures have been changed or design specifications have been modified, the CVA or project engineer must inform you; and

(2) If you accept the modifications, then you must also inform MMS.

§ 285.709 When conducting onsite fabrication inspections, what must the CVA or project engineer verify?

(a) To comply with § 285.708(a)(3), the CVA or project engineer must make periodic onsite inspections while fabrication is in progress and must verify the following fabrication items, as appropriate:

(1) Quality control by lessee (or grant holder) and builder;

(2) Fabrication site facilities;

(3) Material quality and identification methods;

(4) Fabrication procedures specified in the Fabrication and Installation Report, and adherence to such procedures;

(5) Welder and welding procedure qualification and identification;

(6) Structural tolerances specified, and adherence to those tolerances;

(7) Nondestructive examination requirements and evaluation results of the specified examinations;

(8) Destructive testing requirements and results;

(9) Repair procedures;

(10) Installation of corrosion-protection systems and splash-zone protection;

(11) Erection procedures to ensure that overstressing of structural members does not occur;

(12) Alignment procedures;

(13) Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and

(14) Status of quality-control records at various stages of fabrication.

(b) For any floating facilities, the CVA or project engineer must ensure that any requirements of the U.S. Coast Guard for structural integrity and stability (e.g., verification of center of gravity) have been met. The CVA or project engineer must also consider:

(1) Foundations, foundation pilings and templates, and anchoring systems; and

(2) Mooring or tethering systems.

§ 285.710 When conducting onsite installation inspections, what must the CVA or project engineer do?

To comply with § 285.708(a)(4), the CVA or project engineer must make periodic onsite inspections while installation is in progress and must, as appropriate, verify, witness, survey, or check, the installation items required by this section.

(a) The CVA or project engineer must verify, as appropriate, all of the following:

(1) Loadout and initial flotation procedures;

(2) Towing operation procedures to the specified location, and review the towing records;

(3) Launching and uprighting activities;

(4) Submergence activities;

(5) Pile or anchor installations;

(6) Installation of mooring and tethering systems;

(7) Final deck and component installations; and

(8) Installation at the approved location according to the Facility Design Report and the Fabrication and Installation Report.

(b) For a fixed or floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the jacket, decks, piles, or structures from each fabrication site; and

(2) The actual installation of the facility or major modification and the related installation activities.

(c) For a floating facility, the CVA or project engineer must verify that proper procedures were used during the following:

(1) The loadout of the facility;

(2) The installation of foundation pilings and templates, and anchoring systems; and

(3) The installation of the mooring and tethering systems.

(d) The CVA or project engineer must conduct an onsite survey of the facility after transportation to the approved location.

(e) The CVA or project engineer must spot-check the equipment, procedures, and recordkeeping as necessary to determine compliance with the applicable documents incorporated by reference and the regulations under this part.

§ 285.711 [Reserved]

§ 285.712 What are the CVA's or project engineer's reporting requirements?

(a) The CVA or project engineer must prepare and submit to you and MMS all reports required by this subpart. The CVA or project engineer must also submit interim reports to you and MMS, as requested by the MMS.

(b) For each report required by this subpart, the CVA or project engineer must submit one electronic copy and one paper copy of each final report to MMS. In each report, the CVA or project engineer must:

(1) Give details of how, by whom, and when the CVA or project engineer activities were conducted;

(2) Describe the CVA's or project engineer's activities during the verification process;

(3) Summarize the CVA's or project engineer's findings; and

(4) Provide any additional comments that the CVA or project engineer deems necessary.

§ 285.713 What must I do after the CVA or project engineer confirms conformance with the Fabrication and Installation Report on my commercial lease?

After the CVA or project engineer files the certification report, you must notify MMS within 10 business days after commencing commercial operations.

§ 285.714 What records relating to SAPs COPs and GAPs must I keep?

(a) Until MMS releases your financial assurance under § 285.534, you must compile, retain, and make available to MMS representatives, within the time specified by MMS, all of the following:

(1) The as-built drawings;

(2) The design assumptions and analyses;

(3) A summary of the fabrication and installation examination records;

(4) The inspection results from the inspections and assessments required by §§ 285.820 through 285.825; and

(5) Records of repairs not covered in the inspection report submitted under § 285.824(b)(3).

(b) You must record and retain the original material test results of all primary structural materials during all stages of construction until MMS releases your financial assurance under § 285.534. Primary material is material that, should it fail, would lead to a significant reduction in facility safety, structural reliability, or operating capabilities. Items such as steel brackets, deck stiffeners and secondary braces or beams would not generally be

considered primary structural members (or materials).

(c) You must provide MMS with the location of these records in the certification statement, as required in §§ 285.701(c), 285.703(b), and 285.708(a)(5)(i).

Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs and GAPs

§ 285.800 How must I conduct my activities to comply with safety and environmental requirements?

(a) You must conduct all activities on your lease or grant under this part in a manner that conforms with your responsibilities in § 285.105(a), and using:

(1) Trained personnel; and

(2) Technologies, precautions, and techniques that will not cause undue harm or damage to natural resources, including their physical, atmospheric, and biological components.

(b) You must certify compliance with those terms and conditions identified in your approved SAP, COP, or GAP, as required under §§ 285.615(c), 285.633(b), or 285.653(c).

§ 285.801 How must I conduct my approved activities to protect marine mammals, threatened and endangered species, and designated critical habitat?

(a) You must not conduct any activity under your lease or grant that may affect threatened or endangered species or that may affect designated critical habitat of such species until the appropriate level of consultation is conducted, as required under the ESA, as amended (16 U.S.C. 1531 *et seq.*), to ensure that your actions are not likely to jeopardize a threatened or endangered species and are not likely to destroy or adversely modify designated critical habitat.

(b) You must not conduct any activity under your lease or grant that may result in an incidental taking of marine mammals until the appropriate authorization has been issued under the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*).

(c) If there is reason to believe that a threatened or endangered species may be present while you conduct your MMS approved activities or may be affected by the direct or indirect effects of your actions:

(1) You must notify us that endangered or threatened species may be present in the vicinity of the lease or grant or may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(d) If there is reason to believe that designated critical habitat of a threatened or endangered species may be affected by the direct or indirect effects of your MMS approved activities:

(1) You must notify us that designated critical habitat of a threatened or endangered species in the vicinity of the lease or grant may be affected by your actions; and

(2) We will consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, you may proceed.

(e) If there is reason to believe that marine mammals may be incidentally taken as a result of your proposed activities:

(1) You must agree to secure an authorization from National Oceanic and Atmospheric Administration (NOAA) or the U.S. Fish and Wildlife Service (FWS) for incidental taking, including taking by harassment, that may result from your actions; and

(2) You must comply with all measures required by the NOAA or FWS, including measures to affect the least practicable impact on such species and its habitat and to ensure no unmitigable adverse impact on the availability of the species for subsistence use.

(f) Submit to us:

(1) Measures designed to avoid or minimize adverse effects and any potential incidental take of the endangered or threatened species or marine mammals;

(2) Measures designed to avoid likely adverse modification or destruction of designated critical habitat of such endangered or threatened species; and

(3) Your agreement to monitor for the incidental take of the species and adverse effects on the critical habitat, and provide the results of the monitoring to MMS as required; and

(4) Your agreement to perform any relevant terms and conditions of the Incidental Take Statement that may result from the ESA consultation.

(5) Your agreement to perform any relevant mitigation measures under an MMPA incidental take authorization.

§ 285.802 What must I do if I discover a potential archaeological resource while conducting my approved activities?

(a) If you, your subcontractors, or any agent acting on your behalf discovers a potential archaeological resource while conducting construction activities, or any other activity related to your project, you must:

(1) Immediately halt all seafloor-disturbing activities within the area of the discovery;

(2) Notify MMS of the discovery within 72 hours; and

(3) Keep the location of the discovery confidential and not take any action that may adversely affect the archaeological resource until we have made an evaluation and instructed you on how to proceed.

(b) We may require you to conduct additional investigations to determine if the resource is eligible for listing in the National Register of Historic Places under 36 CFR 60.4. We will do this if:

(1) The site has been impacted by your project activities; or

(2) Impacts to the site or to the area of potential effect cannot be avoided.

(c) If investigations under paragraph (b) of this section indicate that the resource is potentially eligible for listing in the National Register of Historic Places, we will tell you how to protect the resource, or how to mitigate adverse effects to the site.

(d) If we incur costs in protecting the resource, under section 110(g) of the NHPA, we may charge you reasonable costs for carrying out preservation responsibilities under the OCS Lands Act.

§ 285.803 How must I conduct my approved activities to protect essential fish habitats identified and described under the Magnuson-Stevens Fishery Conservation and Management Act?

(a) If, during the conduct of your approved activities, MMS finds that essential fish habitat or habitat areas of particular concern may be adversely affected by your activities, MMS must consult with National Marine Fisheries Service.

(b) Any conservation recommendations adopted by MMS to avoid or minimize adverse affects on Essential Fish Habitat will be incorporated as terms and conditions in the lease and must be adhered to by the applicant. The MMS may require additional surveys to define boundaries and avoidance distances.

(c) If required, MMS will specify the survey methods and instrumentations for conducting the biological survey and will specify the contents of the biological report.

§§ 285.804–285.809 [Reserved]

Safety Management Systems

§ 285.810 What must I include in my Safety Management System?

You must submit a description of the Safety Management System you will use with your COP (provided under

§ 285.627(d)) and, when required by this part, your SAP (as provided in § 285.614(b)) or GAP (as provided in § 285.651). You must describe:

(a) How you will ensure the safety of personnel or anyone on or near your facilities;

(b) Remote monitoring, control, and shut down capabilities;

(c) Emergency response procedures;

(d) Fire suppression equipment, if needed;

(e) How and when you will test your Safety Management System; and

(f) How you will ensure personnel who operate your facilities are properly trained.

§ 285.811 When must I follow my Safety Management System?

Your Safety Management System must be fully functional when you begin activities described in your approved COP, SAP, or GAP. You must conduct all activities described in your approved COP, SAP, or GAP in accordance with the Safety Management System you described, as required by § 285.810.

§ 285.812 [Reserved]

Maintenance and Shutdowns

§ 285.813 When do I have to report removing equipment from service?

(a) The removal of any equipment from service may result in MMS applying remedies, as provided in this part, when such equipment is necessary for implementing your approved plan. Such remedies may include an order from MMS requiring you to replace or remove such equipment or facilities.

(b)(1) You must report within 24 hours when equipment necessary for implementing your approved plan is removed from service for more than 12 hours. If you provide an oral notification, you must submit a written confirmation of this notice within 3 business days, as required by § 285.105(c);

(2) You do not have to report removing equipment necessary for implementing your plan if the removal is part of planned maintenance or repair activities; and

(3) You must notify MMS when you return the equipment to service.

§ 285.814 [Reserved]

Equipment Failure and Adverse Environmental Effects

§ 285.815 What must I do if I have facility damage or an equipment failure?

(a) If you have facility damage or the failure of a pipeline, cable, or other equipment necessary for you to implement your approved plan, you must make repairs as soon as practicable. If you have a major repair, you must submit a report of the repairs to MMS, as required in § 285.711.

(b) If you are required to report any facility damage or failure under § 285.831, MMS may require you to revise your SAP, COP, or GAP to describe how you will address the facility damage or failure as required by § 285.634 (COP), § 285.617 (SAP), § 285.655 (GAP). You must submit a report of the repairs to MMS, as required in § 285.703.

(c) The MMS may require that you analyze cable, pipeline, or facility damage or failure to determine the cause. If requested by MMS, you must submit a comprehensive written report of the failure or damage to MMS as soon as available.

§ 285.816 What must I do if environmental or other conditions adversely affect a cable, pipeline, or facility?

If environmental or other conditions adversely affect a cable, pipeline, or facility so as to endanger the safety or the environment, you must:

(a) Submit a plan of corrective action to MMS within 30 days of the discovery of the adverse effect.

(b) Take remedial action as described in your corrective action plan.

(c) Submit to the MMS a report of the remedial action taken within 30 days after completion.

§§ 285.817–285.819 [Reserved]

Inspections and Assessments

§ 285.820 Will MMS conduct inspections?

The MMS will inspect OCS facilities and any vessels engaged in activities authorized under this part. We conduct these inspections:

(a) To verify that you are conducting activities in compliance with subsection 8(p) of the OCS Lands Act; the regulations in this part; the terms, conditions, and stipulations of your lease or grant; approved plans; and other applicable laws and regulations.

(b) To determine whether proper safety equipment has been installed and is operating properly according to your Safety Management System, as required in § 285.810.

§ 285.821 Will MMS conduct scheduled and unscheduled inspections?

The MMS will conduct both scheduled and unscheduled inspections.

§ 285.822 What must I do when MMS conducts an inspection?

(a) When MMS conducts an inspection, you must:

(1) Provide access to all facilities on your lease (including your project easement) or grant; and

(2) Make the following available for MMS to inspect:

(i) The area covered under a lease, ROW grant, or RUE grant;

(ii) All improvements, structures, and fixtures on these areas; and

(iii) All records of design, construction, operation, maintenance, repairs, or investigations on or related to the area.

(b) You must retain these records in paragraph (a)(2)(iii) of this section until MMS releases your financial assurance under § 285.534 and provide them to MMS upon request, within the time period specified by MMS.

(c) You must demonstrate to the inspector how you are in compliance with your Safety Management System.

§ 285.823 Will MMS reimburse me for my expenses related to inspections?

Upon request, MMS will reimburse you for food, quarters, and transportation that you provide for our representatives while they inspect your lease or grant facilities and associated activities. You must send us your reimbursement request within 90 days of the inspection.

§ 285.824 How must I conduct self-inspections?

(a) You must develop a comprehensive annual self-inspection plan covering all of your facilities. You must keep this plan wherever you keep your records and make it available to MMS inspectors upon request. Your plan must specify:

(1) The type, extent, and frequency of in-place inspections that you will conduct for both the above-water and the below-water structures of all facilities and pertinent components of the mooring systems for any floating facilities; and

(2) How you are monitoring the corrosion protection for both the above-water and below-water structures.

(b) You must submit a report annually to us no later than November 1 that must include:

(1) A list of facilities inspected in the preceding 12 months;

(2) The type of inspection employed, (i.e., visual, magnetic particle, ultrasonic testing); and

(3) A summary of the inspection indicating what repairs, if any, were needed and the overall structural condition of the facility.

§ 285.825 When must I assess my facilities?

(a) You must perform an assessment of the structure, when needed, based on

the platform assessment initiators listed in sections 17.2.1–17.2.5 of API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design (incorporated by reference, as specified in § 285.115).

(b) You must initiate mitigation actions for structures that do not pass the assessment process of API RP 2A–WSD.

(c) You must perform other assessments as required by MMS.

§§ 285.826–285.829 [Reserved]

Incident Reporting and Investigation

§ 285.830 What are my incident reporting requirements?

(a) You must report all incidents listed in § 285.831 to MMS, according to the reporting requirements for these incidents in §§ 285.832 and 285.833.

(b) These reporting requirements apply to incidents that occur on the area covered by your lease or grant under this part and that are related to activities resulting from the exercise of your rights under your lease or grant under this part.

(c) Nothing in this subpart relieves you from providing notices and reports of incidents that may be required by other regulatory agencies.

(d) You must report all spills of oil or other liquid pollutants in accordance with 30 CFR 254.46.

§ 285.831 What incidents must I report, and when must I report them?

(a) You must report the following incidents to us immediately via oral communication, and provide a written follow-up report (paper copy or electronically transmitted) within 15 business days after the incident:

(1) Fatalities;

(2) Incidents that require the evacuation of person(s) from the facility to shore or to another offshore facility;

(3) Fires and explosions;

(4) Collisions that result in property or equipment damage greater than $25,000 (*Collision* means the act of a moving vessel (including an aircraft) striking another vessel, or striking a stationary vessel or object. *Property or equipment damage* means the cost of labor and material to restore all affected items to their condition before the damage, including, but not limited to, the OCS facility, a vessel, a helicopter, or the equipment. It does not include the cost of salvage, cleaning, dry docking, or demurrage);

(5) Incidents involving structural damage to an OCS facility that is severe enough so that activities on the facility cannot continue until repairs are made;

(6) Incidents involving crane or personnel/material handling activities, if they result in a fatality, injury, structural damage, or significant environmental damage;

(7) Incidents that damage or disable safety systems or equipment (including firefighting systems);

(8) Other incidents resulting in property or equipment damage greater than $25,000; and

(9) Any other incidents involving significant environmental damage, or harm.

(b) You must provide a written report of the following incidents to us within 15 days after the incident:

(1) Any injuries that result in the injured person not being able to return to work or to all of their normal duties the day after the injury occurred; and

(2) All incidents that require personnel on the facility to muster for evacuation for reasons not related to weather or drills.

§ 285.832 How do I report incidents requiring immediate notification?

For an incident requiring immediate notification under § 285.831(a), you must notify MMS verbally after aiding the injured and stabilizing the situation. Your verbal communication must provide the following information:

(a) Date and time of occurrence;

(b) Identification and contact information for the lessee, grant holder, or operator;

(c) Contractor, and contractor representative's name and telephone number (if a contractor is involved in the incident or injury/fatality);

(d) Lease number, OCS area, and block;

(e) Platform/facility name and number, or cable or pipeline segment number;

(f) Type of incident or injury/fatality;

(g) Activity at time of incident; and

(h) Description of the incident, damage, or injury/fatality.

§ 285.833 What are the reporting requirements for incidents requiring written notification?

(a) For any incident covered under § 285.831, you must submit a written report within 15 days after the incident to MMS. The report must contain the following information:

(1) Date and time of occurrence;

(2) Identification and contact information for each lessee, grant holder, or operator;

(3) Name and telephone number of the contractor and the contractor's representative, if a contractor is involved in the incident or injury;

(4) Lease number, OCS area, and block;

(5) Platform/facility name and number, or cable or pipeline segment number;

(6) Type of incident or injury;

(7) Activity at time of incident;

(8) Description of incident, damage, or injury (including days away from work, restricted work, or job transfer), and any corrective action taken; and

(9) Property or equipment damage estimate (in U.S. dollars).

(b) You may submit a report or form prepared for another agency in lieu of the written report required by paragraph (a) of this section if the report or form contains all required information.

(c) The MMS may require you to submit additional information about an incident on a case-by-case basis.

Subpart I—Decommissioning

Decommissioning Obligations and Requirements

§ 285.900 Who must meet the decommissioning obligations in this subpart?

(a) Lessees are jointly and severally responsible for meeting decommissioning obligations for facilities on their leases, including all obstructions, as the obligations accrue and until each obligation is met.

(b) Grant holders are jointly and severally liable for meeting decommissioning obligations for facilities on their grant, including all obstructions, as the obligations accrue and until each obligation is met.

§ 285.901 When do I accrue decommissioning obligations?

You accrue decommissioning obligations when you are or become a lessee or grant holder, and you either install, construct, or acquire by an MMS-approved assignment a facility, cable, or pipeline, or you create an obstruction to other uses of the OCS.

§ 285.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?

(a) Except as otherwise authorized by MMS under § 285.909, within 2 years following termination of a lease or grant, you must:

(1) Remove or decommission all facilities, projects, cables, pipelines, and obstructions;

(2) Clear the seafloor of all obstructions created by activities on your lease, including your project easement, or grant, as required by the MMS.

(b) Before decommissioning the facilities under your SAP, COP, or GAP, you must submit a decommissioning

application and receive approval from the MMS.

(c) The approval of the decommissioning concept in the SAP, COP, or GAP is not an approval of a decommissioning application. However, you may submit your complete decommissioning application simultaneously with the SAP, COP, or GAP so that it may undergo appropriate technical and regulatory reviews at that time.

(d) Following approval of your decommissioning application, you must submit a decommissioning notice under § 285.908 to MMS at least 60 days before commencing decommissioning activities.

(e) If you, your subcontractors, or any agent acting on your behalf discover any archaeological resource while conducting decommissioning activities, you must immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to us within 72 hours. We will inform you how to conduct investigations to determine if the resource is significant and how to protect it. You, your subcontractors, or any agent acting on your behalf must keep the location of the discovery confidential and must not take any action that may adversely affect the archaeological resource until we have made an evaluation and told you how to proceed.

(f) Provide MMS with documentation of any coordination efforts you have made with the affected States, local, and tribal governments.

§ 285.903 What are the requirements for decommissioning FERC-licensed hydrokinetic facilities?

You must comply with the decommissioning requirements in your MMS-issued lease. If you fail to comply with the decommissioning requirements of your lease then:

(a) The MMS may call for the forfeiture of your bond or other financial assurance;

(b) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure; and

(c) The MMS may take enforcement action under § 285.400 of this part.

§ 285.904 Can I request a departure from the decommissioning requirements?

You may request a departure from the decommissioning requirements under § 285.103.

Decommissioning Applications

§ 285.905 When must I submit my decommissioning application?

You must submit your decommissioning application upon the earliest of the following dates:

(a) 2 years before the expiration of your lease.

(b) 90 days after completion of your commercial activities on a commercial lease.

(c) 90 days after completion of your approved activities under a limited lease on a ROW grant or RUE grant.

(d) 90 days after cancellation, relinquishment, or other termination of your lease or grant.

§ 285.906 What must my decommissioning application include?

You must provide one paper copy and one electronic copy of the application. Include the following information in the application, as applicable.

(a) Identification of the applicant including:

(1) Lease operator, ROW grant holder, or RUE grant holder;

(2) Address;

(3) Contact person and telephone number; and

(4) Shore base.

(b) Identification and description of the facilities, cables, or pipelines you plan to remove or propose to leave in place, as provided in § 285.909.

(c) A proposed decommissioning schedule for your lease, ROW grant, or RUE grant, including the expiration or relinquishment date and proposed month and year of removal.

(d) A description of the removal methods and procedures, including the types of equipment, vessels, and moorings (i.e., anchors, chains, lines, etc.) you will use.

(e) A description of your site clearance activities.

(f) Your plans for transportation and disposal (including as an artificial reef) or salvage of the removed facilities, cables, or pipelines and any required approvals.

(g) A description of those resources, conditions, and activities that could be affected by or could affect your proposed decommissioning activities. The description must be as detailed as necessary to assist MMS in complying with the NEPA and other relevant Federal laws.

(h) The results of any recent biological surveys conducted in the vicinity of the structure and recent observations of turtles or marine mammals at the structure site.

(i) Mitigation measures you will use to protect archaeological and sensitive biological features during removal activities.

(j) A description of measures you will take to prevent unauthorized discharge of pollutants, including marine trash and debris, into the offshore waters.

(k) A statement of whether or not you will use divers to survey the area after removal to determine any effects on marine life.

§ 285.907 How will MMS process my decommissioning application?

(a) Based upon your inclusion of all the information required by § 285.906, MMS will compare your decommissioning application with the decommissioning general concept in your approved SAP, COP, or GAP to determine what technical and environmental reviews are needed.

(b) You will likely have to revise your SAP, COP, or GAP, and MMS will begin the appropriate NEPA analysis and other regulatory reviews as required, if MMS determines that your decommissioning application would:

(1) Result in a significant change in the impacts previously identified and evaluated in your SAP, COP, or GAP;

(2) Require any additional Federal permits; or

(3) Propose activities not previously identified and evaluated in your SAP, COP, or GAP.

(c) During the review process, we may request additional information if we determine that the information provided is not sufficient to complete the review and approval process.

(d) Upon completion of the technical and environmental reviews, we may approve, approve with conditions, or disapprove your decommissioning application.

(e) If MMS disapproves your decommissioning application, you must resubmit your application to address the concerns identified by MMS.

§ 285.908 What must I include in my decommissioning notice?

(a) The decommissioning notice is distinct from your decommissioning application and may only be submitted following approval of your decommissioning application, as described in §§ 285.905 through 285.907. You must submit a decommissioning notice at least 60 days before you plan to begin decommissioning activities.

(b) Your decommissioning notice must include:

(1) A description of any changes to the approved removal methods and procedures in your approved decommissioning application, including changes to the types of vessels and equipment you will use; and

(2) An updated decommissioning schedule.

(c) We will review your decommissioning notice and may require you to resubmit a decommissioning application if MMS determines that your decommissioning activities would:

(1) Result in a significant change in the impacts previously identified and evaluated;

(2) Require any additional Federal permits; or

(3) Propose activities not previously identified and evaluated.

Facility Removal

§ 285.909 When may MMS authorize facilities to remain in place following termination of a lease or grant?

(a) In your decommissioning application, you may request that certain facilities authorized in your lease or grant remain in place for other activities authorized in this part, elsewhere in this subchapter, or by other applicable Federal laws.

(b) The MMS may approve such requests on a case-by-case basis considering the following:

(1) Potential impacts to the marine environment;

(2) Competing uses of the OCS;

(3) Impacts on marine safety and national defense;

(4) Maintenance of adequate financial assurance; and

(5) Other factors determined by the Director.

(c) Except as provided in paragraph (d) of this section, if MMS authorizes facilities to remain in place, the former lessee or grantee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to MMS showing that another party has assumed that responsibility and has secured adequate financial assurances.

(d) In your decommissioning application, you may request that certain facilities authorized in your lease or grant be converted to an artificial reef or otherwise toppled in place. The MMS will evaluate all such requests, as provided in § 250.1730 of this subchapter.

§ 285.910 What must I do when I remove my facility?

(a) You must remove all facilities to a depth of 15 feet below the mudline, unless otherwise authorized by MMS.

(b) Within 60 days after you remove a facility, you must verify to MMS that you have cleared the site.

§ 285.911 [Reserved]

Decommissioning Report

§ 285.912 After I remove a facility, cable, or pipeline, what information must I submit?

Within 60 days after you remove a facility, cable, or pipeline, you must submit a written report to MMS that includes the following:

(a) A summary of the removal activities, including the date they were completed;

(b) A description of any mitigation measures you took; and

(c) If you used explosives, a statement signed by your authorized representative that certifies that the types and amount of explosives you used in removing the facility were consistent with those in the approved decommissioning application.

Compliance with an Approved Decommissioning Application

§ 285.913 What happens if I fail to comply with my approved decommissioning application?

If you fail to comply with your approved decommissioning plan or application:

(a) The MMS may call for the forfeiture of your bond or other financial assurance;

(b) You remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure; and

(c) The MMS may take enforcement action under § 285.400.

Subpart J—Rights of Use and Easement for Energy- and Marine-Related Activities Using Existing OCS Facilities

Regulated Activities

§ 285.1000 What activities does this subpart regulate?

(a) This subpart provides the general provisions for authorizing and regulating activities that use (or propose to use) an existing OCS facility for energy- or marine-related purposes, that are not otherwise authorized under any other part of this subchapter or any other applicable Federal statute. Activities authorized under any other part of this subchapter or under any other Federal law that use (or propose to use) an existing OCS facility are not subject to this subpart.

(b) The MMS will issue an Alternate Use RUE for activities authorized under this subpart.

(c) At the discretion of the Director, an Alternate Use RUE may:

(1) Permit alternate use activities to occur at an existing facility that is currently in use under an approved OCS lease; or

(2) Limit alternate use activities at the existing facility until after previously authorized activities at the facility have ceased and the OCS lease terminates.

§§ 285.1001—285.1003 [Reserved]

Requesting an Alternate Use RUE

§ 285.1004 What must I do before I request an Alternate Use RUE?

If you are not the owner of the existing facility on the OCS and the lessee of the area in which the facility is located, you must contact the lessee and owner of the facility and reach a preliminary agreement as to the proposed activity for the use of the existing facility.

§ 285.1005 How do I request an Alternate Use RUE?

To request an Alternate Use RUE, you must submit to MMS all of the following:

(a) The name, address, e-mail address, and phone number of an authorized representative.

(b) A summary of the proposed activities for the use of an existing OCS facility, including:

(1) The type of activities that would involve the use of the existing OCS facility;

(2) A description of the existing OCS facility, including a map providing its location on the lease block;

(3) The names of the owner of the existing OCS facility, the operator, the lessee, and any owner of operating rights on the lease at which the facility is located;

(4) A description of additional structures or equipment that will be required to be located on or in the vicinity of the existing OCS facility in connection with the proposed activities;

(5) A statement indicating whether any of the proposed activities are intended to occur before existing activities on the OCS facility have ceased; and

(6) A statement describing how existing activities at the OCS facility will be affected if proposed activities are to occur at the same time as existing activities at the OCS facility.

(c) A statement affirming that the proposed activities sought to be approved under this subpart are not otherwise authorized by other provisions in this subchapter or any other Federal law.

(d) Evidence that you meet the requirements of § 285.106, as required by § 285.107.

(e) The signatures of the applicant, the owner of the existing OCS facility, and

the lessee of the area in which the existing facility is located.

§ 285.1006 How will MMS decide whether to issue an Alternate Use RUE?

(a) We will consider requests for an Alternate Use RUE on a case-by-case basis. In considering such requests, we will consult with relevant Federal agencies and evaluate whether the proposed activities involving the use of an existing OCS facility can be conducted in a manner that:

(1) Ensures safety and minimizes adverse effects to the coastal and marine environments, including their physical, atmospheric, and biological components, to the extent practicable;

(2) Does not inhibit or restrain orderly development of OCS mineral or energy resources; and

(3) Avoids serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), or property (including sites, structures, or objects of historical or archaeological significance);

(4) Is otherwise consistent with subsection 8(p) of the OCS Lands Act; and

(5) MMS can effectively regulate.

(b) Based on the evaluation that we perform under paragraph (a) of this section, the MMS may authorize or reject, or authorize with modifications or stipulations, the proposed activity.

§ 285.1007 What process will MMS use for competitively offering an Alternate Use RUE?

(a) An Alternate Use RUE must be issued on a competitive basis unless MMS determines, after public notice of the proposed Alternate Use RUE, that there is no competitive interest.

(b) We will issue a public notice in the **Federal Register** to determine if there is competitive interest in using the proposed facility for alternate use activities. The MMS will specify a time period for members of the public to express competitive interest.

(c) If we receive indications of competitive interest within the published timeframe, we will proceed with a competitive offering. As part of such competitive offering, each competing applicant must submit a description of the types of activities proposed for the existing facility, as well as satisfactory evidence that the competing applicant qualifies to hold a lease or grant on the OCS, as required in §§ 285.106 and 285.107, by a date we specify. We may request additional information from competing applicants, as necessary, to adequately evaluate the competing proposals.

(d) We will evaluate all competing proposals to determine whether:

(1) The proposed activities are compatible with existing activities at the facility; and

(2) We have the expertise and resources available to regulate the activities effectively.

(e) We will evaluate all proposals under the requirements of NEPA, CZMA, and other applicable laws.

(f) Following our evaluation, we will select one or more acceptable proposals for activities involving the alternate use of an existing OCS facility, notify the competing applicants, and submit each acceptable proposal to the lessee and owner of the existing OCS facility. If the lessee and owner of the facility agree to accept a proposal, we will proceed to issue an Alternate Use RUE. If the lessee and owner of the facility are unwilling to accept any of the proposals that we deem acceptable, we will not issue an Alternate Use RUE.

§§ 285.1008—285.1009 [Reserved]

Alternate Use RUE Administration

§ 285.1010 How long may I conduct activities under an Alternate Use RUE?

(a) We will establish on a case-by-case basis, and set forth in the Alternate Use RUE, the length of time for which you are authorized to conduct activities approved in your Alternate Use RUE instrument.

(b) In establishing this term, MMS will consider the size and scale of the proposed alternate use activities, the type of alternate use activities, and any other relevant considerations.

(c) The MMS may authorize renewal of Alternate Use RUEs at its discretion.

§ 285.1011 What payments are required for an Alternate Use RUE?

We will establish rental or other payments for an Alternate Use RUE on a case-by-case basis, as set forth in the Alternate Use RUE grant, depending on our assessment of the following factors:

(a) The effect on the original OCS Lands Act approved activity;

(b) The size and scale of the proposed alternate use activities;

(c) The income, if any, expected to be generated from the proposed alternate use activities; and

(d) The type of alternate use activities.

§ 285.1012 What financial assurance is required for an Alternate Use RUE?

(a) The holder of an Alternate Use RUE will be required to secure financial assurances in an amount determined by MMS that is sufficient to cover all obligations under the Alternate Use RUE, including decommissioning obligations, and must retain such financial assurance amounts until all obligations have been fulfilled, as determined by MMS.

(b) We may revise financial assurance amounts, as necessary, to ensure that there is sufficient financial assurance to secure all obligations under the Alternate Use RUE.

(c) We may reduce the amount of the financial assurance that you must retain if it is not necessary to cover existing obligations under the Alternate Use RUE.

§ 285.1013 Is an Alternate Use RUE assignable?

(a) The MMS may authorize assignment of an Alternate Use RUE.

(b) To request assignment of an Alternate Use RUE, you must submit a written request for assignment that includes the following information:

(1) The MMS-assigned Alternate Use RUE number;

(2) The names of both the assignor and the assignee, if applicable;

(3) The names and telephone numbers of the contacts for both the assignor and the assignee;

(4) The names, titles, and signatures of the authorizing officials for both the assignor and the assignee;

(5) A statement affirming that the owner of the existing OCS facility and lessee of the lease in which the facility is located approve of the proposed assignment and assignee;

(6) A statement that the assignee agrees to comply with and to be bound by the terms and conditions of the Alternate Use RUE;

(7) Evidence required by § 285.107 that the assignee satisfies the requirements of § 285.106; and

(8) A statement on how the assignee will comply with the financial assurance requirements set forth in the Alternate Use RUE.

(c) The assignment takes effect on the date we approve your request.

(d) The assignor is liable for all obligations that accrue under an Alternate Use RUE before the date we approve your assignment request. An assignment approval by MMS does not relieve the assignor of liability for accrued obligations that the assignee, or a subsequent assignee, fail to perform.

(e) The assignee and each subsequent assignee are liable for all obligations that accrue under an Alternate Use RUE after the date we approve the assignment request.

§ 285.1014 When will MMS suspend an Alternate Use RUE?

(a) The MMS may suspend an Alternate Use RUE if:

(1) Necessary to comply with judicial decrees;

(2) Continued activities pursuant to the Alternate Use RUE pose an imminent threat of serious or irreparable harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(3) The suspension is necessary for reasons of national security or defense; or

(4) We have suspended or temporarily prohibited operation of the existing OCS facility that is subject to the Alternate Use RUE, and have determined that continued activities under the Alternate Use RUE are unsafe or cause undue interference with the operation of the original OCS Lands Act approved activity.

(b) A suspension will extend the term of your Alternate Use RUE grant for the period of the suspension.

§ 285.1015 How do I relinquish an Alternate Use RUE?

(a) You may voluntarily surrender an Alternate Use RUE by submitting a written request to us that includes the following:

(1) The name, address, e-mail address, and phone number of an authorized representative;

(2) The reason you are requesting relinquishment of the Alternate Use RUE;

(3) The MMS-assigned Alternate Use RUE number;

(4) The name of the associated OCS facility, its owner, and the lessee for the lease in which the OCS facility is located;

(5) The name, title, and signature of your authorizing official (which must match exactly the name, title, and signature in the MMS qualification records); and

(6) A statement that you will adhere to the decommissioning requirements in the Alternate Use RUE.

(b) We will not approve your relinquishment request until you have paid all outstanding rentals (or other payments) and fines.

(c) The relinquishment takes effect on the date we approve your request.

§ 285.1016 When will an Alternate Use RUE be cancelled?

The Secretary may cancel an Alternate Use RUE if it is determined, after notice and opportunity to be heard:

(a) You no longer qualify to hold an Alternate Use RUE;

(b) You failed to provide any additional financial assurance required by MMS, replace or provide additional coverage for a de-valued bond, or replace a lapsed or forfeited bond within the prescribed time period;

(c) Continued activity under the Alternate Use RUE is likely to cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(d) Continued activity under the Alternate Use RUE is determined to be adversely impacting the original OCS Lands Act approved activities on the existing OCS facility;

(e) You failed to comply with any of the terms and conditions of your approved Alternate Use RUE or your approved plan; or

(f) You otherwise failed to comply with applicable laws or regulations.

§ 285.1017 [Reserved]

Decommissioning an Alternate Use RUE

§ 285.1018 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?

(a) The holder of an Alternate Use RUE is responsible for all decommissioning obligations that accrue following the issuance of the Alternate Use RUE and which pertain to the Alternate Use RUE.

(b) The lessee under the lease originally issued under part 250 of this chapter will remain responsible for decommissioning obligations that accrued before issuance of the Alternate Use RUE, as well as for decommissioning obligations that accrue following issuance of the Alternate Use RUE to the extent associated with continued activities authorized under other parts of this subchapter.

§ 285.1019 What are the decommissioning requirements for an Alternate Use RUE?

(a) Decommissioning requirements will be determined by MMS on a case-by-case basis, and will be included in the terms of each Alternate Use RUE.

(b) Decommissioning activities must be completed within 1 year of termination of the Alternate Use RUE.

(c) If you fail to satisfy all decommissioning requirements within the prescribed time period, we will call for the forfeiture of your bond or other financial guarantee, and you will remain liable for all accidents or damages that might result from such failure.

PART 290—APPEAL PROCEDURES

■ 7. Revise the authority citation for part 290 to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 43 U.S.C. 1331

■ 8. Revise the last sentence in § 290.2 to read as follows:

§ 290.2 Who may appeal?

* * * A request for reconsideration of an MMS decision concerning a lease bid, authorized in 30 CFR 256.47(e)(3), 281.21(a)(1), or 285.118(c), is not subject to the procedures found in this part.

[FR Doc. E9–9462 Filed 4–22–09; 1:15 pm]

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