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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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25232; Directorate Identifier 2006–NM–106–AD; Amendment 39–14935; AD 2007–04–04]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. This AD requires repetitive inspections of the wing top skin under the rib 0 joint strap, and related investigative and corrective actions if necessary. This AD results from a report of a significant crack in the wing top skin under the rib 0 joint strap. We are issuing this AD to detect and correct corrosion and cracking in that area, which could result in reduced structural integrity of the wing.

DATES: This AD becomes effective March 21, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 21, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That NPRM was published in the **Federal Register** on July 3, 2006 (71 FR 37868). That NPRM proposed to require repetitive inspections of the wing top skin under the rib 0 joint strap, and related investigative and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment received.

Request for Posting of Service Information

One commenter, the Modification and Replacement Parts Association (MARPA), requests that we revise our procedures for incorporation by reference (IBR) of service information in ADs. MARPA states: ''Typically airworthiness directives are based upon service information originating with the type certificate holder or its suppliers. Manufacturer service documents are privately authored instruments generally enjoying copyright protection against duplication and distribution. When a service document is incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 into a public document such as an airworthiness directive, it loses its private, protected status and becomes itself a public document. If a service document is used as a mandatory element of compliance it should not simply be referenced, but should be incorporated into the regulatory document. Public laws by definition must be public which means they cannot rely upon private writings.

''Incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS) keyed to the action that incorporates them. The stated purpose of the **Federal Register** incorporation by reference method is brevity; to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals. Traditionally, ''affected individuals'' has meant aircraft owners and operators who are generally provided service information by the manufacturer. However, a new class of affected individuals has emerged since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. This new class includes maintenance and repair organizations (MRO), component servicing and repair shops, parts purveyors and distributors and organizations manufacturing or servicing alternatively certified parts under 14 CFR 21.303 (PMA). Further, the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper.

''We therefore request that the service documents deemed essential to the accomplishment of this proposed action be (1) Incorporated by reference into the regulatory instrument, and (2) published in the DMS.''

We acknowledge MARPA's requests. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by

reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD, per inspection cycle.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost per inspection
Inspection	6	$80	$0	$480	10	$4,800

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–04–04 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14935. Docket No. FAA–2006–25232; Directorate Identifier 2006–NM–106–AD.

Effective Date

(a) This AD becomes effective March 21, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAE 146–100A, –200A, and –300A series airplanes; and Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; as identified in BAE Systems (Operations) Limited Alert Inspection Service Bulletin ISB.57–a071, dated April 12, 2006.

Unsafe Condition

(d) This AD results from a report of a significant crack in the wing top skin under the rib 0 joint strap. We are issuing this AD to detect and correct corrosion and cracking in that area, which could result in reduced structural integrity of the wing.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(f) Inspect the airplane at the applicable time specified in paragraph 1.D. ''Compliance'' of BAE Systems (Operations) Limited Alert Inspection Service Bulletin ISB.57–a071, dated April 12, 2006, except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. The inspection required by this paragraph involves an ultrasonic inspection for defects, including corrosion and cracking, of the wing top skin under the rib 0 joint strap at the outer row of fasteners, by doing all applicable actions specified in the Accomplishment Instructions of the service bulletin. Do all applicable related investigative and corrective actions before further flight in accordance with the service bulletin, except as required by paragraph (g) of this AD. Repeat the inspection at intervals not to exceed 4,000 flight cycles or 24 months, whichever occurs first.

Exceptions to Service Bulletin Specifications

(g) BAE Systems (Operations) Limited Alert Inspection Service Bulletin ISB.57–a071, dated April 12, 2006, specifies two provisions not specified in this AD.

(1) No inspection report is required by this AD.

(2) As an option, the service bulletin allows repairs specified in an approved BAE Systems repair scheme. This AD instead requires any repair using this option to be done in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA; or the European Aviation Safety Agency (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) The subject of this AD is also addressed in European Aviation Safety Agency emergency airworthiness directive 2006–0091–E, dated April 20, 2006.

Material Incorporated by Reference

(j) You must use BAE Systems (Operations) Limited Alert Inspection Service Bulletin ISB.57–a071, dated April 12, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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/cfr/ibr-locations.html.*

Issued in Renton, Washington, on February 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2414 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26084; Directorate Identifier 2006–NM–063–AD; Amendment 39–14937; AD 2007–04–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–62, DC–8–63, DC–8–62F, and DC–8–63F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–8–62, DC–8–63, DC–8–62F, and DC–8–63F airplanes. This AD requires revising the wiring for the engine thrust brake circuit and indicating circuit and other specified actions, or rerouting the wiring at plug P1–1762A on the electrical power center generator control panel, as necessary. This AD results from the determination that the thrust reverser systems on these airplanes do not adequately preclude inadvertent deployment of the thrust reversers. We are issuing this AD to prevent inadvertent deployment of the thrust reversers during takeoff or landing, which could result in loss of control of the airplane.

DATES: This AD becomes effective March 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 21, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC–8–62, DC–8–63, DC–8–62F, and DC–8–63F airplanes. That NPRM was published in the **Federal Register** on October 19, 2006 (71 FR 61690). That NPRM proposed to require revising the wiring for the engine thrust brake circuit and indicating circuit and other specified actions, or rerouting the wiring at plug P1–1762A on the electrical power center generator control panel, as necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 70 airplanes of the affected design in the worldwide fleet. This AD affects about 45 airplanes of U.S. registry. The required actions take between 1 and 5 work hours per airplane, depending on airplane configuration, at an average labor rate of $80 per work hour. For a certain airplane configuration, required parts cost about $9 per airplane. For a certain other airplane configuration, required parts cost about $2,825 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is between $4,005 and $145,125, or between $89 and $3,225 per airplane.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–04–06 McDonnell Douglas: Amendment 39–14937. Docket No. FAA–2006–26084; Directorate Identifier 2006–NM–063–AD.

Effective Date

(a) This AD becomes effective March 21, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–8–62 and DC–8–63 airplanes and Model DC–8–62F and DC–8–63F airplanes, certificated in any category; as identified in McDonnell Douglas DC–8 Service Bulletin 78–95, Revision 2, dated March 10, 1971.

Unsafe Condition

(d) This AD results from the determination that the thrust reverser systems on McDonnell Douglas Model DC–8–62, DC–8–63, DC–8–62F, and DC–8–63F airplanes do not adequately preclude inadvertent deployment of the thrust reversers. We are issuing this AD to prevent inadvertent deployment of the thrust reversers during takeoff or landing, which could result in loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification of Engine Thrust Brake Circuitry

(f) Within 27 months after the effective date of this AD, do the applicable action specified in paragraph (f)(1) or (f)(2) of this AD, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of McDonnell Douglas DC–8 Service Bulletin 78–95, Revision 2, dated March 10, 1971; or Revision 1, dated December 29, 1970.

(1) Revise the wiring for the engine thrust brake circuit and indicating circuit, and do all other specified actions before further flight after revising the wiring.

(2) Reroute the wiring at plug P1–1762A on the electrical power center generator control panel.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(h) You must use McDonnell Douglas DC–8 Service Bulletin 78–95, Revision 2, dated March 10, 1971; or McDonnell Douglas DC–8 Service Bulletin 78–95, Revision 1, dated December 29, 1970; to perform the actions that are required by this AD, unless the AD specifies otherwise. McDonnell Douglas DC–8 Service Bulletin 78–95, Revision 2, dated March 10, 1971, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1, 2, 16, 17	2	March 10, 1971.
3–15, 18–23	1	December 29, 1970.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 2, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2416 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26045; Directorate Identifier 2006–NM–145–AD; Amendment 39–14936; AD 2007–04–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A300 B2 and B4 series airplanes. That AD currently requires modifying the wiring of the autopilot pitch torque limiter switch. This new AD adds repetitive operational tests of the autopilot disconnection upon pitch override, and related investigative/corrective actions if necessary. This AD results from the determination that such operational tests are necessary following the modification. We are issuing this AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight of the airplane.

DATES: This AD becomes effective March 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 21, 2007.

On August 1, 2005 (70 FR 36833, June 27, 2005), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–22–0117, dated September 7, 2004.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005–13–33, amendment 39–14170 (70 FR 36833, June 27, 2005). The existing AD applies to certain Airbus Model A300 B2 and B4 series airplanes. That NPRM was published in the **Federal Register** on October 12, 2006 (71 FR 60087). That NPRM proposed to continue to require modifying the wiring of the autopilot pitch torque limiter switch. That NPRM also proposed to require repetitive operational tests of the autopilot disconnection upon pitch override, and related investigative/corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Publish/Incorporate by Reference in the NPRM

The Modification and Replacement Parts Association (MARPA) states that, typically, ADs are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an AD, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated by reference (IBR) service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in the DMS prior to the release of the final rule.

We acknowledge MARPA's comment concerning IBR. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

Request To State FAA Intent To Incorporate Certain Service Bulletin(s) by Reference in the NPRM

MARPA requests that, during the NPRM stage of AD rulemaking, the FAA state its intent to IBR any relevant

service information. MARPA states that without such a statement in the NPRM, it is unclear whether the relevant service information will be incorporated by reference in the final rule.

The FAA does not concur with the commenter's request. When we reference certain service information in a proposed AD, the public can assume we intend to IBR that service information, as required by the Office of the Federal Register. No change to this final rule is necessary in regard to this request.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD affects about 29 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Modification (Required by AD 2005–13–33).	Between 8 and 11	$80	Between $1,700 and $4,280.	Between $2,340 and $5,160.	Between $67,860 and $149,640.
Operational test (New Requirement) ..	4	80	$0	$320, per test cycle ...	$9,280, per test cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14170 (70 FR 36833, June 27, 2005) and by adding the following new airworthiness directive (AD):

2007–04–05 Airbus: Amendment 39–14936. Docket No. FAA–2006–26045; Directorate Identifier 2006–NM–145–AD.

Effective Date

(a) This AD becomes effective March 21, 2007.

Affected ADs

(b) This AD supersedes AD 2005–13–33.

Applicability

(c) This AD applies to Airbus A300 airplanes, all certified models and all serial numbers, certificated in any category, except for:

(1) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes, Model A300 B4–605R and B4–622R airplanes, A300 F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes.

(2) Airbus Models A300 B4–220, A300 B4–203, and A300 B2–203 airplanes in forward facing crew cockpit certified configuration.

Unsafe Condition

(d) This AD results from the determination that repetitive operational tests are necessary following incorporation of the wiring modification required by AD 2005–13–33. We are issuing this AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2005–13–33

Modification

(f) Within 20 months after August 1, 2005 (the effective date of AD 2005–13–33), modify the wiring of the autopilot pitch torque limiter switch, by doing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–22–0117, dated September 7, 2004; Revision 01, dated April 20, 2005; or Revision 02, dated September 14, 2005. After the effective date of this AD, only Revision 02 may be used.

New Requirements of This AD

Repetitive Operational Tests

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do an operational test of the autopilot disconnection upon pitch override, and do all applicable related investigative and corrective actions. Do the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–22–0118, excluding Appendix 01, dated May 18, 2005; except that this AD does not require a report of the inspection results. Do all applicable related investigative and

corrective actions before further flight. Repeat the test thereafter at intervals not to exceed 2,000 flight hours.

(1) For airplanes modified before the effective date of this AD in accordance with Airbus Service Bulletin A300–22–0117, dated September 7, 2004: Do the initial test within 2,000 flight hours after the effective date of this AD.

(2) For airplanes modified in accordance with Airbus Service Bulletin A300–22–0117, Revision 01, dated April 20, 2005; or Revision 02, dated September 14, 2005: Do the initial test within 2,000 flight hours after the modification required by paragraph (f) of this AD, or within 2,000 flight hours after the effective date of this AD, whichever occurs later.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 2005–13–33 are not approved as AMOCs with this AD.

Related Information

(i) French airworthiness directive F–2005–107, dated July 6, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use the service information identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300–22–0117	Original	September 7, 2004.
A300–22–0117	01	April 20, 2005.
A300–22–0117	02	September 14, 2005.
A300–22–0118, excluding Appendix 01	Original	May 18, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of the documents identified in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300–22–0117	01	April 20, 2005.
A300–22–0117	02	September 14, 2005.
A300–22–0118, excluding Appendix 01	Original	May 18, 2005.

(2) On August 1, 2005 (70 FR 36833, June 27, 2005), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–22–0117, dated September 7, 2004.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2412 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD; Amendment 39–14940; AD 2005–17–17R1]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2F Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for Turbomeca S.A. Arrius 2F turboshaft engines. That AD currently requires replacing certain O-rings on the check valve piston in the lubrication unit, at repetitive intervals. This AD requires the same actions except it reduces the applicability from all Turbomeca S.A. Arrius 2F turboshaft engines, to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated modification Tf75. This AD results from Turbomeca S.A. introducing a check valve piston design requiring no O-ring. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

DATES: This AD becomes effective March 21, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 21, 2007.

ADDRESSES: You can get the service information identified in this AD from Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with

a proposed AD. The proposed AD applies to Turbomeca S.A. Arrius 2F turboshaft engines. We published the proposed AD in the **Federal Register** on November 8, 2006 (71 FR 65430). That action proposed to require replacing certain O-rings on the check valve piston in the lubrication unit, at repetitive intervals. This AD requires the same actions except it reduces the applicability from all Turbomeca S.A. Arrius 2F turboshaft engines, to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated modification Tf75.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect about 124 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per engine to perform the actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $100 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators, for one O-ring replacement to be $22,320 for the fleet, or $180 per engine.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing Amendment 14238 (70 FR 50164, August 26, 2005), and by adding a new airworthiness directive, Amendment 39–14940, to read as follows:

2005–17–17R1 Turbomeca S.A.: Amendment 39–14940; Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 21, 2007.

Affected ADs

(b) This AD revises AD 2005–17–17, Amendment 39–14238.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated modification Tf75. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Unsafe Condition

(d) This AD results from Turbomeca S.A. introducing a check valve piston design requiring no O-ring. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

O-ring Replacement

(f) Replace the O-ring on the check valve piston in the lubrication unit at the intervals specified in Table 1 of this AD. Use the ''Instructions to be Incorporated,'' 2.A. through 2.C. (2) of Turbomeca Alert Service Bulletin No. A319 79 4802, Update No. 1, dated April 3, 2006, to replace the O-ring.

TABLE 1.—COMPLIANCE TIMES FOR O-RING REPLACEMENT

If the class of oil is:	Then replace the O-ring by the later of:	Thereafter, replace the O-ring within:
(1) HTS or unknown	300 hours time-since-new (TSN) or 50 hours after the effective date of this AD.	300 hours time-since-last replacement (TSR).
(2) STD	450 hours TSN or 50 hours after the effective date of this AD.	500 hours TSR.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175, fax (781) 238–7199; e-mail: *christopher.spinney@faa.gov* for more information about this AD. European Aviation Safety Agency AD No. 2006–0141, dated May 29, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Turbomeca Alert Service Bulletin No. A319 79 4802, Update No. 1, dated April 3, 2006, to perform the replacements required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information. You may review copies 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/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on February 7, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–2425 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26241; Directorate Identifier 2006–NM–155–AD; Amendment 39–14938; AD 2007–04–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD requires inspecting to determine the manufacturer's date of certain V-band clamps on the engine exhaust shroud assembly, and doing related investigative/corrective actions if necessary. This AD results from a report of a discrepancy found during a maintenance inspection on a V-band clamp located on the engine exhaust duct shroud. The clamp ends were touching (although the correct fastener torque had been applied), resulting in reduced clamp force on the flanges. We are issuing this AD to prevent vibration in the duct shroud and fretting of the V-band clamp and flanges, which could result in cracking of the flanges and consequent release of hot exhaust gases from the engine tailpipe and damage to adjacent structure. This situation could trigger the fire warning system and result in an in-flight emergency, such as the flightcrew shutting down the engine and activating the fire suppression system.

DATES: This AD becomes effective March 21, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 21, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC–8–400 series airplanes. That NPRM was published in the **Federal Register** on November 3, 2006 (71 FR 64651). That NPRM proposed to require inspecting to determine the manufacturer's date of certain V-band clamps on the engine exhaust shroud assembly, and doing related investigative/corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD affects about 21 airplanes of U.S. registry. The required actions take about 3 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost is minimal. Based on these figures, the estimated cost of this AD for U.S. operators is $5,040, or $240 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–04–07 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14938. FAA–2006–26241; Directorate Identifier 2006–NM–155–AD.

Effective Date

(a) This AD becomes effective March 21, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; as identified in Bombardier Service Bulletin 84–78–01, Revision 'A,' dated September 15, 2005.

Unsafe Condition

(d) This AD results from a report of a discrepancy found during a maintenance inspection on a V-band clamp located on the engine exhaust duct shroud. The clamp ends were touching (although the correct fastener torque had been applied), resulting in reduced clamp force on the flanges. We are issuing this AD to prevent vibration in the duct shroud and fretting of the V-band clamp and flanges, which could result in cracking of the flanges and consequent release of hot exhaust gases from the engine tailpipe and damage to adjacent structure. This situation could trigger the fire warning system and result in an in-flight emergency, such as the flightcrew shutting down the engine and activating the fire suppression system.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection/Investigative and Corrective Actions

(f) Within 5,000 flight hours after the effective date of this AD: Inspect to determine the part number (P/N) of the V-band clamps on the engine exhaust duct shroud in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–78–01, Revision 'A,' dated September 15, 2005. For any V-band clamp having P/N VC1642A–2030–A or VC1642A–1875–A, before further flight, determine the manufacturer's date and do all applicable related investigative and corrective actions (including inspecting the flange of the shroud assemblies for discrepancies), by accomplishing all the actions specified in the Accomplishment Instructions of the service bulletin; except as provided by paragraph (g) of this AD. Do all applicable related investigative and corrective actions before further flight.

(g) If, during the accomplishment of the corrective actions required by paragraph (f) of this AD, the service bulletin specifies contacting the manufacturer for repair instructions, before further flight, repair in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Actions Accomplished According to Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD according to Bombardier Service Bulletin 84–78–01, dated March 22, 2005, are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install a V-band clamp, P/N VC1642A–2030–A or VC1642A–1875–A, with a manufacturer batch stamp dated before ''08–02,'' on any airplane.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Canadian airworthiness directive CF–2006–06, dated April 4, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 84–78–01, Revision 'A,' dated September 15, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 2, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2411 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23786; Directorate Identifier 2006–CE–11-AD; Amendment 39–14933; AD 2007–04–02]

RIN 2120–AA64

Airworthiness Directives; CTRM Aviation Sdn. Bhd. (Formerly Eagle Aircraft (Malaysia) Sdn. Bhd.) Model Eagle 150B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2004–11–04, which applies to all CTRM Aviation Sdn. Bhd. (Formerly Eagle Aircraft (Malaysia) Sdn. Bhd.) Model Eagle 150B airplanes. AD 2004–11–04 currently requires you to inspect certain canard inboard flap hinge support brackets (initially before further flight and repetitively before the first flight of each day) and perform any necessary follow-up action. This AD results from mandatory continuing

airworthiness information (MCAI) issued by the airworthiness authority for Malaysia to require the installation of improved design inboard flap hinge brackets as terminating action for the repetitive inspections. Consequently, this AD retains the requirement that you inspect certain canard inboard flap hinge support brackets (initially before further flight and repetitively before the first flight of each day) and then requires that you replace the parts with new design inboard flap hinge brackets as terminating action for the repetitive inspections or if cracks are found. We are issuing this AD to detect and correct cracks in the canard inboard flap hinge support brackets, which could result in loss of retention of controls and consequently, loss of airplane control.

DATES: This AD becomes effective on March 21, 2007.

As of March 21, 2007, the Director of the Federal Register approved the incorporation by reference of Eagle Aircraft Mandatory Service Bulletin SB 1120, Original, Effective Date June 3, 2005.

On June 4, 2004 (69 FR 30189, May 27, 2004), the Director of the Federal Register previously approved the incorporation by reference of Eagle Aircraft Mandatory Service Bulletin SB 1109, Revision Original, Effective Date August 29, 2003.

ADDRESSES: To get the service information identified in this AD, contact CTRM Aviation Sdn. Bhd. (formerly known as Eagle Aircraft (Malaysia) Sdn. Bhd.), Locked Bag 1028, Pejabat Pos Besar Melaka, 75150 Melaka, Malaysia; telephone: 06 317 1007; fax: 06 317 7023.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–23786; Directorate Identifier 2006-CE–11–AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; fax: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On July 3, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all CTRM Aviation Sdn. Bhd. (Formerly Eagle Aircraft (Malaysia) Sdn. Bhd.) Model Eagle 150B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 11, 2006 (71 FR 39020). The NPRM proposed to retain the requirement of AD 2004–11–04 that you inspect certain canard inboard flap hinge support brackets (initially before further flight and repetitively before the first flight of each day) and then replace the parts with new design inboard flap hinge brackets as terminating action for the repetitive inspections or if cracks are found.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Service Documents and Parts Manufacturer Approval

Jack Buster of the Modification and Replacement Parts Association (MARPA) requests the following be incorporated into the regulatory action:

1. Service documents deemed essential to the accomplishment of this proposed action be incorporated by reference and published in the Docket Management System (DMS); and

2. The issue of parts manufacturer approval (PMA) be addressed in the proposed action and that all Directorates within the FAA treat the issue the same per Section 1, paragraph (b)(10) of Executive Order 12866.

We agree that the service documents are essential and should be incorporated by reference. However, we do not incorporate by reference any document in a proposed AD action; instead we incorporate by reference the document in the final rule. Since we are issuing the proposal as a final rule AD action, the service information referenced in this action will be incorporated by reference.

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

On the PMA issue, Mr. Buster's comments are timely in that the FAA is currently reviewing this issue as it applies to all products: Transport airplanes, commuter airplanes, general aviation airplanes, engines and propellers, rotorcraft, and appliances. The FAA acknowledges that there are different ways of addressing this issue to ensure that unsafe PMA parts are identified and addressed. Once we have thoroughly examined all aspects of this issue including input from industry and have made a final determination, we will consider developing a standardized approach and standardized language on how to address PMA parts in airworthiness directives.

We have determined that to delay this AD action would be inappropriate since an unsafe condition exists and that replacement of certain parts must be done to ensure continued safety. Therefore, we have made no change to the AD in this regard.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 13 airplanes in the U.S. registry.

We estimate the following costs to do each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 = $80	Not Applicable	$80	$1,040

We estimate the following costs to do the replacements that would be required as a result of the inspection or the mandatory replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 work-hours × $80 = $800	$1,700	$2,500	$32,500

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 AD.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–23786; Directorate Identifier 2006–CE–11–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) AD 2004–11–04; Amendment 39–13649 (69 FR 30189, May 27, 2004), and adding the following new AD:

2007–04–02 CTRM Aviation Sdn. Bhd. (Formerly Eagle Aircraft (Malaysia) Sdn. Bhd.): Amendment 39–14933; Docket No. FAA–2006–23786; Directorate Identifier 2006–CE–11–AD.

Effective Date

(a) This AD becomes effective on March 21, 2007.

Affected ADs

(b) This AD supersedes AD 2004–11–04; Amendment 39–13649.

Applicability

(c) This AD affects Model Eagle 150B airplanes, all serial numbers, that are certificated in any category.

Unsafe Condition

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Malaysia. The actions specified in this AD are intended to detect and correct cracks in the canard inboard flap hinge support brackets, which could result in loss of retention of controls and consequently, loss of airplane control.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the gusset weld area of the canard inboard flap hinge support brackets, part number (P/N) 5731D01–05 and P/N 5731D01–02, for cracked, lifted, or missing paint in the area of the weld or suspected cracks.	Initially inspect before the next flight after June 4, 2004 (the effective date of AD 2004–11–04). Repetitively inspect thereafter before the first flight of each day.	Follow Eagle Aircraft Mandatory Service Bulletin SB 1109, Revision Original, Effective Date August 29, 2003.
(2) If cracked, lifted, or missing paint in the area of the weld or suspected cracks are found during any inspection required in paragraph (e)(1) of this AD, inspect the affected bracket more fully as specified in the service bulletin.	Before further flight after any inspection required by paragraph (e)(1) of this AD, where cracked, lifted, or missing paint in the area of the weld or suspected cracks are found.	Follow Eagle Aircraft Mandatory Service Bulletin SB 1109, Revision Original, Effective Date August 29, 2003.
(3) Replace any canard inboard flap hinge support brackets, P/N 5731D01–05 and P/N 5731D01–02, with new design inboard flap hinge brackets, P/N 5731D05–01 and P/N 5731D06–01.	Before further flight after any inspection where cracks are found or within 6 months after March 21, 2007 (the effective date of this AD), whichever occurs first. This action terminates the repetitive inspections required in paragraph (e)(1) of this AD.	Follow Eagle Aircraft Mandatory Service Bulletin SB 1120, Original, Effective Date June 3, 2005.
(4) Do not install any canard inboard flap hinge support brackets, P/N 5731D01–05 and P/N 5731D01–02	As of March 21, 2007 (the effective date of this AD).	Not Applicable.

(f) The Australian AD allows an appropriately trained pilot to perform the visual inspections of the canard inboard flap hinge support brackets. Although the Malaysian AD does not specifically state this, it does refer to the Australian AD. Regardless, the Federal Aviation Regulations (14 CFR 43.3) only allow the pilot to perform preventive maintenance as described in 14 CFR part 43, App. A, paragraph (c). These visual inspections are not considered preventive maintenance under 14 CFR part 43, App. A, paragraph (c). Therefore, an appropriately-rated mechanic must perform all actions of this AD.

Special Flight Permit

(g) Special flight permits are not allowed for this AD. Part 39 of the Federal Aviation Regulations (14 CFR part 39) provides that FAA may issue special flight permits for ADs, unless otherwise specified in the individual AD. The FAA has determined that the safety issue is severe enough that failure of the canard inboard flap hinge support brackets must be prevented and cracks in this area must be detected before further operation.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Standards Staff, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(i) AMOCs approved for AD 2004–11–04 are approved for this AD.

Related Information

(j) Malaysian AD No. CAM AD 001–01–2004 R1, dated December 23, 2005; and Australian AD No. CASA AD/X–TS/5, dated August 21, 2003, revised April 2, 2004, also address the subject of this AD.

Material Incorporated by Reference

(k) You must use Eagle Aircraft Mandatory Service Bulletin SB 1120, Original, Effective Date June 3, 2005; and Eagle Aircraft Mandatory Service Bulletin SB 1109, Revision Original, Effective Date August 29, 2003 to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Eagle Aircraft Mandatory Service Bulletin SB 1120, Original, Effective Date June 3, 2005, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On June 4, 2004 (69 FR 30189, May 27, 2004), the Director of the Federal Register previously approved the incorporation by reference of Eagle Aircraft Mandatory Service Bulletin SB 1109, Revision Original, Effective Date August 29, 2003.

(3) For service information identified in this AD, contact CTRM Aviation Sdn. Bhd. (formerly known as Eagle Aircraft Sdn. Bhd.), Locked Bag 1028, Pejabat Pos Besar Melaka, 75150 Melaka, Malaysia; telephone: 06 317 1007; fax: 06 317 7023.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; 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.*

Issued in Kansas City, Missouri, on February 5, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2319 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26285; Directorate Identifier 2006–CE–69-AD; Amendment 39–14932; AD 2007–04–01]

RIN 2120-AA64

Airworthiness Directives; Pacific Aerospace Corporation Ltd Model 750XL Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued 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 possible installation of undersize rivets in the fuselage roof at STN 180.85, BL 19.67, WL 86.2. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 21, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 11, 2006 (71 FR 71499). That NPRM proposed to require that you inspect the rivets in the fuselage roof at STN 180.85, BL 19.67, WL 86.2, and replace undersize rivets.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

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 a U.S. court of law. 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 required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also

estimate that it will take about 16 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $100 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 parts. 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 this AD to the U.S. operators to be $9,660, or $1,380 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 AD will not have federalism implications under Executive Order 13132. This AD will 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 AD:

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

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

(3) 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 AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

* * * **Pacific Aerospace Corporation Ltd:** Amendment 39–14932; Docket No. FAA–2006–26285; Directorate Identifier 2006–CE–69–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 21, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 750XL airplanes, serial numbers 102, 104 through 120, 122, and 125, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states the finding of the possible installation of undersize rivets in the fuselage roof at STN 180.85, BL 19.67, WL 86.2.

Actions and Compliance

(e) Unless already done, within the next 150 hours time-in-service after the effective date of this AD, inspect the rivets in the fuselage roof at STN 180.85, BL 19.67, WL 86.2, and replace undersize rivets, following PAC Pacific Aerospace Corporation Mandatory Service Bulletin PACSB/XL/019, Date Issued: April 21, 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(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 (44 U.S.C. 3501 et. seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to MCAI New Zealand Civil Aviation Authority AD DCA/750XL/8, Drafted: May 9, 2006; Effective Date: August 31, 2006; and PAC Pacific Aerospace Corporation Mandatory Service Bulletin PACSB/XL/019, Date Issued: April 21, 2006, for related information.

Material Incorporated by Reference

(h) You must use PAC Pacific Aerospace Corporation Mandatory Service Bulletin PACSB/XL/019, Date Issued: April 21, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Pacific Aerospace Corporation Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand; telephone: 011 64 7 843 6144; fax: 011 64 7 843 6134.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; 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/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on February 5, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2318 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25925; Directorate Identifier 2006–NM–167–AD; Amendment 39–14934; AD 2007–04–03]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD currently requires repetitive inspections of the pitot static heating relay K0057 and corrective actions if necessary. That AD also requires doing a terminating modification, which ends the repetitive inspections. This new AD removes the existing repetitive inspections and instead requires a one-time detailed inspection for damage of the relay, relay socket, and silicone gasket; applicable corrective actions; and a new action to modify and re-identify the relay socket. This AD also revises the existing terminating modification—replacing/rerouting the windowsill drain hoses—into two parts, each with a different, reduced compliance time. This AD results from a report of smoke in the cockpit. We are issuing this AD to prevent ignition of a windowsill drain hose by an overheated relay, which could cause fire and smoke in the cockpit.

DATES: This AD becomes effective March 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 21, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–04–02, amendment 39–14483 (71 FR 9434, February 24, 2006). The existing AD applies to all EMBRAER Model EMB–135 airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That NPRM was published in the **Federal Register** on September 28, 2006 (71 FR 56900). That NPRM proposed to remove the existing repetitive inspections and instead to require a one-time detailed inspection for damage of the relay, relay socket, and silicone gasket; applicable corrective actions; and a new action to modify and re-identify the relay socket. That NPRM also proposed to revise the existing terminating modification—replacing/rerouting the windowsill drain hoses—into two parts, each with a different, reduced compliance time.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Allow Use of Existing Alternative Method of Compliance (AMOC)

One commenter, ExpressJet Inc., requests that we allow for termination of certain repetitive inspections described in the NPRM. The commenter states that it has received AMOC number ANM–116–06–244 to AD 2006–04–02, which allows ending the repetitive relay inspections described in EMBRAER Service Bulletin 145–30–0042 once EMBRAER Alert Service Bulletin 145–30–A050 is accomplished; and, further, that doing EMBRAER Service Bulletin 145–30–0041 also provides terminating action for the repetitive inspections. The commenter states that paragraph (f) of the NPRM proposes to require repetitive inspections as described in EMBRAER Alert Service Bulletin 145–30–A050 until EMBRAER Service Bulletin 145–30–0041 is accomplished, and requests that we revise the NPRM to allow those inspections to be terminated if the modification described in either EMBRAER Alert Service Bulletin 145–30–A050 or EMBRAER Service Bulletin 145–30–0041 is accomplished in accordance with the AMOC.

We find that clarification is necessary. This AD cancels the repetitive inspections required by AD 2006–04–02, which cites EMBRAER Service Bulletins 145LEG–30–0012 and 145–30–0042, both dated April 18, 2005, as the appropriate sources of service information for doing the repetitive inspections. EMBRAER Alert Service Bulletins 145LEG–30–A017 and 145–30–A050, both dated May 31, 2006, supersede Service Bulletins 145LEG–30–0012 and 145–30–0042, respectively, and replace the repetitive inspections with a one-time only inspection. Therefore, as of the effective date of this AD, the repetitive inspections are no longer required. No change is needed to the AD in this regard.

Request To Change Incorporation of Certain Information

One commenter, the Modification and Replacement Parts Association (MARPA), requests that we revise our procedures for incorporation by reference (IBR) of service information in ADs. MARPA asserts that ADs are frequently derived from privately-authored, copyright-protected manufacturer service documents, but that when such a document is incorporated by reference into a public document like an AD, it loses its private, protected status and becomes itself a public document. MARPA continues that public laws by definition must be public and cannot rely for

compliance upon private writings, and that unless such writings are incorporated by reference, a court of law will not consider them in interpreting the AD and might invalidate the AD. MARPA contends that IBR service documents should be published in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA states that IBR was adopted to relieve the **Federal Register** from publishing documents already held by affected individuals, which traditionally meant aircraft owners and operators who received service information from manufacturers. However, MARPA contends that a new affected class of maintenance and repair organizations (MRO), component service and repair shops, parts purveyors and distributors, and organizations that manufacture or service alternatively certified parts under section 21.303 of the Federal Aviation Regulations (14 CFR 21.303), now perform a majority of aircraft maintenance. MARPA continues that service information distributed to owners and operators who are financing or leasing institutions may not reach this class, who may actually be responsible for accomplishing ADs. MARPA therefore requests that service documents deemed essential to accomplishing this proposed action be (1) incorporated by reference into the regulatory instrument, and (2) published in the DMS.

We acknowledge the commenter's requests. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

Request To Comply With Draft FAA Order 8040.2

MARPA asserts that the NPRM, as written, does not comply with proposed FAA Order 8040.2 which states, ''Parts Manufacturer Approval (PMA). MCAI that require replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identicality. We have determined that any parts approved under this regulation and installed should be subject to the actions of our AD and included in the applicability of our AD.'' MARPA contends that including certain language from proposed FAA Order 8040.2 to permit the use of any PMA part and including such parts in the applicability of the AD would resolve the issue of possibly defective PMA parts being installed and not affected by the proposed action.

The NPRM did not address PMA parts, as provided in draft FAA Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs; therefore we have not changed the AD in this regard.

Request To Revise Specification of Replacement Parts

MARPA requests that we revisit the manner in which PMA parts are addressed in the NPRM. MARPA asserts that type certificate holders, particularly foreign manufacturers, almost universally ignore any possible PMA parts while frequently specifying replacing a part with a part having a different part number as a corrective action in their service documents. MARPA contends that this ''runs afoul of 14 CFR § 21.303,'' which permits development, certification, and installation of PMA parts. MARPA expresses concern that parts having different part numbers will not be subject to the AD if part numbers are not specified, asserting that if a part number is used to designate defective parts, the AD must address any defective PMA parts that have different part numbers but the same defects. MARPA continues that mandating only one part is not generally favored and can prevent installing perfectly good parts while prohibiting development of new parts as permitted under 14 CFR 21.303. MARPA asserts that identifying specifically numbered parts for installation should be only one of several methods of addressing the problem. MARPA continues that another directorate has published ADs containing language permitting the use of ''FAA-approved equivalent parts,'' which differs markedly from the policies of the other directorates. Because of this difference, MARPA claims that the requirements of Executive Order 12866 for all agencies to act uniformly on a given issue are not being met. MARPA therefore requests that the NPRM be modified to consider possibly defective PMA parts and to permit the use of PMA parts meeting the ''new and improved'' criteria pursuant to existing laws and regulations and the issues set forth in the current proposed regulatory action.

The FAA recognizes the need for standardization of this issue and is currently in the process of reviewing issues that address the use of PMAs in ADs at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action/item	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection	1	None	$80	651	$52,080

ESTIMATED COSTS—Continued

Action/item	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification/reidentification of relay socket	1	[1] $10	90	651	58,590
Replacement of drain hoses [2]	2	268	428	651	278,628

[1] Operator-supplied parts.
[2] Includes rerouting of drain hoses of cockpit horizontal linings, if applicable.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14483 (71 FR 9434, February 24, 2006) and by adding the following new airworthiness directive (AD):

2007–04–03 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14934. Docket No. FAA–2006–25925; Directorate Identifier 2006–NM–167–AD.

Effective Date

(a) This AD becomes effective March 21, 2007.

Affected ADs

(b) This AD supersedes AD 2006–04–02.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report of smoke in the cockpit. We are issuing this AD to prevent ignition of a windowsill drain hose by an overheated relay, which could cause fire and smoke in the cockpit.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Modification of Relay/Relay Socket, and Corrective Actions

(f) Within 600 flight hours or 180 days after the effective date of this AD, whichever occurs first: Do a one-time detailed inspection for discrepancies of the pitot static heating relay K0057, relay socket XK0057, and silicone gasket; modify and re-identify the XK0057 relay socket; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG–30–A017, dated May 31, 2006 (for Model EMB–135BJ airplanes); or EMBRAER Alert Service Bulletin 145–30–A050, dated May 31, 2006 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes); as applicable; except where the service bulletins specify to contact the manufacturer if damage to components for the relay support is found, this AD does not require that action. All applicable corrective actions must be done before further flight.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Replacement and Modification of Right-Hand Windowsill Drain Hoses

(g) Within 600 flight hours or 180 days after the effective date of this AD, whichever occurs first, do the actions required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–30–0011, Revision 01, dated June 7, 2006 (for Model EMB–135BJ airplanes); or EMBRAER Service Bulletin 145–30–0041, Revision 01, dated June 5, 2006 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes); as applicable.

(1) For all airplanes: Modify and re-identify the drain hose having part number (P/N) 123–15435–405, in accordance with Figure 1 of the applicable service bulletin.

(2) For all airplanes: Replace the right-hand windowsill drain hoses having P/N 123–15435–403 with new, improved hoses, P/N 145–13047–001 and 145–13044–005; and replace the tiedown straps with new tiedown straps, in accordance with Figure 1 of the applicable service bulletin.

(3) For Model EMB–135BJ airplanes: Reroute the drain hoses of the right cockpit horizontal linings, in accordance with Figure 2 of the applicable service bulletin.

Replacement of Left-Hand Windowsill Drain Hoses

(h) Within 1,200 flight hours or 360 days after the effective date of this AD, whichever occurs first, do the actions required by paragraphs (h)(1) and (h)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–30–0011, Revision 01, dated June 7, 2006 (for Model EMB–135BJ airplanes); or EMBRAER Service Bulletin 145–30–0041, Revision 01, dated June 5, 2006 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes); as applicable.

(1) *For all airplanes:* Replace the left-hand windowsill drain hoses having P/N 123–15435–401 and –403 with new, improved hoses having P/N 145–13044–001 and P/N 145–13047–001, and replace the tiedown straps with new tiedown straps, in accordance with Figure 1 of the applicable service bulletin.

(2) *For Model EMB–135BJ airplanes:* Reroute the drain hoses of the left cockpit horizontal linings, in accordance with Figure 2 of the applicable service bulletin.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Any replacement/rerouting of the drain hoses accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–30–0041 or 145LEG–30–0011, both dated April 20, 2005, as applicable, is considered acceptable for compliance with the requirements of paragraphs (g) and (h) this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Brazilian airworthiness directive 2005–08–04R1, effective July 27, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use the applicable EMBRAER service bulletins specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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/cfr/ibr-locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

EMBRAER—	Revision level—	Date—
Alert Service Bulletin 145–30–A050	Original	May 31, 2006.
Alert Service Bulletin 145LEG–30–A017	Original	May 31, 2006.
Service Bulletin 145–30–0041	01	June 5, 2006.
Service Bulletin 145LEG–30–0011	01	June 7, 2006.

Issued in Renton, Washington, on February 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2413 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038–AC28

Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations (''SROs'')

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission hereby adopts final acceptable practices for minimizing conflicts of interest in decision making by designated contract markets (''DCMs'' or ''exchanges''),[1] pursuant to Section 5(d)(15) (''Core Principle 15'')[2] of the Commodity Exchange Act (''CEA'' or ''Act'').[3] The final acceptable practices are the first issued for Core Principle 15 and are applicable to all DCMs.[4] They focus upon structural conflicts of interest within modern self-regulation, and offer DCMs a ''safe harbor'' by which they may minimize such conflicts and comply with Core Principle 15. To receive safe harbor treatment, DCMs must implement the final acceptable practices in their entirety, including instituting boards of directors that are at least 35% public and establishing oversight of all regulatory functions through Regulatory Oversight Committees (''ROCs') consisting exclusively of public directors.

DATES: *Effective Date:* March 16, 2007.

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Acting Deputy Director for Market Compliance, (202) 418–5429, or Sebastian Pujol Schott, Special Counsel (202) 418–5641, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581.

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[1] The acceptable practices for core principles reside in Appendix B to Part 38 of the Commission's Regulations, 17 CFR Part 38, App. B.

[2] Core Principle 15 states: ''CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the contract market and establish a process for resolving such conflicts of interest.'' CEA § 5(d)(15), 7 U.S.C. 7(d)(15).

[3] The Act is codified at 7 U.S.C. 1 *et seq.* (2000).

[4] Any board of trade that is registered with the Securities and Exchange Commission (''SEC'') as a national securities exchange, is a national securities association registered pursuant to section 15(A)(a) of the Securities Exchange Act of 1934, or is an alternative trading system, and that operates as a designated contract market in security futures products under Section 5f of the Act and Commission Regulation 41.31, is exempt from the core principles enumerated in Section 5 of the Act, and the acceptable practices thereunder, including those adopted herein.

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D. Overlapping Public Directors
E. Jurisdiction of Disciplinary Panels and Definition of ''Public'' for Persons Serving on Disciplinary Panels
F. ''No Material Relationship Test''
G. Elimination of ROCs' Periodic Reporting Requirement
V. Related Matters
VI. Text of Acceptable Practices for Core Principle 15

I. Introduction

A. Overview of the Acceptable Practices

The final acceptable practices recognize DCMs' unique public-interest responsibilities as self-regulatory organizations (''SROs'') in the U.S. futures industry. They address conflicts of interest that exist within DCMs as they operate in an increasingly competitive environment and transform from member-owned, not-for-profit entities into diverse enterprises with a variety of business models and ownership structures. While continuing to meet their regulatory responsibilities, DCMs must now compete effectively to generate profits, advance their commercial interests, maximize the value of their stock, and/or serve multiple membership, ownership, customer, and other constituencies. The presence of these potentially conflicting demands within a single entity—regulatory authority coupled with commercial incentives to misuse such authority—constitutes the new structural conflict of interest addressed by the acceptable practices adopted herein.

The Commission has determined that the structural conflicts outlined above are appropriately addressed through reforms within DCMs themselves, including reforms of DCMs' governing bodies. Accordingly, the Commission offers the new acceptable practices for Core Principle 15 as an appropriate method for minimizing such conflicts. The Commission believes that additional public directors on governing bodies, greater independence at key levels of decision making, and careful insulation of regulatory functions and personnel from commercial pressures, are important elements in ensuring vigorous, effective, and impartial self-regulation now and in the future. The new acceptable practices incorporate and emphasize each of these elements, and offer all DCMs clear instruction as to how they may comply with Core Principle 15.

Although DCMs are free to comply with Core Principle 15 by other means, the Commission stresses that they all must address structural conflicts of interest and adopt substantive measures to protect their regulatory decision making from improper commercial considerations. DCMs must ensure that regulatory decisions are made on their own merits, and that they are not compromised by the commercial interests of the DCMs or the interests of their numerous constituencies. Likewise, DCMs' regulatory operations and personnel must be insulated from improper influence and commercial considerations to ensure appropriate regulatory outcomes.

The new acceptable practices are set forth in four component parts, and DCMs must meet all four to receive safe harbor treatment under Core Principle 15. Each component part is summarized as follows:

First, the Board Composition Acceptable Practice calls upon all DCMs to minimize conflicts of interest in self-regulation by establishing boards of directors that contain at least 35% ''public directors'' (as defined by a separate Public Director Acceptable Practice discussed below). The Board Composition Acceptable Practice further requires that DCMs ensure that any executive committees (or similarly empowered bodies) also meet the 35% public director standard. This 35% standard in the new acceptable practices represents a modification from the 50% public director standard in the proposed acceptable practice.[5]

Second, the Regulatory Oversight Committee Acceptable Practice mandates that all DCMs establish Regulatory Oversight Committees, composed only of public directors, to oversee core regulatory functions and ensure that they remain free of improper influence. The Commission notes that ROCs are intended to insulate self-regulatory functions and personnel from improper influence. In fulfilling this role, however, ROCs are not expected to assume managerial responsibilities, or to isolate self-regulatory functions and personnel from others within the DCM. ROCs' oversight and insulation should be aided by their DCMs' chief regulatory officers (''CROs''). A full description of the responsibilities and authority of ROCs may be found in the text of the final acceptable practices.

Third, the Disciplinary Panel Acceptable Practice states that DCM disciplinary panels should not be dominated by any group or class of DCM members or participants, and must include at least one ''public person'' on every panel. Under the Disciplinary Panel Acceptable Practice, disciplinary panels must keep thorough minutes of their meetings, including a full articulation of the rationale supporting their disciplinary decisions.

Finally, the Public Director Acceptable Practice establishes specific definitions of ''public'' for DCM directors and for members of disciplinary panels. Public directors are persons who have no ''material relationship'' with their DCM, i.e., any relationship which could reasonably affect their independent judgment or decision making. In addition, public directors must meet a series of ''bright-line tests'' which identify specific circumstances and relationships which the Commission believes are clearly material. For members of disciplinary panels, the definition of ''public'' includes the bright-line tests, but not the materiality criterion.

The final acceptable practices also include clarifications to the acceptable practices originally proposed by the Commission on July 7, 2006. For example, the final acceptable practices clarify that a DCM's public directors may also serve as public directors of its holding company under certain circumstances. These clarifications were made in response to public comments on the proposed acceptable practices.

In addition, although the final acceptable practices are effective 30 days after publication in the **Federal Register**, the Commission will permit currently established DCMs to implement responsive measures over a phase-in period of two years or two regularly-scheduled board elections, whichever occurs sooner.[6] Responsive measures include implementing the final acceptable practices or otherwise fully complying with the requirements of Core Principle 15, including requirements to minimize the structural conflicts of interest discussed herein. The phase-in period and the modified public director requirements for boards and executive committees are the only significant changes between the proposed acceptable practices and those adopted today.

[5] Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations (''Proposed Rule''), 71 FR 38740 (July 7, 2006).

[6] ''Currently established'' DCMs are those that are already designated at the time this release is published in the **Federal Register**

B. Background

U.S. futures markets are a critical component of the U.S. and world economies, providing significant economic benefits to market participants and the public at large. They provide an important hedging vehicle to individuals and firms in myriad industries, resulting in more efficient production, lower costs for consumers, and other economic benefits. By offering a competitive marketplace and focal point where traders can freely interact based on their assessments of supply and demand, futures markets also provide a vital forum for discovering prices that are generally considered to be superior to administered prices or prices determined privately. For this reason, futures markets are widely utilized throughout the global economy. Participants in the markets include virtually all economic actors, and the prices discovered on a daily basis materially affect a wide range of businesses in the agricultural, energy, financial, and other sectors.

For the reasons outlined above, DCMs are not just typical commercial enterprises, but are commercial enterprises affected with a significant national public interest. Actions that distort prices or otherwise undermine the integrity of the futures markets have broad, detrimental implications for the economy as a whole and the public in general. Congress recognized the importance of futures trading in the Act, when it explicitly stated that futures transactions ''are entered into regularly in interstate and international commerce and are affected with a national public interest * * *.''[7] It defined the public interest to include ''liquid, fair, and financially secure trading facilities.''[8] Congress also identified the purposes of the Act: ''to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; and to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets.''[9] To accomplish these purposes, Congress established a statutory system of DCM self-regulation, combined with Commission oversight, to promote ''responsible innovation and fair competition among boards of trade, other markets and market participants.''[10] Meeting these statutory obligations and purposes requires DCM self-regulation that is as vigorous, impartial, and effective as possible.

All DCMs face unique and potentially conflicting regulatory obligations and commercial demands as they work to meet the statutory requirements outlined above. On the commercial side, they must attract trading to their markets, maximize the value of their stock, generate profits, satisfy the financial needs of their numerous stakeholders and constituencies, and/or meet the diverse business needs of their market participants. At the same time, as self-regulatory organizations, DCMs must exercise their authority judiciously, impartially, and in the public interest. As essential forums for the execution of futures transactions and for price discovery, DCMs must ensure fair and financially secure trading facilities. DCMs must also help to ''serve'' and ''foster'' the national public interest through self-regulatory responsibilities that include ensuring market integrity, financial integrity, and the strict protection of market participants.[11]

When DCMs were first entrusted with these extensive regulatory responsibilities, they were almost exclusively member-owned, not-for-profit exchanges facing little competition for customers or in their prominent contracts. Although conflicts of interest in self-regulation were a concern even then, such conflicts typically centered on individual exchange members policing one another. Today's DCMs, however, are vibrant commercial enterprises competing globally in an industry whose ownership structures, business models, trading practices, and products are evolving rapidly. As a result, DCMs now face potential conflicts of interest between their critical self-regulatory responsibilities and their powerful commercial imperatives. Specifically, DCMs must: defend and expand their markets against others offering similar products or services; generate returns for their owners; and provide liquid markets where their members and customers may profit. At the same time, they must continue to meet fundamental public interest responsibilities through vigorous and impartial self-regulation. To reconcile these obligations, DCMs must acknowledge and guard against conflicts between their regulatory responsibilities and their commercial interests, and take measures to prevent improper influence upon self-regulation by their numerous constituencies, including members, owners, customers, and others.

As explained in the proposing release, rapid and ongoing changes in the futures industry have raised concerns as to whether existing self-regulatory structures are equipped to manage evolving conflicts of interest. Self-regulation's traditional conflict—that members will fail to police their peers with sufficient zeal—has been joined by the possibility that competing DCMs could abuse their regulatory authority to gain competitive advantage or satisfy commercial imperatives. Such conflicts of interest must be addressed promptly and proactively to prevent them from becoming real abuses, and to ensure continued public confidence in the integrity of the U.S. futures markets.

After three-and-a-half years of careful study, the Commission has determined that the conflicts of interest identified above are inherent in any system of self-regulation conducted by competing DCMs, many of which operate under new ownership structures and business models, and all of which are possessed of strong commercial imperatives. The Commission has further determined that successfully addressing such conflicts, and complying with Core Principle 15, requires appropriate responses within DCMs. Only by reconciling the inherent tension between their self-regulatory responsibilities and their commercial interests, whether via the new acceptable practices or otherwise, can DCMs successfully minimize conflicts of interest in their decision-making processes and thereby ensure the integrity of self-regulation in the U.S. futures industry.

The new acceptable practices for Core Principle 15 are a direct response to the industry changes outlined above. As required by the Act, they ''promote responsible innovation and fair competition'' among U.S. DCMs, and ensure that self-regulation remains compatible with the modern business practices of today's DCMs.[12] The new acceptable practices embody the Commission's firm belief that effective self-regulation in an increasingly competitive, publicly traded, for-profit environment requires independent decision making at key levels of DCMs' regulatory governance structures. The Commission further believes that the new acceptable practices constitute an ideal solution to emerging structural conflicts of interest in self-regulation. Both proactive and carefully targeted, the new acceptable practices for Core Principle 15 advance the public interest and ensure the continued strength and

[7] CEA § 3(a), 7 U.S.C. 5(a).

[8] Id.

[9] CEA § 3(b), 7 U.S.C. 5(b).

[10] Id.

[11] Id.

[12] Id.

integrity of self-regulation in a rapidly evolving industry.

The conflicts of interest described above require careful responses by all DCMs. The Commission believes that DCMs can comply with Core Principle 15 by minimizing conflicts of interest between their regulatory responsibilities and their commercial interests or those of their membership, ownership, management, customer, and other constituencies. However, whether DCMs choose to comply with Core Principle 15 via the acceptable practices adopted herein or by other means, the Commission recognizes that necessary measures may take time to implement. Accordingly, and at the request of public commenters, the Commission is adopting a phase-in period for full compliance with Core Principle 15. Within two years of this document's effective date, or two regularly-scheduled board elections, whichever occurs first, all DCMs must be in full compliance with Core Principle 15, either by availing themselves of the new acceptable practices or undertaking other effective measures to address the structural conflicts of interest identified herein. Commission staff will contact all DCMs in six months of the effective date of these final acceptable practices to learn of their plans for full compliance. Established DCMs must demonstrate substantial compliance with Core Principle 15, and plans for full compliance, well before the phase-in period's expiration. New candidates for designation as contract markets should be prepared to demonstrate compliance with Core Principle 15, or a plan for compliance, upon application.

II. Procedural History

The four acceptable practices for Core Principle 15 adopted today are the culmination of a comprehensive review of self-regulation in the U.S. futures industry (''SRO Review'' or ''Review'') launched by the Commission in May of 2003. Phase I of the Review explored the roles, responsibilities, and capabilities of SROs in the context of industry changes. Staff examined the designated self-regulatory organization system of financial surveillance, the treatment of confidential information, the composition of DCM disciplinary committees and panels, and other aspects of the self-regulatory process. Phase I of the Review also included staff interviews with over 100 persons including representatives of DCMs, clearing houses, futures commission merchants (''FCMs''), industry associations, and securities-industry entities, as well as current and retired industry executives, academics, and consultants.

In June of 2004, the Commission initiated Phase II of the SRO Review and broadened its inquiry to explicitly address SRO governance and the interplay between DCMs' self-regulatory responsibilities and their commercial interests. In June of 2004, the Commission issued a **Federal Register** Request for Comments (''Request'') on the governance of futures industry SROs.[13] The Request sought input on the proper composition of DCM boards, optimal regulatory structures, the impact of different business and ownership models on self-regulation, the proper composition of DCM disciplinary committees and panels, and other issues.

In November of 2005, the Commission updated its previous findings through a second **Federal Register** Request for Comments (''Second Request'') that focused on the most recent industry developments.[14] The Second Request examined the board-level ROCs recently established at some SROs in the futures and securities industries. It also asked commenters to consider the impact of New York Stock Exchange (''NYSE'') listing standards on publicly traded futures exchanges; whether the standards were relevant to self-regulation; and how the standards might inform the Commission's own regulations.[15]

Phase II of the SRO Review concluded with a public Commission hearing on ''Self-Regulation and Self-Regulatory Organizations in the U.S. Futures Industry'' (''Hearing''). The day-long Hearing, held on February 15, 2006, included senior executives and compliance officials from a wide range of U.S. futures exchanges, representatives of small and large FCMs, academics and other outside experts, and an industry trade group. The Hearing afforded the Commission an opportunity to question panelists on four broad subject areas: (1) Board composition; (2) alternative regulatory structures, including ROCs and third-party regulatory service providers; (3) transparency and disclosure; and (4) disciplinary committees.[16]

Finally, in July of 2006, the Commission published the Proposed Rule and sought public comment on new acceptable practices for Core Principle 15.[17] The Commission proposed that at least 50% of the directors on DCM boards and executive committees (or similarly empowered bodies) be public directors. It also proposed that day-to-day regulatory operations be overseen and insulated through a CRO reporting directly to a board-level ROC consisting exclusively of public directors. The proposed acceptable practices also defined ''public director'' for persons serving on boards and ROCs, and defined ''public person'' for disciplinary panel members. To qualify as a public director under the proposal, the director in question would require an affirmative determination that he or she had no material relationship with the DCM. In addition, public directors and public persons would both have been required to meet a series of ''bright-line'' tests. The inability to satisfy both the material relationship and bright-line test requirements would automatically preclude them from serving as public directors or public disciplinary panel members. Finally, the proposed acceptable practices called for DCM disciplinary panels that were not dominated by any group or class of SRO participants, and that included at least one public person.

The proposal's original 30-day comment period, scheduled to close on August 7, 2006, was extended by an additional 30 days, to September 7, 2006. The Commission received a total of 34 comment letters in response to the proposed acceptable practices for Core Principle 15, significant aspects of which are discussed below.[18]

[13] Governance of Self-Regulatory Organizations, 69 FR 32326 (June 9, 2004). Comment letters received are available at: *http://www.cftc.gov/foia/comment04/foi04--005_1.htm*.

[14] Self-Regulation and Self-Regulatory Organizations in the Futures Industry, 70 FR 71090 (Nov. 25, 2005). Comment letters received are available at *http://www.cftc.gov/foia/comments05/foi05--007_1.htm*.

[15] The NYSE's corporate governance listing standards require listed companies to: have a majority of independent directors; meet materiality and bright-line tests for independence; convene regularly scheduled executive sessions of the board without management present; institute nominating/governance, compensation, and audit committees consisting exclusively of public directors; etc. See NYSE Listed Company Manual, §§ 303A:00–14, available at: *http://www.nyse.com/regulation/listed/1101074746736.html*. The NASDAQ Stock Market has adopted corporate governance listing standards similar to the NYSE's. See the NASDAQ Stock Market Listing Standards and Fees, available at: *http://www.nasdaq.com/about/nasdaq_listing_req_fees.pdf*. DCMs whose parent companies are listed on the NYSE include the CBOT, CME, NYBOT, and NYMEX. Although these DCMs themselves are not required to comply with the listing standards, they may be in de facto compliance if they have chosen to name identical boards of directors for both the listed parent and the DCM.

[16] The Hearing Transcript is available at *http://www.cftc.gov/files/opa/opapublichearing021506.final.pdf*.

[17] See supra note 5.

[18] Comment letters in response to the Proposed Rules are available at: *http://www.cftc.gov/foia/comment06/foi06--004_1.htm*.

III. Public Comments Received and the Commission's Response

The 34 comment letters received in response to the proposed acceptable practices included responses from 10 industry associations and trade groups, nine individuals (including directors of exchanges writing separately), eight DCMs, six futures commission merchants (''FCMs''), one group of DCM public directors, one U.S. Senator, and one U.S. Congressman.[19]

The Commission thoroughly reviewed and considered all comments received. In response to persuasive arguments by various commenters, the final acceptable practices include two significant modifications from those originally proposed. Specifically, the final acceptable practices include: (1) a reduction in the required number of public directors on boards and executive committees, from at least 50% public to at least 35% public; and (2) a phase-in period to implement the acceptable practices, or otherwise come into full compliance with Core Principle 15, of two years or two regularly scheduled board elections, whichever occurs sooner.

In addition, in response to comments received, the Commission has made several clarifications and non-substantive revisions to the final acceptable practices. The Commission has also provided further discussion or elaboration in this preamble in order to provide further clarification on specific aspects of the acceptable practices, consistent with the Commission's original intent.

Specifically, in the text of the final acceptable practices, the Commission has clarified: that a public director may serve on the boards of both a DCM and of its parent company; that public directors are allowed deferred compensation in excess of $100,000 under certain circumstances; and that public persons serving on disciplinary panels are subject only to the bright-line tests used to define public directors. The Commission has also clarified that the acceptable practices do not address the manner in which DCMs select their public directors, whether by election, appointment, or other means.

Some commenters called for greater requirements than in the proposed acceptable practices, and others called for less requirements. The Commission carefully considered those comments, but decided not to make any changes other than those outlined above. As stated previously, the Commission believes that adopting the new acceptable practices strikes a careful balance between an appropriate approach to minimizing conflicts of interest in self-regulation, as required by Core Principle 15, and the overall flexibility offered by the core principle regime. Moreover, the Commission believes that the acceptable practices adopted herein are necessary and appropriate to fulfill the purposes of the Act and advance the public interest.

The substantive comments received, and the Commission's responses thereto, are presented below. They are organized as follows:

Legal Comments: comments questioning the Commission's authority to issue the proposed acceptable practices, including comments with respect to the meaning of Core Principle 15 and its interaction with other core principles;

Policy Comments: comments requesting more or stricter guidance than that proposed by the Commission; comments requesting that the Commission issue no acceptable practices, or fewer or less detailed acceptable practices; and comments questioning the rationale behind the proposed acceptable practices, including:

- General comments;
- Comments with respect to board composition;
- Comments with respect to the definition of public director;
- Comments with respect to Regulatory Oversight Committees;
- Comments with respect to disciplinary committees;

Comments Requesting Modifications and Clarifications, including:

- Phase-in period for the new acceptable practices;
- Selection of public directors;
- Compensation of public directors;
- Overlapping public directors;
- Jurisdiction of disciplinary panels and definition of ''public'' for persons serving on disciplinary panels;
- ''No material relationship'' test for public directors;
- elimination of ROCs' periodic reporting requirements.

A. Legal Comments: Public Comments Received and the Commission's Response.

1. Overview of the Commission's Authority To Issue the Acceptable Practices

The Commission's issuance of the acceptable practices for Core Principle 15 respects the letter and spirit of the Act. The Commission's authority to do so is firmly rooted in Core Principle 15's mandate to DCMs to minimize conflicts of interest in decision making. Core Principle 15 requires DCMs to maintain systems to minimize structural conflicts of interest inherent in self-regulation, as well as individual conflicts of interest faced by particular persons.[20] The acceptable practices are rationally related to the purposes of Core Principle 15.

The Board Composition Acceptable Practice recognizes that the governing board of a DCM is its ultimate decision maker and therefore the logical place to begin to address conflicts. Participation by public directors in board decision making is a widely accepted and effective means to reduce conflicts of interest.[21] By providing for significant public participation on the board, the seat of DCM governance and policymaking, the acceptable practice ensures that conflicts of interest are minimized at the highest level of decision making.

The ROC Acceptable Practice recognizes the importance of insulating core regulatory functions from improper influences and pressures stemming from a DCM's commercial affairs. It operates to minimize conflicts of interest in decisions made in the ordinary course of business. Finally, the Disciplinary Panel Acceptable Practice, by mandating participation on most disciplinary panels of at least one person who meets the bright-line tests for public director, minimizes conflicts of interest that may undermine the fundamental fairness required of DCM disciplinary proceedings. In sum, these acceptable practices represent an effective means to implement Core Principle 15 and are fully consistent with its mandate that DCMs minimize conflicts of interest in all decision making. They therefore lie well within the Commission's authority.

Congress has determined that there is a national public interest in risk management and price discovery.[22] The individual provisions of the Act operate

[19] The commenters were: Bear Stearns; Citigroup; Morgan Stanley; the Chicago Mercantile Exchange (''CME''); the New York Mercantile Exchange (''NYMEX''); U.S. Sen. Pat Roberts and Congressman Jerry Moran; the National Grain Trade Council; Daniel L. Gibson; the National Grain and Feed Association; the New York Board of Trade (''NYBOT''); Public Members of the NYBOT; the Chicago Board of Trade (''CBOT''); Philip McBride Johnson; the CBOE Futures Exchange (''CFE''); Dennis M. Erwin; HedgeStreet; Colby Moss; Horizon Milling, LLC; John Legg; the National Futures Association; Robert J. Rixey; Michael Braude; Lehman Brothers; the Kansas City Board of Trade (''KCBT''); the Futures Industry Association (''FIA''); the Florida Citrus Producers Association; the National Cotton Council of America; Cargill Juice North America; Nickolas Neubauer; the American Cotton Shippers Association; Barry Bell; Fimat; J.P. Morgan Futures Inc.; and the Minneapolis Grain Exchange (''MGEX'').

[20] 71 FR 38740, 38743.

[21] *See, e.g.*, NYSE Listed Company Manual, § 303A (commentary).

[22] CEA Section 3(a), 7 U.S.C. 5(a).

in furtherance of those interests by instituting and enforcing a system of ''effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission.'' [23] Core Principle 15 must be read in light of those public interests and purposes.

The safe harbor created by the new acceptable practices removes the guesswork from compliance with Core Principle 15. Congress intentionally wrote the core principles to be broad and flexible, and to help DCMs and the Commission to adjust to changing circumstances. Flexibility, however, may give rise to uncertainty. In order to provide DCMs with greater certainty in the context of flexible core principles, Congress, in adopting the Commodity Futures Modernization Act (''CFMA''),[24] added Section 5c(a)(1) to the CEA, which specifically authorizes the Commission, consistent with the purposes of the CEA, to ''issue interpretations, or approve interpretations submitted to the Commission * * * to describe what would constitute an acceptable business practice for Core Principles.'' [25] As a general rule, the Commission believes that issuing acceptable practices and other guidance under the core principles is beneficial, given the CFMA's lack of legislative history that might otherwise have been a source of guidance. Safe harbors, such as those created by the acceptable practices being issued today, remove uncertainty while setting high standards consistent with the purposes of the CEA and the authority granted by Congress to the Commission to issue such acceptable practices. Nothing in these acceptable practices, as safe harbors, infringes upon the Congressional directive in Section 5c(a)(2) of the CEA that acceptable practices not be the ''exclusive means for complying'' with core principles, as DCMs remain free to demonstrate core principle compliance by other means.[26]

Pursuant to its duty under the CEA to consider the costs and benefits of its action in issuing the acceptable practices, as discussed separately below, the Commission believes that the acceptable practices will minimize conflicts of interest in DCM decision making and promote public confidence in the futures markets. These are significant benefits to the futures industry, market participants, and the public. While commenters alleged that compliance would be costly, none of them provided an estimate of those costs in response to the Commission's specific request for quantitative data. The Commission has no basis to conclude that compliance would not be a reasonable cost of doing business in an industry subject to federal oversight—a cost that may be phased in gradually over two years or two election cycles.

Finally, the Board Composition Acceptable Practice operates without impeding the duties owed to shareholders by the directors of a public corporation. Demutualized DCMs typically have reorganized themselves as subsidiaries of parent holding companies. The acceptable practice applies to the board of a DCM itself—not to the parent. Accordingly, the Board Composition Acceptable Practice is unquestionably within the Commission's authority to issue acceptable practices under the core principles applicable to DCMs. The composition of a DCM governing board may be identical to that of its parent—that decision is a matter for the business judgment of the persons involved. Nevertheless, the boards are separate bodies, even if their memberships overlap. DCM directors have a fiduciary duty to stockholders, to be sure, but stockholders of a DCM own an entity that, as a matter of federal law, is required to minimize conflicts of interest under Core Principle 15 and that serves a public interest through its business activity. Stockholders are well served when the DCMs that they own comply with applicable laws and regulations.

We now turn to the legal issues raised by the commenters with respect to the Commission's authority to issue the acceptable practices.

2. Specific Legal Issues Raised by Commenters

FIA, five major FCMs, and one exchange, CFE, filed comments generally in favor of the proposed acceptable practices and endorsed the Commission's analysis of its authority to issue them. CME, CBOT, NYMEX, and other commenters, in opposition, challenged the Commission's interpretation of Core Principle 15 and the statutory authority under which the proposals were issued.

As stated above, Core Principle 15 requires DCMs to establish and maintain systems that address conflicts of interest inherent in the structure of self-regulation, as well as personal conflicts faced by individuals. FIA endorsed this analysis, stating that the proposed acceptable practices are ''well-grounded'' in the Commission's statutory authority and ''rationally related'' to the purposes of Core Principle 15.[27]

Commenters challenging the Commission's authority to promulgate the acceptable practices for Core Principle 15 contend that they: (1) Conflict with Core Principle 16; (2) are contrary to the text of the statute; (3) are contrary to Congressional intent in enacting the CFMA; (4) lack factual support; (5) conflict with guidance for Core Principle 14; and (6) impermissibly shift the burden to DCMs to demonstrate compliance with Core Principle 15. As discussed below, none of these contentions is persuasive.

a. The Acceptable Practices For Core Principle 15 Do Not Conflict With Core Principle 16.

CME challenged Core Principle 15's applicability to the acceptable practices, contending that because Core Principle 16 is the only core principle that mentions board composition, it is the only source of authority the Commission may use for this purpose, and that it is limited to mutually-owned DCMs.[28] Similarly, NYBOT and KCBT contended that as member-owned DCMs, they are subject to Core Principle 16's requirement to maintain governing boards that ''reflect[ ] market participants,'' and should not face any other board composition provision.[29]

Core Principle 16 requires a mutually owned board of trade to ensure that the composition of its governing board reflects market participants. Based on its plain language, Core Principle 16 is limited to that goal,[30] and has no bearing on the entirely separate goal of Core Principle 15 to ''minimize conflicts of interest in the decision-making process of the contract market,'' whether or not it is mutually owned. Core Principle 16 applies only to mutually owned contract markets and directs that their governing boards must fairly represent market participants. Core Principle 15 applies to all contract markets, no matter how organized, and directs them to minimize conflicts of interest. Conflicts may be structural as well as personal. Core Principle 15 embraces both and supports the public director membership requirement for

[23] CEA Section 3(b), 7 U.S.C. 5(a).

[24] The CFMA is published at Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[25] 7 U.S.C. 7a–2(a)(1).

[26] 7 U.S.C. 7a–2(a)(2).

[27] FIA Comment Letter (''CL'') 7 at 3–4.

[28] CME CL 29 at 4–5. Core Principle 16 states: ''COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS.—In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.'' CEA § 5(d)(16), 7 U.S.C. 7(d)(16).

[29] NYBOT CL 21 at 4; KCBT CL 8 at 3.

[30] There is no legislative history concerning Core Principle 16 other than the statutory language itself.

boards of DCMs. Accordingly, Core Principle 16 does not limit the Commission's authority to issue acceptable practices to increase public director representation on DCM boards in order to minimize conflicts of interest under Core Principle 15.

b. The Acceptable Practices for Core Principle 15 Are Not Contrary to the CEA's Text.

Other opposing comments based on the text of Core Principle 15 substitute the Commission's straightforward reading of the statute with targeted interpretations of individual words and phrases. The Commission believes that these comments do not rise to the stature of significant questions of statutory interpretation. For instance, various commenters contended that Core Principle 15 says ''minimize'' conflicts of interest, not ''eliminate'' them, as they argue the Commission seeks to do with the Board Composition Acceptable Practice.[31] However, if the Commission had sought to ''eliminate'' conflicts of interest, the Commission could have imposed a 100% public director requirement. Certainly any less-than-100% public director requirement may not eliminate all conflicts of interest.

Another such comment stated that Core Principle 15 applies to ''rules'' and ''process,'' but board composition is contained in DCM ''bylaws'' (not rules), and a change to board composition is not a ''process.''[32] Contrary to this commenter's restrictive interpretation of the term, ''rule'' is defined broadly in Commission regulations to include by-laws.[33] Thus, the mere mention of ''rules'' in Core Principle 15 has no bearing on the Commission's authority. In addition, Core Principle 15 provides that a DCM shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the contract market and establish a process for resolving such conflicts of interest. The two requirements are not mutually exclusive.

Another commenter stated that Core Principle 15 provides that a DCM shall ''enforce'' rules, and thereby contemplates action against individuals rather than the DCM itself.[34] In fact, Core Principle 15 states ''establish and enforce'' rules. Use of the conjunctive belies any contention that Core Principle 15 was intended to be directed solely to individuals.

Numerous comments of this type were received, none of which constitutes a serious challenge to the Commission's legal authority and reasonable interpretation of Core Principle 15.

c. The Acceptable Practices for Core Principle 15 Are Not Contrary to Congressional Intent in Enacting the CFMA.

Several commenters, including NYMEX and CBOT, contended that the Board Composition Acceptable Practice is contrary to Congress' intent in enacting Core Principle 15 and the CFMA.

Specifically, CBOT stated that prior to the CFMA's enactment, the CEA treated board composition and conflicts of interest in two distinct provisions of the statute. In passing the CFMA, Congress omitted the board composition provision and kept the conflicts of interest provision. CBOT interpreted this as evidence that Congress did not view board composition as a mechanism to minimize conflict of interests.[35] We believe that the legal import of silence as a statutory canon of construction in these circumstances is a weak indicator of Congressional intent.[36] Moreover, inclusion of public directors on company boards is a widely accepted means to reduce conflicts of interest.[37] Congress has in other contexts recognized the utility of public directors in controlling conflicts of interest.[38] Interpreting the CFMA as the CBOT advocates would require the Commission to infer that Congress was unaware of its own enactments, as well as the aforementioned wide acceptance of public directors for reducing conflicts, which the Commission is not prepared to do.

Similarly, NYMEX commented that when the CFMA was enacted there was a general understanding among DCMs, Commission staff, and legislators that Congress did not intend the Commission to establish board composition requirements for demutualized DCMs, which would instead be subject to corporate governance and NYSE listing standards.[39] A congressional comment letter stated that it does not ''appear'' that Congress intended the Commission to address board composition in the instance of small mutually-owned DCMs like KCBT.[40]

No commenter, however, cited any legislative history supporting these views, and no rule of statutory or legal interpretation compels the Commission to adopt them. The Commission may interpret the CEA according to its reasoned discretion and agency expertise given the absence of any contrary indication of Congressional intent at the time the CFMA was enacted.

Various commenters also asserted that the proposed acceptable practices in general are counter to the spirit of the CFMA, which transformed the Commission into an oversight agency.[41] They contended also that the 50% public board member requirement in the proposed Board Composition Acceptable Practice is stricter than the former statutory requirement that DCM boards have 20% independent directors.[42] This comment would apply equally to the minimum 35% requirement contained in the final acceptable practice. These commenters, however, overlook the essential fact that the acceptable practices—unlike the pre-CFMA 20% rule—are safe harbors, not statutory mandates. Persons taking this view appear to want the Commission to do nothing at all—neither issue rules nor announce nonbinding acceptable practices that embody high standards.

One commenter argued that the Commission did not subject DCMs to Commission Rule 1.64 (containing the board composition requirement for non-member representation)[43] when it adopted Commission Rule 38.2[44] shortly after the enactment of the CFMA, thus suggesting that the Commission's interpretation was that Core Principle 15 did not impose a board composition requirement.[45]

The Commission did not adopt acceptable practices for all of the core principles when it promulgated Commission Rule 38.2. Nor did the Commission permanently reserve from exemption all regulations that are reflected in core principles. Indeed, in January 2006, the Commission added Commission Rule 1.60 to the enumerated list of regulations to which DCMs are subject pursuant to Commission Rule 38.2.[46] Accordingly,

[31] *See, e.g.,* KCBT CL 8 at 2 and Roberts & Moran CL 27 at 1–2.

[32] NYMEX CL 28 at 6.

[33] *See* Commission Reg. 40.1(h), 17 CFR 40.1(h).

[34] NYMEX CL 28 at 6.

[35] CBOT CL at 5–6.

[36] *See, e.g., U.S.* v. *Vonn*, 535 U.S. 55, 65 (2002); *Pauley* v. *Bethenergy Mines, Inc.*, 501 U.S. 680, 703 (1991) (internal citation omitted).

[37] *See, e.g.*, NYSE Corporate Governance Rule 303A (commentary).

[38] *See* Section 10(a) of the Investment Company Act of 1940, 7 U.S.C. 80a–10(a); *Burks* v. *Lasker*, 441 U.S. 471, 484 (1979).

[39] NYMEX CL 28 at 5–6.

[40] Roberts & Moran CL 27 at 1–2.

[41] *See, e.g.*, NYMEX CL 28 at 9–10.

[42] *See, e.g.*, CME CL 29 at 12.

[43] 17 CFR 1.64.

[44] Commission Rule 38.2 contains an exemption for DCMs from all Commission regulations except those specifically enumerated. 17 CFR 38.2.

[45] NYMEX CL 28 at 15.

[46] *See* 71 FR 1953 (Jan. 12, 2006).

the fact that Commission Rule 1.64 was not specifically exempted when Commission Rule 38.2 was promulgated is not a reliable indicator of the Commission's interpretation of Core Principle 15. Moreover, not long after Commission Rule 38.2 was issued, the Commission began the SRO Review to examine governance issues in order to determine whether action was warranted. Thus, even if the omission of Commission Rule 1.64 from the enumerated regulations in Commission Rule 38.2 were somehow indicative of a contemporaneous interpretation by the Commission of Core Principle 15, a matter that the Commission does not concede, the Commission's evolving views—based on the extensive record developed during the course of the SRO Review—support its current interpretation that Core Principle 15 authorizes it to adopt the Board Composition Acceptable Practice.

d. Acceptable Practices Are Justified As A Prophylactic Measure.

Several commenters contended that the acceptable practices lack factual support demonstrating a need for their issuance. They argued that the Commission did not point to any specific event or documented self-regulatory failure or allegation of such failure in support of the acceptable practices.[47] Several commenters contended that the studies cited by the Commission in the proposing release applied only to the securities industry, and thus were inapposite to conditions in the futures industry.[48]

These comments are misplaced. Although the Commission did not specifically identify futures industry self-regulatory lapses in support of the acceptable practices, it identified significant trends in the futures industry, including increased competition and changing ownership structures, that justify the acceptable practices as a prophylactic measure to minimize conflicts in decision making and to promote public confidence in the futures markets in the altered, demutualized, and more competitive landscape. Commenters pointed to nothing in the CEA, nor has the Commission found anything, to suggest that Congress intended to restrict the authority of the Commission to make ''precautionary or prophylactic responses to perceived risks,'' that would render the Commission's action a violation of the CEA.[49]

e. Acceptable Practices for Core Principle 15 Do Not Conflict with Guidance to Core Principle 14.

Another issue raised is whether the new acceptable practices for Core Principle 15 conflict with guidance issued for Core Principle 14.[50] One commenter asserted that guidance to Core Principle 14 suggests that directors of DCMs should, at a minimum, be market participants, contrary to the proposed ''public director'' definition.[51] This contention misreads the guidance for Core Principle 14. Minimum standards for directors provided in the guidance are derived from the bases for refusal to register persons under CEA Section 8a(2),[52] and from the types of serious disciplinary offenses that would disqualify persons from board and committee service under Commission Rule 1.63.[53] Nothing in the Application Guidance for Core Principle 14 requires directors to be market participants. Moreover, a significant number of DCMs currently have directors on their boards who are not market participants.

f. Acceptable Practices for Core Principle 15 Do Not Impermissibly Shift the Burden to DCMs for Demonstrating Compliance.

Finally, CME, CBOT, and NYMEX contended that the Board Composition Acceptable Practice impermissibly shifts the burden of demonstrating a DCM's compliance with Core Principle 15 from the Commission to the DCM if a DCM elects not to comply with the acceptable practices.

There is no burden shifting here. All DCMs are required to demonstrate to the Commission how they are complying with the core principles. Without such a factual demonstration, the Commission could not determine whether a contract market is in compliance with the core principles, and thus the Commission could not meet its obligations under the CEA.[54] Compliance with these acceptable practices merely eliminates the need for a DCM to demonstrate to the Commission that it is complying with certain aspects of Core Principle 15. It follows that a contract market that does not comply with the acceptable practices must demonstrate to the Commission that it is complying with Core Principle 15 by other means, as stated in the release.

B. Policy Comments: Public Comments Received and the Commission's Response

1. General Comments

The Commission received a series of general comments, as discussed more fully below, both in support of and in opposition to the overall direction and findings of the proposed acceptable practices.

a. The proposed acceptable practices are inflexible; DCMs should be free to determine their own methods of core principle compliance.

Several commenters stated that, consistent with the CFMA, DCMs, and not the Commission, should determine the composition of their boards and committees, and should have the discretion to establish their own definition of ''public director.'' One commenter noted that the concept of membership has evolved as markets have become increasingly electronic and global, and now encompasses a growing number of new types of market participants (which consequently reduces the population of potential public directors). Commenters argued that DCMs should be permitted to tap these new types of members for service as directors, bringing market knowledge and differing perspectives to their boards, rather than adding public directors, who, as defined by the Commission, will lack experience and expertise. It was further argued that DCMs should be permitted to decide for themselves how to constitute their boards in order to obtain the necessary knowledge, experience, and expertise that will permit them to serve their economic functions and the public interest.

With respect to the other committees and panels addressed in the proposal, commenters stated that each DCM should be permitted to determine the appropriate size and composition of its executive committee, and likewise should be permitted: To determine whether to establish an ROC; to determine the extent of an ROC's responsibilities; and to determine the most appropriate composition for such committee. Commenters also stated that each DCM should be permitted to determine the composition and the structure of its disciplinary committees in order to ensure that decisions are informed by knowledge and experience.

Numerous commenters opined that the proposals are inflexible, arbitrary, or

[47] *See* CME CL 29 at 9; NYMEX CL 28 at 11–12; NYBOT CL 22 at 4; CBOT CL 21 at 3.

[48] *See, e.g.*, NYMEX CL 28 at 11–13; CME CL 29 at 9; NYBOT CL 22 at 2; Comment of Donald L. Gibson, CL 25 at 1.

[49] *Chamber of Commerce* v. *SEC*, 412 F.3d 133, 141 (D.C. Cir. 2005).

[50] Core Principle 14 provides that a ''Board of Trade shall establish and enforce appropriate fitness standards for directors [and others].'' CEA § 5(d)(14), 7 U.S.C. 7(d)(14).

[51] CME CL 29 at 9.

[52] 7 U.S.C. 12a(2).

[53] 17 CFR 1.63. See 17 CFR Part 38, Appendix B, Core Principle 14 (''Application Guidance'').

[54] See CEA § 5c(d), 7 U.S.C. 7a–2(d).

overly prescriptive. Among other things, commenters stated that the regulatory proposals: could stifle vital day-to-day market functions; Could swing the balance too far towards rigid, arbitrary requirements when there is no demonstrable need for such action; are contrary to the spirit and intent of the CFMA and the market-oriented, principle-based structure authorized by that legislation; unnecessarily micromanage the operations of DCMs; fail to recognize the changing definition and increasing breadth of the concept of DCM membership; inflexibly impose uniform requirements upon all DCMs without regard to the nature of a particular DCM or the products traded on that DCM; and should be presented not as a model for DCMs to adopt, but rather as examples of ways for DCMs to meet core principle requirements.

Commenters also expressed concern that a bright-line test regarding the proper number of public directors will become the de facto requirement for all DCMs and will severely limit the ability of DCMs to undertake other approaches to achieving the general performance standard set by the core principles. Some commenters also contended that requiring a DCM that does not meet the proposed acceptable practices to demonstrate compliance with Core Principle 15 through other means impermissibly shifts the burden of proof to DCMs to justify departures from the acceptable practices, when the Act gives DCMs reasonable discretion in how they comply with the core principles. Another commenter noted that since the Commission has proposed absolute numerical standards as a means of avoiding conflicts of interest, there is no legitimate way to prove compliance by other means.

b. Safeguards are already in place to protect against conflicts of interest at publicly traded, mutually-owned, and other DCMs.

Numerous commenters opined that the proposals are not necessary because there are sufficient safeguards already in place to ensure that potential conflicts of interest are adequately identified and controlled and that self-regulation remains effective. Several commenters argued that small DCMs already have in place adequate controls to address potential conflicts of interest, and that the Commission conducts an independent review of each DCM's compliance department through its rule enforcement review (''RER'') program.[55] Several commenters noted that their board composition standards already require public directors (albeit at a level lower than the proposed 50% requirement). Those commenters opined that their existing procedures for avoiding conflicts and including public participation are sufficient and more effective than the proposed 50% public member requirement.

Commenters also argued that fear of a possible conflict of interest between a demutualized DCM's regulatory responsibilities and the demands of a for-profit company is without foundation. These comments asserted that demutualization actually encourages rather than discourages effective self-regulation because market integrity is key to attracting and retaining business. Commenters stated that large, publicly traded DCMs already have numerous safeguards in place to ensure that they act in the best interest of their shareholders and do not act to the detriment of a particular group of shareholders. In addition, some commenters opined that corporate governance requirements currently applicable to publicly traded DCMs, combined with the reasonable exercise of discretion by DCMs pursuant to Core Principle 1,[56] provide sufficient assurance that conflicts of interest will be kept to a minimum in the decision-making process. One DCM commented that the proposed acceptable practices are unnecessary given, inter alia, the NYSE and NASDAQ listing standards to which some DCM parent companies are subject. In addition, it was observed that when a potential conflict does arise, DCMs have developed specific board governance procedures to ensure proper disclosure and to remove the potential conflict from the decision-making process. One commenter stated that the proposals are unnecessary because, if the Commission's general concern is that a DCM will adopt rules that will disadvantage members who are their competitors, it may address that concern through its review of self-certified rules to ensure that such rules comply with the Act and regulations.

Several commenters argued that the proposals should not be applied to mutually-owned DCMs, as none of the factors cited by the Commission as justification for the proposed acceptable practices apply to them. These commenters further argued that applying the acceptable practices to mutually-owned DCMs to the same degree as large publicly traded DCMs would be burdensome in terms of cost, administration, and efficiency.

1a. The Commission's Response to the General Comments

i. Proactive measures are justified to protect the integrity of self-regulation in the U.S. futures industry.

The Commission's response to the comments summarized above is three-fold. First, the Commission believes that the argument that there are no specific regulatory failures justifying new acceptable practices for Core Principle 15 is misplaced. As discussed more fully in the cost-benefit analyses in Section V–A, the Commission did identify industry changes that it believes create new structural conflicts of interest within self-regulation, increase the risk of customer harm, could lead to an abuse of self-regulatory authority, and threaten the integrity of, and public confidence in, self-regulation in the U.S. futures industry. Increased competition, demutualization and other new ownership structures, for-profit business models, and other factors are highly relevant to the impartiality, vigor, and effectiveness with which DCMs exercise their self-regulatory responsibilities. The Commission strongly believes that credible threats to effective self-regulation must be dealt with promptly and proactively, and is confident that precautionary and prophylactic methods are fully justified and well within its authority.

Second, the Commission firmly rejects commenters' implicit argument that its oversight authority may be exercised only in response to crises or failures in self-regulation. To the contrary, the Commission's mandate, given by the Congress, is affirmative and forward-looking, including promoting ''responsible innovation'' and ''fair competition'' in the U.S. futures industry.[57] As catalogued throughout the SRO Review, rapid innovation and increasing competition are powerful new realities for all DCMs. The Commission's statutory obligation is to ensure that these realities evolve as fairly and responsibly as possible, and always in a manner that serves the public interest. The Commission believes that the new acceptable practices for Core Principle 15 serve exactly those purposes by ensuring a strong public voice at key levels of SRO

[55] The Commission's Division of Market Oversight conducts periodic RERs at all DCMs to assess their compliance with particular core principles over a one-year target period. Staff's analyses, conclusions, and recommendations regarding any identified deficiency are included in a publicly available written report.

[56] Core Principle 1 states: ''IN GENERAL—To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.'' CEA § 5(d)(1), 7 U.S.C. 7(d)(1).

[57] CEA § 3(b), 7 U.S.C. 5(b) .

decision making, particularly as it effects self-regulation.

Finally, prior to adopting these acceptable practices, the Commission initiated an exhaustive, three-and-one-half year research program that resulted in a uniquely informed regulatory process. The Commission determined, as have many other regulatory and self-regulatory bodies, that ''independent'' directors can be of great benefit to the deliberations and decisions of corporate boards and their committees. The Commission further determined, as have others, that DCMs charged with self-regulatory responsibilities are distinct from typical corporations, and thereby require careful attention to how their independent directors are defined. Finally, the Commission determined, as have others, that DCMs' independent directors should be of a special type—''public'' directors—and should meet higher standards, including non-membership in the DCM. All three decisions have ample precedent in exchange governance and self-regulation, both in the futures and the securities industries, are based on the extensive record amassed during the SRO Review and on the Commission's expertise and unique knowledge of the futures industry, and are well-grounded in the Commission's statutory authority to issue acceptable practices for core principle compliance.

ii. Some comments do not stand up to factual scrutiny.

Some general comments in opposition to the proposed acceptable practices do not stand up to factual scrutiny. For example, DCMs whose parent companies are publicly traded and subject to NYSE listing standards (50% ''independent'' board of directors and key committees that are 100% independent) argued that those standards are sufficient to ensure effective self-regulation. The argument fails on two grounds.

First, by their very terms, the NYSE's listing standards are designed for shareholder protection, not the effective self-regulation of futures exchanges in the public interest. Second, DCM holding companies have determined that DCM members are independent under the NYSE's listing standards.[58] By doing so, they have demonstrated the inappropriateness of relying on the listing standards as a means of identifying public directors for effective self-regulation. Notably, the NYSE itself recognized this same point when reforming its own governance and self-regulatory structure, which is substantially more demanding than what it requires of its listed companies, or than what the Commission's new acceptable practices will require of DCMs.[59]

The related argument that the proposed acceptable practices should not be applied to mutually-owned DCMs is also without merit. It ignores the futures industry's rapid and continuing evolution. When the SRO Review began in 2003, three of the four largest DCMs were member-owned. Now, all four are subsidiaries of public companies.[60] Only two member-owned futures exchanges remain in the United States, and one is actually structured as a Delaware for-profit stock corporation that has paid dividends for nine consecutive years, including $11,000 per share in 2006 and $7,000 per share in 2005.[61] More importantly, all DCMs, regardless of ownership structure, operate in an increasingly competitive environment where improper influence may be brought to bear upon regulatory functions, personnel, and decisions.

Another misplaced series of comments argued that existing Commission processes, such as RERs, provide sufficient safeguards to ensure the future integrity of self-regulation. RERs are in fact central to the Commission's oversight regime for DCMs, and constitute the primary method by which the Commission verifies core principle compliance. However, RERs are retrospective in nature (focusing on a target period in the past) and cannot guarantee future performance. When self-regulatory failures are discovered, they are typically corrected via recommendations made by the Commission's Division of Market Oversight and implemented by the relevant DCM on a forward-looking basis. In contrast, the objective of effective self-regulation and Commission oversight is to prevent such failures from ever occurring. The Commission does not believe that RERs should be a substitute for issuing acceptable practices for compliance with a particular core principle. The Commission has found that acceptable practices improve core principle compliance by providing all DCMs with greater clarity regarding the Commission's expectations, and a safe-harbor upon which they may fully rely. Neither RERs nor any other existing Commission process, such as the review of self-certified rules, is an adequate substitute for carefully tailored acceptable practices.[62] This is particularly true when the new acceptable practices concern a core principle that has no previous acceptable practices or respond to a rapidly changing area of the futures industry.

iii. The Commission may implement detailed acceptable practices as safe-harbors for core principle compliance.

Notwithstanding those comments generally opposed to the proposed acceptable practices for Core Principle 15, the Commission continues to strongly believe that the recent structural changes in the U.S. futures industry require an appropriate response within DCMs to ensure that self-regulation remains compatible with competitive, for-profit DCMs. Accordingly, the new acceptable practices for Core Principle 15 establish

[58] See, e.g., CME's Categorical Independence Standards: ''* * * the Board of Directors has determined that a director who acts as a floor broker, floor trader, employee or officer of a futures commission merchant, CME clearing member firm, or other similarly situation person that intermediates transactions in or otherwise uses CME products and services shall be presumed to be ''independent,'' if he or she otherwise satisfies all of the above categorical standards and the independence standards of the [NYSE] and The Nasdaq Stock Market, Inc. * * *'' CME Holdings Inc., Definitive Proxy Statement (Form DEF 14A), App. A, (March 10 2006). Accord CBOT Holdings Inc., Definite Proxy Statement (Form DEF 14A), App. A, (March 29, 2006). Both holding companies are listed on the NYSE and subject to its listing standards.

[59] NYSE Group's board of directors consists exclusively of directors who are independent both of member organizations and listed companies. In addition, NYSE Group and NASD recently announced plans to consolidate their member firm regulation into a single new SRO for all securities broker/dealers. Market regulation and listed company compliance will remain with NYSE Regulation, a not-for-profit subsidiary of NYSE Group. A majority of NYSE Regulation's directors must be independent of member organizations and listed companies, and unaffiliated with any other NYSE Group board. See *http://www.nyse.com/regulation/1089235621148.html.*

[60] CME, CBOT, and NYMEX are wholly-owned subsidiaries of CME Holdings Inc., CBOT Holdings Inc., and NYMEX Holdings Inc., respectively. NYBOT is a wholly owned subsidiary of IntercontinentalExchange Inc. In each case, the DCMs are now subsidiaries of for-profit, publicly traded stock corporations listed on the NYSE.

[61] The two mutually-owned exchanges are the Kansas City Board of Trade and the Minneapolis Grain Exchange. However, as noted above, KCBT is structured as a for-profit, dividend-paying, stock corporation. See *http://www.kcbt.com/news_2.asp?id=457* (KCBT press release announcing ninth consecutive annual dividend, including $11,000 per share in 2006) and *http://www.kcbt.com/news_2.asp?id=347* (KCBT press release announcing eighth consecutive annual dividend, including $7,000 per share in 2005).

[62] The argument that RERs make acceptable practices unnecessary is further misplaced as it ignores the beneficial interaction between the two oversight tools. For example, acceptable practices facilitate core principle compliance and advance the RER process by providing both DCMs and Commission staff with information as to the areas of concern which must be addressed under a particular core principle. The final acceptable practices for Core Principle 15 are no exception, as they highlight the type of structural conflicts of interest which all DCMs must address.

appropriate governance and self-regulatory structures, while preserving DCMs' flexibility to adopt alternate measures if necessary.

Those commenters that opposed the new acceptable practices for their ''inflexibility'' misunderstand the nature of the core principle regime and the interaction between core principles and acceptable practices. The 18 core principles for DCMs establish standards of performance and grant DCMs discretion in how to meet those standards. However, compliance with the core principles is not static and does not exist in a vacuum; instead, core principles are broad precepts whose specific application is subject to change as DCMs and the futures industry evolve. Furthermore, as discussed in Section III, core principle compliance is an affirmative and continuing obligation for all DCMs, and it is incumbent upon them to demonstrate compliance to the Commission's satisfaction.[63]

The flexibility inherent in the core principles permits each DCM to comply in the manner most appropriate to it. At the same time, such flexibility provides both the Commission and the futures industry with the latitude to grow in their understanding of self-regulation and its requirements. One common example is the Commission's approach to the safe storage of trade data under Core Principle 10,[64] which evolved following the events of September 11, 2001.[65] Similarly, the Commission's expectations for the management of conflicts of interest under Core Principle 15 now include an understanding that in a highly competitive futures industry, where almost all DCMs are for-profit and many are subsidiaries of publicly traded companies, the conflicts that may arise are not purely personal or individual. Simply stated, whether or not DCMs choose to implement the new acceptable practices, the conflicts of interest which they must address to comply with Core Principle 15 now include structural conflicts between their self-regulatory responsibilities and their commercial interests.

All acceptable practices, including those for Core Principle 15, are designed to assist DCMs by offering ''pre-approved'' roadmaps or safe-harbors for core principle compliance. Although it may be a preferred method of compliance, no acceptable practice is mandatory. Instead, as safe-harbors, acceptable practices provide all DCMs with valuable regulatory certainty upon which they may rely, should they choose to do so, when seeking initial designation, when subject to periodic RERs by the Division of Market Oversight, or at any other time in which the Commission requires a DCM to demonstrate core principle compliance.[66]

Because they offer such broad and beneficial safe-harbors, acceptable practices are sometimes detailed and exact in their requirements. If the Commission effectively ''pre-approves'' a specific self-regulatory structure for minimizing conflicts of interests under Core Principle 15, as it is doing here, then it must be sufficiently specific in describing that structure and all of its components. In the alternative, the Commission would be offering not a safe-harbor upon which DCMs may fully rely, but only additional guidance, subject to varying interpretations, raising many questions, and providing few answers and even less certainty. That is not the intent of these acceptable practices.

In addition, the Commission notes that the presence of ''must,'' ''shall,'' and similar words in the new acceptable practices indicates only that these things must be done to receive the benefits of the safe-harbor, not that the acceptable practices themselves are required. What is now required of all DCMs under Core Principle 15 is to demonstrate that they have effectively insulated their self-regulatory functions, personnel, and decisions from improper influence and commercial considerations, including those stemming from their numerous member, customer, owner, and other constituencies. If a DCM chooses not to implement the new acceptable practices for Core Principle 15, then the Commission will evaluate the DCM's alternative plan, either through RERs, the rule submission process, or other means. During any such review, the DCM will be required to present and demonstrate what procedures, arrangements, and methods it has adopted or will adopt to minimize structural conflicts of interest in self-regulation. The DCM will further be required to demonstrate that its approach is capable of responding effectively to conflicts that may arise in the future.

2. Comments With Respect to the Board Composition Acceptable Practice

The proposed Board Composition Acceptable Practice calling for at least 50% public director representation on DCM boards and executive committees drew substantial comment, both for and against. In their comment letters, the FIA and five large FCMs strongly supported the 50% public director benchmark for DCM boards. The FIA particularly noted that the proposal provides DCMs with flexibility as to how they want to address the diversity of interest groups in that the proposal does not specify any fixed number of board members. The FIA also recommended that a subgroup of public directors should serve as a nominating committee to select new or re-nominate existing public directors. One exchange also generally supported the proposals, commenting that the proposed governance standards and ROCs will enhance DCM governance and serve to protect market participants and the public interest.

Many commenters, however, opposed the proposed 50% public director composition requirement. Several commenters were concerned that the proposal would dilute the voices of trade, commodity, and farmer interests in DCM governance, as well as the voices of market users, members, shareholders, and other stakeholders in the DCM. Commenters were also concerned about the need for experience and expertise on DCM boards.[67]

Several commenters stated that, in order to meet the proposed 50% board composition requirement, either the board would have to be made unreasonably large, or a DCM would have to reduce the number of directors drawn from its commercial interest and other memberships. Commenters also contended that it would be difficult to

[63] See 17 CFR Part 38, App. B, ¶ 1 (''This appendix provides guidance on complying with the core principles, both initially *and on an ongoing basis* to maintain designation under Section 5(d) of the Act and this part'' (emphasis added)).

[64] Core Principle 10 states: ''TRADE INFORMATION—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.'' CEA § 5(d)(10), 7 U.S.C. 7(d)(10).

[65] On September 11, 2001, the physical location of three DCMs was destroyed, and both the Commission and the industry recognized the importance of redundancy capabilities, including safe storage of trade information, that are sufficiently distant from primary locations.

[66] The Commission has explained that ''boards of trade that follow the specific practices outlined under [the acceptable practices] * * * will meet the applicable core principle.'' 17 CFR 38, App. B, ¶ 2.

[67] One commenter stated that filling governance positions with those totally devoid of any connection to the marketplace would necessarily lead to major decisions regarding the operation of futures markets being made by those with no expertise in such decision making and no vested interest in the long-term best interests of those markets. It was suggested that this will result in either grossly mismanaged DCMs or the appearance of conflicts of interest as public directors defer to the less diverse non-public directors and officers.

attract a sufficient number of qualified public directors.[68]

Many of the comments regarding executive committee composition raised the same points as comments regarding the board composition requirement. Such comments included the need for a diversity of representation on executive committees, the need for experience and expertise, and the difficulty of attracting qualified public directors. In addition, several commenters argued that members of an executive committee have a special need for expertise due to its unique involvement in day-to-day operational and managerial issues.

2a. The Commission's Response to Comments on the Board Composition Acceptable Practice

After carefully reviewing the comments above, the Commission has decided to modify the proposed Board Composition Acceptable Practice, and reduce the required ratio of public directors on boards and executive committees from at least 50% to at least 35%. The Commission is confident that the new Board Composition Acceptable Practice, together with the other acceptable practices adopted herein, effectively accomplishes what Core Principle 15 requires—''minimiz[ing] conflicts of interest in the decision-making process of the contract market''—while simultaneously respecting the legitimate needs of efficiency and expertise in that process.

Both the proposed and final Board Composition Acceptable Practices recognize the importance of DCM boards of directors in effective self-regulation. Boards of directors bear ultimate responsibility for all regulatory decisions, and must ensure that DCMs' unique statutory obligations are duly considered in their decision making. While exchange boards do have fiduciary obligations to their owners, they are also required by the Act to ensure effective self-regulation, to protect market participants from fraud and abuse, and to compete and innovate in a fair and responsible manner. To meet these obligations, boards of directors, and any committees to which they delegate authority, including executive committees, must make certain that DCMs' regulatory responsibilities are not displaced by their commercial interests or those of their numerous constituencies.

The Commission strongly believes that DCMs are best able to meet their statutory obligations if their boards and executive committees include a sufficient number of public directors.[69] While determining a ''sufficient'' level of public representation is not an exact process, the Commission has concluded that the public interest will be furthered if the boards and executive committees of all DCMs are at least 35% public. Such boards and committees will gain an independent perspective that is best provided by directors with no current industry ties or other relationships which may pose a conflict of interest. These public directors, representing over one-third of their boards, will approach their responsibilities without the conflicting demands faced by industry insiders. They will be free to consider both the needs of the DCM and of its regulatory mission, and may best appreciate the manner in which vigorous, impartial, and effective self-regulation will serve the interests of the DCM and the public at large. Furthermore, boards of directors that are at least 35% public will help to promote widespread confidence in the integrity of U.S. futures markets and self-regulation. Public participation on such boards will enhance the independence and accountability of all self-regulatory actions. As regulatory authority flows from the board of directors to all decision-makers within a DCM, such independence should permeate every level of self-regulation and successfully minimize conflicts of interest as required by Core Principle 15.

As stated above, the Commission is confident that boards of directors and executive committees that are at least 35% public will effectively protect the public interest; at the same time, the Commission believes that they are appropriately responsive to the comments. Under the new 35% standard, DCMs will have more latitude to include a broader diversity of non-public directors, such as commercial representatives and other highly experienced industry professionals, and to appoint more member directors and other emerging classes of trading privilege holders. There will also be sufficient room for stockholders and other outside investors, DCM officers, and persons representing affiliated entities or business partners.

The Commission believes that a public director level of at least 35% will not require DCMs to increase the size of their boards or executive committees, nor will they lose the ability to convene boards and committees on short notice. Furthermore, at the 35% level, DCMs should find it easier to attract a sufficient number of qualified public directors to serve on their boards and executive committees, thereby substantially reducing any disproportionate burden on smaller or start-up DCMs. Finally, while this modification makes ROCs with 100% public representation all the more necessary, it also provides ROC directors with access to a larger pool of industry expertise from among their fellow board members, with whom they may freely consult whenever needed.

At the same time, the Commission has determined that the 35% standard adopted in the final Board Composition Acceptable Practice is sufficient to ensure strong representation of the public interest in DCM decision making. While a DCM may determine that a 50% public director standard is more appropriate for its circumstances,[70] the Commission believes that the 35% standard for safe harbor purposes under Core Principle 15 will be effective while also responsive to reasonable concerns voiced in the public comments.

The Commission has concluded that the most effective way to address DCM conflicts of interest, while still maintaining the self-regulatory model, is to place a sufficient number of public persons on DCM boards of directors, executive committees, and other decision-making bodies. Ultimately, however, the Commission's objective is

[68] One mutually-owned DCM commented that payment of a stipend to directors will create additional financial burdens on smaller, non-profit DCMs and create the possibility of less qualified directors serving on the board. Another commenter noted that public directors with no industry experience might be less inclined to invest in the self-regulatory functions of the DCM.

[69] As noted previously, some commenters made similar arguments with respect to executive committee composition and board composition. Those arguments are addressed jointly in this Section. Some commenters also argued that executive committees require a special degree of expertise due to their unique role in day-to-day operational and managerial issues. The Commission notes that this argument runs counter to commenters' opposition to the ROC Acceptable Practice on the grounds that directors and board committees should not take part in day-to-day operational and managerial issues. The Commission believes that executive committees' unique role stems from their authority to act in place of the full board of directors. Regardless of the decision being made, if a DCM decides that such decision is best made by a small group of directors to whom full board authority has been delegated, then the ratio of public directors in that group should be no less than the ratio on the full board. Anything less would deprive a key level of DCM decision making from the benefits attendant to sufficient public representation and independence, and diminish the effectiveness of the Board Composition Acceptable Practice.

[70] Certain DCMs, such as large exchange subsidiaries of publicly traded companies, may be better served by a higher ratio of public directors, and may be better able to attract them. Although the Commissions believes that the 35% standard adopted herein is an appropriate minimum standard for all DCMs, the core principle regime grants DCMs the flexibility to adopt higher ratios of public directors should they wish.

not to engineer specific board-level decisions, but rather to encourage a process that ensures that every decision will be both well-informed by inside expertise and well-balanced by the public interest. Following implementation of the Board Composition and companion acceptable practices, the Commission will carefully monitor DCM decision making, and reserves the right to modify the required ratio of public directors as necessary.

3. Comments With Respect to the Public Director Acceptable Practice

Many commenters addressed the proposed acceptable practices' definition of ''public'' for DCM directors and members of disciplinary panels. With respect to the definition generally, the FIA supported the Commission's definition but noted that it had proposed a more stringent public director standard of no involvement with the futures or derivatives business. Several commenters expressed the general concern that the Commission's definition of public would lead to a lack of experience and expertise among DCM directors and members of disciplinary panels. One commenter contended that the definition was not needed for NYSE-listed DCMs as the definition of independence contained in the NYSE listing requirements was sufficient to ensure the appropriate level of independence in a DCM's decision-making processes.

With respect to the proposed definition's exclusion of persons having a material relationship with the contract market, one commenter asked that the Commission clarify that DCM boards may make material relationship determinations without any independent nominating committee involvement. That commenter also asked that the Commission clarify whether it would represent a material relationship with the futures exchange for an individual, who otherwise satisfied the proposed qualification criteria, to be a lessor member of a DCM affiliate with a de minimus equity percentage interest in the DCM affiliate. Another commenter questioned whether the material relationship test would prevent an otherwise qualified individual from becoming a public director if its family farming operation used the DCM's contracts as risk management tools.[71]

The proposed definition stated that a director will not be considered ''public'' if the director is a member of the contract market or a person employed by or affiliated with a member. In response, one commenter stated that such a restriction would be a mistake because it would exclude from the board people with both industry knowledge and substantial shareholdings, including persons who hold membership but who are retired or lease their membership to others, members that are marginally involved in trading, persons who are members at other DCMs, and holders of corporate memberships whose firms likely conduct business at multiple DCMs. One commenter stated that the proposal's definition of member does not take into account the various types of membership, some of which may raise greater potential for conflicts of interest, while others may raise very little potential.

The proposed definition also stated that a director will not be considered ''public'' if the director is an officer or employee of the DCM or a director, officer, or employee of its affiliate. In response, one commenter argued against the disqualification of an otherwise public DCM because he or she is also serving as a director at an affiliate of the DCM. Another commenter requested that the Commission clarify that a director of a DCM would not be considered non-public because he or she was also a director of the DCM's holding company.

Several comments addressed the proposed definition's determination that a director will not be considered ''public'' if the director receives more than $100,000 in payments, not including compensation for services as a director, from the DCM, any affiliate of the DCM or from a member or anyone affiliated with a member. The FIA argued that the Commission should adopt a ''no-payment-from-contract-market'' standard, noting that payment of up to $100,000 would result in at least some allegiance to DCM management. Additionally, the FIA commented that if the $100,000 compensation limit is retained, the Commission should clarify that it is an overall cap of permissible compensation from contract markets and their members. The FIA also opined that receipt of more than $100,000 by a potential director's firm (rather than by the director) from a DCM member constitutes indirect payment or compensation and should not prevent an otherwise qualified director from being considered public.

By contrast, one DCM stated that the public director definition should be modified to eliminate the $100,000 compensation provision because it is an arbitrary level and may amount to de minimis compensation in the context of the person's total compensation.[72] Another exchange requested that the Commission clarify that pensions and other forms of deferred compensation for prior services that are not contingent on continued service would not automatically disqualify a person from serving as a public director.

One commenter addressed the proposed definition's determination that a person will be precluded from serving as a public director if any of the relationships identified in the definition apply to a member of the director's immediate family. That commenter stated that an individual should not be prohibited from serving as a public director based on the affiliation of an immediate family member with a member firm unless the family member is an executive officer of the member firm. The same commenter further noted that the exclusion should not apply to family members who do not live in the same household as the director.

The proposed definition also included a one-year look back provision with respect to the identified disqualifying circumstances. With respect to this provision, the FIA commented that a two-year look back would be more realistic and effective. In contrast, an exchange commented that the proposed one-year look back is more than sufficient and noted that that the longer the look back period, the less likely that individuals will plan to return to the industry.

3a. The Commission's Response to Comments on the Public Director Acceptable Practice

The Commission carefully considered all of the comments with respect to the Public Director Acceptable Practice, and generally found that many of the

[71] The use of a DCM's contracts to hedge risks in commercial activities otherwise unrelated to futures trading does not automatically constitute a material relationship. However, a board of directors should consider all relevant factors carefully when making its materiality determination. For example, if the farm operator cited above conducted its hedging activities as an exchange member, as broadly defined herein, such membership would disqualify it and persons affiliated with it from serving as public directors. Likewise, if futures trading is a central economic activity for an individual or firm, rather than incidental to other commercial activity, then the board should consider whether such futures trading rises to the level of a material relationship that could affect a director's decision making. For example, a director voting on a proposed exchange rule that would facilitate or deter a particular trading strategy will have a material conflict if their personal or firm trading is likely to benefit or be harmed by such new rule.

[72] This commenter stated that each DCM board should consider compensation from the DCM or its members as one factor in determining whether the person has a material relationship with the DCM.

discrete requests for clarification regarding the definition of ''public'' were reasonable. Accordingly, the Commission made appropriate responsive modifications to the final Public Director Acceptable Practice, as discussed in Section IV below.

The Commission has determined, however, that a less stringent definition of public director, as requested by some, is contrary to the acceptable practices' stated objectives: minimizing conflicts of interest through independent decision making, encouraging a strong regard for the public interest, and insulating regulatory functions via public directors and persons who are not conflicted by industry ties. Furthermore, the Commission believes that a strict definition of public director is especially necessary now that it will apply to 35% of a DCM's directors, rather than the 50% originally proposed. More importantly, the Commission strongly believes that, rather than being a drawback, the most significant contribution made by public directors to the DCM decision-making process is precisely their outside, non-industry perspective. The Commission is confident that a board consisting of at least 35% public directors, as defined in the Public Director Acceptable Practice, is more than capable of reaching intelligent collective decisions, even on technical matters requiring detailed knowledge of futures trading, while at the same time exercising its regulatory authority in a manner consistent with the public interest.

The Commission rejects the contention that it will be impossible to find a sufficient number of qualified public directors to serve on DCM boards. Similarly, it rejects the argument that the materiality and bright-line tests may result in inexperienced directors with limited knowledge of the futures industry. To the contrary, the Commission believes that DCMs are fully capable of finding a sufficient number of qualified directors to constitute at least 35% public boards. DCMs may draw from a large pool of talented candidates with relevant or related experience, including retired futures industry insiders; scholars whose research focuses on the futures markets and related disciplines; officers and executives of many sophisticated corporate entities; persons with expertise in the securities industry, which may translate well into futures; and other members of the legal, business, and regulatory communities.

The Commission notes that a wide variety of DCMs—large and small, mutually-owned and publicly traded, for-profit and not-for-profit—already have boards of directors that are at least 20% non-member, as once required by Commission Regulation 1.64. One securities exchange that is the parent company of a DCM has a board that is at least 50% non-member,[73] and the NYSE's board of directors is 100% non-member. Accordingly, many exchanges have already demonstrated an ability to successfully recruit, retain, and thrive with significant numbers of public directors.

It is noteworthy that the three largest-volume DCMs, all of which are subsidiaries of publicly traded companies, are already required to have boards that are at least 50% ''independent,'' as defined by the NYSE. In certain respects, the Commission's definition of ''public director'' overlaps with the NYSE's ''independent directors'' definition. Thus, these DCMs could potentially select at least some of their public directors from among their independent directors who do not have current ties to the futures industry. At the same time, the argument that the NYSE listing standards render the proposed Public Director Acceptable Practices unnecessary is misplaced. Despite the similarities between the acceptable practices and the NYSE's definition of independent, one overarching difference remains— the listing standards are designed to protect shareholders, through boards of directors that are sufficiently independent from management.[74] In contrast, the new acceptable practices for Core Principle 15, while recognizing that DCMs are commercial enterprises, serve the national public interest in vigorous, impartial, and effective self-regulation.

The Commission agrees with many of the commenters that effective self-regulation is in the long-term interest of DCM owners, including shareholders. However, it is crucial for all DCMs and their owners to understand that DCMs have two responsibilities: a responsibility to their ownership and a responsibility to the public interest as defined in the Act.[75] Whereas the NYSE listing standards serve those with a direct fiduciary claim upon a company (shareholders (owners)), the new acceptable practices serve the public, whose claim upon DCMs is entirely independent of ownership, membership, or any other DCM affiliation. In short, through the new acceptable practices for Core Principle 15, the Commission seeks to ensure adequate representation of a public voice that otherwise is not guaranteed any formal standing within a DCM, and which receives no effective representation under any regulatory regime other than the Commission's.

Some commenters argued that the proposed Public Director Acceptable Practice, and the bright-line tests in particular, do not take into account different types of DCM memberships and the different degrees of conflict which they may or may not engender. Although different commenters focused on different groups of industry participants, their underlying argument was the same: that industry participants should be permitted to serve as public directors to a lesser or greater extent. The Commission's response to this and similar comments summarized above is two-fold.

First, if DCMs value the presence of industry insiders on their boards, they may place them among the 65% of directors who are not required to be public under the final acceptable practices. The Commission has facilitated this option by reducing the required ratio of public directors. Second, and as stated previously, the purpose of the Public Director Acceptable Practice is to ensure independent decision making and strong consideration of the public interest by DCM boards of directors. While all directors are required to consider DCMs' statutory obligations and public responsibilities, public directors are particularly meaningful because they have no fiduciary duty to lessees or lessors of trading seats, corporate members, persons who trade small amounts, or any other persons affiliated with the futures industry and inquired about in the comments. Allowing persons with current industry affiliation to serve as public directors would necessarily reintroduce into board deliberations and ROC oversight the very conflicts of interest that Core Principle 15 and the new acceptable practices seek to minimize.

The Commission also notes that the most significant determination to be made under the Public Director Acceptable Practice is the board's finding that a potential public director has no material relationship with the DCM. The Commission has left this determination to the board's discretion, and offers the bright-line tests only as a beginning to the board's inquiry. The material relationship test requires a

[73] The board of directors of the Chicago Board Options Exchange, which owns CFE, is 50% public (independent non-member).

[74] The NYSE's commentary to its listing standards emphasizes that ''*as the concern is independence from management,* the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.'' NYSE Listed Company Manual, § 303A.02 (commentary) (emphasis added).

[75] CEA § 3(b), 7 U.S.C. 5(b).

DCM's board to make an affirmative, on-the-record finding that a director has no material relationship with the DCM, and to disclose the basis for that determination. The bright-line tests simply facilitate the board's inquiry by noting obviously material relationships, and freeing the board to focus on other relationships that may be less apparent but that are equally detrimental to impartial representation of the public interest. As such, the bright-line tests, like any other acceptable practices, must be sufficiently detailed to merit the benefits accorded to a safe-harbor. Consistent with this approach, the Commission reaffirms the familial relationships excluded under the bright-line tests, the one-year look-back provision, and all other elements of the proposed Public Director Acceptable Practice, except for those specifically treated in Section IV.[76]

4. Comments With Respect to the Regulatory Oversight Committee Acceptable Practice

The proposed Regulatory Oversight Committee Acceptable Practice called upon DCMs to establish a board-level ROC, composed solely of public directors, to oversee regulatory functions. Many commenters focused on the composition of the proposed ROC, voicing many of the same concerns they had with respect to the proposed 50% public director board requirement. Two DCMs commented that each DCM should be permitted to determine whether to establish a ROC, the extent of the ROC's responsibilities, and the most appropriate composition thereof. One DCM argued that the level of public representation should be the same for ROCs and boards.

A number of commenters expressed concern with the difficulty in recruiting qualified public directors (similar to the concerns expressed with respect to recruiting qualified directors for the board generally) to serve on ROCs, and noted the need for experience, expertise, and diversity on any such body. One DCM commented that an ROC should be able to include public representatives who are not public directors of the exchange, but who are otherwise qualified to be.

The FIA and a large FCM supported the proposed Regulatory Oversight Committee Acceptable Practice. The FCM commented that adoption of the proposal will enhance the credibility and effectiveness of DCMs in their capacity as self-regulators.

One DCM commented that while an ROC is an appropriate way to reinforce impartiality in DCM self-regulation, it may not be the best approach for all DCMs (particularly smaller ones) to charge the committee with managerial duties and overseeing daily market regulation functions. Another DCM commented that ROCs should not remove DCMs' chief regulatory officers from the appropriate direction and input of DCM management. Commenters also argued that ROCs' proposed duties could conflict with the responsibilities of the chief executive officer, the board, and DCM personnel, and could well undercut their authority.

Many commenters addressed ROCs' stated responsibilities. Several of these commenters argued that the level of authority assigned to an ROC's public directors is contrary to commonly accepted corporate management best practices because management functions are removed from management and become directors' responsibilities. A number of commenters offered recommendations as to what should be the responsibilities of an ROC. One DCM requested that the Commission clarify that if an ROC were to have any authority with respect to overseeing budgets and the hiring and compensation of regulatory officers and staff, that such authority would supplement rather than replace these normal management and board responsibilities. It was further argued that the Commission should make clear that it is not the function of an ROC to plan or conduct trade practice investigations or market surveillance or to review the results of particular investigations or audits, but rather to serve an oversight role. It also was suggested that the Commission should remove language that states that an ROC shall supervise the DCM's CRO because it is inconsistent with the Commission's stated position that an ROC should not serve as a manager. Another DCM commented that ROCs should be granted unhindered access to regulatory staff along with the authority to ensure that regulatory staff has sufficient resources and that nothing interferes with staff's fulfillment of the regulatory program.

In other comments addressing the proposed responsibilities of ROCs, a large FCM and the FIA contended that ROCs (or their chairmen) should approve the composition of DCM disciplinary panels. The FIA also recommended that ROCs be granted the power to hire, supervise, and determine the compensation of DCMs' CROs and set (or recommend to the board) DCMs' self-regulatory budgets. Further, in the interest of more transparency for DCM rulemakings, the FIA recommended that ROCs should consider and approve any new DCM rule or rule change or, if the Commission elects not to call for committee approval of all such rules and rule changes, than any new DCM rule or rule change that a DCM decides to self-certify to the Commission.

4a. The Commission's Response to Comments on the Regulatory Oversight Committee Acceptable Practice

Criticisms of the proposed ROC Acceptable Practice often mirrored those leveled against the proposed Board Composition Acceptable Practice and the proposed acceptable practices in general. After careful consideration, the Commission has determined to implement the ROC Acceptable Practice for Core Principle 15 as proposed.[77]

The Commission stresses that ROCs are oversight bodies, and that the enumerated powers granted to them in the ROC Acceptable Practice merely complement normal board functions. ROCs are not intended to supplant their boards of directors, nor are they expected to assume managerial responsibilities or to perform direct compliance work. Under the acceptable practices for Core Principle 15, DCM self-regulation remains exactly that—self-regulation, but with a stronger and more defined voice for the public responsibilities inherent to all DCMs. Properly functioning ROCs should be robust oversight bodies capable of firmly representing the interests of vigorous, impartial, and effective self-regulation. ROCs should also represent the interests and needs of regulatory

[76] In Section IV, the Commission makes clarifications with respect to, inter alia, the manner in which DCMs select their public directors, the compensation of public directors, and public directors serving on both a parent company and a subsidiary DCM (''overlapping public directors'').

[77] As stated in the proposing release, the Commission emphasizes that ROCs are expected to identify aspects of their DCMs' regulatory system that work well and those that need improvement, and to make any necessary recommendations to their boards for changes that will help to ensure vigorous, impartial, and effective self-regulation. ROCs should be given the opportunity to review, and, if they wish, present formal opinions to management and the board on any proposed rule or programmatic changes originating outside of the ROCs, but which they or their CROs believe may have a significant regulatory impact. DCMs should provide their ROCs and CROs with sufficient time to consider such proposals before acting on them. ROCs should prepare for their boards and the Commission an annual report assessing the effectiveness, sufficiency, and independence of the DCM's regulatory program, including any proposals to remedy unresolved regulatory deficiencies. ROCs should also keep thorough minutes and records of their meetings, deliberations, and analyses, and make these available to the Commission upon request. In the future, when reviewing DCMs' compliance with the core principles, the Commission will examine any recommendations made by ROCs to their boards and the boards' reactions thereto.

officers and staff; the resource needs of regulatory functions; and the independence of regulatory decisions. In this manner, ROCs will insulate DCM self-regulatory functions, decisions, and personnel from improper influence, both internal and external.

Many of the comments in opposition to the ROC Acceptable Practice—for example, that whether to establish ROCs should be left at DCMs' discretion and that it will be difficult to find qualified public directors—have already been addressed, and the Commission's previous responses need only brief summarizing here. The Commission strongly believes that new structural conflicts of interest within self-regulation require an appropriate response within DCMs. The Commission further believes that ROCs, consisting exclusively of public directors, are a vital element of any such response. With respect to those public directors, the Commission is confident that DCMs can recruit a sufficient number of qualified persons, as they have done for their boards in the past. Finally, the Commission notes that while DCMs must respond to conflicts between their regulatory responsibilities and their commercial interests; the exact manner in which they do so remains at their discretion.

A second line of comments with respect to the ROC Acceptable Practice argued that ROCs should include industry directors, and that the ratio of public directors on ROCs should be the same as on boards. The Commission believes that these comments ignore the very purpose of the ROC Acceptable Practice. As stated previously, the new acceptable practices ensure that DCMs' decision-making bodies include an appropriate number of persons who are not conflicted by industry ties. For ROCs—the overseers of DCMs' regulatory functions—the appropriate number is 100% public. The Commission believes that anything less invites into regulatory oversight operations precisely those directors whose industry affiliations lend themselves to conflicts of interest in decision making.

What constitutes a ''sufficient'' number of public persons for DCM decision making depends upon the decision-making body in question and its responsibilities. Thus, DCM disciplinary panels are required to be diverse and have only one public person because their responsibility—expert and impartial adjudications—often requires a detailed knowledge of futures trading best provided by industry participants. At the same time, that expertise is balanced by the impartiality of at least one public panelist and a diversity of industry representatives. For boards of directors, however, with both regulatory responsibilities and commercial interests, the minimum 35% ratio properly recognizes boards' dual role as the ultimate regulatory and commercial authorities within DCMs. Industry directors on DCMs' boards are fully justified precisely because of the numerous commercial decisions that they must make.

Within this construct, ROC's discrete regulatory responsibilities assume added significance. The sole purpose of ROCs is to insulate self-regulatory functions, personnel, and decisions from improper influence, and to advocate effectively on their behalf. ROCs make no direct commercial decisions, and therefore, have no need for industry directors as members. The public directors serving on ROCs are a buffer between self-regulation and those who could bring improper influence to bear upon it. The Commission notes that at least three DCMs—CME, NYBOT, and U.S. Futures Exchange—have already established board-level committees similar to the ROCs described in the ROC Acceptable Practice, and they consist exclusively of public directors. The same is true of the securities exchange parent company of one DCM that submitted comments.

Commenters who requested greater industry participation on ROCs should recall that ROCs will be subject to the final authority of their boards of directors, which may include a sufficient number of industry directors. DCM boards, including industry directors, will have ample opportunity to consult with and advise ROC public directors, to interact with regulatory officers and personnel, and ultimately to enact any regulatory policies or decisions that they deem appropriate. As stated previously, ROCs are designed to insulate self-regulation, not isolate it. At the same time, under the ROC Acceptable Practice, ROCs have the absolute right to whatever resources and authority they may require to fulfill their responsibilities, including resources within their DCMs. More specifically, ROCs have the authority and resources necessary to conduct their own inquiries; consult directly with their regulatory officers and staffs; interview DCM employees, officers, members, and others; review relevant documents; retain independent legal counsel, consultants, and other professional service providers and industry experts; and otherwise exercise their independent analysis and judgment as needed to fulfill their regulatory responsibilities.[78]

The related concern that ROCs will undercut the authority of DCM boards of directors is misplaced. ROCs should function as any other committee of the board, making recommendations which are afforded great weight and deference, and reaching final decisions if such power is delegated to it, but ultimately subject to the board's authority. The very text of the ROC Acceptable Practice calls for ROCs to ''monitor,'' ''oversee,'' and ''review,'' none of which implies binding authority or a usurpation of the full board of directors. At most, it implies a change in workflow.[79]

Similarly, concerns that ROCs will become managerial bodies or interfere with established managerial relationships are equally misplaced. To be clear, the Commission expects ROCs to oversee DCMs' self-regulatory functions and personnel, not to manage them. ROCs' responsibilities, detailed in Section 3 of the final acceptable practices, include traditional oversight functions or functions that can easily be delegated to a DCM's CRO.[80] Some

[78] ROCs should not rely on outside professionals or firms that also provide services to the full board, other board committees, or other units or management of their DCMs.

[79] For example, whereas the compensation of senior DCM executives typically may be recommended to the board by a compensation committee, the compensation of the CRO will be recommended by the ROC. This provides insulation to the CRO and the regulatory personnel beneath him or her, but does not infringe upon the board's final decision-making authority. Similarly, a ROC, rather than a budget committee, should be the body that formally recommends the appropriate level of regulatory expenditures for the DCM. Again, the salutary effect is to insulate a crucial self-regulatory decision, but not to remove it from the ultimate purview of the full board of directors. In these and similar instances, the Commission will be in a position to evaluate how boards treat ROC recommendations, thus adding Commission review as an additional level of self-regulatory insulation.

[80] The text of the final acceptable practices makes clear that ROCs' shall ''supervise the contract market's chief regulatory officer, who will report directly to the ROC.'' This two-way relationship—delegation of certain responsibilities from the ROC to the CRO combined with supervision of the CRO by the ROC—is a key element of the insulation and oversight provided by the ROC structure. It permits regulatory functions and personnel, including the CRO, to continue operating in an efficient manner while simultaneously protecting them from any improper influence which could otherwise be brought to bear upon them. The ROC Acceptable Practice identifies key levers of influence, including authority over the conduct of investigations, the size and allocation of the regulatory budget, and employment and compensation decisions with respect to regulatory personnel, among others, and then places them within the insulated ROC/CRO-regulatory personnel relationship. While in no way diminishing the ultimate authority of the board of directors, this three-part relationship is intended to protect regulatory functions and personnel, including the CRO, from improper influence in the daily conduct of regulatory activities and broader programmatic regulatory decisions.

examples of traditional committee responsibilities that can easily be performed by an ROC without undue interference in managerial relationships include: recommending rule changes or going on the record as opposed to a rule change originating elsewhere within the DCM; determining an appropriate regulatory budget in conjunction with the CRO and then forwarding that determination for consideration by the full board; arriving at employment decisions with respect to senior regulatory personnel and then forwarding those determinations for consideration by the full board; annual review and reporting on regulatory performance to the full board, etc.

ROCs' most important responsibility will simply be to insulate self-regulatory functions and personnel from improper influence. Such insulation does not usurp established authority, but rather acts as a filter through which it must pass, and be cleansed of any efforts to exercise improper influence or drive regulatory decisions according to commercial interest. One facet of the insulation provided by an ROC clearly is the relationship between it and its CRO, and through him or her, all regulatory functions, personnel, and decisions. The Commission has endeavored to identify the levers of influence that may be used to pressure an individual, or an entire regulatory department, and to place ROCs alongside those levers. Matters such as the hiring, termination, and compensation of regulatory personnel, and size of regulatory budgets, are clearly areas where insulation from improper influences may be beneficial. The insulation provided by the ROC Acceptable Practice, however, need not interfere with the established relationships between management, staff, and others necessary to effective self-regulation.

5. Comments With Respect to the Disciplinary Committee Acceptable Practice

Several commenters addressed the proposed Disciplinary Panel Acceptable Practice provision that all DCM disciplinary panels include at least one public participant and that no panel be dominated by any group or class of DCM members. The FIA and large FCMs that commented were generally supportive of the proposed Disciplinary Panel Acceptable Practice, with the FIA commenting that one public member of a DCM disciplinary panel should be a prerequisite for safe harbor relief, but that a 50% public independent member standard for such panels would be much more in keeping with the spirit of the proposed acceptable practices. One large FCM noted that the proposal's composition requirement would avoid the perception of conflict and lack of fairness and impartiality. Another large FCM commented that it supports the proposed provision that would require rules precluding any group or class of industry participants from dominating or exercising disproportionate influence on disciplinary panels.

Although two large DCMs commented that it is not necessary for the Commission to prescribe diversity on disciplinary panels, most of the smaller DCMs that commented in this area were supportive of the proposed acceptable practice. One smaller DCM that hires hearing officers to determine whether to bring a disciplinary action, however, commented that this proposed acceptable practice is not necessary for that DCM as it did not have any widespread inadequacies.

Two commenters addressed what should be the qualifications of the public person serving on disciplinary panels; one agreed that having a public person on disciplinary panels is a sound proposition, but recommended that such person need not be subject to the same qualifying criteria as public directors. Another requested that the Commission clarify that the proposed board determination and reporting requirements with respect to public directors generally are unnecessary for public persons serving on disciplinary panels. The same commenter also requested clarification that the Disciplinary Panel Acceptable Practice's exclusion of decorum or attire cases from the requirement that one public person serve on disciplinary panels also applies to cases limited to certain recordkeeping matters (e.g., the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities).

5a. The Commission's Response to Comments on the Disciplinary Panel Acceptable Practice

After carefully reviewing these comments, the Commission is satisfied that the Disciplinary Panel Acceptable Practice should be implemented as proposed. The Commission believes that fair disciplinary procedures, with minimal conflicts of interest, require disciplinary bodies that represent a diversity of perspectives and experiences. The presence of at least one public person on disciplinary bodies also provides an outside voice and helps to ensure that the public's interests are represented and protected. This approach is consistent with the Commission's overall objective of ensuring an appropriate level of public representation at every level of DCM decision making, while simultaneously calibrating the required number of public persons to the nature and responsibility of the decision-making body in question.

The Disciplinary Panel Acceptable Practice accomplishes these dual objectives of diversity and public representation, while also maintaining the expertise necessary to evaluate sometimes complex disciplinary matters. The Commission also is comfortable that its RER process is well-positioned to evaluate the performance of DCM disciplinary committees and panels, such that a substantially higher proportion of public representation or other ameliorative steps are not required. RERs typically examine all of a DCM's disciplinary cases during a target period in detail, including reviews of disciplinary committee and panel minutes, investigation reports, settlement offers, and sanctions imposed. The Commission also pays careful attention to the recommendations of DCM compliance staff, to disciplinary bodies' responses to those recommendations, and to the analysis and rationale offered by disciplinary bodies in support of their decisions. If disciplinary committees and panels are underperforming, the Commission will be able to recognize any shortcomings and take appropriate measures.

The work of disciplinary panels requires more specialized knowledge of futures trading than almost any other governing arm of a DCM. Neither the strategic business decisions made by boards of directors, nor the oversight conducted by ROCs, for example, require as much technical futures trading expertise as disciplinary panel service. Accordingly, the Commission believes that increasing the proportion of public representatives on disciplinary panels to 50%, as suggested by one commenter, would eliminate too much expertise from the disciplinary process and is unwarranted.

The Commission recognizes that a small number of DCMs may have unique disciplinary structures. However, the Commission strongly believes that diverse panels, including at least one public person, are appropriate for all DCMs. Should an individual DCM choose to comply with this element of Core Principle 15 by other means, the Commission will examine and monitor it to ensure full core principle compliance.

Other specific requests for modifications and/or clarifications with respect to the Disciplinary Panel

Acceptable Practice are treated separately in Section IV(E) below.

IV. Specific Requests for Modifications and/or Clarifications That the Commission Has Determined To Grant or Deny

Several commenters made specific requests for modifications and/or clarifications that the Commission has determined to grant in some instances and deny in others. The specific modifications and/or clarifications do not represent changes in the proposed acceptable practices, but rather implement the Commission's original intent. They are described below.

A. Phase-in Period for the New Acceptable Practices

Several commenters indicated concern that adoption of the proposed acceptable practices, particularly the requirement to restructure the board, would be burdensome, time consuming and costly. For instance, one large DCM commented that implementation of the acceptable practices would necessitate major changes and cause significant disruption for DCMs, virtually none of which currently meet the proposed 50% public director standard (or the minimum 35% standard adopted in this final release). Another large DCM commented that publicly held DCMs implementing the acceptable practices would have to amend their certificates of incorporation, by-laws, and various public disclosures and respond to any shareholder challenge. As a result of the perceived time requirement, several commenters requested that, if the proposals are adopted, the Commission should provide for an adequate phase-in period.

The Commission hereby grants an appropriate phase-in period. The new acceptable practices for Core Principle 15 are effective 30 days after publication in the **Federal Register.** Under the phase-in period described below, DCMs may take up to two years or two regularly-scheduled board elections, whichever occurs first, to fully implement the new acceptable practices or otherwise demonstrate full compliance with Core Principle 15. The Commission expects that DCMs will begin making preparations and taking conforming steps early in the phase-in period. Accordingly, six months after publishing these acceptable practices in the **Federal Register,** the Commission will survey all DCMs to evaluate their plans for full compliance with Core Principle 15. The Commission also will monitor all DCMs throughout the phase-in period to evaluate their progress toward full compliance.

Although DCMs are not required to implement the new acceptable practices, the Commission has determined that full compliance with Core Principle 15 requires all DCMs to address structural conflicts of interest between their regulatory responsibilities and their commercial interests or those of their numerous constituencies. Such measures must be present throughout DCMs' decision-making processes. DCMs choosing to adopt measures other than the final acceptable practices adopted herein should consider and address key areas of decision making that are subject to conflicts of interest. These may include decisions with respect to regulatory budgets, expenditures, and funding; employment, compensation, and similar decisions involving regulatory personnel; the constitution of disciplinary panels; the promulgation of rules with a potential regulatory impact; decision making with respect to the investigation, prosecution, and sanctioning of disciplinary offenses; and the chain of command in compliance programs (including trade practice surveillance, market surveillance, and financial surveillance) beyond regulatory officers. The Commission will consider all of these factors in evaluating compliance with Core Principle 15.

B. Selection of Public Directors

With respect to the placement of public directors on boards, one DCM commented that the proposing release calls upon DCMs to ''elect'' boards composed of at least 50% public members, but that at that particular DCM public governors are not elected but are identified and appointed by the board itself. Further, election of public members might discourage potential candidates because having to stand for election creates the potential for elected individuals to be beholden to their electing constituency, especially if the position is compensated. Another commenter noted that the proposing release suggests a role for nominating committees in the selection of public directors, and asked for clarification that nominating committees are not required to be involved. Conversely, the FIA recommended that a subgroup of public directors should serve as a nominating committee to select new or re-nominate existing public directors.

The Commission hereby clarifies that DCMs may select their public directors in the manner most appropriate to them. Compliance with the new acceptable practices for Core Principle 15 does not require the use of nominating committees, the ''election'' of public directors, or the selection of public directors by any pre-specified means. DCMs are free to select their public directors by any process they choose, as long as their public directors meet the requirements set forth in the new acceptable practices. In addition, the Commission expects that the tenures and terms of public directors will be no less secure than that of other directors of the DCM. For example, if other directors can be removed only for cause, then that same protection should extend to public directors. Similarly, if other directors are selected for two-year terms, then public directors should be as well, etc.

The Commission considered FIA's request for a special nominating committee for public directors. However, in promulgating these acceptable practices, the Commission has been careful to focus on outcomes—the insulation of regulatory functions, a pure public voice in board deliberations, and fair disciplinary proceedings-while providing only as much instruction as necessary to achieve the safe harbor.

C. Compensation of Public Directors

As summarized in Section III above, several commenters requested clarifications or amendments with respect to the compensation of public directors under the Public Director Acceptable Practice. Section (2)(B)(iii) of the proposed acceptable practices specified that a public director may not receive more than $100,000 in payments from the DCM (or any affiliate of the DCM, or from a member or anyone affiliated with a member) other than for services as a director. One commenter asked whether deferred compensation for prior services would count toward the $100,000 payment limit for public directors. It does not. The Commission hereby affirms that public directors may receive deferred compensation for prior services in excess of $100,000, and that such compensation will not count towards the $100,000 payment limit for public directors. To comply with the acceptable practices, DCMs must ensure that any such compensation is truly deferred compensation for prior services. Thus, the agreement by which the public director is being compensated should predate his or her selection as a public director. Furthermore, it should in no way be conditioned upon the directors' future performance, services, or behavior, and in no way be revocable by the compensating party.

FIA requested clarification that the $100,000 payments cap for public directors, for services other than as a

director, is a cumulative cap on compensation from DCMs and their membership. The Commission hereby confirms that FIA's understanding is correct. The $100,000 payment cap is an annual, cumulative cap on payments to the public director from all ''relevant'' sources (i.e., the DCM, any affiliate of the DCM, or any member or affiliate of a member of the DCM) combined. As explained previously, the $100,000 cap also includes indirect payments made by a DCM, its affiliates, and its members or affiliates of its members to the director. In addition, the $100,000 payment cap is an annual cap, as summarized above.

Finally, FIA argued that the Commission should preclude public directors from receiving any compensation from the DCM, but that compensation received by a director's firm, rather than the director itself should not count towards any compensation cap. The Commission considered both comments carefully, but determined that neither is appropriate. The Public Director Acceptable Practice's compensation cap, higher than that requested by FIA, combined with its narrow limits on where such compensation may originate, strikes the proper balance between an effective but not overly restrictive definition of public director.

The Commission strongly believes that significant compensation paid by a DCM or its affiliates to a firm could adversely impact the independence of a director affiliated with that firm. In the Commission's opinion, any such relationship between a DCM and a director, through the director's firm, clearly rises to the level of a ''material relationship'' that would preclude the director from serving as a public director. Accordingly, the Commission hereby clarifies that a director affiliated with a firm receiving over $100,000 in compensation from the DCM or an affiliate of the DCM may not qualify as a public director.

D. Overlapping Public Directors

At least one commenter requested clarification with respect to overlapping public directors at DCMs whose ownership structures include a parent-subsidiary relationship. In the proposed acceptable practices, Sections (2)(B)(i) and (2)(B)(v), when read together, suggested that the same person could not serve as a public director at both the parent company and its subsidiary DCM. The question is most likely to arise in the context of DCMs that are subsidiaries of publicly traded companies, and whose boards of directors overlap in whole or in part with those of their public parents.

The Commission hereby clarifies that overlapping public directors are permitted. However, such directors must still meet the Commission's definition of public director, as set forth in the Public Director Acceptable Practice. In effect, overlapping public directors must carry the Commission's definition of ''public'' director from their DCMs to the holding companies' boards of directors. Conforming language has been added to the final acceptable practices.

E. Jurisdiction of Disciplinary Panels and Definition of ''Public'' for Persons Serving on Disciplinary Panels

One commenter asked the Commission to confirm that DCM disciplinary panels considering cases involving the timely submission of accurate records required for clearing or verifying each day's transactions need not include a public person. The Commission included such language in the preamble to the proposed Disciplinary Panel Acceptable Practices, but neglected to include it in the text of the acceptable practices themselves. The Commission is correcting that oversight and modifying the final acceptable practices for Core Principle 15 to make clear that disciplinary panels considering cases involving the timely submission of accurate records required for clearing or verifying each day's transactions need not include a public member.

The same commenter requested clarification that public members of DCM disciplinary panels need only meet the ''bright-line'' tests for public directors contained in Section (2)(B)(i-v) and (2)(C) of the proposed acceptable practices. That was, in fact, the Commission's intent. Public members of disciplinary panels are not subject to the broader ''no material relationship'' test of Section (2)(i), nor the disclosure requirements of Section (2)(v) in the final acceptable practices. The Commission is confident that the new bright-line tests, combined with DCMs' existing personal conflicts of interest provisions, are sufficient to ensure impartial public representatives on disciplinary panels. Furthermore, the Commission also believes that requiring DCMs to conduct and disclose a material relationship test for disciplinary panel members would constitute an unjustifiable burden at this time. Conforming changes have been made in the final acceptable practices.

F. ''No Material Relationship Test''

Section (2)(B)(ii) of the proposed acceptable practices precludes a DCM director from being considered public if he or she is a member of the DCM, or employed by or affiliated with a member. A director is ''affiliated with a member'' if he or she is an officer or director of the member. The Commission hereby adds an additional element to that definition: a DCM director is affiliated with a member if he or she has any relationship with the member such that his impartiality could be called in question in matters concerning the member.

The Commission believes that this additional element of ''affiliated'' is a natural outgrowth of its original proposal. In particular, the proposed acceptable practices already precluded a DCM's public directors from also serving as employees, officers, or directors of a member. Combined with the materiality test in Section (2)(A) of the proposed acceptable practices, the Commission's intent to capture a broad array of relationships is clear. Properly applied, the proposed Public Director Acceptable Practice already excluded from service as public directors persons whose relationship with a member firm could call their impartiality into question. Whether the relevant relationships are employment, or similar to employment—independent contracting, legal services, consulting, or other relationships—they are precluded by the Public Director Acceptable Practice. Conforming language has been added to the final acceptable practices.

G. Elimination of ROCs' Periodic Reporting Requirements

Finally, the Commission is removing certain language from Section 3(B)(v) of the proposed acceptable practices. Among other things, this section called for ROCs to ''prepare periodic reports for the board of directors and an annual report assessing the contract market's self-regulatory program. * * *'' While the annual reporting obligation remains in full effect, the Commission has determined that an explicit requirement to prepare periodic reports for the board is unnecessary at this time. DCM boards of directors are free to request reports, updates, and information from committees whenever they wish, and committees are free to provide them even if not requested. Nothing in the ROC Acceptable Practice is intended to change that dynamic.

V. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the CEA,[81] as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.[82]

In the proposing release, the Commission considered the costs and benefits of the acceptable practices, requested comment on the application of the criteria contained in Section 15(a) of the CEA, and invited commenters to submit any quantifiable data that they might have.

DCM commenters asserted that the costs of compliance outweighed any benefit, particularly the costs of amending governing documents in the manner required by Delaware corporate law. A number of DCMs and individuals contended that the Board Composition Acceptable Practice (and the other proposed acceptable practices) is unnecessary and that the Commission's cost-benefit analysis is flawed. Commenters asserted that the acceptable practices present no or minimal benefit, since the Commission failed to demonstrate any problems in the futures industry to warrant issuance of any of the acceptable practices.[83] Several commenters distinguished between securities industry reforms, which followed public scandals, and the recent absence of such events in the futures industry.[84]

As noted above, however, the Commission identified significant futures industry trends, including increased competition and changing ownership structures, which justify the acceptable practices as a prophylactic measure to minimize conflicts of interest in DCM decision making and to promote public confidence in the futures markets in the altered landscape. Minimizing conflicts and promoting public confidence in the futures markets are significant benefits for the futures industry, market participants, and the national public interest served by the futures markets.

KCBT and NYBOT commented that, as small, non-public DCMs, they do not present the types of conflicts the Commission sought to address in expanding public participation on DCM governing boards.[85] HedgeStreet, a small electronic DCM, expressed similar views.[86] The Commission sees no rational basis for the proposition that size insulates a DCM from conflicts of interest. The potential impact arising from an improperly managed conflict may well be less at a smaller DCM than at a large one. The magnitude of potential harm is not the appropriate standard for taking prophylactic measures. What matters is whether the means proposed will impact small DCMs disproportionately. Neither KCBT, NYBOT, nor HedgeStreet have identified a disproportionate burden. Nor have they shown how their status as non-public DCMs immunizes them from conflicts. As the Commission made clear in proposing the acceptable practices, DCMs that become public, stockholder-owned corporations face an additional, new layer of conflict. Conflicts are inherent in other forms of ownership as well. Such conflicts may be minimized at all sizes and forms of DCMs by an increase in the percentage of public directors.

If any DCM faces a particular burden peculiar to its individual circumstances in complying with the acceptable practices, that DCM may, as a matter of statute, choose an alternative method of complying with Core Principle 15 that is responsive to its circumstances. However, such DCM must still demonstrate, to the Commission's satisfaction, that its alternative method effectively addresses conflicts of interest in decision making under Core Principle 15, including structural conflicts of interest.

DCM commenters asserted that complying with the Board Composition Acceptable Practice will be an expensive undertaking requiring amendment of corporate charters and other documents, and that the Commission gave too little consideration to these costs. For example, NYMEX states:

> The process of preparing * * * bylaw changes requires a commitment of time both by in-house exchange staff as well as by specialized legal advisors. This process can be fairly time-intensive with regard to review by such professionals of various drafts of amendments and other material for shareholders in relation to the successive SEC filings. There are the obvious costs generated by numerous runs by the applicable print shop specializing in SEC filing productions as well as the not inconsiderable costs of overnight shipping of the shareholder materials to hundreds if not thousands of shareholders of record.[87]

Arguments such as these are not persuasive. NYMEX describes a process, and asserts that it entails a cost, but fails even to estimate that cost, or to place the cost in any kind of context that would allow the Commission to judge the level of burden. Other comments alleging burdensome costs are similarly flawed. The Commission has no basis to conclude that compliance is other than a reasonable cost of doing business in an industry subject to federal oversight. Moreover, the costs may be phased in over a period of time. In this final release, although the acceptable practices will be effective immediately, the Commission is adopting a phase-in period of two years or two board election cycles, whichever occurs first.

The DCMs' contentions that any level of compliance is burdensome because they already are subject to other governance regimes miss the mark. CME, CBOT, and NYMEX essentially contended that the governance provisions of the Delaware General Corporation Law under which they are organized, and the NYSE Listing Standards, contain sufficient provisions to assure sound governance.[88] The

[81] 7 U.S.C. 19(a).

[82] E.g, *Fishermen's Dock Co-op., Inc.* v. *Brown.* 75 F.3d 164 (4th Cir. Va. 1996); *Center for Auto Safety* v. *Peck,* 751 F.2d 1336 (D.C. Cir. 1985) (agency has discretion to weigh factors in undertaking costs-benefits analyses).

[83] See, e.g., CME CL 29 at 9; NYMEX CL 28 at 10–11; NYBOT CL 22 at 4; CBOT CL 21 at 3.

[84] See, e.g., NYMEX CL 28 at 11–13; CME CL 29 at 9; NYBOT CL 22 at 2; Comment of Donald L. Gibson, CL 25 at 1.

[85] KCBT at CL 8 at 2; NYBOT CL at 4. NYBOT has informed the Commission of its intent to be acquired by ICE and run as a for-profit subsidiary. Accordingly, its comment has little relevance to its own contemplated future circumstances.

[86] See HedgeStreet CL 17.

[87] NYMEX CL at 20 n.32.

[88] CME CL 29 at 14; CBOT CL 21 at 6–7; NYMEX CL 28 at 5–6, 15.

member-owned DCMs, NYBOT, KCBT, and their supporters, state that the diversity standards of Core Principle 16 provide an adequate bulwark against conflicts of interest, and that the membership presence on their boards will be diluted if a large contingent of public directors is admitted.[89] These arguments overlook the overarching purpose of the Board Composition Acceptable Practice, which is expressly to minimize conflicts of interest by addressing the keystone of all corporate decision making—the board of directors.

CME stated that the responsibility imposed on public directors to act in the public interest actually conflicts with the duty owed to shareholders under Delaware corporate law and the NYSE Listing Standards.[90] The Commission's review of corporate law authority reveals no such conflict. These proposals are entirely consistent with bedrock corporate law principles: as Delaware corporations, they are run ''by or under the Board of Directors.'' [91] Directors act as fiduciaries of stockholders, to be sure, but that does not mean the performance of their duties is limited to serving the narrow interests of stockholders. Those affairs include complying with the various statutes to which the corporation is subject. Shareholders are well-served or ill-served by the quality of the directors' discharge of their statutory duties.

Corporate law experts generally agree that outside directors benefit corporate governance generally. ''[M]ost persons in academia and business agree that outside directors play an important role in the effective functioning of the board.'' [92] The suggestion of some commenters that public directors have an inherent conflict between the public interest and their duty to shareholders is misplaced. The acceptable practices address DCM governing boards, not the boards of parent public holding companies. DCMs—and their governing bodies—are vested with a public interest duty under the plain text of the CEA. Moreover, the public interest duty applies to nonpublic as well as public directors. The Commission is aware of overlapping board memberships—i.e., that the members of a DCM governing board may be the same individuals as those who serve on the parent board. This is entirely permissible. When an individuals sits, deliberates and acts in respect of the governance of the registered entity, he or she must do so consistently with the public interest mandate of the CEA.

A number of commenters who wrote in support of KCBT and NYBOT assumed that public directors will lack interest and experience, and add little to board deliberations.[93] These commenters, however, offered no empirical evidence to support their speculation. The Commission notes that many DCM boards already include public directors who have been deemed qualified and competent by the DCMs. As discussed previously, the boards of exchanges such as the KCBT, MGEX, NYMEX, NYBOT, and CME, are typically 20% or more non-member. Moreover, the acceptable practices do not preclude non-member producers, retired and former industry persons, academics, and others from being considered public directors, which should provide a significant pool of futures industry experience from which to draw. DCMs that fear adding public directors will expand their boards to an unwieldy size may comply with the acceptable practices by phasing in public directors into existing seats.

One commenter contended that in prior cost-benefit analyses, the Commission has addressed each of the five considerations under Section 15(a) separately, and that this approach would have facilitated public comment.[94] However, the Commission has not always addressed each consideration separately in its rulemakings, nor is it required by the statute to do so. Section 15(a) requires that costs and benefits be evaluated in terms of the five considerations, but the Commission may give greater weight to any one of them. The cost-benefit analysis in the proposed acceptable practices provided sufficient notice to the public regarding the considerations to which the Commission accorded the greatest weight. The same commenter asserted that the Commission should endeavor to apply the relevant factors separately to each major proposal.[95] Again, however, the statute does not require that the Commission apply the factors in this fashion, but allows it to consider the costs and benefits in light of the impact of its proposal as a whole. Finally, the commenter encouraged the Commission to consider regulatory alternatives in its cost-benefit analysis.[96] As noted above, however, the only alternative suggested by the commenters was that the Commission do nothing. They suggested no other alternative that would address the concerns cited by the Commission in proposing the acceptable practices. In the Commission's judgment, these acceptable practices serve to protect the public interest in a manner that minimizes the costs to the industry while demonstrating compliance with Core Principle 15.

As was discussed in the proposing release, the acceptable practices described herein are safe harbors for compliance with Core Principle 15's conflict of interest provisions. They offer DCMs the opportunity to meet the requirements of Core Principle 15 through a regulatory governance structure that insulates their regulatory functions from their commercial interests. The Board Composition Acceptable Practice provides that DCMs implement boards of directors and executive committees thereof that are at least 35% public. The ROC Acceptable Practice further provides that all DCMs place oversight of core regulatory functions in the hands of board-level ROCs composed exclusively of ''public'' directors. The Public Director Acceptable Practice offers guidance on what constitutes a ''public'' director. In addition, the Disciplinary Panel Acceptable Practice suggests minimum composition standards for DCM disciplinary committees. As noted above, although the acceptable practices will be effective immediately, the Commission is allowing a phase-in period for DCMs to implement them.

The proposed acceptable practices are consistent with legislative and regulatory requirements, and voluntarily undertaken changes in governance practices in other financial sectors, such as the securities markets, and are intended to enhance protection of the public. The Commission has endeavored to establish the least intrusive safe harbors and regulatory requirements that reasonably can be expected to meet the requirements of Core Principle 15 of the CEA. These acceptable practices advance the Commission's mandate of assuring the continued existence of competitive and efficient markets and to protect the public interest in markets free of fraud and abuse. They nevertheless may be expected to entail some costs, including, among the most foreseeable, those attendant to recruiting and appointing additional directors, amending corporate documents, making necessary

[89] NYBOT CL 22 at 3–4; KCBT CL 8 at 1–2; for their supporters, see, e.g., comment of Michael Braude, CL 10 at 1.

[90] CME CL 29 at 8.

[91] Del. Code Ann. tit. 8, § 141(a).

[92] D. Pease, ''Outside Directors: Their Importance to the Corporation and Protection from Liability,'' 12 Del. J. Corp. L. 25, 31 *et seq.* (1987) (citing extensive authority and noting the legal advantages of outside directors).

[93] See, e.g., Comment of Dennis M. Erwin, CL 18 at 1; Comment of John Legg, CL 14 at 1; and Comment of Robert J. Rixey, CL 11 at 1.

[94] NYMEX CL 32 at 20.

[95] Id.

[96] Id.

rule changes and certifying them to the Commission, and appointing a Chief Regulatory Officer. In light of the reduction of the percentage of public board members from 50% in the Board Composition Acceptable Practice as proposed to at least 35%, and the phase-in period, the Commission believes that these costs will not impose a significant burden and can be borne over time. After considering the costs and benefits of the acceptable practices, and considering the comments received in response to its proposal, the Commission has determined to issue the acceptable practices for Core Principle 15 with respect to DCMs.

B. Paperwork Reduction Act of 1995

The acceptable practices contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), the Commission has submitted a copy of this section and the acceptable practices to the Office of Management and Budget (''OMB'') for its review.

The revision of collection of information has been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, under control number 3038–0052. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In the Notice of Proposed Acceptable Practices, the Commission estimated the paperwork burden that could be imposed by the acceptable practices and solicited comment thereon. 71 FR 38740, 38748 (July 7, 2006). No specific or sufficiently material comment was received.

Copies of the information collection submission to OMB are available from the Commission Clearance Officer, Three Lafayette Centre, 1155 21st Street, NW., Washington DC 20581, (202) 418–5160.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The final acceptable practices affect designated contract markets. The Commission has previously determined that designated contract markets are not small entities for purposes of the Regulatory Flexibility Act.[97] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the final acceptable practices will not have a significant economic impact on a substantial number of small entities.

[97] Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

VI. Text of Acceptable Practices for Core Principle 15

List of Subjects in 17 CFR Part 38

Commodity futures, Reporting and recordkeeping requirements.

■ In light of the foregoing, and pursuant to the authority in the Act, and in particular, Sections 3, 5, 5c(a) and 8a(5) of the Act, the Commission hereby amends part 38 of title 17 of the Code of Federal Regulations as follows:

PART 38—DESIGNATED CONTRACT MARKETS

■ 1. The authority citation for part 38 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 2. In Appendix B to Part 38 amend Core Principle 15 by adding paragraph (b) ''Acceptable Practices'' to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles.

* * * * *

Core Principle 15 of section 5(d) of the Act: Conflicts of Interest

* * * * *

(b) *Acceptable Practices.* All designated contract markets (''DCMs'' or ''contract markets'') bear special responsibility to regulate effectively, impartially, and with due consideration of the public interest, as provided for in Section 3 of the Act. Under Core Principle 15, they are also required to minimize conflicts of interest in their decision-making processes. To comply with this Core Principle, contract markets should be particularly vigilant for such conflicts between and among any of their self-regulatory responsibilities, their commercial interests, and the several interests of their management, members, owners, customers and market participants, other industry participants, and other constituencies. Acceptable Practices for minimizing conflicts of interest shall include the following elements:

(1) *Board Composition for Contract Markets*

(i) At least thirty-five percent of the directors on a contract market's board of directors shall be public directors; and

(ii) The executive committees (or similarly empowered bodies) shall be at least thirty-five percent public.

(2) *Public Director*

(i) To qualify as a public director of a contract market, an individual must first be found, by the board of directors, on the record, to have no material relationship with the contract market. A ''material relationship'' is one that reasonably could affect the independent judgment or decision making of the director.

(ii) In addition, a director shall not be considered ''public'' if any of the following circumstances exist:

(A) The director is an officer or employee of the contract market or a director, officer or employee of its affiliate. In this context, ''affiliate'' includes parents or subsidiaries of the contract market or entities that share a common parent with the contract market;

(B) The director is a member of the contract market, or a person employed by or affiliated with a member. ''Member'' is defined according to Section 1a(24) of the Commodity Exchange Act and Commission Regulation 1.3(q). In this context, a person is ''affiliated'' with a member if he or she is an officer or director of the member, or if he or she has any other relationship with the member such that his or her impartiality could be called into question in matters concerning the member;

(C) The director, or a firm with which the director is affiliated, as defined above, receives more than $100,000 in combined annual payments from the contract market, any affiliate of the contract market, or from a member or any person or entity affiliated with a member of the contract market. Compensation for services as a director does not count toward the $100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;

(D) Any of the relationships above apply to a member of the director's ''immediate family,'' i.e., spouse, parents, children, and siblings.

(iii) All of the disqualifying circumstances described in Subsection (2)(ii) shall be subject to a one-year look back.

(iv) A contract market's public directors may also serve as directors of the contract market's parent company if they otherwise meet the definition of public in this Section (2).

(v) A contract market shall disclose to the Commission which members of its board are public directors, and the basis for those determinations.

(3) *Regulatory Oversight Committee*

(i) A board of directors of any contract market shall establish a Regulatory Oversight Committee (''ROC'') as a standing committee, consisting of only public directors as defined in Section (2), to assist it in minimizing actual and potential conflicts of interest. The ROC shall oversee the contract market's regulatory program on behalf of the board. The board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the ROC to fulfill its mandate.

(ii) The ROC shall:

(A) Monitor the contract market's regulatory program for sufficiency, effectiveness, and independence;

(B) Oversee all facets of the program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring

compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;

(C) Review the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;

(D) Supervise the contract market's chief regulatory officer, who will report directly to the ROC;

(E) Prepare an annual report assessing the contract market's self-regulatory program for the board of directors and the Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels;

(F) Recommend changes that would ensure fair, vigorous, and effective regulation; and

(G) Review regulatory proposals and advise the board as to whether and how such changes may impact regulation.

(4) *Disciplinary Panels*

All contract markets shall minimize conflicts of interest in their disciplinary processes through disciplinary panel composition rules that preclude any group or class of industry participants from dominating or exercising disproportionate influence on such panels. Contract markets can further minimize conflicts of interest by including in all disciplinary panels at least one person who would qualify as a public director, as defined in Subsections (2)(ii) and (2)(iii) above, except in cases limited to decorum, attire, or the timely submission of accurate records required for clearing or verifying each day's transactions. If contract market rules provide for appeal to the board of directors, or to a committee of the board, then that appellate body shall also include at least one person who would qualify as a public director as defined in Subsections (2)(ii) and (2)(iii) above.

* * * * *

Issued in Washington, DC, on January 31, 2007 by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. E7–2528 Filed 2–13–07; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM37

Home Schooling and Educational Institution

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulation regarding the definition of a child for purposes of establishing entitlement to additional monetary benefits for a child who is home-schooled. VA defines educational institutions to include home-school programs that meet the legal requirements of the States (by complying with the compulsory attendance laws of the States) in which they are located. The proposed rule published in the **Federal Register** on July 13, 2006, is adopted as final, without change.

DATES: *Effective Date:* March 16, 2007.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 13, 2006, (71 FR 39616), VA proposed to amend its regulations regarding the definition of a child for purposes of establishing entitlement to additional monetary benefits for a child who is home-schooled. VA defined educational institutions and included home-school programs that meet the legal requirements of the States (by complying with the compulsory attendance laws of the States) in which they are located.

The 60-day public comment period ended on September 11, 2006. One comment was received from the Home School Legal Defense Association and it supported the rule change.

Based on the rationale set forth in the proposed rule and the rationale contained in this document, we are adopting the provisions of the proposed rule as a final rule without change.

Paperwork Reduction Act

The collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) referenced in this final rule has an existing Office of Management and Budget (OMB) approval as a form. The form is VA Form 21–674, Request for Approval of School Attendance, OMB approval number 2900–0049. No changes are made in this final rule to the collection of information.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule 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 final rule would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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 unless OMB waives such review, 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 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.

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 the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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 the 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 one year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.104 Pension for Non-Service-Connected Disability for Veterans, 64.105 Pension to Veterans Surviving Spouses, and Children, 64.109 Veterans Compensation for

Service-Connected Disability, and 64.110 Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: January 4, 2007.

R. James Nicholson,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.57(a)(1)(iii) to read as follows:

§ 3.57 Child.

(a) * * *

(1) * * *

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an educational institution approved by the Department of Veterans Affairs. For the purposes of this section and § 3.667, the term ''educational institution'' means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria, including schools, colleges, academies, seminaries, technical institutes, and universities. The term also includes home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law. The term ''home schools'' is limited to courses of instruction for grades kindergarten through 12.

(Authority: 38 U.S.C. 101(4)(A), 104(a))

* * * * *

[FR Doc. E7–2466 Filed 2–13–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 59

RIN 2900–AM42

Priority for Partial Grants to States for Construction or Acquisition of State Home Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, an interim final rule amending the Department of Veterans Affairs (VA) regulations regarding grants to States for construction or acquisition of State homes. The amendment was necessary to ensure that projects designed to remedy conditions at an existing State home that have been cited as threatening to the lives or safety of the residents receive priority for receiving VA grants in the future (including in Fiscal Year 2007).

DATES: *Effective Date:* February 14, 2007.

FOR FURTHER INFORMATION CONTACT: Frank Salvas, Chief, State Home Construction Grant Program (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, 202–273–8534.

SUPPLEMENTARY INFORMATION: An interim final rule amending VA's regulations regarding grants to States for construction or acquisition of State homes was published in the **Federal Register** on August 11, 2006 (71 FR 46103).

We provided a 60-day comment period that ended on October 10, 2006. No comments were received. Based on the rationale set forth in the interim final rule, we now adopt the interim final rule as a final rule without change.

Administrative Procedure Act

This document, without change, affirms the amendment made by the interim final rule that is already in effect. The Secretary of Veterans Affairs concluded that, under 5 U.S.C. 553(b)(3)(B), there was good cause to dispense with the opportunity for prior comment with respect to this rule. The Secretary found that it was impracticable, unnecessary, and contrary to the public interest to delay this regulation for the purpose of soliciting prior public comment. Nevertheless, the Secretary invited public comment on the interim final rule but did not receive any comments. The amendment was consistent with the priorities established by Congress and was needed on an expedited basis because the prior version of the regulation may have precluded VA from funding life safety projects during Fiscal Year 2007. While it is important to give States receiving partial grants priority for continued funding, the regulations need to recognize the other priorities for awarding State home grants including the top priority for projects that protect the lives and safety of veterans residing in existing State homes.

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 the 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 final rule will have no such effect on State, local, and tribal governments, or on the private sector.

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 the Office of Management and Budget (OMB) unless OMB waives such review, 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 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.

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 the Executive Order because it is likely to result in a rule that may raise novel

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

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

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. The rule will affect grants to States and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities.

List of Subjects in 38 CFR Part 59

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: January 11, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

PART 59—GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOMES

■ Accordingly, the interim final rule amending 38 CFR part 59, which was published at 71 FR 46103 on August 11, 2006, is adopted as a final rule without change.

[FR Doc. E7–2465 Filed 2–13–07; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 06–182]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Internet-Based Captioned Telephone Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Commission grants a request for clarification that Internet Protocol (IP) captioned telephone relay service (IP captioned telephone service or IP CTS) is a type of telecommunications relay service (TRS) eligible for compensation from the Interstate TRS Fund (Fund) when offered in compliance with the applicable TRS mandatory minimum standards. The Commission also grants the request that *all* IP CTS calls be compensated from the Fund until such time as it adopts jurisdiction separation of costs for this services. The Commission conditions its approval on Ultratec's representation that it will continue to license its captioned telephone technologies, including technologies relating to IP CTS, at reasonable rates. Also in this document, the Commission seeks approval from the Office of Management and Budget (OMB) for any Paperwork Reduction Act (PRA) burdens contained in this document that will modify OMB Control Number 3060–1053 to have TRS providers offering IP CTS file annual reports with the Commission.

DATES: Effective April 16, 2007. Written comments on the PRA modified information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before April 16, 2007.

ADDRESSES: You may submit PRA comments identified by [CG Docket No. 03–123 and/or OMB Control Number 3060–1053], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their PRA comments to *PRA@fcc.gov* and to Allison E. Zaleski at *AllisonE.Zaleski@omb.eop.gov.* Please include the docket number 03–123 and/or OMB Control number 3060–1053 in the subject line of the message.
- *Mail/Fax:* Parties who choose to file by paper should submit their PRA comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554, and to Allison E. Zaleski, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via fax (202) 395–5167.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer and Governmental Affairs Bureau at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail *Thomas.Chandler@fcc.gov.* For additional information concerning the PRA information collection requirements contained in the document, send an e-mail to *PRA@fc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document contains modified information collection requirements subject to the PRA of 1995, Public Law 104–13. These will be submitted to OMB for review under § 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection(s) contained in this proceeding. On July 19, 2005, the Commission released Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order (*Two-Line Captioned Telephone Order*), CG Docket No. 03–123, FCC 05–141, which was published in the **Federal Register** on September 14, 2005 (70 FR 54292), concluding that *two-line* captioned telephone service is a type of TRS eligible for compensation from the Fund, effective October 14, 2005. This is a summary of the Commission's document FCC 06–182, adopted December 20, 2006, released January 11, 2007. Document FCC 06–182 addresses issues arising from a *Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Services (Petition),* filed October 31, 2005, by Self-Help for the Hard of Hearing (SHHH), the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), the American

Academy of Audiology (AAA), the American Association of People with Disabilities (AAPD), the American Speech-Language-Hearing Association (ASHA), the Association of Late-Deafened Adults (ALDA), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the League for the Hard of Hearing (LHH), the National Association of the Deaf (NAD), the National Cued Speech Association (NCSA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the California Association of the Deaf (CAD), and the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) (Petitioners), a *Request for Expedited Clarification for the Provision of and Cost Recovery for Internet Protocol Captioned Telephone Relay Service (Ultratec Petition to Clarify),* filed January 17, 2006, by Ultratec, Inc. (Ultratec), and a *Request to Amend Petition for Rulemaking to Mandate Captioned Telephone Relay Service; Request for Expedited Clarification on the Provision (Petition to Amend),* filed January 19, 2006 by Petitioners. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The full text of document FCC 06–182 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street. SW., Room CY–A257, Washington, DC 20554. Document FCC 06–182 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 06–182 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Paperwork Reduction Act

Document FCC 06–182 contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in document FCC 06–182 as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Public and agency comments are due April 16, 2007. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, the Commission has assessed the effects of its determination that IP captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund, and finds that such action will not affect businesses with fewer than 25 employees.

Synopsis

The Petition

Petitioners describe IP CTS as using the Internet to provide captioned telephone service. (*See, e.g., Petition* at 19. Ultratec suggests, for example, that regardless of how the call is set up, IP captioned telephone service should be considered any relay service that ''allows the user to simultaneously listen to, and read the text of, what the other party in a telephone conversation has said, where the connection carrying the captions between the service and the user is via an IP addressed and routed link.'' Karen Peltz Strauss, Legal Consultant for Ultratec, Inc. *Ex Parte* Letter, July 19, 2006 (Ultratec *Ex Parte*), Attachment at 1–2.) Petitioners ask the Commission to clarify that IP CTS is a form of TRS eligible for compensation from the Fund, and that all such calls be compensated from the Fund. (*Petition* at 19–20.) Petitioners state that the Commission has already determined that both captioned telephone service and IP Relay service are forms of TRS, and assert that IP captioned telephone service is simply ''an extension of these already-approved services.'' (*Petition to Amend* at 2.)

Petitioners emphasize that there are multiple methods of using the Internet to provide captioned telephone service. (*Petition* at 19 (''Petitioners have learned that multiple methods of using Internet transport to produce captioned telephone service have already been developed * * *, [which] will allow voice and text to be carried by IP or a combination of IP and circuits over the PSTN.''); *Ultratec Petition to Clarify* at 7 (''Ultratec has developed a number of methods for delivering captioned telephone service via IP connections that are ready for deployment upon the FCC's approval''; redacting from public filing a full description of various methods of how the service may be provided.)) The record also reflects that a consumer can use IP CTS with an existing voice telephone and a computer, and therefore, unlike with present captioned telephone service, no specialized equipment is required. (*See, e.g.*, Ultratec *Ex Parte.*) For example, an IP captioned telephone call can be set up similar to a two-line captioned telephone call, except that the line from the user to the provider would be via the Internet, not a second PSTN line. The consumer would make a voice to voice call to the other party on a standard telephone and the PSTN; at the same time, the voice of the called party is directed from the consumer's telephone to a personal computer (or similar device) that routes it to the provider via the Internet. The provider, in turn, sends back to the consumer the text of what was spoken. As a result, the consumer can both hear (to the extent possible) what the called party is saying over the standard voice telephone headset, and read the text of what the called party said on the computer or similar device. (*See, e.g., Ultratec Ex Parte,* Attachment at 4. Ultratec also notes that there are a number of ways in which IP captioned telephone calls can be set up and handled, and that no special software is required. *See, e.g., Ultratec Ex Parte* Attachment at 3–7.)

Petitioners state that IP CTS benefits consumers by giving them the flexibility of using a computer, PDA, or wireless device to make such a call, without having to purchase special telephone equipment. (*Petition* at 19.) In addition, they note that captions provided on a computer screen can accommodate a much wider group of individuals, including people with hearing disabilities who also have low vision, because they can take advantage of the large text, variable fonts, and variable colors that are available. (*Petition* at 19.) Petitioners also note that employers are now routinely equipping their employee's workstations with computers and connections to the Internet, and migrating away from reliance on the PSTN. Petitioners state that captioned telephone users should not be excluded from being able to use Internet technologies to communicate. (*Petition* at 19; *see also Ultratec Petition to Clarify* at 4–7 (addressing benefits of IP captioned telephone service)).

Petitioners further assert that, like VRS and IP Relay, the Commission

should permit all IP captioned telephone service calls to be compensated from the Interstate TRS Fund. (*Petition* at 19–20; *see also Ultratec Petition to Clarify* at 6.) Petitioners note that under this arrangement, multiple national providers are able to compete for customers. (*Petition* at 20; *see also Ultratec Petition to Clarify* at 6.) Petitioners also assert that IP CTS providers should be subject to the Commission certification procedures applicable to other Internet-based forms of TRS. (*Petition* at 20.) Finally, Ultratec requests that the same waivers of the TRS mandatory minimum standards applicable to captioned telephone service and IP Relay also be made applicable to IP captioned telephone service. (*Ultratec Petition to Clarify* at 7–8 (listing waivers)).

The Comments

The *Petition* was placed on Public Notice. (*Petition for Rulemaking Filed Concerning Mandating Captioned Telephone Relay Service and Authorizing Internet Protocol (IP) Captioned Telephone Relay Service,* CG Docket No. 03–123, Public Notice, 20 FCC Rcd 18028, (November 14, 2005); published at 70 FR 71849, November 30, 2005)). Five providers and governmental entities submitted comments and six entities submitted reply comments. (Comments were filed by the California Public Utilities Commission and the People of the State of California (CA PUC) (December 29, 2005); the Florida Public Service Commission (FPSC) (December 21, 2005); Hamilton Relay, Inc. (Hamilton) (December 30, 2005); Sprint Nextel Corporation (Sprint) (December 30, 2005); and MCI, Inc. (now Verizon) (Verizon) (December 30, 2005). Reply comments were filed by Petitioners (January 17, 2006); CA PUC (January 17, 2006); Missouri Public Service Commission (MO PSC) (January 17, 2006); National Association of State Utility Commissioners (NASUCA) (January 17, 2006); Ultratec (January 17, 2006); and Verizon (January 17, 2006)). All of these commenters urge the Commission to recognize IP captioned telephone service as a type of TRS service. (*See, e.g.*, FPSC Comments at 3; NASUCA Reply Comments at 2; Ultratec Reply Comments at 2, 21; *see also* Hamilton Comments at 2 (supporting IP CTS as a type of TRS but questioning its general availability at this time). No commenters oppose this request.)) Numerous individuals also submitted comments, all generally supporting of the Petition. (Individual comments can be found in Docket No. 03–123 at *http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi*.) In addition, the Commission's Consumer Advisory Committee (CAC) TRS Working Group has requested that the Commission recognize IP captioned telephone service as a TRS service eligible for compensation from the Fund. (*See* Report of the TRS Working Group to the Federal Communications Commission Consumer Advisory Committee (November 2006) (*CAC TRS Working Group Recommendation*.))

Commenters also support compensating all such calls from the Interstate TRS Fund. (*See, e.g.*, Hamilton Comments at 2–3; Ultratec Reply Comments at 2, 21; FPSC Comments at 3–4. Although Petitioners assert that all calls should be compensated by the Fund so that multiple national providers could offer service and compete for customers, some commenters also assert that, like VRS and IP Relay, providers cannot determine which calls are intrastate and which are interstate. *See, e.g.*, Hamilton Comments at 2–3; FPSC Comments at 3–4; *cf.* NASUCA Reply Comments at 6–9 (suggesting that IP CTS calls can be separated into intrastate and interstate calls, but not objecting to having the Fund compensate all such calls on an interim basis). Verizon, however, suggests that the Fund should not pay for all IP CTS calls. Verizon Reply Comments at 4.) Further, Hamilton asserts that because IP CTS is similar to VRS and IP Relay (*i.e.*, Internet-based), there should be federal certification of IP CTS providers so that the Commission can ensure the providers are offering service in compliance with the mandatory minimum standards. (Hamilton Comments at 4. No commenters oppose this request.)

Discussion

The Commission concludes that IP CTS is a type of TRS, and that all such calls may be compensated from the Interstate TRS Fund. The Commission also concludes that providers seeking to offer this service and to be compensated from the Fund may seek certification from the Commission pursuant to the recent certification rules adopted by the Commission. (*See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Report and Order and Order on Reconsideration, 20 FCC Rcd 1719 (December 12, 2005); published at 70 FR 76208, December 23, 2005 (*TRS Provider Certification Order*)). In addition, the Commission sets forth those TRS mandatory minimum standards inapplicable to the provision of this service. Finally, the Commission conditions its approval on Ultratec's representation that it will continue to license its captioned telephone technologies, including technologies relating to IP CTS, at reasonable rates.

IP Captioned Telephone Service and Compensation from the Fund. The recognition of IP captioned telephone service as a type of TRS pursuant to Section 225 of the Communications Act follows from the nature of this service. The provision of TRS has evolved as new forms of technology have been developed and as consumers have identified the particularized needs of persons with hearing and speech disabilities. Since the adoption the TRS rules and the provision of TRS as a text-based service via TTYs and the PSTN, the Commission has recognized VRS and STS, IP Relay, and most recently, captioned telephone service. (*See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Order on Reconsideration, 20 FCC Rcd 13140 (July 19, 2005); published at 70 FR 51643, August 31, 2005 (*ASL-to-Spanish VRS Order*) (recognizing ASL-to-Spanish VRS service as a form of TRS); *Two-line Captioned Telephone Order*.) In so doing, the Commission has noted that:

> In enacting Section 225 of the Communications Act, Congress did not narrow its definition of TRS only to a specific category of services otherwise defined in the Communications Act, such as ''telecommunications services.'' Rather, Congress used the broad phrase ''telephone transmission services'' that is constrained only by the requirement that such service provide a specific functionality. The requisite functionality is that the service provides the ability for an individual who has a hearing or speech impairment to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of individuals without any such impairment to do so. Congress further provided that TRS includes ''services that enable two-way communication between an individual who uses a TDD [*i.e.*, TTY] or other nonvoice terminal device and an individual who does not use such a device.'' In this context, the Commission has found that the phrase ''telephone transmission service'' used in Section 225 of the Communications Act, should be interpreted broadly to include any transmission service (involving telephonic equipment or devices) to the extent that such transmission provides the particular functionality that the definition specifies. (*See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16124, paragraph 8; published at 68 FR 55898, September 29, 2003.)

The record reflects that IP captioned telephone service simply describes a new way that consumers with hearing

disabilities can access the telephone system through TRS that will accommodate persons who wish to speak to the other party and simultaneously both listen to what the other party is saying and read captions of what is being said. As such, it is a service that borrows from both the IP Relay and captioned telephone services that the Commission has previously recognized as forms of TRS. Like IP Relay, the consumer is connected to the relay provider via the Internet, not the PSTN. Like captioned telephone service, the provider sends to the consumer the text of what the other party is saying.

Therefore, the Commission finds that IP captioned telephone service is a type of TRS. The Commission emphasizes that such service may be initiated, set up, and provided in numerous ways, including using specific telephone equipment or IP-enabled devices, and various combinations of the PSTN and IP-enabled networks. (*See* Ultratec *Ex Parte*, Attachment at 3–7 (setting forth various ways in which IP CTS calls can be offered); *CAC TRS Working Group Recommendation* at 3 (noting that ''multiple methods of transport are now available for delivering captioned telephone relay service over the Internet'' and that the ''ability to make calls over one's own computer or IP-enabled device can * * * eliminate the significant costs that are associated with purchasing specially designed captioned telephone devices''); Gregg Vanderheiden, *Ex Parte* e-mail, CG Docket No. 03–123 (August 17, 2006) (stating that there is a ''generic'' way to do ''captioned IP telephony'' with any computer)). A service will be considered IP captioned telephone service as long as it allows the user to simultaneously listen to, and read the text of, what the other party in a telephone conversation has said, and the connection carrying the captions between the service and the user is via the Internet rather than the PSTN. (*Cf. Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16127, paragraph 17 (''to avoid authorizing a particular proprietary technology, rather than a particular functionality or service, the Commission defines the captioned telephone * * * service that it recognize as TRS in the *Declaratory Ruling* as any service that uses a device that allows the user to simultaneously listen to, and read the text of, what the other party has said, on one standard telephone line. TRS providers, therefore, that may choose to offer captioned telephone * * * service are not bound to offer any particular company's service''). The Commission also notes that IP captioned telephone service may be offered as either a ''one-line'' or ''two line'' service, which gives consumers and providers flexibility in how they use or offer this service. *See generally* Ultratec *Ex Parte.*) As a result, the Commission does not set forth in greater detail how this service must be provided, as long as it meets applicable TRS mandatory minimum standards (discussed below) and the captions are delivered via an IP network to the user fast enough so that they keep up with the speed of the other party's speech. (At this time, the Commission declines to adopt a quantitative measure for this service that is more stringent than the 60 words per minute (wpm) standard applicable to text-based TRS services. *See Petition* at 22; 47 CFR 64.604(a)(1)(iii) of the Commission's rules. The Commission recognizes, however, that when the captions are generated by voice recognition technology, the captions are generated at a speed well above the 60 wpm standard. *See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16134–35, paragraph 38 and note 106 (suggesting that with voice recognition technology captions are generated at approximately 140 wpm). Further, if captions are not keeping up with the speech (although a short delay is inevitable), at some point the provider is no longer offering relay service and the call is not compensable. Therefore, a provider offering this service has a strong incentive to ensure that the text is delivered promptly to the IP captioned telephone user.)

The Commission expects, however, as with captioned telephone service, that the service will be provided in a way that is automated and invisible to both parties to the call. For example, presently with captioned telephone service the consumer does not communicate directly with a CA to set up the call; similarly, we expect that IP captioned telephone service should permit the consumer to directly dial the called party and then automatically connect the CA to the calling party to deliver the captions. The Commission does not, however, require that all captioned telephone calls be set up and handled in this manner. *Cf. Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Order, 21 FCC Rcd 9147, 9148, paragraph 2 (August 14, 2006); published at 71 FR 49380, August 23, 2006 (*2006 Captioned Telephone Waiver Order*) (noting that ''as presently offered,'' the consumer directly dials the number of the called party, not the number of the relay center). The Commission also notes that for calls initiated by a voice telephone user (inbound calls), the calling party dials an 800 number and then the number of the IP captioned telephone user. *See Petition* at 22.) Similarly, although the *Captioned Telephone Declaratory Ruling* explained that the captions were generated by voice recognition technology, and therefore no typing was involved, (*See, e.g.*, *Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16122, paragraph 4, and 16127, paragraph 16), the Commission does not preclude providers of IP captioned telephone service from generating the captions in other ways (*e.g.*, typing), as long as the captions are generated quickly enough to appear on the consumer's device nearly simultaneously with the speech. (*See 2006 Captioned Telephone Waiver Order* at paragraph 4 (clarifying that certain requirements does not apply to this service if it is offered via voice recognition technology and not typed text)). The principle characteristic of any captioned telephone service is that the consumer nearly simultaneously receives both the actual voice of the other party to the call and text of what the party is saying, not that the captions are generated by voice recognition technology or any other particular way. (*See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16127, paragraph 17 (captioned telephone service is ''any service that uses a device that allows the user to simultaneously listen to, and read the text of, what the other party has said'')). The Commission recognizes that because this service offers consumers additional features—*e.g.*, portability, lower cost and easier availability, greater accessibility for persons with multiple disabilities (*see, e.g.*, *Ultratec Petition to Clarify at 4–7; CAC TRS Working Group Recommendation* at 3)—it represents an important step towards functional equivalency. (*See CAC TRS Working Group Recommendation* at 3–4.)

Moreover, the Commission expects that this will not be a service under the control of one vendor or provider. In this regard, the Commission conditions its approval on Ultratec's representation that it will continue to license its captioned telephone technologies, including technologies relating to IP CTS, at reasonable rates. (*See* KPS Consulting, *Ex Parte* Letter, CG Docket No. 03–123 (November 27, 2006) (stating that Ultratec ''has licensed its technologies at reasonable rates since captioned telephone service first became available * * * and will

continue to license its technologies, including technologies relating to IP captioned telephone, going forward'')).

The Commission also concludes that, on an interim basis, all IP CTS calls may be compensated from the Fund if provided in compliance with the Commission's rules. (*See CAC TRS Working Group Recommendation* at 1 (urging that this service be compensated from the Fund)). This is consistent with the present treatment of VRS and IP Relay calls. (The *Declaratory Ruling* does not affect the compensation of captioned telephone calls recognized in the *Captioned Telephone Declaratory Ruling,* which are not Internet-based (*i.e.*, are not calls where the connection carrying the captions between the service and the user is via the Internet). *See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16128–29, paragraphs 19–22 (declining to permit all captioned telephone calls to be compensated from the Fund, noting that for such calls providers can determine if a particular call is interstate or intrastate)). The Commission believes this arrangement will be an incentive for multiple providers to offer this service on a nationwide basis. (*See generally Ultratec Petition to Clarify* at 6.) The Commission notes that this is an interim measure and that we intend to revisit the cost recovery methodology for this service in the future, (as noted above, in the pending *2006 TRS Cost Recovery FNPRM,* the Commission has raised the issue of the appropriate cost recovery methodologies for all forms of TRS), including jurisdictional separation of costs. The Commission will also consider at a future date whether IP CTS and captioned telephone service should be mandatory forms of TRS.).

In addition, the Commission notes that, presently, interstate captioned telephone calls are compensated at the same rate as traditional TRS calls, and IP Relay is compensated at a separate rate. (For the 2006–2007 Fund year, traditional TRS and captioned telephone service are compensated at the rate of $1.291 per minute, and IP Relay is compensated at the rate of $1.293 per minute. *See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, CG Docket No. 03–123, Order, 21 FCC Rcd 7018 (June 29, 2006); *Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16129, paragraph 22.) Because the Commission believes that, for cost recovery purposes, the provision of IP captioned telephone service more closely resembles IP Relay service, not captioned telephone service, IP captioned telephone calls shall be compensated at the same per-minute rate as IP Relay service. (In the *Captioned Telephone Declaratory Ruling,* the Commission concluded that although captioned telephone service would be compensated at the traditional TRS rate, because there was only one provider of the service, which used proprietary technology, the projected costs and minutes of use for captioned telephone service would not be included in determining the traditional TRS rate. *Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16129–30, paragraph 23. Because it is presently unclear how many providers may choose to offer IP CTS, and how it will be offered, the Commission similarly concludes that the projected costs and minutes of use for IP CTS shall not be included in determining the IP Relay compensation rate, which will apply to IP CTS. At the same time, the Commission directs providers of IP CTS to submit their cost and use data specific to this service to the Fund administrator so that we will be able to monitor and review the costs associated with this service.)

Federal Certification for IP CTS Providers. In the *TRS Provider Certification Order,* the Commission adopted a means by which common carriers seeking to offer IP Relay or VRS may seek ''certification'' from the Commission as an eligible provider. (*See TRS Provider Certification Order,* 20 FCC Rcd at 20586–90, paragraphs 17–26.) The Commission noted that the present eligibility criteria for compensation from the Interstate TRS Fund set forth in the Commission's rules do not reflect advances in the way that TRS is offered, particularly with respect to the Internet-based forms of TRS. (*See* 47 CFR 64.604(c)(5)(iii)(F)(3) of the Commission's rules, setting forth three eligibility categories for TRS providers seeking compensation from the Fund. As the Commission has explained, these categories include being part of a certified state program, contracting with an entity that is part of a certified state program, or being a common carrier obligated to provide TRS in a state that does not have a certified state program. *TRS Provider Certification Order,* 20 FCC Rcd at 20586–87, paragraphs 18–19.) As a result, the Commission adopted a Commission certification alternative that would permit common carriers desiring to offer VRS and/or IP Relay, and not the other forms of TRS, to receive compensation from the Fund. (*TRS Provider Certification Order,* 20 FCC Rcd at 20586, paragraph 17.) This process is described in that order and the Commission's rules. (*TRS Provider Certification Order,* 20 FCC Rcd at 20587–90, paragraphs 22–26; 47 CFR 64.605 of the Commission's rules.)

The Commission concludes that an entity desiring to provide IP captioned telephone service, like an IP Relay provider, may choose to seek certification from the Commission under these rules. (In a subsequent rulemaking, the Commission will add IP CTS to these certification rules. *See* 47 CFR 64.604(c)(5)(iii)(F)(4) and § 64.605 of the Commission's rules.) As a general matter, potential IP CTS providers may become eligible for compensation from the Fund by being accepted into a certified state TRS program or subcontracting with an entity that is part of a certified state program, or by seeking Commission certification. (If eligibility is via a certified state program, the Commission reminds the state programs that they must notify the Commission within 60 days of substantive changes in their program. *See* 47 CFR 64.605(f)(1) of the Commission's rule.) Present eligibility to receive compensation from the Fund for the provision of other forms of TRS (including captioned telephone service) does not confer eligibility with regard to the provision of the IP CTS recognized in the *Declaratory Ruling.*

Applicable Mandatory Minimum Standards. The Commission does not mandate the provision of IP captioned telephone service at this time. (Presently VRS, IP Relay, and captioned telephone service are not mandatory TRS services). Because the Commission does not mandate IP captioned telephone service, this service need not be offered 24/7 at this time. *See* 47 CFR 64.604(b)(4) of the Commission's rules.) Nevertheless, to be eligible for compensation from the Fund, providers must offer service in compliance with all applicable TRS mandatory minimum standards. The Commission has waived or found to be inapplicable various mandatory minimum standards for the provision of captioned telephone service (*see Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16130–39, paragraphs 24–54 (addressing mandatory minimum standards that are either inapplicable or waived for captioned telephone service); *Captioned Telephone Waiver Order*) and IP Relay, (*see generally 2004 TRS Report and Order,* 19 FCC Rcd at 12594 (summarizing waivers for IP Relay and VRS)), given the nature of these services. Because IP captioned telephone service shares characteristics with both of these services, the Commission sets forth herein those mandatory minimum standards either

inapplicable or presently waived for IP CTS.

Although, as noted above, the Commission recognizes that IP captioned telephone service can be provided in a variety of ways, its defining characteristics—*i.e.*, that the provider relays captions to the consumer via the Internet, and that the captions are delivered to the consumer in a way that is timely, automated and invisible—make certain mandatory minimum standards inapplicable to the provision of this service. Therefore, consistent with the Commission's treatment of various mandatory minimum standards in the context of captioned telephone service and IP Relay, the Commission concludes that providers of IP captioned telephone service need not, at this time, meet the following requirements: (1) gender preference (the gender preference rule requires relay providers to accommodate a user's requested CA gender. *See* 47 CFR 64.604(a)(1)(vi) of the Commission's rules. This requirement does not apply to captioned telephone service. *See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16137–38, paragraphs 47–48); (2) handling calls in ASCII and Baudot formats (providers of traditional TRS (*i.e.*, text-based TRS calls made via a TTY and the PSTN) must ensure that the TTY can communicate in either the ASCII or Baudot formats. *See* 47 CFR 64.601(3) and (4) of the Commission's rules; 47 CFR 64.604(b)(1) of the Commission's rules. This requirement does not apply to captioned telephone service. *See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16139, paragraphs 53–54); (3) call release (call release is a TRS feature that allows the CA to drop from the call after the CA has set up a telephone call between two TTY users. *See* 47 CFR 64.601(5) of the Commission's rules. This requirement does not apply to captioned telephone service. *See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16138–39, paragraphs 51–52. It is waived for IP Relay until January 1, 2008. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12594); (4) Speech-to-Speech (STS) (captioned telephone service providers need not offer STS at this time. *See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16131–32, paragraphs 28–31. STS service is waived for IP Relay until January 1, 2008. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12594); (5) Hearing Carry Over (HCO) and VCO services (VCO permits a person with a hearing disability, but who is able to speak, to speak directly to the other party to the call (instead of typing text), but receive in return the called party's spoken words as text on the TTY. *See* 47 CFR 64.601(18) of the Commission's rules. HCO permits a person with a speech disability, but who is able to hear, to type text to the other party to the call (which is voiced by the CA), but listen in return to what the called party is saying. *See* 47 CFR 64.601(8) of the Commission's rules. HCO does not apply to captioned telephone service. *See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16131–32, paragraphs 28–31. VCO and HCO services are waived for IP Relay until January 1, 2008. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12594); (6) outbound 711 calling (outbound 711 dialing permits a relay user to dial 711 to reach a relay provider. This requirement does not apply to captioned telephone service. *See Captioned Telephone Declaratory Ruling,* 18 FCC Rcd at 16131, paragraph 34); (7) emergency call handling (emergency call handling requires relay providers to be able to automatically contact the appropriate Public Safety Answering Point when they receive an incoming emergency call. *See* 47 CFR 64.604(a)(4) of the Commission's rules. The Commission notes that this requirement is presently waived for other Internet-based forms of TRS (IP Relay and VRS) until January 1, 2008. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12594; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, Order, DA 06–2532 (released December 15, 2006) (extending VRS waiver until January 1, 2008). The Commission recognizes the importance of access to emergency services for all forms of TRS, however, and anticipates addressing access to 911 services for IP CTS when it addresses 911 access for the other Internet-based forms of TRS pursuant to the *2005 VRS/IP Relay 911 NPRM;* published at 71 FR 5221, February 1, 2006. *See also* Federal Communications Commission E9–1–1 Disability Access Summit, held November 15, 2006 (transcript filed in CG Docket No. 03–123)); (8) equal access to interexchange carriers (This requirement requires providers to relay long distance calls through the consumer's choice of interexchange carrier. *See* 47 CFR 64.604(b)(3) of the Commission rules. This requirement is waived permanently for IP Relay, provided that IP Relay providers offer free long distance service to their customers. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12524–25, paragraphs 124–27, and 12594. Similarly, if an IP CTS provider does not offer interexchange carrier of choice, the provider must offer free long distance service to their customers); (9) pay-per-call (900) service (pay-per-call (900) services are calls that include a charge billed to the calling party. *See* 47 CFR 64.604(a)(3)(iv) of the Commission rules. This requirement is waived for IP Relay until January 1, 2008. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12594); (10) three-way calling (three-way calling allows more than two parties to be on the telephone line with the CA. *See* 47 CFR 64.601(16) of the Commission's rules. This requirement is waived for IP Relay until January 1, 2008. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12594); (11) speed dialing (speed dialing allows a TRS user to place a call using a stored number maintained by the TRS provider. The TRS user gives the CA a ''short-hand'' name or number for the user's most frequently called telephone numbers. *See* 47 CFR 64.601(13) of the Commission's rules. This requirement is waived for IP Relay until January 1, 2008. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12594); and (12) certain rules applying to CAs. (The *Captioned Telephone Declaratory Ruling* waived certain requirements applying to the CAs, including that: (1) CAs must be competent in interpreting typewritten American Sign Language (ASL); (2) TRS providers must give CAs oral-to-type tests; and (3) CAs may not refuse sequential calls. *See Captioned Telephone Declaratory Ruling*, 18 FCC Rcd at 16134–37, paragraphs 36–46. These waivers expired on August 1, 2006. In the *2006 Captioned Telephone Waiver Order,* the Commission clarified that these requirements do not apply to captioned telephone services where the user does not type the outbound message, the CA generates text for the user principally using voice recognition technologies (instead of typing), and the CA does not play a role in setting up a call. *See 2006 Captioned Telephone Waiver Order,* at paragraph 4. These requirements also do not apply to IP CTS in similar circumstances.) For those waivers presently contingent on annual reporting requirements, providers of IP CTS must also file such reports. (Consistent with the present treatment of waivers for IP Relay, IP CTS providers must file annual reports addressing the waivers for STS, emergency call handling, pay-per-call (900) services, VCO and HCO, call release, three-way calling, and speed dialing. These reports must be filed by April 1 of each year, beginning April 1,

2008. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12594; *see also 2004 TRS Report and Order* at 12520–21, paragraph 111 (detailing required contents of annual report)).

The Commission recognizes that depending on how IP CTS is offered, providers may be able to offer some of the features and services noted above. The Commission encourages all IP CTS providers to offer consumers as many of these features as possible if it is technically feasible to do so, and expect that competition between providers will serve as an incentive for providers to do so. (*See also CAC TRS Working Group Recommendation* at 3 (setting forth possible features of this service)). The Commission also again emphasizes that providers must offer service in compliance with all applicable non-waived mandatory minimum standards to be compensated from the Fund.

Congressional Review Act

The Commission will not send a copy of the *Declaratory Ruling* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the adopted rules are rules of particular applicability, granting a request for clarification that IP CTS is a type of TRS eligible for compensation from the Fund.

Ordering Clauses

Pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 218 and 225, and Sections 1.2, 1.3, 64.604 and 64.605 of the Commission's rules, 47 CFR 1.2, 1.3, 64.604 and 64.605, the *Declaratory Ruling* hereby is *adopted.*

Petition to Amend filed by Petitioners *is granted* to the extent indicated herein.

Ultratec Petition to Clarify is granted to the extent indicated herein.

The Declaratory Ruling shall be effective April 16, 2007.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center *shall send* a copy of the *Declaratory Ruling,* including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–2573 Filed 2–13–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 013107D]

Atlantic Highly Migratory Species; Small Coastal Shark Fishery

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

ACTION: Regional fishery closure.

SUMMARY: NMFS is closing the commercial fishery for small coastal sharks conducted by persons aboard vessels issued a Federal Atlantic shark permit in the Gulf of Mexico region. This action is necessary because the quota for the first 2007 fishing season in the Gulf of Mexico season has likely been exceeded. The commercial small coastal shark fisheries in the South Atlantic and North Atlantic regions are allocated separate quotas and will remain open until further notice.

DATES: The commercial small coastal shark fishery in the Gulf of Mexico region is closed effective from 11:30 p.m. local time February 23, 2007 to May 1, 2007.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

On December 14, 2006 (71 FR 75122), NMFS announced that the small coastal shark quota for the first fishing season of the 2007 fishing year in the Gulf of Mexico region would be 15.1 metric tons (mt) dressed weight (dw) (33,289 lb dw). As of January 26, 2007, preliminary reports from dealers indicate that approximately 6.6 mt dw (14,500 lb dw) were reported landed in the Gulf of Mexico region during the first fishing season of 2007. Under 50 CFR 635.5(b)(1), shark dealers are required to report every two weeks. Fish received by dealers between the 1st and 15th of any month are required to be reported by the 26th of that month. Fish received by dealers between the 16th and the end of any month are required to be reported by the 10th of the following month. As such, these preliminary reports indicate that in the first reporting period of the fishing season approximately 43.7 percent of the available quota was taken. Assuming the same catch rates continued for the second reporting period in January and will continue for the first reporting period in February, NMFS estimates that approximately 131 percent of the available quota (19.8 mt dw) could be taken by the close of the first reporting period in February (February 15, 2007). NMFS will not have estimates of actual landings through the first reporting period in February until February 26, 2007.

Under 50 CFR 635.28(b)(2), when the fishing season quota for small coastal sharks is reached for a particular region, NMFS will file for publication a notice of closure at least 14 days before the effective date. Accordingly, NMFS is closing the commercial small coastal shark fishery in the Gulf of Mexico region as of 11:30 p.m. local time February 23, 2007. During the closure, retention of small coastal sharks in the Gulf of Mexico region is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4, unless the vessel is permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and no sale provisions may apply (50 CFR 635.22(a) and (c)). The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of small coastal sharks harvested by a person aboard a vessel in the Gulf of Mexico region that has been issued a commercial shark limited access permit under 50 CFR 635.4, is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

This closure does not affect the commercial small coastal shark fisheries in the South Atlantic or North Atlantic regions which remain open until further notice. In addition, the commercial pelagic shark fishery remains open until further notice. The large coastal shark fishery in the North Atlantic is currently open, and as was announced on December 14, 2006 (71 FR 75122), will close on April 30, 2007. As announced in that notice, the large coastal shark fishery in the South Atlantic and Gulf of Mexico regions is already closed. The recreational shark fishery is not affected by this closure.

Classification

Pursuant to 5 U.S.C. 553 (b)(B), the Assistant Administrator for Fisheries,

NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest. Based on recent landings reports, it is likely that the available quota for SCS in the Gulf of Mexico region will be exceeded in early February. Thus, affording prior notice and opportunity for public comment on this action is impracticable because the fishery is currently underway, and any delay in this action would cause further overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the effected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. Thus, for these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under 50 CFR 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: February 8, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–680 Filed 2–9–07; 2:12 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 30
Wednesday, February 14, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 43, and 45

[Docket No. FAA–2006–25877; Notice No. 07–02]

Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on the Initial Regulatory Flexibility Analysis (IRFA) associated with the notice of proposed rulemaking entitled, Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals.

DATES: Send your comments to reach us on or before April 2, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007—using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Governmentwide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Capron, Production Certification Branch, AIR–220, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; *telephone number:* (202) 267–3343.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the IRFA, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this IRFA. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

The purpose behind an IRFA is to notify small businesses of a rulemaking activity that, if finalized, may adversely affect a substantial number of small businesses. If a rulemaking is likely to have such an impact, we are required to identify alternatives that may reduce this impact. To adequately explore these alternatives, we need the input of those small businesses. Accordingly, we will consider all comments we receive on or before the closing date for comments. However, your comments should be limited to the IRFA since the comment period on the NPRM has closed. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change our proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket

Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Discussion

On October 5, 2006, the Federal Aviation Administration (FAA) issued a notice of proposed rulemaking (NPRM) entitled, Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals (71 FR 58915). The extended comment period for this NPRM closed on February 5, 2007.

The Small Business Administration's Office of Advocacy has asked us, on behalf of small businesses that may be adversely affected by the proposed rulemaking, to allow additional time for small businesses to comment on the Initial Regulatory Flexibility Analysis associated with the NPRM.[1] The analysis examines whether the proposed rulemaking would have a significant economic impact on a substantial number of small entities. We have determined that the additional comment period is consistent with the public interest and that good cause exists for taking this action. Accordingly, we are establishing an additional 45-day comment period on the Initial Regulatory Flexibility Analysis.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA used the Small Business Administration (SBA) guideline of 1,500 employees or less per firm as the criterion for the determination of a small business in aircraft manufacturing. The FAA also used the SBA guideline of 1,000 employees or less per firm as the criterion for the determination of a small business in aircraft engine and engine parts manufacturing, and/or other aircraft part and auxiliary equipment manufacturing.[2]

In order to determine if the proposed rule will have a significant economic impact on a substantial number of small entities, lists of all U.S. aircraft, aircraft engine, and other aircraft part and auxiliary equipment manufacturers was generated by the FAA Aircraft Certification Directorate Offices. Because the list was organized by the type of production approval, a firm could be listed more than once (e.g., a firm could hold a TSO authorization as well as a PMA). There are close to 2,000 records on this list.

From the lists of manufacturers supplied by the Rotorcraft Directorate (ASW) and the Small Airplane Directorate (ACE), the FAA took a 10% sample of firms that had already been identified as small entities by the Directorates (or 78 firms). From the lists of manufacturers supplied by the Transport Airplane Directorate (ANM) and the Engine and Propeller Directorate (ANE), the FAA took a 10% sample of all firms (or 109 firms) because those two Directorates had not identified the firms that were small entities. Hence, the FAA used a sample of 187 firms (or approximately 10%) for the analysis.

Using information provided by the ReferenceUSA Business Database, company annual reports, and SEC filings, all businesses with more than 1,500 employees for aircraft manufacturer and 1,000 employees for other manufacturers, and subsidiaries of larger businesses, were excluded from the list of small businesses. An example of a subsidiary business is Bell Helicopter, which is a subsidiary of Textron, Inc. For the remaining businesses, the FAA obtained company revenue information from these three sources, when the revenue was made public.

By applying this methodology to the 10% sample, the FAA verified that 109 firms are small entities, 32 firms are large businesses or subsidiaries of large businesses or consortiums, and 46 firms could not be found in the database and/or had no revenue information available. Among the 109 verified small entities, 5 are small PCs, 19 are small TSO authorization holders, and 85 are small PMAs.

The FAA estimates that the average discounted compliance cost for a small PC is approximately $582,000, for a small TSO authorization holder is approximately $52,000, and for a small PMA is approximately $15,000. (Refer to Appendix E.) The annualized cost for a small PC is estimated at $82,881 ($582,120 * 0.142378 = $82,881), for a small TSO authorization holder is estimated at $7,342 ($51,566 * 0.142378 = $7,342), and for a small PMA is estimated at $2,153 ($15,125 * 0.142378 = $2,153).

The degree to which small manufacturers can ''afford'' the cost of compliance is determined by the availability of financial resources. The initial implementation costs of the proposed rule may be financed, paid for using existing company assets, or borrowed. As a proxy for the firm's ability to afford the cost of compliance, the FAA calculated the ratio of the total annualized cost of the proposed rule as a percentage of annual revenue. This ratio is a conservative measure as the annualized value of the 10-year total compliance cost is divided by one year of annual revenue. Appendix F shows that one of the small businesses sampled would incur costs greater than 1 percent of their annual revenue. Since this is based on a 10% sample, approximately 10 small businesses would incur costs greater than 1 percent of their annual revenue.

Thus, the FAA believes that approximately 10 small entities would incur a substantial economic impact in the form of higher annual costs as a result of this proposed rule. Therefore,

[1] This analysis can also be found in the FAA's Initial Regulatory Evaluation, docket # FAA–2006–25877–19.

[2] 13 CFR 121.201, Size Standards Used to Define Small Business Concerns, Sectors 31–33 Manufacturing, Subsector 336 Transportation Equipment Manufacturing.

the FAA thinks that the rule may have a significant economic impact on a substantial number of small entities. However, the FAA does not think that the implementation of this proposed regulation would cause any of these companies to become bankrupt.

Questions to be addressed in an Initial Regulatory Flexibility Analysis (IRFA):

1. Which small entities will be impacted most? PC holders and TSO authorization holders. Should the definition of ''small entity'' be redefined for purposes of the Regulatory Flexibility Act of 1980 (RFA)? No.

2. Are all the required elements of an IRFA present, particularly a description of all compliance requirements, and a clear explanation of the need for and objectives of the rule? Yes. This Federal Aviation Administration (FAA) proposed rule would make various changes in design, production, and identification regulations for products and parts. These proposed changes include establishing a single set of quality system requirements applicable to all production approval holders as well as requiring an airworthiness approval document to be issued with all products and parts shipments from a production approval holder. The proposed rule would also revise aircraft parts marking requirements. For additional information, refer to the Regulatory Evaluation for a description of all compliance requirements and further explanations of the need for and objectives of the rule.

3. Have all major cost factors been developed and analyzed? Yes. Refer to Appendix E for the cost factors for a small entity by type of production approval.

4. What alternatives will allow the agency to accomplish its regulatory objectives while minimizing the impact on small entities?

Alternative 1: No Action.

This alternative would have no impact on small entities. The FAA decided to discard this alternative because it would not enhance safety. Among other things, the FAA proposes to enhance safety by (1) establishing a single set of quality system requirements applicable to all production approval holders, (2) requiring an airworthiness approval document to be issued with all products and parts shipments from a production approval holder, and (3) revising aircraft parts marking requirements.

Alternative 2: Partial Proposed Rule.

The partial proposed rule would be the complete proposed rule with the exception of the requirement for airworthiness approval tags (Form 8130–3) with all part or product sales/shipments. This requirement is the most costly proposal for the manufacturers. If this were not included in the proposed rule, then there would not be a significant economic impact on a substantial number of small entities.

Alternative 3: Complete Proposed Rule.

The complete proposed rule is more costly for small entities, but the FAA recommends proceeding with the complete proposed rule instead of Alternative 2 for several reasons.

- The Form 8130–3 is the recognized industry standard document that provides legal proof that the part was produced by an FAA-approved source and is airworthy. Use of the Form in this way parallels what is done in Europe with the EASA Form One.
- A common, easily recognizable Form is needed with all new parts shipments so that the receiver can easily verify the airworthiness of the part and authority of the producer.
- Most non-US aviation agencies demand a completed Form 8130–3 for parts imported into their country. The FAA recommends it for domestic use also because it makes sense to use a common form for all shipments, rather than different forms for domestic versus export shipments.
- Legal enforcement for misuse—since the 8130–3 is a Federal form, misuse of the Form is a Federal offense.

5. *Competitiveness Analysis:*

This rule is a comprehensive rule that impacts all production approval holders including PC holders, TSO authorization holders, and PMA holders. This covers a wide variety of businesses (e.g., balloons, gliders, helicopters, small airplanes, large transport category airplanes, engine manufacturers, propeller manufacturers, seat belt manufacturers, seat manufacturers, and so forth). Market share within the industry probably would not change due to this proposed regulation, and the industry itself would not lose market share to other products or services.

6. *Business closure analysis:*

The FAA thinks that there would not be any small businesses that close due to the proposed regulation because there were only about 10 companies that would have costs that exceed one percent of revenues, more specifically, their costs would be approximately 1.1% of revenues. The FAA estimates that these costs are not high enough to force companies into bankruptcy.

7. *Disproportionality Analysis:*

The table below shows the differences in the impacts on small businesses as compared to large ones.

Small entity	Total costs	Discounted total costs	Large entity	Total costs	Discounted total costs
Small PCs:			Large PCs:		
21.9(a)(4)	$1,600	$917	21.9(a)(4)	$128,000	$73,387
21.123(e)	10,000	5,733	21.123(e)	0	0
21.137(h)	2,000	1,526	21.137(h)	0	0
21.137(m)	300	229	21.137(m)	0	0
21.137(n)	500	381	21.137(n)	0	0
21.146(d)	1,000,000	573,333	21.146(d)	706,667	405,156
Subtotal	1,014,400	582,120	Subtotal	834,667	478,542
Small TSOAs:			Large TSOAs:		
21.9(a)(4)	375	215	21.9(a)(4)	0	0
21.605	50	38	21.605	0	0
21.616(d)	4,500	2,580	21.616(d)	3,668,750	2,103,417
45.15(b)	85,000	48,733	45.15(b)	572,000	327,947
Subtotal	89,925	51,566	Subtotal	4,240,750	2,431,364
Small PMAs:			Large PMAs:		
21.9(a)(4)	1,250	717	21.9(a)(4)	0	0
21.303(a)(5)	50	38	21.303(a)(5)	50	38

Small entity	Total costs	Discounted total costs	Large entity	Total costs	Discounted total costs
21.307	400	305	21.307	80	61
21.308	400	305	21.308	200	153
21.316(d)	24,000	13,760	21.316(d)	825,000	473,000
Subtotal	26,100	15,125	Subtotal	825,330	473,252

Large PCs appear to have lower costs on these requirements because the requirements are already current practice. Large TSOAs and large PMAs have higher costs on these requirements compared to their respective smaller entities. The FAA estimates that there would be no significant change in market share due to this proposed regulation.

APPENDIX E.—COSTS FOR SMALL BUSINESSES

[per firm]

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total Costs	Discounted total costs
Small PCs:												
21.9(a)(4)	$160	$160	$160	$160	$160	$160	$160	$160	$160	$160	$1,600	$917
21.123(e)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	10,000	5,733
21.137(h)	2,000										2,000	1,526
21.137(m)	300										300	229
21.137(n)	500										500	381
21.146(d)	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	1,000,000	573,333
Subtotal											1,014,400	582,120
Small TSOAs:												
21.9(a)(4)	38	38	38	38	38	38	38	38	38	38	375	215
21.605	50										50	38
21.616(d)	450	450	450	450	450	450	450	450	450	450	4,500	2,580
45.15(b)	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	85,000	48,733
Subtotal											89,925	51,566
Small PMAs:												
21.9(a)(4)	125	125	125	125	125	125	125	125	125	125	1,250	717
21.303(a)(5)	50										50	38
21.307	400										400	305
21.308	400										400	305
21.316(d)	2,400	2,400	2,400	2,400	2,400	2,400	2,400	2,400	2,400	2,400	24,000	13,760
Subtotal											26,100	15,125

APPENDIX F.—ECONOMIC IMPACT ON A REPRESENTATIVE SAMPLE OF SMALL BUSINESSES

Production basis	Manufacturer	State	Revenues (avg est.)	Annualized cost of rule	Percent
PC	AEROSTAR AIRCRAFT CORP	ID	$15,000,000	$82,881	0.55
PC	AIR TRACTOR, INC.	TX	75,000,000	82,881	0.11
PC	AMERICAN CHAMPION AIRCRAFT CORP	WI	35,000,000	82,881	0.24
PC	UNIVAIR AIRCRAFT CORP	CO	7,500,000	82,881	1.11
PC	WILLIAMS INTERNATIONAL	MI	75,000,000	82,881	0.11
PMA	A&C PRODUCTS, INC	TX	1,750,000	2,153	0.12
PMA	ABLE AIR	CA	750,000	2,153	0.29
PMA	ACCURATE BUSHING COMPANY INC	NJ	3,750,000	2,153	0.06
PMA	ACR ELECTRONICS INC	FL	75,000,000	2,153	0.00
PMA	ADVANCED HYPERFINE PRODUCTS	CA	250,000	2,153	0.86
PMA	AERO DECALS	FL	750,000	2,153	0.29
PMA	AERO SEATS AND SYSTEMS, INC	TX	1,750,000	2,153	0.12
PMA	AERO TECHNICAL ALLIANCE INC	FL	1,750,000	2,153	0.12
PMA	AERODYNE ENGINEERING	CA	250,000	2,153	0.86
PMA	AERONCA INC	OH	75,000,000	2,153	0.00
PMA	AEROSPACE SYSTEMS. & COMPONENTS, INC	KS	3,750,000	2,153	0.06
PMA	AIRBORNE TECHNOLOGIES, INC	CA	7,500,000	2,153	0.03
PMA	AIRCRAFT INSTRUMENTS	PA	1,750,000	2,153	0.12
PMA	AIRCRAFT SPECIALTIES SERVICES, INC	OK	3,750,000	2,153	0.06
PMA	AIRWELD, INC	CA	1,750,000	2,153	0.12
PMA	AIRWOLF FILTER CORP	OH	1,750,000	2,153	0.12
PMA	AMERICAN POLARIZERS, INC	PA	3,750,000	2,153	0.06
PMA	AMGLO KEMLITE LABORATORIES, INC	IL	15,000,000	2,153	0.01
PMA	APACHE ENTERPRISES	TX	7,500,000	2,153	0.03
PMA	AVIATION DEVELOPMENT CORP	WA	750,000	2,153	0.29

APPENDIX F.—ECONOMIC IMPACT ON A REPRESENTATIVE SAMPLE OF SMALL BUSINESSES—Continued

Production basis	Manufacturer	State	Revenues (avg est.)	Annualized cost of rule	Percent
PMA	AVION RESEARCH	CA	750,000	2,153	0.29
PMA	BIZJET INTERNATIONAL SALES	OK	15,000,000	2,153	0.01
PMA	BRAUER AEROSPACE PRODUCTS, INC	AL	3,750,000	2,153	0.06
PMA	BREEZE-EASTERN CORP	NJ	72,300,000	2,153	0.00
PMA	BRUCE INDUSTRIES, INC	NV	15,000,000	2,153	0.01
PMA	CAMARILLO AIRCRAFT SERVICE	CA	250,000	2,153	0.86
PMA	CANARD AEROSPACE CORPORATION	MN	1,750,000	2,153	0.12
PMA	CEE BAILEY'S AIRCRAFT PLASTICS	CA	15,000,000	2,153	0.01
PMA	COLLINS AIRCRAFT DYNAMICS, INC	TX	750,000	2,153	0.29
PMA	COMANT INDUSTRIES, INC	CA	15,000,000	2,153	0.01
PMA	CONAX FLORIDA CORPORATION	FL	7,500,000	2,153	0.03
PMA	DAVTRON	CA	3,750,000	2,153	0.06
PMA	DER ASSOCIATES INC	KS	250,000	2,153	0.86
PMA	DEUTSCH RELAYS, INC	NY	35,000,000	2,153	0.01
PMA	DOW-ELCO INC	CA	3,750,000	2,153	0.06
PMA	DUSTERS AND SPRAYERS, INC	OK	1,750,000	2,153	0.12
PMA	DYNAMIC AIR ENGINEERING	CA	7,500,000	2,153	0.03
PMA	E.J. MLYNARCZYK & CO., INC	FL	7,500,000	2,153	0.03
PMA	ELECTRONIC CABLE SPECIALISTS	WI	300,000,000	2,153	0.00
PMA	ESSEX INDUSTRIES INC	MO	7,500,000	2,153	0.03
PMA	FLEXFAB DIVISION	MI	300,000,000	2,153	0.00
PMA	FLIGHT DYNAMICS	OR	1,750,000	2,153	0.12
PMA	FRANKLIN AIRCRAFT ENGINES, INC	CO	1,750,000	2,153	0.12
PMA	HELI-TECH	OR	1,750,000	2,153	0.12
PMA	HYDRAFLOW	CA	35,000,000	2,153	0.01
PMA	INTERNATIONAL AERO INC	WA	35,000,000	2,153	0.01
PMA	JAY-DEE AIRCRAFT SUPPLY CO., INC	CA	3,750,000	2,153	0.06
PMA	JORMAC, INC.	FL	1,750,000	2,153	0.12
PMA	KEITH PRODUCTS, L.P	TX	15,000,000	2,153	0.01
PMA	KING AIRE, INC	KS	250,000	2,153	0.86
PMA	LTA AVIATION, INC	NY	250,000	2,153	0.86
PMA	MAGNETIC SEAL CORP	RI	7,500,000	2,153	0.03
PMA	MED-FLITE OF MIDAMERICA, INC	KS	250,000	2,153	0.86
PMA	MILLENNIUM CONCEPTS, INC	KS	1,750,000	2,153	0.12
PMA	MILMAN ENGINEERING INC	WA	250,000	2,153	0.86
PMA	NASERA CORPORATION	NC	1,750,000	2,153	0.12
PMA	NORDAM TEXAS	TX	35,000,000	2,153	0.01
PMA	NORTHEAST AERO COMPRESSOR CORP	NY	3,750,000	2,153	0.06
PMA	OTTO ENGINEERING INC	IL	15,000,000	2,153	0.01
PMA	PACIFIC PRECISION PRODUCTS	CA	1,750,000	2,153	0.12
PMA	PARAVION TECHNOLOGY INC	CO	7,500,000	2,153	0.03
PMA	PETERSON'S PERFORMANCE PLUS	KS	1,750,000	2,153	0.12
PMA	PLASTIC MOLDED PRODUCTS	WA	15,000,000	2,153	0.01
PMA	PRECISION PATTERN INC	KS	15,000,000	2,153	0.01
PMA	QED, INC	CA	7,500,000	2,153	0.03
PMA	RALMARK COMPANY	PA	1,750,000	2,153	0.12
PMA	RAY'S AIRCRAFT SERVICE	CA	750,000	2,153	0.29
PMA	ROTOR DYNAMICS AMERICAS, INC	TX	250,000	2,153	0.86
PMA	SAINT GOBAIN PERFORMANCE PLASTIC	WA	15,000,000	2,153	0.01
PMA	SEAL DYNAMICS, INC	NY	35,000,000	2,153	0.01
PMA	SENSOR SYSTEMS L.L.C	FL	35,000,000	2,153	0.01
PMA	SKYBOLT AEROMOTIVE CORP	FL	7,500,000	2,153	0.03
PMA	SKYLIGHT AVIONICS CO	CA	1,750,000	2,153	0.12
PMA	SPECTRUM AEROMED, INC	MN	7,500,000	2,153	0.03
PMA	STEIN SEAL	PA	35,000,000	2,153	0.01
PMA	STERLING AVIATION TECHNOLOGIES	WA	1,750,000	2,153	0.12
PMA	TANIS AIRCRAFT SERVICES, INC	MN	750,000	2,153	0.29
PMA	TEXAS AIR STAR, INC.	TX	750,000	2,153	0.29
PMA	THORNTON TECHNOLOGY CORP	CA	15,000,000	2,153	0.01
PMA	UMPCO, INC	CA	15,000,000	2,153	0.01
PMA	VALCOR ENGINEERING	NJ	35,000,000	2,153	0.01
PMA	VARGA ENTERPRISES, INC	AZ	7,500,000	2,153	0.03
PMA	WECO AEROSPACE SYSTEMS, INC	CA	15,000,000	2,153	0.01
PMA	WENDON COMPANY, INC	CT	7,500,000	2,153	0.03
PMA	WINDSOR AIRMOTIVE	CT	15,000,000	2,153	0.01
TSOA	AERO TWIN, INCORPORATED	AK	3,750,000	7,342	0.20
TSOA	AIRCRAFT BELTS INC	TX	35,000,000	7,342	0.02
TSOA	AIRPATH INSTR. CO	MO	3,750,000	7,342	0.20
TSOA	AVIONICS INNOVATIONS	CA	750,000	7,342	0.98
TSOA	BURL'S AIRCRAFT REBUILD	AK	1,750,000	7,342	0.42
TSOA	CASTLE INDUSTRIES, INC	CA	75,000,000	7,342	0.01

APPENDIX F.—ECONOMIC IMPACT ON A REPRESENTATIVE SAMPLE OF SMALL BUSINESSES—Continued

Production basis	Manufacturer	State	Revenues (avg est.)	Annualized cost of rule	Percent
TSOA	DIAMOND J , INC	KS	3,750,000	7,342	0.20
TSOA	ESSEX INDUSTRIES INC	MO	7,500,000	7,342	0.10
TSOA	GLOBE MOTORS INTERNATIONAL LOGISTICS SUPPORT CORP. (ILSC).	AL	75,000,000	7,342	0.01
TSOA		AZ	1,750,000	7,342	0.42
TSOA	KOLLSMAN INC	NH	750,000	7,342	0.98
TSOA	KOSOLA & ASSOCIATES	GA	3,750,000	7,342	0.20
TSOA	NORTH AMERICAN AERODYNAMICS	NC	15,000,000	7,342	0.05
TSOA	PHAOSTRON INSTRUMENTS & ELEC. CO	CA	15,000,000	7,342	0.05
TSOA	R.A. MILLER INDUSTRIES INC	MI	15,000,000	7,342	0.05
TSOA	SATCO, INC	CA	75,000,000	7,342	0.01
TSOA	SIGMA TEK, INC	KS	35,000,000	7,342	0.02
TSOA	SOUTHWEST PRODUCTS COMPANY	CA	15,000,000	7,342	0.05
TSOA	VISION MICROSYSTEMS	WA	1,750,000	7,342	0.42

Issued in Washington, DC on February 8, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–2537 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27152; Directorate Identifier 2006–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This proposed AD would require installing a certain junction(s) and changing the wiring of the first officer's pitot static heater system. This proposed AD results from a report of temporary loss of the auto-flight function with displays of suspect or erratic airspeed indications. We are proposing this AD to prevent display of suspect or erratic airspeed indications during heavy rain conditions, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

DATES: We must receive comments on this proposed AD by April 2, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–27152; Directorate Identifier 2006–NM–219–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report of temporary loss of the auto-flight function with displays of suspect or erratic airspeed indications on a McDonnell Douglas Model 717–200 airplane during climb-out in very heavy rain. The suspect or erratic indications were consistent with loss of air data sensor heating caused by ice build-up on unheated captain's, first officer's, and auxiliary's pitot sensors. In

addition, investigation revealed that the original design of the air data sensor heating system does not meet system separation criteria and independence requirements. As a result, the airplane may lose or have unreliable airspeed indications. This condition, if not corrected, could result in display of suspect or erratic airspeed indications during heavy rain conditions, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 717–30A0003, Revision 2, dated November 28, 2006. The service bulletin describes procedures for installing CTM–16–090 junction(s) and changing the wiring of the first officer's pitot static heater system, which separates the first officer's pitot sensor heater power from the captain's and auxiliary's pitot sensor heater power. These actions will ensure that the three systems (i.e., captain's, first officer's, and auxiliary's pitot sensor heaters) will always be on in-flight, regardless of the position of the air data heat switch. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 155 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 123 airplanes of U.S. registry. The proposed actions would take between 4 and 16 work hours per airplane depending on the airplane configuration, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $39,360 and $157,440, or between $320 and $1,280 per airplane, depending on the airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–27152; Directorate Identifier 2006–NM–219–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 717–30A0003, Revision 2, dated November 28, 2006.

Unsafe Condition

(d) This AD results from a report of temporary loss of the auto-flight function with displays of suspect or erratic airspeed indications. We are issuing this AD to prevent display of suspect or erratic airspeed indications during heavy rain conditions, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation and Wiring Change

(f) Within 24 months after the effective date of this AD, install CTM–16–090 junction(s) and change the wiring of the first officer's pitot static heater system, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–30A0003, Revision 2, dated November 28, 2006.

(g) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 717–30A0003, Revision 1, dated March 2, 2006, are acceptable for compliance with the corresponding provisions of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on February 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2525 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27151; Directorate Identifier 2006–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–10–10F and MD–10–30F Airplanes, Model MD–11 and MD–11F Airplanes, and Model 717–200 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes, Model MD–11 and MD–11F airplanes, and Model 717–200 airplanes. The existing AD currently requires a revision to the Limitations section of the airplane flight manual (AFM) to prohibit use of the flight management system (FMS) profile (PROF) mode for descent and/or approach operations unless certain conditions are met. This proposed AD would require, for Model 717–200 airplanes, upgrading the versatile integrated avionics (VIA) digital computer with new system software, which would end the need for the AFM revision. This proposed AD results from a report of two violations of the selected flight control panel (FCP) altitude during FMS PROF descents. We are proposing this AD to prevent, under certain conditions during the FMS PROF descent, the uncommanded descent of an airplane below the selected level-off altitude, which could result in an unacceptable reduction in the separation between the airplane and nearby air traffic or terrain.

DATES: We must receive comments on this proposed AD by April 2, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Thomas Phan, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5342; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–27151; Directorate Identifier 2006–NM–156–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or may can visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On August 25, 2004, we issued AD 2004–18–04, amendment 39–13782 (69 FR 53794, September 21, 2004), for all McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes, Model MD–11 and MD–11F airplanes, and Model 717–200 airplanes. That AD currently requires a revision to the Limitations section of the airplane flight manual (AFM) to prohibit use of the flight management system (FMS) profile (PROF) mode for descent and/or approach operations unless certain conditions are met. That AD resulted from a report of two violations of the selected flight control panel (FCP) altitude during FMS PROF descents. We issued that AD to prevent, under certain conditions during the FMS PROF descent, the uncommanded descent of an airplane below the selected level-off altitude, which could result in an unacceptable reduction in the separation between the airplane and nearby air traffic or terrain.

Actions Since Existing AD Was Issued

The preamble to AD 2004–18–04 explains that we consider the requirements ''interim action'' and that the manufacturer was developing a software modification to address the unsafe condition. That AD explained that we may consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification for Model 717–200 airplanes, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Other Relevant Rulemaking

On August 3, 2006, we issued AD 2006–16–15, amendment 39–14715 (71 FR 47707, August 18, 2006), for certain McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes and all Model MD–11 and MD–11F airplanes. That AD currently requires installation of upgraded flight management computer (FMC) software. As specified

in paragraph (n)(4) of that AD, doing the applicable software/hardware upgrades required by paragraph (j) or (k) of that AD is an alternative method of compliance for the corresponding actions required by AD 2004–18–04. Doing the upgrades specified in AD 2006–16–15 would also be an acceptable method of compliance for the actions in paragraph (f) of this proposed AD for the applicable airplanes.

Relevant Service Information

We have reviewed Boeing Service Bulletin 717–31–0013, dated March 25, 2005. The service bulletin describes procedures for upgrading the versatile integrated avionics (VIA) digital computer with new system software (part number (P/N) PS4081970–909) and in-service data acquisition system (ISDAS) database (DB) software (P/N PS4081642–909). The service bulletin refers to Honeywell Alert Service Bulletin 4081570–31–A6007, dated March 9, 2005, as an additional source of service information for doing the actions. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2004–18–04 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in Boeing Service Bulletin 717–31–0013 described previously.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Costs of Compliance

There are about 369 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The parts manufacturer states that it will supply required parts to the operators at no cost.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM Revision (required by AD 2004–18–04)	1	$80	$80	226	$18,080
Software upgrade for Model 717–200 airplanes (new proposed action)	1	$80	$80	109	$8,720

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13782 (69 FR 53794, September 21, 2004) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–27151; Directorate Identifier 2006–NM–156–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 2, 2007.

Affected ADs

(b) This AD supersedes AD 2004–18–04.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes, Model MD–11 and MD–11F airplanes, and Model 717–200 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of two violations of the selected flight control panel (FCP) altitude during flight management system (FMS) profile (PROF) descents. We are issuing this AD to prevent, under certain conditions during the FMS PROF descent, the uncommanded descent of an airplane below the selected level-off altitude, which could result in an unacceptable reduction in the separation between the airplane and nearby air traffic or terrain.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2004–18–04

Airplane Flight Manual (AFM) Revision

(f) Within 90 days after September 20, 2004 (the effective date of AD 2004–18–04), revise the Limitations section of the AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM. Doing the applicable software upgrade specified in paragraph (g) of this AD (for Model 717–200 airplanes), paragraph (j) of AD 2006–16–15, amendment 39–14715 (for Model MD–11 and MD–11F airplanes), or paragraph (k) of AD 2006–16–15 (for Model MD–10–10F and MD–10–30F airplanes), terminates the requirements of this paragraph for that airplane. For airplanes on which the applicable software upgrade has been done, the AFM revision may be removed.

''Use of PROF mode for descent and/or approach operations is prohibited unless

1. The airplane is on path and the FMA indicates THRUST |xxx|PROF, or

2. The indicated airspeed is below Vmax for the airplane configuration by at least:

a. 10 knots at indicated altitudes below 10,000 feet, or

b. 15 knots at indicated altitudes of 10,000 feet or above, or

3. Basic autoflight modes (e.g., LVL CHG, V/S, or FPA) are used to recapture the path when the PROF mode is engaged and the airplane is:

a. Above or below the path and the FMA indicates PITCH |xxx|IDLE, or

b. Below the path and the FMA indicates THRUST |xxx|V/S.''

Note 1: When a statement identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

New Requirements of This AD

Upgrade Software—Model 717–200 Airplanes

(g) For Model 717–200 airplanes: Within 18 months after the effective date of this AD, upgrade the versatile integrated avionics (VIA) digital computer with new system software (part number (P/N) PS4081970–909) and in-service data acquisition system (ISDAS) database (DB) software (P/N PS4081642–909), in accordance with the Accomplishment Instructions of Boeing Service Bulletin 717–31–0013, dated March 25, 2005. Doing this upgrade terminates the requirements of paragraph (f) of this AD for that airplane only.

Note 2: Boeing Service Bulletin 717–31–0013, dated March 25, 2005, refers to Honeywell Alert Service Bulletin 4081570–31-A6007, dated March 9, 2005, as an additional source of service information for doing the actions specified in paragraph (g) of this AD.

Parts Installation

(h) For Model 717–200 airplanes: As of the effective date of this AD, no person may install a VIA digital computer, P/N 4081570–904, –905, –906, or –907, on any airplane, except as required by the actions specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on February 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2524 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27257; Directorate Identifier 2006–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A300 airplanes and Model A300–600 series airplanes. This proposed AD would require inspecting to determine the part number of the sliding rods of the main landing gear (MLG) retraction actuators. For MLG retraction actuators equipped with sliding rods having certain part numbers, this proposed AD would also require inspecting for discrepancies, including but not limited to cracking, of the sliding rod; and performing corrective actions if necessary. This proposed AD results from a report of a failure of a sliding rod of the MLG retraction actuator before the actuator reached the life limit established by the manufacturer. We are proposing this AD to prevent failure of the sliding rod of the MLG retraction actuator, which could result in reduced structural integrity of the MLG.

DATES: We must receive comments on this proposed AD by March 16, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–27257; Directorate Identifier 2006–NM–131–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual

who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on all Airbus Model A300 airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called A300–600 series airplanes). The EASA advises of a report of a failure of a sliding rod of the main landing gear (MLG) retraction actuator. The total number of flight cycles on the actuator at the time of the failure was close to, but below, the life limit of 32,000 flight cycles established by the manufacturer. Failure of a sliding rod of the MLG retraction actuator, if not corrected, could result in reduced structural integrity of the MLG.

Relevant Service Information

Airbus has issued Service Bulletins A300–32–0450 (for Model A300 airplanes) and A300–32–6097 (for Model A300–600 series airplanes), both Revision 01, both dated May 10, 2006. The service bulletins describe procedures for inspecting to determine the part number (P/N) of the sliding rod of the MLG retraction actuators on the left-hand and right-hand MLGs. For MLG retraction actuators equipped with sliding rods having certain part numbers, the service bulletins describe procedures for detailed and high frequency eddy current (HFEC) inspections to detect discrepancies, including but not limited to cracking, of the thread of the sliding rod, and corrective actions if necessary. The corrective action, if any discrepancy is found, is replacing the MLG retraction actuator with a new or serviceable actuator that has a new sliding rod. The service bulletins also note that the MLG retraction actuator must be replaced with a new or serviceable actuator before the 32,000-flight-cycle life limit, regardless of the inspection findings. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006–0075R2, dated January 4, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

The Airbus service bulletins refer to Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005, as an additional source of service information for performing the detailed and HFEC inspections to detect discrepancies of the sliding rod.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously. This proposed AD would also require repeating the inspections in this proposed AD on MLG retraction actuators installed in accordance with this proposed AD prior to the accumulation of 27,000 flight cycles on those actuators.

Difference Between the Proposed AD and the EASA Airworthiness Directive

The EASA airworthiness directive specifies that MLG retraction actuator rods that have reached the life limit of 32,000 flight cycles must be returned to Messier-Dowty. However, this proposed AD would not require that action. We have included a reminder to operators in Note 3 of this proposed AD that the MLG retraction actuator rod must be replaced before the 32,000-flight-cycle life limit specified in the applicable airworthiness limitations document.

Clarification of Requirement To Repeat Inspections

The EASA's airworthiness directive and the referenced Airbus service bulletins do not specifically state that the inspections must be accomplished on all actuators installed from spares when they reach the inspection threshold. However, we have determined that these inspections are necessary on any MLG retraction actuator equipped with a sliding rod having P/N C69029–2 or C69029–3 when the MLG retraction actuator reaches the thresholds specified in this proposed AD. This is consistent with the intent of the EASA's airworthiness directive and the service bulletins.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $80 per hour, per inspection cycle.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection to determine part number	1	None	$80	168	$13,440
Inspections for discrepancies	11	None	880	168	147,840

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2007–27257; Directorate Identifier 2006–NM–131–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 16, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 airplanes; and all Airbus Model A300 B4–601, A300 B4–603, A300 B4–620, A300 B4–622, A300 B4–605R, A300 B4–622R, A300 F4–605R, A300 F4–622R, and A300 C4–605R Variant F airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report of a failure of a sliding rod of the main landing gear (MLG) retraction actuator before the actuator reached the life limit established by the manufacturer. We are issuing this AD to prevent failure of the sliding rod of the MLG retraction actuator, which could result in reduced structural integrity of the MLG.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1) and (f)(2) of this AD, as applicable. Where these service bulletins refer to an inspection report, this AD does not require submitting an inspection report.

(1) *For Model A300 airplanes:* Airbus Service Bulletin A300–32–0450, Revision 01, excluding Appendix 01, dated May 10, 2006.

(2) For Model A300 B4–601, A300 B4–603, A300 B4–620, A300 B4–622, A300 B4–605R, A300 B4–622R, A300 F4–605R, A300 F4–622R, and A300 C4–605R Variant F airplanes: Airbus Service Bulletin A300–32–6097, Revision 01, excluding Appendix 01, dated May 10, 2006.

Note 1: The Airbus service bulletins refer to Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005, as an additional source of service information for performing detailed and high-frequency eddy current (HFEC) inspections to detect discrepancies of the sliding rod.

Inspection to Determine Part Number (P/N) of Sliding Rod

(g) At the time specified in paragraph (g)(1) or (g)(2) of this AD, whichever is later, do a one-time inspection to determine the part number of the sliding rod of the MLG retraction actuator, in accordance with the applicable service bulletin. If no sliding rod having P/N C69029–2 or C69029–3 is installed, no further action is required by this paragraph.

(1) Before the accumulation of 27,000 total flight cycles on the MLG retraction actuator.

(2) Within 1,000 landings or 12 months after the effective date of this AD, whichever is first.

Inspection for Discrepancies of Sliding Rod

(h) For MLG retraction actuators equipped with sliding rods having P/N C69029–2 or C69029–3: At the later of the times specified in paragraph (g)(1) or (g)(2) of this AD, perform detailed and HFEC inspections of the sliding rod of the MLG retraction actuators on the left-hand and right-hand MLGs, in accordance with the applicable service bulletin. Then, before further flight, perform all applicable corrective actions, in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Note 3: Operators should note that the MLG retraction actuator rod must be replaced with a new or serviceable actuator rod before the 32,000-flight-cycle life limit specified in the applicable airworthiness limitations document, regardless of the inspection findings.

Parts Installation for MLG Retraction Actuator Rod

(i) As of the effective date of this AD, no person may install, on any airplane, an MLG retraction actuator that is equipped with a sliding rod having P/N C69029–2 or C69029–3, and on which the retraction actuator rod has accumulated 27,000 total flight cycles or more, unless paragraph (h) of this AD is accomplished.

Actions Accomplished According to a Previous Issue of the Service Bulletins

(j) Inspections and corrective actions done before the effective date of this AD in accordance with the following service bulletins are acceptable for compliance with the corresponding requirements of this AD:

(1) For Model A300 airplanes: Airbus Service Bulletin A300–32–0450, excluding Appendix 01, dated December 1, 2005.

(2) For Model A300 B4–601, A300 B4–603, A300 B4–620, A300 B4–622, A300 B4–605R, A300 B4–622R, A300 F4–605R, A300 F4–622R, and A300 C4–605R Variant F airplanes: Airbus Service Bulletin A300–32–6097, excluding Appendix 01, dated December 1, 2005.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs

for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(l) European Aviation Safety Agency airworthiness directive 2006–0075R2, dated January 4, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on February 6, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2513 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27223; Directorate Identifier 2006–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767 airplanes. This proposed AD would require modifying the link arms of the number 2 windows in the flight compartment. This proposed AD results from reports of the number 2 windows opening during takeoff roll, which has resulted in aborted takeoffs. We are proposing this AD to prevent the opening of the number 2 windows during takeoff roll, which could result in an aborted takeoff or an unscheduled landing, and adversely affect the flightcrew's ability to perform critical takeoff communication.

DATES: We must receive comments on this proposed AD by April 2, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: John Bell, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6422; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–27223; Directorate Identifier 2006–NM–224–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

Operators have reported the number 2 windows opening during takeoff roll. This has resulted in aborted takeoffs, which have occurred at speeds up to 140 knots. The number 2 windows are opened and closed by rotating an operating crank. When the flightcrew closes the window, the crank roller at the end of the torque tube will move and lock into the cam block at the top aft corner of the window. On affected airplanes, the crank roller can move at 18-degree increments with one gear tooth rotation. This minimum adjustment of 18 degrees can cause too much movement of the lower link arm and result in interference with the link bracket, preventing the crank roller from engaging into the cam block. When this occurs, the link arm will not be positioned at an angle less than 90 degrees (over center) in reference to the track roller, and the window could open during takeoff roll. Opening of the number 2 windows during takeoff roll, if not corrected, could result in aborted takeoffs or unscheduled landings, and adversely affect the flightcrew's ability to perform critical takeoff communication.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–56A0010, dated September 7, 2006. The service bulletin describes procedures for modifying the link arms of the number 2 windows in the flight compartment. The modification will allow the crank roller to move at 9-degree increments with a change of position of a retaining pin, instead of one gear tooth rotation of 18-degree increments. The link arm that drives the window shut will be positioned at an angle less than 90 degrees (over center), in reference to the track roller, when the window is closed. The modification will make sure that the window cannot open without input from the operating crank. The modification involves either:

- Replacing the link brackets, cam blocks, and torque tube assemblies with new parts; or
- Reworking the cam blocks and torque tube assemblies, and either reworking the link brackets or replacing them with new link brackets.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 896 airplanes of the affected design in the worldwide fleet; of these, 384 are U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The cost of parts depends on the type and extent of the replacement or rework.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Modification	8–10	$80	$495–$6,805	$1,135–$7,605	Up to $2,920,320.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–27223; Directorate Identifier 2006–NM–224–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–56A0010, dated September 7, 2006.

Unsafe Condition

(d) This AD results from reports of the number 2 windows opening during takeoff roll, which has resulted in aborted takeoffs. We are issuing this AD to prevent the opening of the number 2 windows during takeoff roll, which could result in an aborted takeoff or an unscheduled landing, and adversely affect the flightcrew's ability to perform critical takeoff communication.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 60 months after the effective date of this AD, modify the link arms of the number 2 windows in the flight compartment, in accordance with Boeing Alert Service Bulletin 767–56A0010, dated September 7, 2006.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on February 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2523 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27109; Directorate Identifier 2007–CE–005–AD]

RIN 2120–AA64

Airworthiness Directives; LATINOAMERICANA DE AVIACIÓN (LAVIA) S.A. (Type Certificate Data Sheets No. 2A8 and No. 2A10 Previously Held by The New Piper Aircraft, Inc.) Models PA–25, PA–25–235, and PA–25–260 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for 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 references Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006, which describes the unsafe condition as:

REAR AND FORWARD SUPPORTS OF BOTH HORIZONTAL STABILIZER MODIFICATION. It have been found on several of the affected airplanes some severe corrosion and cracks in both supports. The probable cause for those failures is the accumulation of steam or application products vapors.

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 March 16, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

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–2007–27109; Directorate Identifier 2007–CE–005–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 because of those comments.

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

Discussion

The Dirección Nacional de Aeronavegabilidad (DNA), which is the aviation authority for Republica Argentina, has issued AD No. RA 2006–06–01, Rev. 1 LAVIA S.A., Amendment No. 39/03–041, dated November 17, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI references Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006, which states:

REAR AND FORWARD SUPPORTS OF BOTH HORIZONTAL STABILIZER MODIFICATION. It have been found on several of the affected airplanes some severe corrosion and cracks in both supports. The probable cause for those failures is the accumulation of steam or application products vapors.

The MCAI requires:

Compliance with Service Bulletin No. 25/53/03 issued by Latinoamericana de Aviación S.A. is required in order to detect cracks, evidence of corrosion or any other anomalies on support tubes of the horizontal stabilizer.

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

Relevant Service Information

Latinoamericana de Aviación S.A. has issued Service Bulletin No. 25/53/03, dated May 10, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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 1,144 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $845 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 $1,881,880, or $1,645 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

LATINOAMERICANA DE AVIACIÓN (LAVIA) S.A. (Type Certificate Data Sheets No. 2A8 and No. 2A10 previously held by The New Piper Aircraft, Inc.): Docket No. FAA–2007–27109; Directorate Identifier 2007–CE–005–AD

Comments Due Date

(a) We must receive comments by March 16, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models PA–25, PA–25–235, and PA–25–260, all serial numbers up to LA–260–06008, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) references Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006, which states:

REAR AND FORWARD SUPPORTS OF BOTH HORIZONTAL STABILIZER MODIFICATION. It has been found on several of the affected airplanes some severe corrosion and cracks in both supports. The probable cause for those failures is the accumulation of steam or application products vapors.

Actions and Compliance

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

(1) Upon accumulating 1,500 hours time-in-service (TIS) or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, do the operations as specified in the paragraph ''ACTIONS,'' subparagraph ''INITIAL'' of Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006. Repetitively inspect thereafter every 100 hours TIS or 12 months, whichever occurs first, until the modification specified in paragraph ''ACTIONS,'' subparagraph ''DEFINITIVE'' of Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006, is done.

(2) If any evidence of cracks, signs of corrosion, or any other discrepancy is detected during any inspection required in paragraph (f)(1) of this AD, before further flight, disassemble both horizontal stabilizers and conduct a detailed inspection on the surface of both supports and take corrective action. Use paragraph ''ACTIONS,'' subparagraph ''DEFINITIVE'' of Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006.

(3) After incorporating the modification specified in paragraph ''ACTIONS,'' subparagraph ''DEFINITIVE'' of Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006, no further action is required.

(4) Upon accumulating 1,000 hours TIS after the effective date of this AD, modify both horizontal stabilizers as specified in paragraph ''ACTIONS,'' subparagraph ''DEFINITIVE'' of Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006, unless already done. Incorporating this modification terminates the repetitive inspection requirement in paragraph (f)(1) of this AD.

(5) As a terminating action to the inspection requirements of this AD, the modification to both horizontal stabilizers specified in paragraph ''ACTIONS,'' subparagraph ''DEFINITIVE'' of Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006, may be incorporated at any time after the effective date of this AD and before the time required in paragraph (f)(4) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, Small Airplane Directorate, ATTN: Sarjapur Nagarajan, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(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 (44 U.S.C. 3501 et.seq.), 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 Dirección Nacional de Aeronavegabilidad AD No. RA 2006–06–01, Rev. 1 LAVIA S.A., Amendment No. 39/03–041, dated November 17, 2006; and Latinoamericana de Aviación S.A. Service Bulletin No. 25/53/03, dated May 10, 2006, for related information.

Issued in Kansas City, Missouri, on February 8, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2508 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–159444–04]

RIN 1545–BE35

Release of Lien or Discharge of Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–159444–04) that was published in the **Federal Register** on Thursday, January 11, 2007 (72 FR 1301) relating to release of lien and discharge of property under sections 6325, 6503, and 7426 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Debra A. Kohn, (202) 622–7985 (not toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 6325, 6503, and 7426 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–159444–04) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (REG–159444–04), which was the subject of FR Doc. E7–219, is corrected as follows:

1. On page 1302, column 1, in the preamble, under the paragraph heading ''Background'', sixth line from the bottom of the second paragraph of the column, the language ''addition these provisions to the Code,'' is corrected to read ''addition of these provisions to the Code,''.

§ 301.6325–1 [Corrected]

2. On page 1306, column 3, § 301.6325–1(a)(2)(i), fourth paragraph of the column, sixth line from the bottom of the paragraph, the language ''been put into the matter. In no case'' is corrected to read ''been put in the matter. In no case''.

LaNita Van Dyke,

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

[FR Doc. E7–2496 Filed 2–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2006–0011]

RIN 0651–AC05

Changes in the Requirements for Filing Requests for Reconsideration of Final Office Actions in Trademark Cases

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rule.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') proposes to amend 37 CFR 2.64 to require a request for reconsideration of an examining attorney's final refusal or requirement to be filed through the Trademark Electronic Application System (''TEAS'') within three months of the mailing date of the final action.

DATES: Comments must be received by April 16, 2007 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to *TM RECON COMMENTS@USPTO.GOV.* Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; or by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection on the Office's Web site at *http://www.uspto.gov.* and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272–8742.

SUPPLEMENTARY INFORMATION: The USPTO proposes the amendment of 37 CFR 2.64 to streamline and promote efficiency in the process once a final action has issued in an application for trademark registration. By setting a three-month period in which to file a request for reconsideration of the final action, and by requiring that the request be filed through TEAS, the proposed amendment would facilitate the likely disposition of an applicant's request for reconsideration prior to the six-month deadline for filing an appeal to the Trademark Trial and Appeal Board (''TTAB'') or petition to the Director on the same final action. This may eliminate the need for some appeals or petitions, and reduces the need for remands and transfers of applications on appeal.

A request for reconsideration of a final action does not extend the time for filing an appeal or petitioning the Director on that action. Under the current version of the rule, wherein the applicant may file a request for reconsideration at any time between the final action and the six-month deadline for appealing or petitioning, many applicants simultaneously seek reconsideration and file an appeal. Because the examining attorney loses jurisdiction over the application upon the filing of an appeal to the TTAB, this simultaneous pursuit of reconsideration and appeal often necessitates a remand by the TTAB to the examining attorney for a decision on the request for reconsideration. If the request is denied, then the case is transferred back to the TTAB. If the request is granted, and the examining attorney reconsiders the final

action, the appeal or petition may become moot. The need for these remands and transfers contributes to the burden on the applicant and the USPTO, and prolongs the pendency of the case.

In order to eliminate some appeals and petitions and reduce the need for these remands and transfers, the proposed rule provides that a request for reconsideration must be filed within three months of the final action, while the six-month period for appeal or petition remains unchanged. Normally, the examining attorney will reply to the request for reconsideration before the end of the six-month period to appeal or petition. To facilitate the prompt consideration by the examining attorney, the proposed rule further provides that the request must be filed through TEAS, which expedites the examining attorney's notice of and access to the request.

The proposed earlier deadline and mandatory TEAS filing facilitate the likely disposition of the request for reconsideration prior to the deadline to petition or appeal. A grant of reconsideration within this time frame will obviate the need for an applicant to file an appeal or petition, thus also saving the applicant the filing fee for an appeal or petition. A denial of reconsideration within this time frame will obviate the need for a case on appeal to be remanded and transferred between the TTAB and the examining attorney. Under either scenario, the time frame in the proposed rule promotes more efficient and prompt handling of the case, and achieves benefits both for the applicant and the USPTO.

References in this notice to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended. ''TMEP'' refers to the *Trademark Manual of Examining Procedure,* 4th Edition, April 2005.

Discussion of Specific Rule

The Office proposes to revise current § 2.64(b). This section concerns the time frame for and effect of filing a request for reconsideration of a final action, as well as the treatment of amendments accompanying such requests. The proposed revision changes the period for filing a request for reconsideration of a final action to three months from the date of the action. The proposed revision also introduces a requirement that any request for reconsideration be filed through TEAS. In addition, the proposed revision eliminates the aspirational statement in the current rule as to when an examining attorney would ''normally'' act on such requests, as unnecessary to the rule. Nonetheless, the USPTO anticipates that an examining attorney will continue to act promptly on such requests, and in any event, before the end of the six-month period to petition or appeal.

The proposed rule still affords applicants the opportunity to submit amendments for the full six-month period from the date of the final action, and maintains the practice under the current rule that such amendments are entered if they comply with the applicable rules and statutory provisions. As in the current version of the rule, the filing of such amendments does not extend the time for filing an appeal or petitioning the Director.

The Office proposes a technical correction to § 2.64(c), for consistency with the proposed amendment to § 2.64(b), to eliminate the reference to ''the six-month *response* period after issuance of the final action.'' The reference would be changed to ''the six-month period after issuance of the final action.''

Rule Making Requirements

Executive Order 13132: This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The changes proposed in this notice would not impose any additional fees on trademark applicants. Rather, the proposed changes would facilitate the likely disposition of the request for reconsideration prior to the deadline to petition or appeal. A grant of reconsideration within this time frame will obviate the need for an applicant to file an appeal or petition, thus also saving the applicant the filing fee for an appeal or petition.

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control number 0651–0050. This notice proposes to require a request for reconsideration of an examining attorney's final refusal or requirement to be filed through TEAS within three months of the mailing date of the final action. The United States Patent and Trademark Office is resubmitting an information collection package to OMB for its review and approval because the changes in this notice do affect the information collection requirements associated with the information collection under OMB control number 0651–0050.

The estimated annual reporting burden for OMB control number 0651–0050 Electronic Response to Office Action and Preliminary Amendment Forms is 117,400 responses and 19,958 burden hours. The estimated time per response is 10 minutes. The time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information is included in the estimate. The collection is approved through April of 2009.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451 (Attn: Cynthia C. Lynch), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503 (Attn: Desk Officer for the Patent and Trademark Office).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons stated, title 37 CFR part 2 is proposed to be amended as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Amend § 2.64 by revising paragraphs (b) and (c)(1) to read as follows:

§ 2.64 Final action.

* * * * *

(b)(1) During the three-month period after issuance of a final action, the applicant may request that the examining attorney reconsider the final action. The request must be filed through TEAS. The filing of a request for reconsideration will not extend the time for filing an appeal or petitioning the Director.

(2) During the six-month period after issuance of a final action, the applicant may submit amendments. Any such amendments will be examined, and will be entered if they comply with the rules of practice in trademark cases and the Act of 1946. The filing of such an amendment will not extend the time for filing an appeal or petitioning the Director.

(c)(1) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month period after issuance of a final action, the examiner shall examine the amendment. The filing of such an amendment will not extend the time for filing an appeal or petitioning the Director.

* * * * *

Dated: February 8, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7–2519 Filed 2–13–07; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2007–0101; FRL–8277–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant a request submitted by the State to redesignate the South Coast from nonattainment to attainment for the CO National Ambient Air Quality Standards (NAAQS). EPA is also proposing to approve a state implementation plan (SIP) revision for the South Coast nonattainment area in California as meeting the Clean Air Act (CAA) requirements for maintenance plans for carbon monoxide (CO). EPA is proposing to find adequate and approve motor vehicle emission budgets, which are included in the maintenance plan. Finally, EPA is proposing to approve the California motor vehicle inspection and maintenance (I/M) program as meeting the low enhanced I/M requirements for CO in the South Coast.

DATES: Comments must be received by March 16, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0101, by one of the following methods:

1. Agency Web site: *http://www.regulations.gov*. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

3. E-mail: *jesson.david@epa.gov*

4. Mail or deliver: Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are anonymous access systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: David Jesson, U.S. EPA Region 9, 415–972–3961, *david.jesson@epa.gov* or *http://www.epa.gov/region09/air/actions*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' mean U.S. EPA.

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I. Summary of Today's Proposed Action

We are proposing to approve the 2005 Carbon Monoxide Redesignation Request and Carbon Monoxide Maintenance Plan for the South Coast Air Basin (Maintenance Plan) as meeting the requirements of CAA sections 107(d)(3)(E) and 175A, which provide, in part, that plans must demonstrate continued attainment for at least 10 years and must include contingency measures. The submittal included evidence that the South Coast attained the CO NAAQS in 2002 and continues to attain the NAAQS. We are also proposing to approve and find adequate the motor vehicle emissions budgets (MVEBs) submitted with the Maintenance Plan.

We are proposing to approve the request by the State of California to redesignate the area to attainment for CO under the provisions of CAA section 107(d)(3)(E). Section 107(d)(3)(E) authorizes the EPA Administrator to redesignate areas to attainment if the area has attained the NAAQS due to permanent and enforceable emission reductions, and the approved SIP for the area meets all of the applicable requirements of CAA section 110 (basic requirements applicable to SIPs generally), Part D (special SIP requirements applicable to nonattainment areas), and 175A (SIP requirements for maintenance areas).

As part of our proposed determination that California has met applicable Part D provisions, we propose to adapt to CO nonattainment areas the provisions of our Clean Data Policy, which was initially established for ozone (see discussion below in section III.B.2.). Under the Clean Data Policy, certain CAA Part D requirements—including the requirements for developing attainment demonstrations, reasonable further progress (RFP) plans, reasonably available control measures (RACM) and contingency measures—no longer apply because the area has already attained the NAAQS.

Finally, because our interim approval of California's I/M program for CO in the South Coast expired on August 7, 1998, California has now submitted a demonstration that the I/M program meets the low-enhanced requirements applicable to the South Coast CO nonattainment area (see discussion in section III.B.4.) We are proposing to approve that demonstration.

II. CO SIPs for the South Coast

A. Requirements for Serious CO Nonattainment Areas

The CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS, including CO.[1] Under section 107(d)(1)(C) of the Act, areas designated nonattainment prior to enactment of the 1990 amendments, including the South Coast, were designated nonattainment by operation of law.[2] Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either moderate or serious, depending on the severity of the area's air quality problem. CO areas with design values at and above 16.5 ppm, such as the South Coast, were classified as serious.

Section 172 of the Act contains general requirements applicable to SIPs for nonattainment areas. Sections 186 and 187 of the Act set out additional air quality planning requirements for CO nonattainment areas. The most fundamental of these provisions is the requirement that CO nonattainment areas submit by November 15, 1992, a SIP demonstrating attainment of the NAAQS as expeditiously as practicable, but no later than the deadline applicable to the area's classification: December 31, 1995, for moderate areas, and December 31, 2000, for serious areas like the South Coast. CAA sections 186(a)(1), 187(a)(7), and 187(b)(1). Such a demonstration must include enforceable measures to achieve emission reductions each year leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area.

EPA has issued a General Preamble describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of EPA's preliminary interpretations of the CAA's Title I requirements.

B. Serious CO SIP for the South Coast

On February 5, 1997, California submitted a CO plan for the South Coast, which had been adopted by the South Coast Air Quality Management District (SCAQMD) on November 15, 1996. Because the South Coast had continuously achieved the 1-hour CO NAAQS for more than 20 years, this plan primarily addressed the 8-hour CO NAAQS. On April 21, 1998 (63 FR 19661), we fully approved the SIP as meeting the applicable CO requirements for the South Coast, with the following exceptions: (1) We took no action on the plan with respect to the CAA section 187(b)(2) requirement for transportation control measures (TCMs) to offset any growth in emissions from vehicle miles traveled (VMT) or numbers of vehicles trips; (2) we took no action on the plan with respect to the contingency measure requirements of CAA sections 172(c)(9) and 187(a)(3);[3] (3) we granted interim approval to the RFP provisions under CAA sections 171(1), 172(c)(2), and 187(a)(7); (4) we granted interim approval to the attainment demonstration under CAA section 187(a)(7); and (5) we granted interim approval to the enhanced I/M program required by CAA 187(a)(6), as discussed below.

Interim approval is authorized under section 348(c) of the National Highway System Designation Act (''Highway Act,'' Public Law 104–59, enacted on November 28, 1995) for certain types of I/M programs and, by extension, to SIP provisions dependent upon reductions from these I/M programs. We had previously granted interim approval to California's enhanced I/M program (62 FR 1160, January 8, 1997). Our 1997 interim approval established August 7, 1998, as the expiration of the approval if by such date EPA had not approved a SIP submittal demonstrating that the credits claimed for the I/M program are appropriate and the program is otherwise in full compliance with the applicable enhanced I/M requirements. Because the State did not submit the needed demonstration, the approval of the I/M program and the South Coast CO SIP with respect to RFP and attainment demonstration expired on August 7, 1998.

[1] Under section 109 of the CAA, EPA has established primary, health-related NAAQS for CO: 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour. Attainment of the 8-hour CO NAAQS is achieved if not more than one non-overlapping 8-hour average in any consecutive 2-year period per monitoring site exceeds 9 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances). See 40 CFR 50.8; William G. Laxton, Director Technical Support Division, entitled ''Ozone and Carbon Monoxide Design Value Calculations,'' dated June 18, 1990; and EPA's General Preamble (see 57 FR 13535).

[2] For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[3] CAA section 172(c)(9) requires contingency measures that would be implemented if an area fails to make RFP or to attain the NAAQS by the applicable deadline. For CO areas, CAA section 187(a)(3) requires contingency measures to be implemented if any estimate of vehicle miles traveled (VMT) in the area for any year prior to the attainment year that is submitted in an annual report under section 187(a)(2)(A) (''VMT tracking report'') exceeds the number predicted in the most recent prior forecast or if the area fails to attain the NAAQS by the attainment year.

C. CO Maintenance Plan for the South Coast

In 2002, the South Coast attained the 8-hour CO NAAQS, and on March 4, 2005, the SCAQMD adopted the Maintenance Plan, following 30-day public notice (SCAQMD Board Resolution No. 05–8). On February 24, 2006, the California Air Resources Board (CARB) adopted the Maintenance Plan (CARB Executive Order G–125–332) and submitted it to EPA as a SIP revision, along with a request that we approve a redesignation request to attainment (Letter from Lynn Terry, CARB, to Wayne Nastri, EPA Region 9). On August 11, 2006, CARB submitted additional technical information relating to the I/M program in the South Coast (Letter from Kurt Karperos, CARB, to Lisa Hanf, EPA Region 9). The attachment to the letter addressed the requirement associated with EPA's 1997 interim approval of the enhanced I/M program under the Highway Act, by demonstrating that the California smog check program meets minimum requirements applicable to an enhanced I/M program for CO. In accordance with CAA section 110(k)(1)(B), the submittal became complete by operation of law on August 25, 2006.

III. South Coast Redesignation to Attainment

The criteria for approval of a redesignation request are set out in CAA section 107(d)(3)(E). We review the State's request against each of these criteria in our discussion below.

A. Attainment of the NAAQS

1. Basis for Determining Attainment

CAA section 107(d)(3)(E) requires that we determine that the area has attained the NAAQS. EPA makes the determination as to whether an area's air quality is meeting the CO NAAQS based upon air quality data gathered at CO monitoring sites in the nonattainment area which have been entered into the Air Quality System (AQS) database, formerly known as the Aerometric Information Retrieval System (AIRS). This data is reviewed to determine the area's air quality status in accordance with 40 CFR 50.8; EPA policy guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled ''Ozone and Carbon Monoxide Design Value Calculations,'' dated June 18, 1990; and EPA's General Preamble at 57 FR 13535.

The 8-hour and 1-hour CO design values are used to determine attainment of CO areas, and the design values are determined by reviewing 8 quarters of data, or a total of two complete calendar years of data for an area. The 8-hour design value is computed by first finding the maximum and second maximum (non-overlapping) 8-hour values at each monitoring site for each year of the two calendar years prior to and including the attainment date. Then the higher of the ''second high'' values is used as the design value for the monitoring site, and the highest design value among the various CO monitoring sites represents the CO design value for the area.

The CO NAAQS requires that not more than one 8-hour average per year equals or exceeds 9.5 ppm (values below 9.5 are rounded down to 9 and are not considered exceedances). If an area has a design value that is equal to or greater than 9.5 ppm, this means that there was a monitoring site where the second highest (non-overlapping) 8-hour average was measured to be equal to or greater than 9.5 ppm in at least one of the two years being reviewed to determine attainment for the area. This indicates that there were at least two values above the NAAQS during one year at that site and thus the NAAQS for CO was not met. Conversely, an 8-hour design value of less than 9.5 ppm indicates that the area has attained the CO NAAQS.

The 1-hour CO design value is computed in the same manner. An area attains the one-hour CO NAAQS if the 1-hour design value is less than 35.5 ppm.

2. Record of Attainment in the South Coast

The Maintenance Plan presents the attainment air quality data for the South Coast's 22 monitoring stations in Table 2–2 on p. 8. During the period 2002–2003, there was only one maximum 8-hour average concentration above the standard, a 10.1 ppm concentration recorded at the Lynwood (South Central Los Angeles) site on January 8, 2002, under very stagnant conditions and a strong inversion. The maximum 8-hour concentration at Lynwood was 7.7 ppm in 2001 and 7.3 ppm in 2003. There were no exceedances of the 8-hour NAAQS recorded in 2001 and 2003 at any station, and the design value at all stations for the periods 2001–2002 and 2002–2003 was well below the NAAQS.

A review of data input to AQS indicates that the South Coast has continued to attain the CO NAAQS since 2003. The highest second maximum 1-hour and 8-hour CO concentrations measured at the various monitoring stations during the 2004 through the first quarter of 2006 were 8.7 ppm and 6.1 ppm, respectively, both recorded in 2004 at the Lynwood station in south central Los Angeles County. These values are well below the corresponding CO NAAQS of 35 and 9 ppm. A ''quick look'' report generated using AQS for the South Coast CO monitoring stations for 2004 through the third quarter of 2006 is included in the docket for this proposed rule. The Maintenance Plan indicates that the 1-hour CO NAAQS has not been violated for 25 years in the South Coast.

Based on the monitoring data presented in the Maintenance Plan and AQS data for the past two years, we propose to determine that the South Coast attained the CO NAAQS in 2002 and has continued to attain the NAAQS.

B. Fully Approved Applicable Implementation Plan Under CAA Section 110(k) Meeting Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D

Section 107(d)(3)(E)(ii) and (v) require EPA to determine that the area has a fully approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and Part D for purposes of redesignation.

1. Basic SIP Requirements Under CAA Section 110

The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following: Kubmittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of Part C requirement for Prevention of Significant Deterioration (PSD); provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

On numerous occasions over the past 35 years, CARB and SCAQMD have submitted and we have approved provisions addressing the basic CAA section 110 provisions. There are no outstanding or disapproved applicable SIP submittals with respect to the State and SCAQMD.[4] We propose to conclude

[4] The applicable SIP for CARB and South Coast may be found at *http://yosemite.epa.gov/r9/r9sips.nsf/Casips?readform&state=California*.

We note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). Thus, for example, CAA

that CARB and SCAQMD have met all SIP requirements for the South Coast area applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements). With the exceptions discussed below in Sections III.B.2–4, the SIP for the South Coast also has been approved as meeting applicable requirements under Part D of Title I of the CAA. See our approval of the South Coast CO attainment SIP at 63 FR 19661–2.

2. Clean Data Policy and Outstanding Part D Requirements

a. Introduction

In some designated nonattainment areas, monitored data demonstrates that the NAAQS have already been achieved. Based on its interpretation of the Act, EPA has determined that certain SIP submission requirements of part D, subparts 1, 2, and 4 of the Act do not apply and therefore do not require certain submissions for an area that has attained the NAAQS. These include RFP requirements, attainment demonstrations and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

The Clean Data Policy is the subject of two EPA memoranda setting forth our interpretation of the provisions of the Act as they apply to areas that have attained the relevant NAAQS. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2 (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71645–71646 (November 29, 2005). We have also applied the same approach to the interpretations of the provisions of subparts 1 and 4 applicable to PM–10. For detailed discussions of this interpretation with respect to the CAA's PM–10 requirements for RFP, attainment demonstrations, and contingency measures, see 71 FR 6352, 6354 (February 8, 2006); 71 FR 13021, 13024 (March 14, 2006); 71 FR 27440, 27443–27444 (May 11, 2006); and 71 FR 40952, 40954 (July 19, 2006); and 71 FR 63642 (October 30, 2006).

EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (Seitz memo), and our December 14, 2004 memorandum from Stephen D. Page entitled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (Page memo), are equally pertinent to the interpretation of provisions of subparts 1 and 3 applicable to CO. EPA's interpretation of how the provisions of the Act apply to areas with ''clean data'' is not logically limited to ozone, PM–2.5, and PM–10, because the rationale is not dependent upon the type of pollutant. Our interpretation that an area that is attaining the standard is relieved of obligations to demonstrate RFP and to provide an attainment demonstration and contingency measures pursuant to part D of the CAA, pertains whether the standard is CO, 1-hour ozone, 8-hour ozone, PM–2.5, or PM–10.

b. RFP and Attainment Demonstration

The reasons for relieving an area that has attained the relevant standard of certain part D, subpart 1 and 2 (sections 171 and 172) obligations, applies equally as well to part D, subpart 3, which contains specific attainment demonstration and RFP provisions for CO nonattainment areas. As we have explained in the 8-hour ozone Phase 2 Final Rule, our ozone and PM–2.5 clean data memoranda, and our approval of PM–10 SIPs, EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured air quality monitoring data for ozone and PM, and two consecutive years for CO). Three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion). It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

> [R]equirements for RFP will not apply in evaluating a request for redesignation to attainment, since, at a minimum, the air quality data for the area must show that the area has already attained. A showing that the State will make RFP toward attainment will, therefore, have no meaning at that point. 57 FR at 13564.

See also page 6 of the guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, to Regional Air Division Directors, dated September 4, 1992 (Calcagni Memo, available at *http://www.epa.gov/ttn/naaqs/ozone/ozonetech/940904.pdf*).

EPA believes the same reasoning applies to the CO RFP provisions of part D, subpart 3.

With respect to RFP, CAA section 171(1) states that, for purposes of part D of title I, RFP

> means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The stated purpose of RFP is to ensure attainment by the applicable attainment date, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), the PM–10 specific RFP requirements of section 189(c)(1), or the CO-specific RFP requirements of section 187(a)(7).

Section 187(a)(7) states that the SIP for moderate CO areas with a design value greater than 12.7 must:

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section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the South Coast area is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation 66 FR 50399 (October 19, 2001). EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation.

provide a demonstration that the plan as revised will provide for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

This same requirement also applies to serious CO areas in accordance with CAA section 187(b)(1).

It is clear that once the area has attained the standard, no further specific annual emission reductions are necessary or meaningful. With respect to CO areas, this interpretation is supported by language in section 187(d)(3), which mandates that a state that fails to achieve the milestone must submit a plan that assures that the state achieves the ''pecific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.'' [5] Section 187(d)(3) assumes that the requirement to submit and achieve the milestone does not continue after attainment of the NAAQS.

If an area has in fact attained the standard, the stated purpose of the RFP and specific annual emissions reductions requirements will have already been fulfilled.[6] The specific annual emission reductions required are only those necessary to attain the standard by the attainment date. EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(b) and (c). We are proposing to extend that interpretation to the specific provisions of part D, subpart 3.

With respect to the attainment demonstration requirements of section 187(a)(7), an analogous rationale leads to the same result. Section 187(a)(7) requires that the State submit

a revision to provide, and a demonstration that the plan as revised will provide for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memo and of the section 182(b) and (c) requirements set forth in the Seitz memo. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564).

c. Contingency Provisions

(1) CAA Section 172(c)(9)

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of CAA section 172(c)(9), and the special contingency provisions applicable to ozone and CO plans. Section 172(c)(9) requires a State to submit contingency measures that will be implemented if an area fails to make ''reasonable further progress'' or fails to attain by the applicable attainment date.[7] Thus, the stated purpose of the contingency measure requirement is to ensure RFP (the purpose of which is to ensure attainment by the applicable attainment date) and attainment by the applicable attainment date. If an area has in fact attained the standard by the applicable attainment date, the stated purpose of the contingency measure requirement will have already been fulfilled. Consequently, we believe that the requirement for a State to submit revisions providing for measures to meet the contingency provisions of section 172(c)(9) no longer applies for an area that we find as having attained the relevant NAAQS by the applicable attainment date.

We note that we took this view with respect to the general contingency measure requirement of section 172(c)(9) in our General Preamble. In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''section 172(c)(9) requirements for contingency measures * * * no longer apply when an area has attained the standard and is eligible for redesignation.'' See 57 FR 13498, at 13564 (April 16, 1992). See also Calcagni memo, p. 6.

We propose to extend the same reasoning to CO plans with respect to the section 172(c)(9) contingency provision requirements, since our reasoning is equally applicable regardless of the pollutant. Moreover, just as we concluded that the pollutant-specific contingency measure requirements of section 182(c)(9) for ozone areas also no longer apply to areas attaining the ozone NAAQS, we propose below that the CO-specific contingency provisions of section 187(a)(3) no longer apply at the time we find that an area has attained the CO NAAQS.

(2) CAA Section 187(a)(3)

Section 187(a)(3) requires contingency measures to be implemented

if any estimate of vehicle miles traveled in the area which is submitted in an annual report under paragraph (2) exceeds the number predicted in the most recent prior forecast or if the area fails to attain the national primary ambient air quality standard for carbon monoxide by the primary standard attainment date.

Thus, the Act establishes two triggers for implementation of contingency measures required under this provision. The first trigger is associated with CAA section 187(a)(2), which requires plans for areas with a design value above 12.7 ppm at the time of classification to

[5] AA section 187(d), CO Milestone, applies to serious CO areas and requires:

(1) The state to submit a demonstration that the area has achieved certain specific annual emission reductions (187(d)(1));

(2) EPA to determine whether the demonstration is adequate within 90 days (187(d)(2)); and

(3) the state to submit a plan revision within 9 months of EPA's notification that the state has not met the milestone, such plan to implement CAA section 182(g)(4) economic incentive and transportation control programs sufficient to achieve the specific annual emission reductions by the attainment date (187(d)(3)).

EPA interprets these provisions consistent with its interpretation of Section 182(g) in Subpart 2. See May 10, 1995 Seitz Memorandum at p. 5. There, EPA included in its identification of SIP submission requirements linked with attainment and RFP requirements the ''Section 182(g) requirements concerning milestones that are based on the section 182(b)(1) and 182(c)(2)(B) and (C) submissions.'' In Subpart 3, similarly, milestone requirements are based on the section 187(a)(7) specific annual emission reduction requirements.

[6] For PM–10 areas, we have concluded that it is a distinction without a difference that section 189(c)(1) speaks of the PM–10 nonattainment area RFP requirement as one to be achieved until an area is ''redesignated as attainment'', as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone and CO nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2) for ozone and 187(a)(7) for CO, which refer to the RFP requirements as applying until the ''attainment date'', since, section 189(c)(1) defines RFP by reference to section 171(l) of the Act. Reference to 171(l) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2) and the CO-specific requirements of section 187(a)(7), the PM-specific requirements may only be required for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(l), to be a requirement that no longer applies once the standard has been attained.

[7] RFP means ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' CAA Section 171(1).

include ''a forecast of vehicle miles traveled in the nonattainment area concerned for each year before the year in which the plan projects the national ambient air quality standard for carbon monoxide to be attained in the area,'' along with

> annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which such forecasts proved to be accurate. Such annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

The plan's contingency measures must be implemented ''if the prior forecast has been exceeded by an updated forecast * * *.'' Both the forecasts and reports are required only until the SIP's projected attainment year. Following the plan's projected attainment year, which is the last year of the VMT forecasts, this trigger disappears.

The second trigger of the contingency provision is a failure of the area to attain the primary CO standard by the applicable deadline, for the evident purpose of ensuring that such an area further reduces emissions as needed to attain the NAAQS. Once an area has actually attained the CO NAAQS, this second trigger is clearly eliminated.

Thus, the CAA section 187(a)(3) contingency provision has no further practical effect when the two contingency triggers cease to exist. Moreover, the implicit goal of the contingency provision, to reduce motor vehicle-related CO emissions to the extent needed to achieve annual progress and eventual attainment, would have been accomplished when an area comes into attainment. Therefore, we propose to conclude that an area that is attaining the CO standards is relieved of an obligation to provide contingency measures pursuant to CAA section 187(a)(3).

CAA section 187(b)(2) requires that CO serious area plans include TCMs as prescribed in CAA section 182(d)(1) for ozone areas, except that the TCMs relate to CO emissions rather than volatile organic compound emissions. Section 182(d)(1) requires that plans for severe ozone areas must include TCMs to be implemented

> to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) (pertaining to periodic emissions reduction requirements).

The section 187(b)(2) TCMs are required to be submitted if CO emissions are expected to increase from growth in VMT or vehicle trips, and to meet RFP or attainment. For the same reason that the requirement for RFP no longer applies to an area that has attained the NAAQS, the requirement for measures to contribute to RFP no longer applies following a finding of attainment. Thus EPA interprets the provisions of section 187(b)(2)(A) that cross-reference section 182(d)(1) so as to suspend those provisions pertaining to periodic emissions reductions requirements for so long as the area is attaining the standard. In a May 10, 1995 Seitz memorandum, we identified as among those requirements that could be suspended upon finding of attainment ''the elements of the * * * requirements of section 182(d)(1)(A) concerning vehicle miles traveled that are related to RFP requirements.'' (p. 2). With respect to the requirement for TCMs to offset any growth in emissions from VMT, see Section 3 below.

d. Conclusion

As noted above, the South Coast area does not currently have an approved SIP with respect to the requirements for RFP, attainment, contingency provisions, and TCMs related to RFP requirements. However, we believe that, for the reasons set forth here and established in our prior ''clean data'' memoranda and rulemakings, a CO nonattainment area that has ''clean data,'' should be relieved of the part D, subpart 3 obligations to provide an attainment demonstration with specific annual emission reductions pursuant to CAA section 187(a)(7); the CAA section 187(d) milestone demonstration requirement; contingency provisions pursuant to CAA section 187(a)(3)); and TCMs related to RFP requirements pursuant to 187(b)(2); as well as the attainment demonstration, RFP, and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act.

Here, as in both our 8-hour ozone Phase 2 final rule and 1-hour ozone and PM–2.5 clean data memoranda, we emphasize that the suspension of a requirement to submit these SIP revisions exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard. However, once EPA ultimately redesignates the area to attainment, the area will be entirely relieved of these requirements to the extent the maintenance plan for the area does not rely on them.

Should we at some future time determine that an area that had clean data, but which has not yet been redesignated as attainment for a NAAQS, has violated the relevant standard, the area would again be required to submit the pertinent requirements under the SIP for the area. Attainment determinations under the policy do not shield an area from other required actions, such as provisions to address pollution transport.

As set forth, above, we propose to find that because the South Coast area has continued to attain the NAAQS the requirement of an attainment demonstration, reasonable further progress, milestone demonstration, TCMs related to RFP, and contingency measures no longer apply.

3. TCMs To Offset Growth in Emissions From VMT Increases

As noted above, the section 187(b)(2) TCMs are required to be submitted if CO emissions are expected to increase from growth in VMT or vehicle trips.

EPA has concluded that states are not required to submit such measures if the SIP includes a demonstration that, despite any growth in projected VMT, CO emissions will decline each year through the attainment year.[8] In the General Preamble, we state that: ''If projected total motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT offset requirement is satisfied.'' General Preamble at 57 FR 13522.

The 1997 CO Plan contains a demonstration that CO emissions from motor vehicles decline each year through the attainment year (Appendix V, page V–5–4, Table 5–2 ''Carbon Monoxide Emissions (tons/day) Projected from 1993 through 2000 for the South Coast Air Basin''). This table shows that no additional TCMs are required to prevent an increase in emissions associated with a growth in VMT or trips, since emissions are shown to decline each year through the attainment year despite increases in

[8] See, for example, EPA's final approval of Illinois' VMT SIP at 60 FR 48896, 48897 (September 21, 1995).

VMT and trip numbers.[9] The Maintenance Plan includes revised and updated VMT forecasts for each year from 1997 through 2006 (Table 4–1). The Maintenance Plan also includes revised and updated projected CO emissions from motor vehicles from 1997 through 2006 (Table 4–2), showing a continuing sharp decline in CO emissions despite the growth in VMT and trips. Consequently, we conclude that no TCMs are required to satisfy the progress requirements of the Act or to offset growth in CO emissions from growth in VMT or vehicle trips. We therefore propose to approve the 1997 CO Plan, and the update through the year of attainment (2002) in the Maintenance Plan, as meeting the provisions of CAA section 187(b)(2).

4. Requirement for Enhanced I/M Program

The requirement for an enhanced motor vehicle I/M program under CAA section 187(a)(6) applies to the South Coast by virtue of the area's designation as a serious nonattainment area for CO, in accordance with CAA section 187(b)(1). On January 22, 1996, CARB submitted a SIP revision to satisfy the requirements for basic and enhanced I/M programs in the various ozone and CO nonattainment areas in the State.

On January 8, 1997 (62 FR 1150), we approved the State's basic I/M program as meeting the CAA section 182(b)(4) requirement for moderate ozone areas within California, and the CAA section 187(a)(4) requirement for I/M program corrections applicable to California's moderate CO areas with a design value of less than 12.7 ppm at the time of classification. In the same rule, we granted interim approval to the State's enhanced I/M program under section 348(c) of the Highway Act, as meeting the CAA section 182(c)(3) requirement for serious and above ozone areas, and CAA 187(a)(6) for serious CO areas.

In accordance with the State's request, we approved the I/M program as meeting the high enhanced requirements (see discussion below). As provided in the Highway Act, the interim approval was for a period of 18 months (i.e., until August 7, 1998), by which time the approval would expire unless we had approved a SIP demonstrating that the credits claimed for the program are appropriate and the I/M program is otherwise in compliance with the Clean Air Act. See 40 CFR 52.241.

When we subsequently ruled on the South Coast CO SIP, we also granted interim approval to the progress and attainment provisions of the plan, since fulfillment of those requirements depended upon emission reductions from the enhanced I/M program. (63 FR 19661, April 21, 1998).

California failed to make the SIP submittal required under the Highway Act to substantiate the emission reductions claimed for the enhanced I/M program and, as a result, the interim approval of the enhanced I/M program and the progress and attainment demonstration provisions of the South Coast CO SIP expired by operation of law on August 7, 1998. In Section III.B.2.b, we discuss this lapsed approval and our interpretation that the Clean Data Policy allows us to suspend the requirements for progress and attainment demonstration as they apply to the South Coast CO SIP.

With the submittal of the South Coast CO Maintenance Plan and redesignation request, the State included a SIP revision documenting that: (1) The I/M program delivered CO emission reductions sufficient, along with other control measures, to lead to attainment of the CO NAAQS in the South Coast, and (2) the I/M program meets the low-enhanced I/M performance requirements for CO in the South Coast.

The State's transmittal letter included a table of the wintertime CO emissions reduction benefits in the South Coast from the current I/M program, along with a copy of the September 2005 Report to the Legislature regarding ARB's &''April 2004 Evaluation of the California Enhanced Vehicle Inspection and Maintenance (Smog Check) Program.'' The table shows the following reductions:

TABLE 1.—WINTER SEASON CO EMISSIONS REDUCTION BENEFITS IN THE SOUTH COAST AIR BASIN ASSOCIATED WITH THE ENHANCED I/M PROGRAM

[In tons per day]

Year	1990	1993	2000	2006	2010	2020
Reductions	494	459	291	671	618	377

Because these substantial emission reductions did, in fact, result in attainment of the CO NAAQS in the South Coast, we agree with the State that the enhanced I/M program proved adequate to meet attainment needs for the area.

The State requests that we also now determine that the program meets other low enhanced I/M program requirements. This would allow us to conclude, for purposes of the redesignation provisions of CAA section 107(d)(3)(E)(v), that the area has met the applicable requirement for an enhanced I/M program under CAA sections 187(a)(6) and 187(b)(1).

On September 18, 1995, we amended our regulatory requirements for enhanced I/M programs (60 FR 48029). Among other changes, we established a low enhanced performance standard as an option for areas subject to the enhanced I/M requirement and meeting the following requirements set out in 40 CFR 51.351(g) regarding RFP and attainment: (1) The area is either not subject to or has an approved SIP for RFP in 1996, and (2) the area does not have a disapproved post-1996 RFP plan or a disapproved attainment plan for ozone or CO. South Coast meets these requirements because it has an approved plan for RFP in 1996 for ozone, (62 FR 1150, January 8, 1997) and has no disapproved post-1996 RFP plan or a disapproved attainment plan for ozone or CO.

The low enhanced I/M requirements set out in 40 CFR 51.351(g), and further described in the preamble, establish specific program test elements generally equivalent to those for a basic I/M program, as set out in 40 CFR 51.352. The key difference in test requirements between the basic and the low enhanced I/M program are two additional requirements for low enhanced programs: visual inspection of emission control device inspections in accordance with 40 CFR 51.351(g)(8), and testing of light duty trucks rated up to 8,500 pounds gross vehicle weight rating (GVWR) as prescribed in 40 CFR 51.351(g)(5). Additionally, 40 CFR 51.351(b) requires on-road testing of 0.5% of the subject fleet or 20,000

[9] Motor vehicle VMT forecasts for each year are shown in Table 5–1. Despite this annual growth, emissions from motor vehicles are shown in Table 5–2 to decline as follows: 1993–5909, 1994–5522, 1995–5135, 1996–4596, 1997–4057, 1998–3784, 1999–3511, 2000–3298.

vehicles, whichever is less, and 40 CFR 51.351(c) requires inspection of all 1996 and later vehicles equipped with on-board diagnostics (OBD) systems.

As mentioned above, we fully approved California's I/M program as meeting the basic I/M performance standard on January 8, 1997. 62 FR 1150 and 40 CFR 52.220(c)(234). California has now shown that its I/M program also meets the low enhanced I/M performance standard and meets the four requirements mentioned above.[10]

(1) Since March 1984, the State has required visual inspection of the positive crankcase ventilation valve and of the exhaust gas recirculation valve on all vehicles subject to the I/M program, in accordance with 40 CFR 51.351(g)(8). See Health & Safety Code, Division 26, Part 5, Section 44012(f); Title 16, California Code of Regulations, Division 33, Bureau of Automotive Repair, Article 5.5, Motor Vehicle Inspection Program, section 3340.42; and BAR 97 Specifications sections 3.3.9 and 3.6.18.

(2) Since March 1984, the State I/M program has applied to light duty trucks rated up to 8,500 pounds GVWR, in accordance with 40 CFR 51.351(g)(5). See Health & Safety Code, Division 26, Part 5, Section 44011, and Title 16, California Code of Regulations, Division 33, Bureau of Automotive Repair, Article 5.5, Motor Vehicle Inspection Program, Section 3340.5.

(3) Since 1998, California has conducted random roadside pullover inspections in accordance with 40 CFR 51.351(b), under the authority of Health & Safety Code, Division 26, Part 5, Section 44081.

(4) Since 2002, California has inspected 1996 and later OBD-equipped vehicles in accordance with 40 CFR 51.351(c). See Health & Safety Code, Division 26, Part 5, Section 44036(b)(10); Title 16, California Code of Regulations, Division 33, Bureau of Automotive Repair, Article 5.5, Motor Vehicle Inspection Program, Section 3340.42; and BAR 97 Specifications, Sections 2 and 3.

In summary, we conclude that: (1) The State was entitled to elect to implement a low enhanced I/M program for CO in the South Coast; (2) the program, as implemented by the State, delivered actual CO emission reductions sufficient (along with reductions from other measures) to attain the CO NAAQS in the South Coast; (3) the State's program has been federally approved as meeting the basic I/M performance standard; and (4) the State's program meets the low enhanced I/M performance standard. Consequently, we find that the State met the CAA section 187(a)(6) and 187(b)(1) enhanced I/M requirements that applied to the South Coast CO nonattainment area prior to and at the time of the submission of the redesignation request.

Finally, we note that the State has indicated that it intends to continue to implement the enhanced I/M program in the South Coast, and continued CO emission reduction benefits from the program are incorporated in the projected emissions inventory that is part of the maintenance demonstration in the submitted maintenance plan.

5. Wintertime Oxygenated Gasoline Program

Pursuant to CAA section 211(m), CO nonattainment areas with design values of 9.5 ppm or higher must implement a wintertime oxygenated gasoline program requiring that gasoline contain not less than 2.7 percent oxygen by weight. In addition, CAA section 187(b)(3) requires that all serious CO areas implement such a program. California submitted its motor vehicle fuels regulations, including requirements for wintertime oxygen content, on November 15, 1994. We approved the regulations on August 21, 1995, as meeting the applicable CAA requirements. 60 FR 43379. The requirements remain in effect in the South Coast area, although the State has amended the program in other areas.

6. Conclusion

For the reasons discussed above, we propose to determine that all of the provisions of CAA section 110 and part D applicable to the South Coast CO area for purposes of redesignation have been approved into the California SIP.

C. Improvement in Air Quality Is Due to Permanent and Enforceable Measures

CAA section 107(d)(3)(E)(iii) establishes that, as a prerequisite to redesignation to attainment,

> the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions * * *.

The Maintenance Plan provides evidence that the meteorological conditions for the years when the South Coast attained the CO NAAQS were more conducive to higher ambient CO concentrations than the long term mean. During the same period, daily VMT increased at the normal rate of growth, from 322.8 million miles in 2001 to 330.4 million miles in 2003, so activity levels associated with motor vehicles, the primary CO source in the South Coast, were not abnormal. Maintenance Plan, p. 6. Increasing CO emission reductions associated with State and Federal motor vehicle standards, coupled with SCAQMD's CO emission limits on stationary and area sources, provide additional evidence that attainment results from the SIP's permanent and reliable controls on CO emissions rather than favorable meteorology or depressed activity levels. The largest source of emissions reductions during this period came from progressively more stringent State emission standards for cars, trucks, buses, and nonroad equipment, including forklifts, lawn and garden equipment, and marine pleasurecraft.[11]

We propose to find that this prerequisite to redesignation has been met.

D. Fully Approved Maintenance Plan

CAA section 107(d)(3)(E)(iii) requires that, before we redesignate an area to attainment, we must have ''fully approved a maintenance plan for the area as meeting the requirements of section 175A * * *.''

1. Applicable Requirements

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule

[10] See August 11, 2006, letter from Kurt Karperos, CARB, to Lisa Hanf, EPA Region 9, for technical information about this demonstration.

[11] Documentation on these and other California mobile souce standards may be found at: *http://www.arb.ca.gov/msprog/msprog.htm.* EPA has acted over the years to waive Federal preemption of State standards for California's motor vehicle standards as authorized by CAA section 209(b) and nonroad engine standards as authorized by CAA section 209(e)(2). Under these CAA sections, EPA must grant the waiver unless the Adminsitrator finds that: (1) Califronia's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious; (2) California does not need such State standards to meet compelling and extraordinary conditions; or (3) California's standards and accompanying enforcement procedures are not consistent with section 202(a) [or 209 for nonroad] of the CAA.

for adoption and implementation, that are adequate to assure prompt correction of a violation.

We have issued guidance on maintenance plans, including most notably: (1) The General Preamble (57 FR 13498, April 16, 1992), and (2) the Calcagni memo. In this action, we propose to approve the Maintenance Plan because we believe that it meets the requirements of CAA section 175A and is consistent with the documents referenced above and other documents identified in the discussion below.

2. Maintenance Plan Provisions

a. Emissions Inventories for Attainment Year and Future Years

The Maintenance Plan includes emissions inventories for the attainment year (2002) and for future years 2005, 2010, and 2015, along with motor vehicle emissions for 2020. The methodologies for the inventories are discussed on pages 14–16, including an extensive discussion of adjustments to projected mobile source emissions to reflect the impact of possible suspension of wintertime oxygenate requirement for gasoline in the South Coast.[12] Table 2 below reproduces emissions data primarily from Table 3–2 of the Maintenance Plan. For 2020, the onroad emissions data are presented in Attachment 3 to the plan. Attachment 3 provides winter emissions for motor vehicles under two scenarios, SCAG 2001 RTP baseline case (1078 tpd) and SCAG 2001 RTP plan case (941 tpd). The Maintenance Plan does not include inventories for stationary, areawide, and nonroad sources for 2020. In Table 2, the 2020 projected emissions are derived from CARB's latest annual updated emissions analysis for these inventory categories. The data are taken from The *California Almanac of Emissions and Air Quality,* 2006 Edition, Table 4–10, available at: *http://www.arb.ca.gov/aqd/almanac/almanac06/chap406.htm.*

TABLE 2.—SOUTH COAST PROJECTED WINTER CO EMISSIONS INVENTORY

[In tons per day]

Category	2002	2005	2010	2015	2020
Stationary	53	55	59	64	69
Areawide	315	318	325	332	79
Onroad	3402	2668	2018	1428	1078
Onroad with oxygenated fuel adjustment	3402	2668	3041	1444	
Nonroad	1065	987	912	890	953
Nonroad with oxygenated fuel adjustment	1065	987	921	899	
Total	4835	4028	3346	2739	2179

The table shows that maintenance of the NAAQS would be expected primarily from large reductions in the onroad category, which result from the turnover of cars and trucks, as older and more polluting vehicles are retired and replaced with newer and much cleaner vehicles.

The projected 2015 and 2020 onroad emissions were generated using CARB's motor vehicle emissions factor model, EMFAC2002v2.2, interpolating vehicle populations from calendar year 2010 and 2020 populations, as set out in Maintenance Plan, Attachment 2 (CO Modeling Attainment Demonstration Extracted from the 2003 Air Quality Management Plan, Appendix V, Section 4), Attachment 3 (CARB Assessment 549: South Coast Air Basin CO Maintenance Plan Winter Emissions).

EMFAC2002v2.2 was the most recent EPA-approved motor vehicle emissions factor model at the time the Maintenance Plan was prepared, but CARB expects to update the model in the near future as part of the preparation of SIPs due to be submitted by the State in 2007.[13] Other aspects of the emissions inventory were current, accurate, and complete at the time of plan preparation, and comply with applicable EPA guidance on the preparation of emission inventories. We therefore propose to approve the Maintenance Plan with respect to its emissions inventories.

b. Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Generally, a state may demonstrate maintenance of the CO NAAQS by either showing that future emissions will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same type of modeling. Calcagni memo, p. 9. Because the design value for the South Coast exceeded 12.7 ppm and the area is classified as serious, modeling would have been required as part of the attainment demonstration under CAA section 187(b)(7)(i). The Maintenance Plan includes a modeled maintenance demonstration.[14]

The modeling demonstration is discussed on pages 12–13 of the Maintenance Plan, and at more length in Attachment 2. Regional modeling used the Comprehensive Air Quality Model (CAMx) and an October 31–November 1, 1997 meteorological episode, which ranked in the 98th percentile in stagnation severity. Additional hot-spot roadway intersection modeling using

[12] Section 3.1.2 of the Maintenance Plan discusses the possibility that the State might determine in future to rescind the wintertime oxygenated fuel requirement as a primary measure. As discussed below, data from the *California Almanac of Emissions and Air Quality,* 2006 Edition, were used to complete the emissions profile for 2020. The Almanac does not provide projected emissions for a future scenario in which the wintertime oxygenated fuel requirement is shifted from a primary measure to a contingency measure. Therefore, the 2020 column in Table 2 does not show these projections. If the State wishes in future to change the wintertime oxygenated fuel program from an active measure to a contingency measure, the State will need at that time to update the quantification of the impact on CO emissions, and demonstrate that the proposed revision will not interfere with continued maintenance or any other applicable requirement.

[13] We approved the use of EMFAC2002 to estimate motor vehicle emissions on April 2, 2003 (68 FR 15720).

[14] However, where there is a determination of attainment, the requirement for an attainment demonstration is suspended and demonstrations of maintenance can be either by emissions inventory or modeling. See *Wall* v. *EPA,* 265 F.3d 426, 435–436 (6th Cir. 2001).

the CAL3QHC model was used to demonstrate attainment at high-volume intersections. The modeling estimated the South Coast CO carrying capacity to be 4,527 tpd. For the 2005 emissions inventory level of 4028, modeling predicted the 8-hour maximum concentration to be 7.8 ppm, and the 1-hour maximum to be 8.5 ppm. Concentrations still further below the NAAQS are associated with the 2015 and 2020 inventory levels, primarily due to significant reductions in the dominant motor vehicle emissions category (2668 tpd in 2005, 1428 in 2015, and 1078 in 2020). The demonstration covers a 13-year period (from 2007 through 2020), although primarily referencing the 2015 year.

The CAMx modeling approach used in the Maintenance Plan is an EPA-approved model and the modeling performance is fully acceptable. Moreover, the declining projected emissions inventories for the span of the maintenance demonstration also support continued maintenance of the NAAQS. We therefore propose to approve the demonstration of maintenance.

c. Monitoring Network and Verification of Continued Attainment

The Calcagni Memo provides that areas must continue to operate an air quality monitoring network to verify attainment. CO is currently monitored in accordance with 40 CFR Part 50, Appendix C and 40 CFR Part 58 at 22 stations. SCAQMD continues to assure the quality of the measured data by conducting routine calibrations, pre-run and post-run test procedures, and routine service checks. The District also completes an annual review of the monitoring network to document continued compliance with siting criteria. The SCAQMD commits in the Maintenance Plan to verify continued maintenance by daily analysis of air quality data collected (pp. 22–23). Furthermore, the District commits to a formal review of the Maintenance Plan in 2007 and 2010 (p. 24). We propose to approve the Maintenance Plan with respect to the obligation to continue to monitor and verify attainment.

d. Contingency Provision

CAA section 175A(d) requires that maintenance plans include provisions that EPA deems are necessary to assure that the State will promptly correct any NAAQS violation, and further requires that such provisions include a requirement that the State will implement all measures contained in the SIP before redesignation. We have concluded that contingency measures need not be new measures that would be triggered by a violation, but may consist of early implementation of measures that provide surplus reductions beyond those needed for attainment or maintenance. See ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' memo from G.T. Helms to EPA Air Branch Chiefs, August 13, 1993.

The Maintenance Plan takes this approach, providing a large margin of emissions from fully adopted State regulations, such as tighter emission standards for all categories of motor vehicles and for nonroad engines, such as forklifts, lawn and garden equipment, and marine pleasure craft. See discussion above in Section III.C., providing a more extensive list of measures, referencing the extensive CARB documentation available for each measure, and discussing the EPA waiver process applicable to these California mobile source standards. There is no reason to expect that these standards, which are all currently in effect, will be relaxed in the future. Nor is there reason to believe that compliance will be inadequate, since CARB has for many decades maintained a successful enforcement program. For details on CARB's mobile source enforcement program for new and existing vehicles and engines, see: *http://www.arb.ca.gov/enf/enf.htm.*

As a result, the predicted emissions for 2015 are approximately 43 percent below the 2002 attainment year emissions levels, and this margin of excess reductions is projected to increase further in future years due to the State's progressively tighter emissions standards for new mobile source engines coupled with fleet turnover of the onroad and nonroad fleet.

The SCAQMD and CARB have committed to continue to implement all existing measures to achieve permanent, enforceable CO emission reductions that will further reduce CO levels (Maintenance Plan, Chapters 2 and 3; CARB's letter to EPA dated February 24, 2006). The Maintenance Plan does evaluate, however, the relatively small emissions impact of a possible future decision to suspend implementation of the wintertime oxygenate program in the South Coast (see Table 2 above). The methodology and assumptions for calculating the impact are discussed at length on pp. 15–16 and in Attachment A to the Maintenance Plan. If the State decides in future to suspend the wintertime oxygenated fuel requirement, the State would need to submit a SIP revision complying with applicable CAA requirements.

For the above reasons, we propose to approve the contingency provisions in the Maintenance Plan as meeting the requirements of CAA section 175A(d).

e. Commitment To Submit Subsequent Maintenance Plan Revisons

CAA section 179A(b) provides that States shall submit a commitment to submit a SIP revision 8 years after redesignation providing for maintaining the NAAQS for an additional 10 years. SCAQMD has made this commitment as part of the Maintenance Plan (see p. 22), and we propose to approve it.

f. Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the CAA. Our transportation conformity rule (codified in 40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

Maintenance plan submittals must specify the maximum emissions of transportation-related CO emissions allowed in the last year of the maintenance period, i.e., the motor vehicle emissions budget (MVEB). The submittal must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or ''budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5), and be approvable under all pertinent SIP requirements. For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

The Maintenance Plan includes the CO MVEBs shown in Table 3 below. The budgets are based on Table 3–5 of the plan and other documentation in Section 3.1.3 of the plan.[15] See also the

[15] The MVEB for 2020 was clarified in letters from Sylia Oey, CARB, to Dave Jesson, EPA Region 9, dated February 2, 2007, and from Laki Tisopulos, SCAQMD, to Dave Jesson, dated February 2, 2007, and an e-mail from Jonathan Nadler, SCAG, to Dave Jesson, dated February 2, 2007.

discussion of projected emissions in Section III.D.2.a., above.

TABLE 3.—SOUTH COAST CO MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Winter season emissions in tons per day]

Category	2005	2010	2015	2020
Total Air Basin Emissions	4028	3346	2739	2179
Motor Vehicle Emissions	2668	2041	1444	1078
Safety Margins	220	96	693	1059
Motor Vehicle Emissions Budgets	2888	2137	2137	2137
Total Air Basin Emissions with Safety Margin	4248	3442	3432	3196
Modeled Air Basin Emissions	4528	4528	4528	4528

In setting MVEBs, States generally use motor vehicle emission inventories. California took this approach, for example, in the 1997 CO attainment plan. California need not, however, cap MVEBs at projected motor vehicle emissions levels. Because overall projected levels of emissions from all sources are expected to be less than the levels necessary to maintain the CO NAAQS, California has a ''safety margin'' that the State may use to set MVEBs at a higher level. As long as emissions from all sources are lower than needed to provide for continued maintenance, the State may allocate additional emissions to future mobile source growth by assigning a portion of the safety margin to the MVEBs (see 40 CFR 93.124). California stated in the Maintenance Plan that the safety margins described in Table 3 above are allocated to the MVEBs.

Attainment was achieved in 2002 when the CO emissions level in the basin was 4835 tpd. The modeled attainment level is 4527 tpd. As can be seen from Table 3, total basin emissions, with the safety margin, are substantially below actual and modeled attainment levels. Thus, the safety margins comply with the requirement that the budgets with safety margins are lower than the maintenance level.

The criteria by which we determine whether a SIP's MVEBs are adequate and approvable for conformity purposes are outlined in 40 CFR 93.118(e)(4) and (5). The following paragraphs provide our review of the budgets in the Maintenance Plan against our adequacy criteria and provide the basis for our proposed approval of the MVEBs.

Under 40 CFR 93.118(e)(4)(i), we review a submitted plan to determine whether the plan was endorsed by the Governor (or designee) and was subject to a public hearing. The February 24, 2006 transmittal letter for the Maintenance Plan was signed by the CARB Executive Officer, the Governor's designee for SIP purposes. CARB Executive Order G–125–332 provides evidence of State adoption and legal authority. SCAQMD's April 19, 2005 transmittal letter documents that the District held a public hearing on the Maintenance Plan on March 4, 2005, after proper public notice. Therefore, we propose to conclude that the submitted plan meets the criterion under 40 CFR 93.118(e)(4)(i).

Under 40 CFR 93.118(e)(4)(ii), we review a submitted plan to determine whether the plan was developed through consultation with Federal, State and local agencies and whether full implementation plan documentation was provided to EPA and EPA's stated concerns, if any, were addressed. Consultation for development of this plan largely consisted of public meetings (page 75 of the plan); discussions with Federal, State, and local transportation planning agencies; and a public hearing, preceded by notices that were published in newspapers of general circulation. Documentation was provided to EPA and EPA's stated concerns were addressed. We propose to conclude that this consultation is sufficient for the purposes of 40 CFR 93.118(e)(4)(ii).

Under 40 CFR 93.118(e)(4)(iii), we review a submitted plan to determine whether the MVEBs are clearly identified and precisely quantified. The Maintenance Plan clearly identifies and precisely quantifies the CO MVEBs as shown in Table 3 above. The budgets are derived from EMFAC2002 with travel activity data provided by the Southern California Association of Governments (SCAG). The methodology and rationale for determining the MVEBs is discussed on pages 17 through 22 of the plan. This portion of the plan also indicates that modeling sensitivity analyses confirm that the budgets would provide for maintenance even assuming possible changes in future to the estimation of motor vehicle emissions. We propose that the plan thereby meets the adequacy criterion under 40 CFR 93.118(e)(4)(iii).

Under 40 CFR 93.118(e)(4)(iv), we review a submitted plan to determine whether the MVEBs, when considered together with all other emissions sources, are consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to a given SIP submission). The Maintenance Plan shows how the MVEBs and related safety margins are consistent with maintenance of the CO NAAQS through 2015 (see pages 12 through 16 of the Maintenance Plan) and 2020 (see Attachment 3). In particular, Table 3–1, 3–2, 3–4, and 3–6 of the Maintenance Plan show the extent to which maximum future year emissions (including the budget safety margins) fall below emissions for the 2002 attainment year and below the modeled 2003 emissions, which are associated with ambient concentration levels that are below both the 1-hour and 8-hour NAAQS. ''Assessment 549'' on page 74 of the plan shows that this trend of lower CO emissions continues through 2020, despite projected VMT increases. Consequently, we propose to find that the plan meets this criterion for adequacy.

Under 40 CFR 93.118(e)(4)(v), we review a plan to determine whether the MVEBs are consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy plan or maintenance plan. The Maintenance Plan contains no new measures but the budgets appropriately reflect the State's adopted emissions standards, fuel regulations, and the vehicle inspection and maintenance program, as applicable to the area. Thus, we propose to conclude that the submitted plan meets this criterion for adequacy.

Under 40 CFR 93.118(e)(4)(vi), we review a submitted plan to determine whether revisions to previously submitted plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any

changes to established safety margins; and reasons for the changes (including the basis for any changes related to emissions factors or estimates of vehicle miles traveled). The Maintenance Plan explains and documents the various changes that have been made to the CO emissions inventories, etc.[16] Thus, we propose to find that the submitted plan meets this criterion for adequacy.

Under 40 CFR 93.118(e)(5), we review the State's compilation of public comments and response to comments that are required to be submitted with any SIP revision. Attachments 6 and 7 of the Maintenance Plan submittal provide transcripts and minutes of the public hearing, during which there was a single comment, supporting adoption of the plan. We reviewed this compilation and concluded that the comment does not affect our proposed approval of the MVEBs. Thus, we propose that the Maintenance Plan meets this criterion for adequacy.

Therefore, we propose to approve the CO MVEBs contained in the submitted Maintenance Plan because the plan and budgets meet the requirements under 40 CFR 93.118(e)(4) and (5) and because we find that ARB has met all statutory requirements for submittals of maintenance plans under sections 110 and part D of the Act. Should we finalize our approval, the Southern California Association of Governments (SCAG) and the U.S. Department of Transportation must use these new CO MVEBs from the Maintenance Plan for future transportation conformity determinations. We are also announcing our proposed approval on our conformity adequacy Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.*

In the submittal letter dated February 24, 2006, CARB requested that we limit the duration of any final approval of the MVEBs in the Maintenance Plan to last only until the effective date of future EPA adequacy findings for replacement budgets. This would mean that if CARB decides to amend the CO MVEBs sometime in the future, then the new MVEBs would become effective as soon as EPA determined adequacy, rather than after comprehensive rulemaking (which is a longer process).

CARB had made a similar request, and EPA granted it, in connection with the MVEBs in other plans submitted by the State (see 67 FR 69139, November 15, 2002). That prior CARB request was accompanied by significant documentation that demonstrated why limiting the duration of our MVEB approval provided an advantage to air quality and public health protection.

With the current request, however, CARB has not provided supporting documentation to address our criteria for granting limited approval. The criteria are set out on page 69141 of the rulemaking, and include: (1) State acknowledgment that its current budgets are outdated or deficient; (2) State commitment to update the budgets as part of a comprehensive update of its SIP; and (3) State request that we limit the duration of the approval of the State's current approved SIP. We note that CARB's request to limit the duration of the approvals of the MVEBs was contained only in the submittal letter and the request is not, therefore, considered a part of the maintenance plan itself. Therefore, our denial of ARB's request does not affect our approval of the plan or the budgets contained therein.

g. Conclusion

Because the Maintenance Plan satisfies applicable CAA requirements, we propose to approve it under section 175A.

IV. Proposed Action

We are proposing to approve the 2005 Carbon Monoxide Redesignation Request and Carbon Monoxide Maintenance Plan for the South Coast Air Basin as meeting the requirements of CAA section 175A. We are proposing to find adequate the MVEBs and to approve the budgets under CAA section 176(c).

We are also proposing to approve the State's request to redesignate the area to attainment for CO under the provisions of CAA section 107(d)(3)(E). As prerequisite to this action, we are proposing to find that the area has attained the NAAQS due to permanent and enforceable emission reductions under the SIP, and that the SIP for the area meets all of the requirements of CAA section 110, Part D, and section 175A applicable for purposes of redesignation.

As part of our proposed determination that the South Coast area has met applicable Part D provisions, we are proposing to adapt to CO areas the provisions of our Clean Data Policy, which we have established for 1-hour ozone, PM–10, 8-hour ozone, and PM–2.5 areas. Under our proposed extension of the Clean Data Policy to CO, we are proposing to interpret certain CAA Part D provisions as suspending the requirements for submission of RFP, attainment demonstrations, contingency measures, and TCMs related to RFP due to the fact that the South Coast has already attained the CO NAAQS. We are proposing to approve the 1997 CO plan and the Maintenance Plan as meeting the requirements of CAA section 187(b)(2) relating to TCMs to offset emissions associated with growth in VMT and vehicle trips.

Finally, because our interim approval of California's I/M program for CO in the South Coast expired on August 7, 1998, California has now submitted a demonstration that the I/M program meets the low-enhanced requirements applicable to the South Coast CO nonattainment area. We are proposing to approve that demonstration and to conclude that the State has satisfied the CAA section 187(a)(6) and 187(b)(1) enhanced I/M requirements that applied to the South Coast CO nonattainment area.

V. Statutory and Executive Order Reviews

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

[16] The most significant technical difference between the attainment SIP and the maintenance plan is the change from EMFAC7G to EMFAC2002v2.2, which results in a significant improvement in the quantification of motor vehicle emissions, and updates to SCAG's growth projections.

(65 FR 97249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard and to redesignate the area to attainment for air quality planning purposes, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to approve a state plan implementing a Federal Standard and to redesignate the area to attainment for air quality planning purposes. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed rule is not subject to EO 13045 because it proposes to approve a State plan and to redesignate the area to attainment for air quality planning purposes.

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 6, 2007.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. E7–2538 Filed 2–13–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on A Petition to List Astragalus debequaeus (DeBeque milkvetch) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list *Astragalus debequaeus* (DeBeque milkvetch) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing *A. debequaeus* may be warranted. Therefore, we will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of *A. debequaeus* or threats to its habitat at any time. This information will help us monitor and encourage the conservation of the species.

DATES: The finding announced in this document was made on February 14, 2007. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Western Colorado Field Office, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, CO 81506. Submit new information, materials, comments, or questions concerning this species to us at the address above.

FOR FURTHER INFORMATION CONTACT: Allan R. Pfister, Field Supervisor, Western Colorado Field Office (see **ADDRESSES** section) (telephone 970–243–2778, extension 29; facsimile 970–245–6933). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we rely on information provided by the petitioner and evaluate that information in accordance with 50 CFR 424.14(b). Our 90-day finding process under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. A substantial finding should be made when the Service deems that adequate and reliable information has been presented that would lead a reasonable person to believe that the petitioned action may be warranted.

On October 26, 2004, we received a formal petition, dated October 25, 2004, submitted by the Center for Native Ecosystems and the Colorado Native Plant Society (2004), requesting that we list *Astragalus debequaeus* as threatened or endangered, and designate critical habitat concurrently. The petition identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). We acknowledged receipt of the petition in a January 20, 2005, letter to Mr. Joshua Pollock. In that letter, we advised the

petitioners that due to prior listing allocations in Fiscal Year 2005, we would not be able to begin processing the petition, and that emergency listing of *A. debequaeus* was not warranted. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements.

On October 20, 2005, petitioners sent a 60-day notice of intent to sue for failure to grant emergency listing status to *Astragalus debequaeus,* to make a 90-day finding, and to make a 12-month finding. On June 8, 2006, petitioners filed suit to force the Service to make the ''overdue'' finding. On July 17, 2006, a settlement agreement was proposed by the Service with dates for the 90-day finding submittal being February 9, 2007, and, if the petition was found to be substantial, we would send a 12-month finding to the **Federal Register** by October 12, 2007. These dates were agreed upon in a settlement filed on August 10, 2006, and approved on August 15, 2006.

General Biology and Listable Entity Evaluation

Astragalus debequaeus is a member of the Fabaceae (Pea) family. Plants are clump-forming perennials 2 to 10 decimeters (8 to 39 inches (in.)) in diameter with a woody taproot; stems 14 to 30 centimeters (cm) (5.5 to 12 in.) long, curving upward; compound leaves 2 to 10 cm (0.8 to 4 in.) long with 13 to 21 glabrous, flat or somewhat folded leaflets. Flowers are white, upright, and 17 to 21 millimeters (mm) (0.6 to 0.8 in.) long. Pods are ascending, 15 to 23 mm (0.5 to 1 in.) long, 6 to 11 mm (0.2 to 0.4 in.) thick, and inflated with minute rough hairs that become smooth with age (Welsh 1985, p. 31).

Astragalus debequaeus has only been identified as a separate taxonomic entity for about 20 years, which represents about two generations (Colorado Natural Heritage Program (CNHP) 2005, p. 60). The species was discovered and described as a new species in 1984 by Dr. Stanley Welsh of Brigham Young University. *Astragalus debequaeus* is recognized as a species in the *Colorado Rare Plant Field Guide* (Spackman *et al.* 1997b, p. 7); Integrated Taxonomic Information System (2007); NatureServe (2006); and Weber and Wittmann (1992, pp. 3, 42; 2001, p. 181).

Astragalus debequaeus plants are found on the fine-textured, sandy clay soils of the Atwell Gulch Member of the Wasatch Formation that are relatively barren, varicolored, seleniferous, and saline (Welsh 1985, p. 31). The habitat is found between 1,508 and 1,981 meters (4,970 and 6,500 feet) elevation in Mesa and Garfield Counties, Colorado. The species is known from 17 occurrences that occupy about 573 hectares (1,417 acres) (CNHP 2006, pp. 1–2). Fourteen of the occurrences are near the town of DeBeque, Colorado, in Mesa County. The Bureau of Land Management (BLM) Grand Junction Field Office (GJFO) manages 12 of these occurrences, 2 of which include small portions of private land. The other two occurrences near DeBeque, Colorado are located on private lands. There are three occurrences of *A. debequaeus* located in Garfield County at the base of the Roan Plateau near the town of Rifle. Two of these occurrences are primarily on BLM lands but include small portions of private land, while the other one is privately owned. The total estimated number of plants at all seventeen occurrences is at least 64,617 (CNHP 2006, p. 2; Lincoln and Bridgman 2006, p. 1). Table 1 outlines the known populations, estimated number of plants and area occupied, land ownership, and overall habitat quality as ranked by CNHP.

TABLE 1.—ASTRAGALUS DEBEQUAEUS POPULATION INFORMATION (CNHP 2005; LINCOLN AND BRIDGMAN 2006, P. 1).

Occurence location	Number of plants*	Acres (hectares) * *	Land ownership	Quality * * *
Shire Gulch	8 to 10	1 (0.4)	Private	D
Pyramid Rock	thousands	300 to 392 (121 to 158).	BLM GJFO	A
Pyramid View	> 1,000	8 (3.2)	BLM GJFO	A
Coon Hollow	> 50,000	352 (142)	BLM GJFO	A
Sulphur Gulch	300 to thousands	1 to 55 (0.4 to 22)	BLM GJFO	A
Sulphur Gulch Bottomland * * * *	>50	>30 (12)	BLM GSFO	C
Corcoran Wash	500	8 to 80 (3.2 to 32)	BLM GJFO	A
Anvil Points	>700	97 (39)	BLM GSFO/Private	AB
Little Horsethief Creek	20	1 (0.4)	BLM GJFO	C
DeBeque Cutoff	710 to thousands	36 to 317 (14.5 to 128).	BLM GJFO/Private	A
Plateau Valley	12 to 50	1 to 15 (0.4 to 6)	BLM GJFO/Private	C
Atwell Gulch	4,478 * * * * *	>16 (6.5) * * * * *	BLM GJFO	AB
South Dry Fork	1,000	15 (6)	BLM GJFO/Private	A
Horsethief Creek	100	3 to 11 (1.2 to 4.4)	BLM GJFO/Private	B
King Creek * * * *	3	1 (0.4)	Private	D
Lockhart Draw * * * *	1 to 5	1 (0.4)	BLM GJFO	D
JQS Trail * * * *	70 to 100	1 to 15 (0.4 to 6)	BLM GSFO/Private	C

* Numbers of plants are estimates.

* * Acres and hectares are estimates. When a range of acres or hectares is presented, the first number represents the observed occupied area and the second number represents the mapped area of continuous habitat.

* * * Quality is an overall quality ranking assigned by CNHP where an ''A'' represents ''excellent'' quality, ''B'' represents ''good'' quality, ''C'' represents ''fair'' quality overall, and a ''D'' represents ''poor'' quality. Intermediates are represented with multiple letters.

* * * * New occurrence added to the CNHP database in 2005.

* * * * * Lincoln and Bridgman (2006, p. 1) provided population estimate and area estimates for new additions to Atwell Gulch.

NatureServe and the CNHP rank the species as G2/S2, indicating that it is imperiled both globally and within Colorado due to extreme rarity (6 to 20 occurrences) and/or because of other factors demonstrably making it vulnerable to extinction throughout its range.

Previous Federal Actions

Astragalus debequaeus was listed as a Category 2 (C2) candidate for listing in 1993 (58 FR 51144, September 30,

1993). In the February 28, 1996, Notice of Review (61 FR 7595), we discontinued the use of multiple candidate categories and considered only the former Category 1 candidates for listing purposes. Because the species did not meet the threshold of the definition of a C1 species, *A. debequaeus* was removed from the candidate list at that time. The species is managed as a Sensitive Species by BLM, as designated by the BLM State Director, with special management consideration. The BLM Manual 6840 provides policy direction that BLM sensitive plant species are to be managed as if they were candidate species for Federal listing so that they do not become listed, while also fulfilling other Federal law mandates.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the *Astragalus debequaeus* presented in the petition and other information available in our files at the time of the petition review may pose a concern with respect to the *A. debequaeus* survival. Our evaluation of these threats is presented below under the most appropriate listing factor.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The petitioners state that substantial threats to the species' habitat are presented by—(1) traditional oil and gas development, (2) oil-shale mining, (3) coalbed methane development and/or coal mining, (4) noxious weeds and seeding, (5) existing and projected roads, (6) livestock trampling, (7) off-road vehicle (ORV) use, and (8) increased housing development. We address each of these topics individually below.

Information Provided in the Petition Regarding Traditional Oil and Gas Development—Oil and gas resources and development are extensive within the range of *Astragalus debequaeus.* The species is endemic to the Atwell Gulch Member of the Wasatch Formation substrate, which overlays deposits of oil and gas in the Piceance Basin that BLM has leased for energy development. The following table summarizes information provided in the petition regarding activities within the leases and the sections where plants occur. Occurrences listed in this table are not necessarily the same as those shown in the previous table due to different occurrence criteria protocols used by CNHP in 2004 versus 2006.

TABLE 2.—SUMMARY INFORMATION PROVIDED IN THE PETITION REGARDING ACTIVITIES WITHIN THE LEASES AND THE SECTIONS WHERE ASTRAGALUS DEBEQUAEUS PLANTS OCCUR

Occurence location *	Number of leases [1]		Applications for permit to drill in the lease area [4]	Applications for permit to drill in the section [5]	Pipelines	Roads	ORV	Grazing
	Old [2]	New [3]						
Pyramid Rock	4	11	20	10	multiple	multiple	90% open	open
Corcoran Wash		1					open	open
South Dry Fork	3	2			1	1	open	open
Sulphur Gulch	2		2		1	1	open	open
DeBeque South	2	3	2	3	3	1	open	open
Atwell Gulch		1	2			multiple	open	open
Jerry Gulch	1	2					open	open
Anvil Points	3	1	27	31			open	open

[1] Occurrences listed in this table are not the same as those shown in the previous table due to different occurrence criteria protocols used by CNHP in 2004 versus 2006. Another discrepancy originates from the fact that four additional occurrences were documented in 2005 after this information was obtained by the petitioners from the CNHP.
[2] Leases granted prior to standard stipulations being included in lease notices.
[3] Leases with, at least, standard stipulations allowing avoidance up to 200 meters. Some of these stipulations also control surface use.
[4] Applications for permit to drill in the lease area as of 2004.
[5] Applications for permit to drill in the section (approximately 640 acres (2.6 km^2)) where plants occur as of 2004.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—We cannot find support for the petitioners' claim that the high density of oil and gas infrastructure causes direct and indirect impacts to *Astragalus debequaeus.* The petitioners cite two instances in which ''a sizable number'' and ''a dozen or so'' sensitive plants (no species named) were destroyed during construction of two well pads (BLM GSFO 1999a, pp. 4–33, 34). The BLM GSFO is aware of only one instance where *A. debequaeus* was directly impacted. The BLM permitted the loss of three plants within a proposed disturbance area for an access road (Scheck 2006a). The Service has information on only one additional instance, in the BLM GJFO management area, where four plants were lost during construction of a pipeline and 12 plants were transplanted (Alward 2006).

The petition provides general information regarding the extent of oil and gas leasing and potential development in the BLM GSFO and GJFO management areas within the range of *Astragalus debequaeus.* It does not present specific information that this development has resulted in losses or threatens to result in losses of plants or habitat. Much of the information in the petition identifies potential threats and hypothetical impacts rather than actual impacts.

On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing of *Astragalus debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to oil and gas development.

Information Provided in the Petition Regarding Oil Shale Development—Petitioners state that oil-shale mining continues to become a more concrete threat that would devastate *Astragalus debequaeus.* They cite the previous mining activity that could resume given sufficient economic incentive, and the conditional oil-shale water rights permits that are still held by three oil companies in Garfield and Mesa Counties, Colorado.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—New oil-shale research leases currently being considered by the BLM in Colorado would be located in the Piceance Basin in Rio Blanco County, outside of the range for *Astragalus debequaeus* (BLM 2006, p. 1). Potential future expansion of the research leases to commercial production would occur in the same area, also outside of the species' range. Oil-shale reserves are found in the Green River Shale formation. *A. debequaeus* is found in the Wasatch formation. The two formations are exposed in close proximity to each other in some areas in Garfield County, Colorado, but we have no information in our files to indicate that historical oil-shale mining in this area is likely to resume in the foreseeable future. Petitioners do not provide evidence that incentives are likely to increase.

Renewal of water rights associated with oil-shale development does not suggest imminent or foreseeable destruction of habitat. In February 2006, Mesa County granted an oil company an extension of a conceptual conditional use permit for a water diversion system in the DeBeque area, but no proposed plan of development was submitted (Mesa County 2006, p. 1–2). While indirect or cumulative impacts may result if large water storage projects or other facilities are constructed in the DeBeque area (Scheck 2006a), the petitioners did not provide specific information, nor does the Service have information to indicate that water projects are likely to be developed within the range of this species in the foreseeable future.

Due to the lack of overlap between the range of *Astragalus debequaeus* and areas considered for new oil-shale development, we have determined that the information in the petition is incorrect and therefore is not substantial with respect to a threat to the species from oil shale development or associated indirect impacts. On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing of *A. debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to oil-shale development.

Information Provided in the Petition Regarding Coalbed Methane Development—The petitioners assert that coalbed methane development and coal mining may constitute threats to *Astragalus debequaeus* due to the resources present and the processes for extraction. Petitioners state that 30 coalbed methane wells have been drilled on South Shale Ridge in the vicinity of an *A. debequaeus* site, and 10 more have been permitted but not drilled.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—Petitioners provide no information to substantiate the claim that coalbed methane development or coal mining are impacting, or are likely to impact, *Astragalus debequaeus* occurrences. On site surveys by the BLM GJFO have not documented any *A. debequaeus* plants within active or permitted coalbed methane development areas and have not identified any potential threats to the species from these activities (Trappett 2005). On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing of *A. debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to coalbed methane or coal development.

Information Provided in the Petition Regarding Noxious Weeds—Petitioners state that noxious weeds and seeding pose threats to *Astragalus debequaeus.* The petition gives three examples of cheatgrass (*Bromus tectorum*) invasions documented at *A. debequaeus* occurrences.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petitioners' description of weed and introduced seed interactions with rare plants in general is accurate and applicable to *Astragalus debequaeus* habitat after disturbance. Three examples are given of cheatgrass invasions documented at *A. debequaeus* occurrences. Two of the sites, Pyramid View and Pyramid Rock/Pyramid Ridge, are ranked by CNHP as ''A'' (excellent) for ''quality'' even though the cheatgrass downgraded the ''condition'' of the habitat to a ''B'' (good). At the third occurrence at Horsethief Creek the ''quality'' is ranked ''B'' although the site is given a ''C'' (fair) for ''condition'' due to cheatgrass and the roadside location. *A. debequaeus* plants at this site are large (114 cm/45 in.) and seedlings are present (CNHP 2005, pp. 36–37). While cheatgrass is nearly ubiquitous in the western United States, it does not necessarily dominate perennial plants or prevent seedling establishment.

In the BLM GSFO management area, cheatgrass has been noted as a component of the vegetative community at all Anvil Points occurrences that have been visited in the past 4 years. Based on observations during these surveys, it does not appear that the Anvil Points occurrences are dominated by cheatgrass or other noxious weeds, and the *Astragalus debequaeus* populations do not appear to be suppressed by the presence of cheatgrass at the current levels (Scheck 2006a).

On the basis of a review of the information in the petition, it is our determination that the petition does not contain substantial information to indicate that cheatgrass and other noxious weeds or seeds are a threat to *Astragalus debequaeous*. Despite the presence of cheatgrass in some locations where *A. debequaeous* occurs, cheatgrass does not appear to suppress *A. debequaeus* (Scheck 2006a). We have concluded that a slight downgrade in habitat quality at a few locations does not constitute a threat to the species. Neither the petitioners, nor our files, provide information on the extent or magnitude of noxious weed invasion to indicate that listing *A. debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range.

Information Provided in the Petition Regarding Roads—The petitioners state that existing and projected roads pose significant threats to *Astragalus debequaeus*. They cite the general proximity of roads to existing populations and the predicted increase in road networks that accompany oil and gas development as significant threats. They base this claim upon assertions of soil compaction, fine particle deposition on the plants, alterations in hydrologic flow above the plants, spread of invasive plants, increased ORV access and use, destabilization of the slopes where the plants are found, the limiting of plant dispersal, and damage to the plants during road maintenance and repairs.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—In the BLM GSFO management area, several of the Anvil Points

suboccurrences are within 0.40 kilometer (0.25 mile) of a road. Scheck (2006a) indicates that road disturbance in the form of destabilization of slopes, dust deposition and corridors for weed dispersal likely results in impacts to *Astragalus debequaeus*. However, there is no substantial information to suggest the magnitude of these impacts and whether they pose a threat to the species. None of the known occurrences are located on slopes below the roads, so there have been no impacts from sedimentation or changes in runoff patterns. Road maintenance and repair has contributed to the loss of a few individuals that are sloughing off the cut banks above the road (Scheck 2006a). However, sloughing at this site seems to be an isolated impact involving only a few plants. Although oil and gas development on BLM lands would include access roads, the BLM would evaluate proposed roads during project planning and they would be subject to applicable stipulations, including possible road relocation (BLM GSFO 1999a, p. 13). These measures should help to ensure that no substantial impacts result from road construction.

It appears that the information provided in the petition addressed impacts to the species in only a few localized areas and does not speak to the magnitude or severity of impacts to the species. Further, the petitioners do not provide information on the extent or magnitude of existing and future roads and how road use, maintenance, or development may affect the species. On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range due to road development.

Information Provided in the Petition Regarding Livestock—Petitioners state that livestock pose a threat to *Astragalus debequaeus*, primarily through trampling, but also discuss secondary issues including the introduction of noxious weeds and other invasive plants as well as direct grazing. According to the petition, livestock pose a threat to *the species* because all known *A. debequaeus* occurrences are within BLM grazing allotments. They cite the Atwell Gulch occurrence in the Heely allotment, BLM GJFO management area, where over 20 percent of the total number of plants was heavily trampled in 1997. The petitioners found this compelling in that only 50 percent of plants were located in areas accessible to cattle. At the Pyramid Rock occurrence in the BLM GJFO management area, one occurrence was reported by CNHP to be somewhat overgrazed, with much cheatgrass, which petitioners cite as an indication that cattle were introducing noxious weeds. Petitioners state that as of 2004 there were no other available reports on the grazing status within any allotments.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—Based on a review of information in our files, we have determined the information contained in the petition regarding the threat to *Astragalus debequaeus* from livestock impacts may not be accurate.

The GJFO BLM manages the Heely grazing allotment, which lies within the Atwell Gulch occurrence of *Astragalus debequaeus*. These occurrences were surveyed in 1996 and 2006. In both surveys, trampling of individual plants by cattle was observed; however, the total estimated number of plants appeared to have increased by 610 plants at previously known locations, and 6 newly recorded sites, with an estimated 3,361 plants, were discovered. The BLM renewed the grazing lease in 2006 for only 3 years to allow for the collection of additional data before issuing a grazing decision, during which time it will continue to monitor the plants (Lincoln and Bridgman 2006, p. 5).

In the BLM GJFO management area, the Pyramid Rock occurrence was ranked ''AB'' in 1996 (Spackman et al. 1997a, figure 11) and ''A'' in 2000 (CNHP 2005, p. 46). Because the quality of the site has improved and its subsequent CNHP ranking, we do not agree with the petitioner's claim that overgrazing is a threat at this site.

In the BLM GSFO management area, only one grazing allotment contains known populations of the species. The BLM GSFO completed a grazing permit renewal Environmental Assessment for Webster Park allotment in the Anvil Points occurrence of *Astragalus debequaeus* that included a discussion of grazing impacts (or lack thereof) on the plants. The BLM stated that ''there are several known populations of the BLM Sensitive plant, *A. debequaeus*, in the lower unit of the Webster Park allotment and in the adjacent Sharrard Park allotment. Monitoring of these populations in 2002 and 2003 found little evidence of livestock grazing or trampling. The reissuance of the grazing permit, as proposed, should have no effect on this plant species'' (Scheck 2006a).

The resilience of these plants over 10 years at Atwell Gulch and 19 years at Pyramid Rock indicates that the response of *Astragalus debequaeus* to grazing impacts under current management does not pose a significant threat to the species. The magnitude of grazing in known occupied *A. debequaeus* habitat is minor, and where it occurs, does not seem to be impacting the long-term viability of the species at the site.

On the basis of our evaluation of the information on the extent or magnitude of livestock impacts contained in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range.

Information Provided in the Petition Regarding Off-Road Vehicle (ORV) Use—The petitioners state that ORV use poses a significant threat and has been documented at an *Astragalus debequaeus* site. Petitioners state that ORV use is allowed in most areas where *A. debequaeus* is found, and that it is documented at the Area of Critical Environmental Concern (ACEC), which is closed to motorized vehicles. The petitioners also expect that increased ORV use will accompany increased access provided by new roads for oil and gas development.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition does not contain reliable information concerning the threat to *Astragalus debequaeus* from ORV use. While ORV use is allowed in most areas of BLM land where *A. debequaeus* is found, ORV tracks are documented only at the Pyramid Rock ACEC, which is closed to motorized vehicles. The BLM GSFO reports no ORV impacts to the Anvil Points populations, because legal public access to these sites is blocked by private land.

On the basis of our evaluation of information on the extent or magnitude of ORV use contained in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range. Our information indicates that the magnitude of ORV use in known occupied *A. debequaeus* areas is minor.

Information Provided in the Petition Regarding Residential Development—The petitioners assert that increased

housing development threatens *Astragalus debequaeus.* Petitioners cite the 1997 CNHP report that listed increased housing development between Rifle and Grand Junction as a threat to the habitat for the species (Spackman et al. 1997a, pp. 5, 44).

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition provides no estimates of current or projected housing development within the habitat for *Astragalus debequaeus* to indicate that it represents a threat to the species. While housing development is known to be increasing within the range of this species, the potential direct impact of housing development on *A. debequaeus* is limited to the occurrences that are at least partly on private land. Information on the portion of occupied area and number of plants present on the private portion of these parcels is not available. However, private lands contribute only a small portion of the known occurrences of *A. debequaeus.* Even if all private lands were lost, the vast majority of occurrences and individuals would remain on BLM lands (see Table 1) not subject to residential development. On the basis of our evaluation of information on the extent or magnitude of residential development contained in the petition, it is our determination that the petition does not present substantial information to indicate that listing *A. debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioners did not provide information regarding the overutilization of this *Astragalus debequaeus* for commercial, recreational, scientific, or educational purposes. We also have no available information on the overutilization of this plant species for commercial, recreational, educational, or scientific purposes. Therefore, we have determined that the petition does not provide substantial information that listing *A. debequaeus* may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Information Provided in the Petition—Petitioners state that the threat of herbivory (either natural or livestock related) could be significant given the small population sizes, scarcity of occurrences, and limited geographic range size of the species. They cite CNHP records from 2004 in which the plants were ''somewhat overgrazed'' at one occurrence in 1986, and two plants were browsed in another occurrence where there also was ''some evidence of seed predation by an unknown predator.'' Petitioners also state that cattle are believed to avoid grazing on *Astragalus debequaeus*, either because it is unpalatable or because the more palatable plants are found in other habitats.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition does not contain substantial information concerning the threat of herbivory. The report on seed predation and browsing appears anecdotal, and no evidence suggests that herbivory threatens *Astragalus debequaeus.* As the petition states, cattle appear to avoid grazing on *A. debequaeus.* As such, we have determined that the petition does not provide substantial information that listing *A. debequaeus* may be warranted due to herbivory. Livestock impacts are also discussed under Factor A above.

D. Inadequacy of Existing Regulatory Mechanisms

Petitioners state that Federal regulatory mechanisms are inadequate to protect the *Astragalus debequaeus.* The petition asserts that BLM fails to protect the species due to—(1) inadequate monitoring of occurrences; (2) inadequate avoidance of adverse impacts from oil and gas development, grazing, and ORV use; and (3) failure to designate or enforce ACECs. Finally, the petition asserts that there is a lack of State regulatory mechanisms protecting the species. As indicated in other portions of this finding, the petition failed to present substantial information indicating that oil and gas, grazing, and ORV use are a threat to *A. debequaeus.* Nevertheless, we evaluated the claims of the petition regarding each of these factors and the adequacy of the associated regulatory mechanisms below.

Information Provided in the Petition Regarding Inadequate Monitoring—The Petitioners state that BLM fails to monitor the species, saying that several occurrences have not been revisited in over 18 years.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition does not provide reliable information that the BLM fails to monitor the species. The petitioners claim that several occurrences have not been revisited in over 18 years. However, CNHP (2005, pp. 12, 17, 123) records indicate that, with the exception of one small occurrence and two suboccurrences, all known occurrences have been surveyed since 1995. Petitioners list eight subocurrences that have been revisited within the last 8 years and four newly discovered suboccurrences. In the BLM GSFO management area, two suboccurrences in the Anvil Points area have been monitored for the past 3 years, and surveys have relocated one of four ''missing'' subocurrences that may have been inaccurately mapped (Scheck 2006b). In the BLM GJFO management area, eight known subocurrences were resurveyed, seven new subocurrences were found, and a monitoring plot was established in the Atwell Gulch occurrence in 2006 (Lincoln and Bridgman 2006, p. 5). Transplant research and monitoring (see Factor E below) were funded after BLM surveys located plants along the route for a new oil and gas pipeline. On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to inadequate monitoring of occurrences.

Information Provided in the Petition Regarding Inadequate Protection From Oil and Gas Development, Grazing, and ORV Use—The petitioners assert that the BLM fails to regulate oil and gas development, ORV use, and livestock grazing in a manner that would adequately protect *Astragalus debequaeus.* Petitioners assert that neither the 1987 Grand Junction Resource Management Plan nor the 1999 Glenwood Springs Resource Management Plan amendment adequately controls energy development impacts on the plants. They state that the standard lease provisions found in 43 CFR 1301.1–2 cannot be applied to leases issued prior to the promulgation of these regulations. They also state that neither of these Resource Management Plans stipulate there will be no surface occupancy at BLM sensitive plant sites.

Regarding regulation of ORV use, the petitioners state that more than half of the occurrences and total number of plants are exposed to ORV traffic, and that several of the occurrences are in designated open ORV areas on BLM land.

Regarding regulation of livestock grazing, petitioners cite the example of five Environmental Assessments written for grazing permit renewals in the BLM GJFO management area, in which BLM

failed to consider grazing impacts to the plant.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition does not provide reliable information regarding the ability of the BLM to apply protections to already leased oil and gas areas. The provisions in 43 CFR 1301.1–2 apply to leases issued prior to the adoption of the regulations, because these provisions are considered ''consistent with lease rights granted'' and, therefore, are not a violation of existing lease rights (Scheck 2006b). While relocation of activities by up to 200 meters (656 feet) may not be adequate to avoid all impacts to large occurrences, it would protect the majority of individuals. Relocation of oil and gas activities also would suffice to avoid direct impacts to smaller occurrences, such as those at Anvil Points.

Ten of the 13 suboccurrences in the Anvil Points occurrence are found on leases issued in May 1999, following the completion of the Glenwood Springs 1999 Oil and Gas Leasing and Development Record of Decision and Resource Management Plan Amendment (Scheck 2006b). These leases are covered by a Controlled Surface Use stipulation (CSU–3) to protect populations of sensitive plants (BLM GSFO 1999b, p. 12). Each time a new Application for Permit to Drill is received or a Geographic Area Plan is proposed, BLM GSFO requires surveys in areas of potential habitat for special status plants, including *Astragalus debequaeus*. If populations or individuals are found in the project area, the proposed action is modified, if deemed necessary, to mitigate impacts (Scheck 2006b). When seismic activities were proposed for the Anvil Points area in 2001, surveys were conducted beforehand and all occurrences of *A. debequaeus* were avoided (Scheck 2006a).

In the BLM GJFO management area where 13 of the 17 occurrences are located, the standard lease stipulation (43 CFR 1301.1–2) is included in 19 of the 30 leases in the area (see Table 1). The earlier leases also are subject to the same provisions, which are consistent with lease rights granted. Conditions of approval for new Applications for Permits to Drill include surveys of potential habitat for special status plants, including *Astragalus debequaeus,* and mitigation measures to avoid impacting occupied habitat.

Regarding regulation of livestock grazing, four of the Environmental Assessments cited by petitioners that were available for review support the petitioner's claim that no specific measures were included for protection of the plant (BLM GJFO 2000, pp. 8–9; BLM GJFO 2001, pp. 7–8; BLM GJFO 2003a, pp. 7–8, 13; BLM GJFO 2003b, p. 6). However, seasoned field biologists, with extensive knowledge of the species and years of site visits to these allotments, signed these assessments after determining that the species was not likely to be adversely affected by the grazing activities. In two of these Environmental Assessments (BLM GJFO 2000, p. 9; BLM GJFO 2001, p. 8), BLM recommended scheduled range monitoring for a subset of the relevant population.

Regarding ORV use regulation, petitioners assert that few restrictions exist within the range of *Astragalus debequaeus*. They do not show, nor do we have additional information to indicate, that the level of ORV use in the area presents a need for a higher level of regulation.

On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the lack of regulation by BLM on oil and gas development, livestock use, or ORV use. Our files show that the BLM routinely considers impacts of its actions on *A. debequaeus*, and avoids the majority of individual plants and occurrences.

Information Provided in the Petition Regarding Failure to Designate Areas of Critical Environmental Concern—Petitioners state that BLM has failed to designate additional ACECs to protect this species, and that the existing ACEC does not protect the plants from grazing and ORV activities and impacts, based on one illegal ORV track and permitted grazing.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—Through the Roan Plateau Resource Management Plan/Final Environmental Impact Statement, the BLM has proposed an ACEC at Anvil Points that would increase protection for the species (BLM GSFO 2006, p. 3–111). This ACEC will be finalized after the Record of Decision is published. The ACEC would protect about 14 percent of the plants in the Anvil Points occurrence (Scheck 2006b; CNHP 2005, pp. 38, 73).

The Pyramid Rock ACEC in the BLM GJFO management area is being evaluated for grazing and ORV impacts to *Astragalus debequaeus* and three other species because some habitat damage has occurred (Lincoln and Bridgman 2006, p. 9). This ACEC has been withheld from oil and gas lease offerings.

On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the lack of protection by BLM through the designation and enforcement of ACECs. The BLM has created the Pyramid Rock ACEC that protects about 150 individuals (CNHP 2005, p. 2). Furthermore, the petition and our files do not contain any evidence that the species requires ACECs to sustain it.

Information Contained in the Petition Regarding Lack of State Regulatory Mechanisms—Petitioners state that Colorado has no State regulatory mechanisms for protecting rare plant species, and that the Colorado Natural Areas Program is insufficient to protect and provide recovery for *Astragalus debequaeus*.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The Colorado Natural Areas Program collects information on rare plant species, but does not have regulatory authority over habitat development. However, they are working with the BLM GJFO to determine whether fencing would be appropriate for the Pyramid Rock Natural Area (Kurzel 2006). Voluntary conservation agreements for a State Natural Area are most effective on private land, which is a very small percentage of the habitat for this species.

While we agree that Colorado does not have State regulatory mechanisms for protecting rare plant species, the petitioners and currently available information do not provide information that the species requires any additional regulatory mechanisms to sustain it. On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Information Provided in the Petition Regarding Population Size and Range—Petitioners state that limited range, small number of plants, and small number of populations make *Astragalus debequaeus* vulnerable to anthropogenic impacts, environmental and genetic stochasticity, and climate change. They

cite 44 occurrences of the species at 8 sites over a range of 40 to 48 kilometers (25 to 30 miles).

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—We disagree with the assertion that population size, range, and number of populations are so limited that other natural or manmade factors would substantially impact the species. In a 2006 Global Ranking report from CNHP, the occurrence numbers have been revised to 32 documented occurrences, 15 of which are suboccurrences; therefore, 17 (primary) occurrences are currently known to be extant (CNHP 2006, p. 2). The difference in the number of occurrences is based on an update of occurrence delineation protocols, plus the addition of four new occurrences that were added to the CNHP database in 2005 (see Table 1). The total number of plants estimated in 1996 was 68,000. Four new occurrences and a net of 1,205 new plants have been documented by CNHP (2005, pp. 7, 36, 47, 80, 137). In 2006, which had a very dry spring, 6 new suboccurrences containing 3,361 plants were recorded in Atwell Gulch (Lincoln and Bridgman 2006, p. 1). The total estimated number of plants has changed from 68,000 in 1996 to 64,617 in 2006. The difference appears to be due to the method of summarizing the rough estimates from 1996 records. There are no recounts that can be used to precisely compare population sizes and determine whether there has been an actual downward trend in the number of plants. The area of currently known occupied habitat for the 17 occurrences is an estimated 573 hectares (1,417 acres) (CNHP 2006, p. 2). Spackman et al. (1997a, p. 8) concluded that the species occupies most of its available suitable habitat and historical range.

On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing of *Astragalus debequaeus* may be warranted due to impacts from other natural or manmade factors.

Information Provided in the Petition Regarding Transplanting Success—Petitioners state that *Astragalus debequaeus* does not respond well to transplanting. They cite one unsuccessful attempt to transplant three plants (Trappett 2005).

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition provides reliable information regarding the lack of success of transplantation as a mitigation measure in Trappett (2005). We also know of one additional attempt at transplantation. In 2005, 12 individuals were transplanted from a pipeline right-of-way. Two of the transplants died, some flowered in 2006, with none being as robust as undisturbed plants in the vicinity (Alward 2006). Because so few individuals were involved, information from these two transplant attempts does not provide substantial evidence to indicate whether transplanting can be successful in minimizing disturbance effects on the species.

Although the two known attempts have been of limited or uncertain success, few individuals are subject to transplantation. The BLM prefers impact avoidance over transplantation as a conservation measure. Neither the petitioners nor our files provide substantial information that listing *Astragalus debequaeus* may be warranted due to the lack of success of transplantation attempts.

Finding

We have reviewed the petition and literature cited in the petition and evaluated that information in relation to information available to us. After this review and evaluation, we find that the petition does not present substantial scientific information to indicate that listing *Astragalus debequaeus* (DeBeque milkvetch) may be warranted at this time.

Petitioners state that nearly all occurrences are—within oil and gas leases, some with approved permits to drill; on active grazing allotments; open to ORVs; and often near roads and pipelines. However, there are only a very limited number of instances where impacts to the plants have resulted from any documented or potential threats. Further, there is insufficient information in the petition regarding the magnitude of these impacts and no information that suggests that these impacts may have population-level effects.

The petition is based primarily on claims regarding Factors A and D, both of which are primarily tied to oil and gas development. Since the petition was submitted in 2004, the BLM has taken additional measures to conserve the species in areas within potential oil and gas development areas. They have withheld the Pyramid Rock ACEC from oil and gas leasing, conducted new surveys during the Application for Permit to Drill and grazing allotment renewal reviews, and added standard lease stipulations and controlled use stipulations to new oil and gas leases in the course of developing appropriate management strategies. Monitoring is being implemented to assess the effectiveness of these measures in minimizing impacts to the species as additional development occurs within its habitat.

Our review of the available information indicated that the species appears to be maintaining its presence in known locations throughout its range. Despite several potential threat factors, the petition and the information in our files do not present substantial information indicating that any factor, nor a combination of factors, suggests the petitioned action, listing as threatened or endangered with critical habitat, may be warranted for *Astragalus debequaeus.*

Although we will not commence a status review in response to this petition, we will continue to monitor the *Astragalus debequaeus* population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the *A. debequaeus* across its range. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding *A. debequaeus*, you may submit your information or materials to the Field Supervisor, Western Colorado Ecological Services Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

References Cited

A complete list of all references cited herein is available upon request from the Western Colorado Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Ellen Mayo, U.S. Fish and Wildlife Service, Western Colorado Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 6, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–2445 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 72, No. 30
Wednesday, February 14, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, February 23, 2007. The meeting will be held in the Rachel Carson Room of the Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC at 9 a.m. The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

Call to Order—9 a.m.

I. Chairman's Welcome.
II. Swearing in Ceremony for Mayor Alan Autry.
III. ACHP Award for Federal Preserve America Achievement and Chairman's Award Presentation.
IV. Adoption of ACHP Recommendations from the Preserve America Summit.
V. Archaeology Task Force.
  A. Presentation of Human Remains Policy Statement for Council Approval.
  B. Report on Archaeology Guidance and Heritage Tourism Initiatives.
VI. Report of the Native American Advisory Group.
VII. Report of the Preservation Initiatives Committee.
  A. Legislative Update.
  B. Update on Preserve America Communities and Grants.
  C. Implementation of NHPA Amendments.
VIII. Report of the Federal Agency Programs Committee.
  A. Guidance for Program Comments.
  B. Update on the Implementation of the Affordable Housing Policy Statement.
  C. Report on Proposed Redevelopment of St. Elizabeths West Campus.
  D. Consideration of Standard Treatments.
IX. Report of the Communications, Education, and Outreach Committee.
  A. 2007 Preserve America Presidential Award Update.
  C. Preserve America Presidential Award Program Improvements.
X. Chairman's Report.
  A. Report on Meeting of Senior Policy Officials.
  B. ACHP Reauthorization Legislation.
  C. ACHP Budget—FY 2007 and FY 2008.
XI. Executive Director's Report.
XII. New Business.
XIII. Adjourn.

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: February 9, 2007.

Ralston Cox,
Acting Executive Director.

[FR Doc. 07–683 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: This notice announces a public comment period on the information collection requests (ICRs) associated with the submission of policies, provisions of policies and rates of premium under section 508(h) of the Federal Crop Insurance Act.

DATES: Written comments on this notice will be accepted until close of business April 16, 2007.

ADDRESSES: Interested persons are invited to submit written comments to Timothy Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676. Comments titled ''Information Collection OMB 0563–0064'' may be sent via the Internet to: *DirectorPDD@rma.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Reid, Risk Management Specialist, Federal Crop Insurance Corporation, at the address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Title: General Administrative Regulations; Subpart V—Submission of Policies, Provisions of Policies, and Rates of Premium.

OMB Number: 0563–0064.

Expiration Date of Approval: August 31, 2007.

Type of Request: Extension of a currently approved information collection.

Abstract: FCIC is proposing to renew the currently approved information collection, OMB Number 0563–0064. It is currently up for renewal and

extension for three years. Subpart V establishes guidelines for the submission of policies or other materials to the Federal Crop Insurance Board of Directors (Board) and identifies the required contents of a submission: the timing, review, and confidentiality requirements; reimbursement of research and development costs, maintenance costs, and use fees; and guidelines for nonreinsured supplemental policies. This data is used to administer the Federal crop insurance program in accordance with the Federal Crop Insurance Act, as amended.

FCIC is requesting the Office of Management and Budget (OMB) to extend the approval of this information collection for an additional 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 543 hours per response.

Respondents/Affected Entities: Parties affected by the information collection requirements included in this Notice is a person (including an approved insurance provider, a college or university, a cooperative or trade association, or any other person) who prepares a submission, or proposes to the Board other crop insurance policies, provisions of policies, or rates of premium.

Estimated annual number of respondents: 210.

Estimated annual number of responses per respondent: .5.

Estimated annual number of responses: 105.

Estimated total annual burden hours on respondents: 57,000.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on February 8, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–2558 Filed 2–13–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Frenchtown Face Ecosystem Restoration Project; Ninemile Ranger District, Lolo National Forest, Missoula County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Forest Service will prepare a supplemental environmental impact statement (SEIS) for the Frenchtown Face Ecosystem Restoration Project. The project includes timber harvest, prescribed burning, road management changes, weed spraying, and stream channel restoration. The Notice of Availability of the Draft EIS was published in the **Federal Register** on July 23, 2004 (Volume 69, Number 141, Page 43981), and the notice of the Final EIS on March 24, 2006. The Record of Decision on this project was administratively appealed to the Regional Forester per 36 CFR part 215. The Regional Forester reversed the decision on June 26, 2006, citing an inadequate soils analysis. A SEIS is being prepared to further address soils issues for this project.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(4)). There was extensive public involvement in the development of the proposed action, the Draft EIS, and the Final EIS. The comment period for the Draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

ADDRESSES: The line officer responsible for this analysis is: Garry Edson, District Ranger, ninemile Ranger District, 20325 Remount Road, Huson, Montana 59846.

FOR FURTHER INFORMATION CONTACT: Brian Riggers, EIS Team Leader, Building 24, Fort Missoula, Missoula, Montana 59804, (406) 329–3793 or e-mail *briggers@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The Frenchtown Face Ecosystem Restoration project area includes 44,000 acres of National Forest land approximately 25 miles northwest of Missoula, Montana. Lands affected are within the Mill, Roman, Houle, Sixmile, and lower Ninemile Creek (including Butler, Kennedy, and McCormick Creeks) watersheds. The project area is bounded by the Clark Fork River and Ninemile Creek to the southwest, and the Ninemile/Flathead Reservation divide to the northeast.

The purpose and need for this project is to:

(1) Reduce the potential for high severity fires within the low elevation ponderosa pine and Douglas-fir forests, while also improving fire protection on private property with all ownerships.

(2) Maintain/improve forest health and reduce the risk of damage from insects and disease while maintaining a natural appearing landscape.

(3) Reduce the expansion of new or less extensive weed species, and control existing weeds, under a comprehensive block planning effort.

(4) Reduce roads while maintaining reasonable access recreation, but limiting further recreational development.

(5) Maintain/improve water quality and fish habitat throughout the landscape.

(6) Maintain/improve wildlife security and habitat.

(7) Protect and interpret historic sites.

The Frenchtown Face Ecosystem Restoration Record of Decision was released at the same time as the Final EIS and publication of the legal notice in the newspaper of record (March 24, 2006). The Record of Decision authorizing the following:

(1) Timber harvest on approximately 3,621 acres, to be followed by underburning on 3,598 of those acres,

(2) Prescribed burning of approximately 6,488 additional acres,

(3) Constructing 3.5 miles of temporary road and reconstructing 57.4 miles of road (42.4 miles to incorporate BMPs (Best Management Practices) and 15.0 miles to temporarily access timber),

(4) Decommissioning 114.7 miles of road (75.9 miles already closed year-long) and removing and/or replacing 19 culverts,

(5) Spraying noxious weeds on approximately 4,600 acres (1,750 acres aerial and 2,850 acres ground-based),

(6) Constructing two new OHV trailheads and ½ mile of new trail to connect existing OHV routes between Mill and Edith Creeks; constructing ¼ mile of mountain bike trail to connect existing trails near Kreis Pond and Camp Menard; constructing 1.5 miles of horse trail to connect the Stony and Butler trailheads; constructing new parking areas at McCormick and Kennedy Ridge trailheads; upgrading 8 existing recreational facilities (Kreis

Pond Campground, Grand Menard Picnic Area, CCC Camp, Ninemile Remount Depot, and Stoney Creek, Ch-paa-qn, Kennedy Ridge, and McCormick Trailheads); and establishing an OHV education program in local area schools,

(7) Improving fish habitat by rehabilitating the placer mining site on ½ mile of Little McCormick Creek, and

(8) Keeping open the Houle Creek and CCC gravel pits and developing the Sixmile rip-rap source.

The SEIS is intended to provide additional analysis on the existing condition and potential effects of proposed treatment activities on soils, along with unit-specific mitigation requirements to protect and improve soils conditions in these units. In addition, we are taking this opportunity to provide more information wildlife issues and cumulative effects. We expect to have a draft SEIS available for public review and comment in February, 2007, and a Final SEIS in April, 2007. The comment period for the Draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplemental environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the Draft SEIS stage but that are not raised until after completion of the Final SEIS (Final Supplemental Environmental Impact Statement) may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Sup. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final SEIS. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Deborah L. R. Austin, Forest Supervisor of the Lolo National Forest, Bldg. 24, Fort Missoula, Missoula, Montana 59804, is the Responsible Official for this project. The Record of Decision will identify the land management activities to be implemented in the project area. The Forest Supervisor will make a decision on this project after considering comments and responses, environmental consequences discussed in the Final SEIS, and applicable laws, regulations, and policies. The decision and supporting reasons will be documented in a Record of Decision.

Dated: February 7, 2007.

Deborah L. R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 07–672 Filed 2–13–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shoshone National Forest, Wyoming, Notice of New Fee Site; Federal Lands Recreation Enhancement Act (REA)

AGENCY: Forest Service, USDA.

ACTION: Notice of new fee sites.

SUMMARY: The Shoshone National Forest will begin renting overnight to the public, four Forest Service administrative cabins and a fire lookout. The Clay Butte Fire Lookout is on the Clarks Fork Ranger District and the cabins are located at the Sunlight Ranger Station on the Clarks Fork Ranger District, the East Fork Guard Station and Double Cabin Guard Station on the Wind River Ranger District of the Shoshone National Forest. The fees charged will vary from $30 to $150 per night, depending on the type of structure, occupancy capacity, and amenities available. Overnight rental of cabins on adjacent national forests has shown that the public appreciates and enjoys the availability of historic rental cabins. Funds from the rentals will be used for the continued operation and maintenance of these structures.

DATES: The cabins will be available for rent beginning August 17, 2007.

ADDRESSES: Forest Supervisor, Shoshone National Forest, 808 Meadow Lane Avenue, Cody, WY 82414.

FOR FURTHER INFORMATION CONTACT: Julie Lyons, Natural Resource Specialist, 307–527–6921.

SUPPLEMENTARY INFORMATION: A comparison of other cabin rental programs and local commercial operations indicate the $30 to $150 per night fee is both reasonable and acceptable for these types of facilities and recreational experience.

Those wanting to rent these cabins will need to do so through the National Recreation Reservation Service, at *http://www.reserveuse.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: February 8, 2007.

Mark Giacoletto,

Shoshone National Forest, Acting Forest Supervisor.

[FR Doc. 07–673 Filed 2–13–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Notice for Extension and Revision of a Currently Approved Information Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Risk Management Agency (RMA) to request an extension for and revision to a currently approved information collection for projects listed in the Abstract of this document.

DATES: Written comments on this notice will be accepted until close of business April 16, 2007.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact: Lon Burke, Risk Management Education Division USDA/RMA, Stop 0808, 1400 Independence Ave. SW., Washington, DC 20250–0808, or call (202) 720–5265.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Risk Management Education and Information.

OMB Number: 0563–0070.

Expiration Date of Approval: September 30, 2007.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Federal Crop Insurance Act directs the Federal Crop Insurance Corporation, operating through RMA, to (a) establish crop insurance education and information programs in States that have been historically underserved by the Federal crop insurance program [7 U.S.C. 1524(a)(2)]; and (b) provide agricultural producers with training opportunities in risk management, with a priority given to producers of specialty

crops and underserved commodities [7 U.S.C. 1522(d)(3)(F)]. With this submission, RMA seeks to obtain OMB's generic approval for four information collection projects that will assist RMA in operating and evaluating these programs. The four information collection projects are: (1) Request for Applications; (2) Performance Reporting; (3) Training Session Evaluation; and (4) Needs Assessment. The primary objectives of the four information collection projects are, respectively, to: (1) Enable RMA to better evaluate the performance capacity and plans of organizations that are applying for funds for cooperative and partnership agreements; (2) document the scope of activities conducted by the recipients of Federal educational funding; (3) assess the effectiveness of individual educational activities; and (4) provide program managers and policy makers with information regarding the effectiveness of educational programs in underserved States.

We are asking the Office of Management and Budget (OMB) to approve this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection activity. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average: 8 hours per response for agri-business professionals, for a total of 5,904 hours and 15 minutes per response for producers, for a total of 21 hours.

Respondents/Affected Entities: Agribusiness professionals and agricultural producers.

Estimated annual number of respondents: 19,450 respondents (2,950 agribusiness professionals and 16,500 agricultural producers).

Estimated annual number of responses: 19,450 responses or 1 per respondent.

Estimated total annual burden on respondents: 5,925 hours (5,904 hours for agribusiness professionals and 21 hours for agricultural producers).

Comments may be sent to Lon Burke, Risk Management Education Division, USDA/RMA, 1400 Independence Avenue, SW., Stop 0808, Room 5720, Washington, DC 20250–0808. Comments may also be submitted electronically to: *RMA.Risk-Ed@rma.usda.gov.*

All comments will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed in Washington, DC, on February 8, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–2557 Filed 2–13–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–815, A–580–816, C–580–818]

Continuation Pursuant to Second Five–Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion–Resistant Carbon Steel Flat Products from Germany and Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping (''AD'') orders on certain corrosion–resistant carbon steel flat products (''CORE'') from Germany and Korea would likely lead to continuation or recurrence of dumping; that revocation of the countervailing duty (''CVD'') order on CORE from Korea would likely lead to continuation or recurrence of a countervailable subsidy; and that revocation of these AD and CVD orders would likely lead to a continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of continuation of these AD and CVD orders.

EFFECTIVE DATE: February 14, 2007.

FOR FURTHER INFORMATION CONTACT: Darla Brown (AD orders), Stephanie Moore (CVD order), or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2849, (202) 482–3692, or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department initiated and the ITC instituted sunset reviews of the AD orders on CORE from Germany and Korea and CVD order on CORE from Korea, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), respectively. *See Notice of Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 65884 (November 1, 2005). As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would be likely to lead to continuation or recurrence of subsidization, and notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders to be revoked. *See Final Results of Expedited Sunset Reviews: Corrosion–Resistant Carbon Steel Flat Products from Australia, Canada, France, Germany, Japan, and South Korea, 71 FR 32508 (June 6, 2006) and Certain Corrosion–Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Five–Year (''Sunset'') Review of Countervailing Duty Order*, 71 FR 32519 (June 6, 2006) (collectively, ''*Final Results*'').

On January 31, 2007, the ITC determined that revocation of the AD orders on CORE from Germany and Korea and the CVD order on CORE from Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. *See Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, 72 FR 4529 (January 31, 2007) (''*ITC Determination*'') and USITC Publication 3899 (January 2007), entitled *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom: Investigation Nos. AA1921–197; (Second Review); 701–TA–319, 320, 325–327, 348, and 350 (Second Review);*

and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review).

Scope of the Orders

The products subject to these orders include flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 mm, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 mm or more, are of a width which exceeds 150 mm and measures at least twice the thickness, as currently classifiable in the HTS under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in these orders are flat–rolled products of nonrectangular cross–section where such cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') - for example, products which have been beveled or rounded at the edges.

Excluded from the scope of these orders are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope of these orders are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Also excluded from the scope of the orders are certain clad stainless flat–rolled products, which are three–layered corrosion- resistant carbon steel flat–rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Determination

As a result of the determinations by the Department and the ITC that revocation of these AD and CVD orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy, and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD orders on CORE from Germany and Korea and the CVD order on CORE from Korea. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation.

Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five–year review of these orders not later than December 2011.

These five–year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: February 5, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–2565 Filed 2–13–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–602–803, A–122–822, A–588–824, A–427–808, C–427–810)

Revocation Pursuant to Second Five–Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion–Resistant Carbon Steel Flat Products from Australia, Canada, Japan, and France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the International Trade Commission (''ITC'') that revocation of the antidumping (''AD'') orders on certain corrosion–resistant carbon steel flat products (''CORE'') from Australia, Canada, Japan, and France and the countervailing duty (''CVD'') order on CORE from France would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, the Department of Commerce (''the Department'') is publishing this notice of revocation of these AD and CVD orders pursuant to section 751(d)(2) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2849 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2000, at the conclusion of the first sunset review of these orders, the Department published notice of continuation of these orders. *See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, 65 FR 78469 (December 15, 2000).

On November 1, 2005, the Department initiated and the ITC instituted sunset reviews of the AD and CVD orders on CORE from Australia, Canada, Japan and France, pursuant to sections 751(c) and 752 of the Act, respectively. *See Notice of Initiation of Five–Year (''Sunset'')*Reviews, 70 FR 65884 (November 1, 2005). As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely to lead to continuation or recurrence of subsidization and notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders to be revoked. *See Final Results of Expedited Sunset Reviews: Corrosion–Resistant Carbon Steel Flat Products from Australia, Canada, France, Germany, Japan, and South Korea*, 71 FR 32508 (June 6, 2006)(''*Final Results*'') and *Corrosion–Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

On January 31, 2007, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD and CVD orders on CORE from Australia, Canada, Japan, and France would not be likely to lead to a continuation or

recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, 72 FR 4529 (January 31, 2007) (''ITC Determination'') and USITC Publication 3899 (January 2007), entitled *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom: Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–327, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review).*

Scope of the Orders

The products subject to these orders include flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 mm, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 mm or more, are of a width which exceeds 150 mm and measures at least twice the thickness, as currently classifiable in the HTS under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in these orders are flat–rolled products of nonrectangular cross–section where such cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') - for example, products which have been beveled or rounded at the edges.

Excluded from the scope of these orders are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope of these orders are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Also excluded from the scope of the orders are certain clad stainless flat–rolled products, which are three–layered corrosion- resistant carbon steel flat–rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The Department has issued numerous rulings regarding the scope of the order on Japan. A complete listing of these rulings is contained in the *Final Results*.

Determination

As a result of the determination by the ITC that revocation of these AD and CVD orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, the Department, pursuant to section 751(d) of the Act, is revoking the AD and CVD orders on CORE from Australia, Canada, Japan, and France. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is December 15, 2005 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation of the AD and CVD orders). The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after December 15, 2005, the effective date of revocation of these AD and CVD orders. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five–year sunset reviews and notice are in accordance with section 751(d)(2) and published pursuant to section 777(i)(1) of the Act.

Dated: February 5, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–2566 Filed 2–13–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2006, the Department of Commerce (''the Department'') published the preliminary results and partial rescission of the ninth administrative review for the antidumping duty order on certain pasta from Italy. The review covers two manufacturers/ exporters: (1) Atar, S.r.L. (''Atar'') and, (2) Corticella Molini e Pastifici S.p.A. and its affiliate Pasta Combattenti S.p.A. (collectively, ''Corticella/Combattenti''). The period of review (''POR'') is July 1, 2004, through June 30, 2005. Further, requests for review of the antidumping duty order for the following companies were withdrawn: Barilla G.e.R. Fratelli, S.p.A./Barilla Alimentare, S.p.A. (''Barilla''), Moline e Pastificio Tomasello S.r.L. (''Tomasello''), and Pastificio Laporta S.a.s. (''Laporta''). We are rescinding the review with respect to Italpasta/Pasta Berruto S.p.A. (''Italpasta'')[1] because Italpasta submitted a letter stating that it had no shipments of subject merchandise during the POR. *See* 19 CFR 351.213(d)(3). Finally, we are rescinding the review with respect to Pastificio Antonio Pallante S.r.L./Industrie Alimentari Molisane, S.r.L./Vitelli Foods, LLC (''Pallante'') because, since the initiation of the current review, the Department has revoked the order in part, with respect to Pallante, effective July 1, 2004.

As a result of our analysis of the comments received, these final results differ from the preliminary results.

EFFECTIVE DATE: February 14, 2007.

FOR FURTHER INFORMATION CONTACT: Dennis McClure and Maura Jeffords for

[1] In its September 20, 2005, letter, counsel for Italpasta S.p.A. informed the Department that it merged with its affiliate, Arrighi S.p.A. into a new company Pasta Berruto S.p.A. *See* Letter to the Department from Italpasta, Re: Pasta from Italy; Response to Questionnaire (September 20, 2005).

Atar and Preeti Tolani for Corticella/Combattenti, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5973, (202) 482–3146 and (202) 482–0395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2006, the Department published the preliminary results of the ninth administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 71 FR 45017 (August 8, 2006) (''*Preliminary Results*'').

On August 1, 2006, we invited Atar to submit comments by August 11, 2006, and petitioners to submit rebuttal comments by August 21, 2006, in response to the Department's particular market situation determination. *See* Letter to Counsel for Atar, August 1, 2006, referencing Memorandum to Stephen J. Claeys, RE: Particular Market Situation, July 31, 2006. On August 10, Atar requested an extension to its deadline, which the Department granted until August 25, 2006. The Department extended petitioners' deadline until September 6, 2006. Atar submitted its comments on August 25, 2006. On August 30, 2006, counsel for the petitioners requested and received an extension until September 13, 2006. Petitioners submitted their comments on September 13, 2006.

The Department verified Atar's sales and cost information between October 16 and 20, 2006, in Naples, Italy. Following the release of verification reports on November 30, 2006, the Department announced that interested parties could submit briefs no later than December 28, 2006, and rebuttal briefs no later than January 5, 2007. A public hearing was held on January 16, 2007.

Scope of the Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale (''ICEA'') are also excluded from this order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled ''Recognition of Instituto per la Certificazione Etica e Ambientale (''ICEA'') as a Public Authority for Certifying Organic Pasta from Italy'' which is on file in the Department's Central Records Unit (''CRU'').

The merchandise subject to this order is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). The merchandise subject to this order is also classifiable under item 1901.90.9095. *See* Memorandum from Dennis McClure to James Terpstra, RE: Request for AD/CVD Module Update with the Addition of HTSUS Number for Pasta from Italy (A–475–818), November 1, 2006. Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Rescission of Review

In the *Preliminary Results*, we stated that we are rescinding the review for Laporta, Barilla, and Tomasello because they filed withdrawal requests within 90 days of the publication of the notice of initiation of this review, as required by statute. We also stated that we are preliminarily rescinding the review with respect to Italpasta because Italpasta submitted a letter stating that it had no shipments of subject merchandise during the POR. We also preliminarily rescinded the review with respect to Pallante because the Department revoked the order in part with respect to Pallante, effective July 1, 2004 after the initiation of the current review. *See Notice of Final Results of the Eighth Administrative Review of the Antidumping Order on Certain Pasta From Italy and Determination to Revoke in Part*, 70 FR 71464 (November 29, 2005). Since our preliminary results were published, the Department has not received any comments regarding the decision to rescind this review for Laporta, Barilla, and Tomasello in accordance with 19 CFR 351.213(d)(1), for Italpasta, in accordance with 19 CFR 351.213(d)(3), and for Pallante, in accordance with 19 CFR 351.222(b). Therefore, we are rescinding the reviews of these companies.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

We determine that the following weighted–average margins exist for the period July 1, 2004, through June 30, 2005:

Manufacturer/exporter	Margin (percent)
Atar	18.18
Corticella/Combattenti	1.95

Assessment Rates

The Department will determine, and Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period

of review produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the ''All Others'' rate established in the less–than-fair–value investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

This notice also serves as a 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. Timely notification of the 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 are sanctionable violations.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 5, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

Atar, S.r.L.

Comment 1: Whether the Department should continue to find that a particular market situation exists which prevents proper comparison with the export price and constructed export price
Comment 2: Indirect Selling Expenses and Profit
Comment 3: Distributions and Salaries
Comment 4: Allocation of Certain Expenses

Corticella Molini e Pastifici S.p.A. and its affiliate Pasta Combattenti S.p.A.

Comment 5: Whether the Department made certain clerical errors in the margin program
Comment 6: Whether the Department erred in applying the major–input rule

[FR Doc. E7–2563 Filed 2–13–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 14, 2007.

SUMMARY: On December 20, 2006, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of an antidumping duty (''AD'') changed circumstances review and intent to revoke, in part, the AD order on wooden bedroom furniture from the People's Republic of China (''PRC''). *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part*, 71 FR 76273 (December 20, 2006) (''*Initiation and Preliminary Results*''). We are now revoking this order in part, with regard to the following product: upholstered beds, as described in footnote 14 in the ''Scope of the Order'' section of this notice, based on the domestic parties' expression of no interest in the relief provided by the order with respect to the imports of upholstered beds, as so described.

In its October 26, 2006, submission, the American Furniture Manufacturers Committee for Legal Trade and its individual members (the ''AFMC'') stated that it no longer has any interest in seeking antidumping relief from imports of such upholstered beds with respect to the subject merchandise defined in the ''Scope of the Order'' section below. On January 4, 2007, American Signature Incorporated (''ASI''), an interested party, submitted comments to the Department stating that exclusion of upholstered beds from the order is warranted.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone: (202) 482–4474 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2006, the Department received a request on behalf of the petitioners, the AFMC, for revocation in part of the AD order on wooden bedroom furniture from the PRC pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (''the Act''), with respect to upholstered beds. In its October 26, 2006, submission, AFMC stated that it no longer has any interest in antidumping relief from imports of such upholstered beds.

Scope of Changed Circumstances Review

The merchandise covered by this changed circumstances review are beds that are completely upholstered, *i.e.*, containing filling material and

completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. Effective upon publication of this final results of changed circumstances review in the **Federal Register**, the amended scope of the order will read as follows.

Scope of the Amended Order

The product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests–on-chests[1], highboys[2], lowboys[3], chests of drawers[4], chests[5], door chests[6], chiffoniers[7], hutches[8], and armoires[9]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate[10]; (9) jewelry armories[11]; (10) cheval mirrors[12], (11) certain metal parts[13]; (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set; (13) upholstered beds.[14]

Imports of subject merchandise are classified under subheading 9403.50.9040 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden...beds'' and under subheading 9403.50.9080 of the HTSUS as ''other...wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors...framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24'' in width, 18'' in depth, and 49'' in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, (71 FR 38621) (July 7, 2006).

[12] Cheval mirrors are, *i.e.*, any framed, tiltable mirror with a height in excess of 50'' that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth.. *See also wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, (72 FR 38621) (January 9, 2007).

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheading 9403.90.7000.

[14] Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning upholstered beds, as described herein, constitutes changed circumstances sufficient to warrant revocation of this order in part. Moreover, ASI supports AFMC's request. Additionally, no party contests that petitioners' statement of no interest represents the views of substantially all of the domestic industry. Therefore, the Department is partially revoking the order on wooden bedroom furniture with respect to upholstered beds from the PRC which meet the specifications detailed above, in accordance with sections 751(b), (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g). We will instruct U.S. Customs and Border Protection to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of upholstered beds, meeting the specifications indicated above, and not subject to final results of an administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222(g).

This notice serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping

duty order and notice are in accordance with sections 751(b), (d) and 782(h) of the Act and

19 CFR 351.216(e) and 351.222(g).

Dated: February 7, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–2564 Filed 2–13–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 11, 2006, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea for the period January 1, 2004, through December 31, 2004.

We gave interested parties an opportunity to comment on the preliminary results. Our analysis of the comments received on the preliminary results did not lead to any changes in the net subsidy rate. Therefore, the final results do not differ from the preliminary results. The final net subsidy rate for the reviewed company is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 14, 2007.

FOR FURTHER INFORMATION CONTACT: Steve Williams or Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4619 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events have occurred since the publication of the preliminary results of this review. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 71 FR 46192 (August 11, 2006) (''*Preliminary Results*'').

We invited interested parties to comment on the *Preliminary Results*. On October 2, 2006, we received a case brief and request for a hearing from Micron Technology, Inc. (''Micron''). We received a rebuttal brief from Hynix Semiconductor Inc. (''Hynix''), the only company covered in the review, on October 16, 2006.

On November 16, 2006, we extended the time limit for the final results of this administrative review by 60 days (to February 7, 2007), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''). *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Notice of Extension of Time Limit for Countervailing Duty Administrative Review*, 71 FR 66751 (November 16, 2006).

A public hearing was held at the Department on November 2, 2006.

Scope of the Order

The products covered by this order are dynamic random access memory semiconductors (''DRAMS'') from the Republic of Korea (''ROK''), whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this order additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in–line processing modules, single in–line memory modules, dual in–line memory modules, small outline dual in–line memory modules, Rambus in–line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This order also covers future DRAMS module types.

The scope of this order additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page–mode, extended data–out, burst extended data–out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this order are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with CBP that neither it, nor a party related to it or under contract to it, will remove the modules from the

motherboards after importation. The scope of this order does not include DRAMS or memory modules that are re–imported for repair or replacement.

The DRAMS subject to this order are currently classifiable under subheadings 8542.21.8005 and 8542.21.8020 through 8542.21.8030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Removable memory modules placed on motherboards are classifiable under subheadings 8471.50.0085, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.61.0000, 8517.62.0010, 8517.62.0050, 8517.69.0000, 8517.70.0000, 8517.90.3400, 8517.90.3600, 8517.90.3800, 8517.90.4400, 8542.31.00, 8542.32.0001, 8542.32.0020, 8542.32.0021, 8542.32.0022, 8542.32.0023, 8542.33.0000, 8542.39.0000, and 8543.89.9600 of the HTSUS.

Scope Rulings

On December 29, 2004, the Department received a request from Cisco Systems, Inc. (''Cisco''), to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the *CVD Order. See Notice of Countervailing Duty Order: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 47546 (August 11, 2003) (''*CVD Order*''). The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On January 12, 2006, the Department issued a final scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the *CVD Order* provided that the importer certifies that it will destroy any memory modules that are removed for repair or refurbishment. *See* Memorandum from Stephen J. Claeys to David M. Spooner, regarding Final Scope Ruling, Countervailing Duty Order on DRAMs from the Republic of Korea (January 12, 2006).

Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of review (''POR''), is January 1, 2004, through December 31, 2004.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the February 7, 2007, *Issues and Decision Memorandum for the Final Results in the Second Administrative Review of the Countervailing Duty Order on Dynamic Random Access Memory Semiconductors from the Republic of Korea (''Decision Memorandum'')* from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for the producer/exporter, Hynix. For the period January 1, 2004, through December 31, 2004, we find the *ad valorem* net subsidy rate for Hynix is 31.86 percent.

Assessment Rates

The Department will instruct CBP to liquidate shipments of DRAMS by Hynix entered or withdrawn from warehouse, for consumption from January 1, 2004, through December 31, 2004, at 31.86 percent *ad valorem* of the entered value.

Cash Deposits

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at 31.86 percent *ad valorem* of the entered value on all shipments of the subject merchandise from Hynix, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific rate applicable to the company. The Department has previously excluded Samsung Electronics Co., Ltd. from this order. *See Notice of Amended Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 44290 (July 28, 2003). Thus, the ''all others'' rate shall apply to all non–reviewed companies until a review of a company assigned this rate is requested.

This notice also serves as a 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 administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act.

Dated: February 7, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix I

Comments in the Issues and Decision Memorandum

Comment 1: Benefit to Hynix of the 2004 Cash Buyout Program.
Comment 2: The Department's Failure to Investigate Thoroughly the GOK's Entrustment or Direction of Hynix's Creditors in Connection with the CBO Components of the Non–Memory Asset Sale.
Comment 3: Entrustment or Direction of Hynix's Creditors in Connection with the Tranche A Acquisition Financing and CBO Components of the Non–Memory Asset Sale.
Comment 4: Whether the Department Should Have Investigated Hynix's Sale of Its LCD and Non–Memory Assets.
Comment 5: Uncreditworthy Benchmark Interest/Discount Rate.

[FR Doc. E7–2562 Filed 2–13–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020707B]

National Standard 1 Guidelines; Notice of Intent to Prepare an Environmental Impact Statement

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

ACTION: Notice of intent (NOI) to prepare an environmental impact statement

(EIS); request for comments; notice of a public scoping meeting.

SUMMARY: NMFS announces its intent to prepare an EIS and commencement of a scoping period in accordance with the National Environmental Policy Act (NEPA) of 1969 to analyze alternatives for guidance regarding annual catch limit (ACL) and accountability measures (AM) and other overfishing provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA). Such guidance would be added to the National Standard 1 (NS1) guidelines.

DATES: Written comments must be received by April 2, 2007. A public scoping meeting will be held at the NMFS Silver Spring headquarters office on March 9, 2007 (see **ADDRESSES**) from 9a.m. through 3p.m.

ADDRESSES: The scoping meeting will be held at 1315 East-West Highway; Room 4527; Silver Spring, Maryland, 20910. NMFS may hold additional scoping meetings and informal public meetings during the scoping period.

You may submit comments on issues and alternatives, by any of the following methods:

- E-mail: *annual.catch.limitDEIS@noaa.gov*. Include ''Scoping comments on annual catch limit DEIS'' in the subject line of the message.
- Fax: 301–713–1193.
- Mail: Mark Millikin; National Marine Fisheries Service, NOAA; 1315 East-West Highway; Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mark Millikin, National Marine Fisheries Service, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index/html*.

Background

The MSRA, signed into law by President Bush on January 12, 2007, set forth new requirements related to overfishing, including new ACL and AM provisions for federally managed fisheries in the U.S. exclusive economic zone (EEZ). NMFS is initiating this action to develop guidance related to these new provisions, specifically, requirements set forth under sections 103(b)(1) and (c)(3), 104(a)(10), (b), and (c) of the MSRA. NMFS intends to revise the National Standard 1 (NS1) Guidelines, 50 CFR 600.310, through a proposed and final rule to incorporate guidance of these MSRA sections before the end of 2007. Because of potential policy implications of these MSRA provisions on Federal fishery management plans (FMPs and plans) and their stocks, NMFS has decided to issue this NOI. However, as it develops this action, NMFS will continue to re-evaluate the environmental review and analyses needed for NEPA purposes.

Public Scoping Process

To help determine the scope of issues to be addressed and to identify significant issues related to this action, NMFS is soliciting written comments on this NOI through April 2, 2007, and will hold a public scoping meeting at the NMFS Silver Spring Headquarters, Building III, Room 4527, 9a.m. through 3p.m. on March 9, 2007. After considering comments received during the scoping process, NMFS will either develop a draft environmental impact statement (DEIS) and proposed rule or an environmental assessment (EA) and proposed rule. If NMFS issues a DEIS, it will provide for a 45-day comment period concurrent with public hearings. If NMFS issues a DEIS, then it will also issue a final environmental impact statement (FEIS). Following an EIS or EA and proposed rule, NMFS will issue a final rule in the **Federal Register**.

Magnuson-Stevens Act

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) amended in 1996 by the Sustainable Fisheries Act, is the chief authority for fisheries management in the U.S. EEZ. The Act requires, among other things, achieving optimum yield on a continuing basis, preventing overfishing, and rebuilding overfished stocks in as short a time as possible. Section 301(a) of the Magnuson-Stevens Act contains 10 national standards (NS) with which all FMPs and their amendments and implementing regulations must be consistent. Section 301(b) requires that ''the Secretary establish advisory guidelines (which shall not have the force and effect of law), based on the national standards to assist in the development of fishery management plans.'' Conforming to the NS guidelines (50 CFR part 600, subpart D) when preparing an FMP, FMP amendment and regulations is essential to properly addressing the intentions of Congress when it established and revised the Magnuson-Stevens Act. The NS guidelines, most notably NS1, are often cited in Court cases, and judges frequently refer to them when considering the merits of an FMP or FMP amendment and its regulations.

NS1 provides that ''Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' 16 U.S.C. 1851(a)(1). As this action focuses on MSRA's overfishing provisions, NMFS believes that it is appropriate to incorporate guidance on those provisions in the NS1 guidelines at 50 CFR 600.310.

Ending overfishing of stocks undergoing overfishing, preventing overfishing of stocks approaching overfishing, and rebuilding overfished stocks to levels of abundance that can produce maximum sustainable yield (MSY) on a continuing basis, are essential to achieving the objectives and goals of the Magnuson-Stevens Act. Ending overfishing is paramount to more rapid and more certain rebuilding. According to the NS1 guidelines, overfishing occurs whenever the annual fishing mortality rate (F) is greater than the maximum fishing mortality threshold (MFMT), 50 CFR 600.310(d)(2)(i). Continued overfishing will depress a stock, on average, below the level that can produce MSY. While some rebuilding of stock abundance can occur if F is slightly greater than MFMT, rebuilding rates are more rapid when overfishing does not occur, and rebuilding occurs faster, the more that F is reduced below MFMT.

MSRA Section 104(a)(10): ACLs and AMs

During the comment period on this NOI, and throughout development of this action, NMFS will seek input from the Councils and the public on implementation of the new MSRA overfishing provisions. To facilitate public comment in the following sections NMFS provides its preliminary interpretation of the new provisions, followed by an explanation of statutory deadlines and other timing considerations.

Section 104(a)(10) of the MSRA amends section 303(a) of the Magnuson-Stevens Act to require that any FMP shall ''establish a mechanism for specifying annual catch limits in the plan (including a multi-year plan), implementing regulations and annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.'' Species that have a life cycle of approximately 1 year (e.g., possibly some shrimp or squid species) are exempt from the requirements, unless the Secretary determines the species is undergoing overfishing. In addition, the ACL/AM requirements would not apply if ''otherwise provided

for under an international agreement.'' Thus, the ACL/AM requirements may be applicable for some species managed under international agreements.

Apart from the above exemptions, NMFS believes that section 104(a)(10) requires ACL/AM mechanisms for each federally-managed ''stock or stock complex'' contained in an FMP. Under the NS guidelines, ''stock or stock complex'' is used as a synonym for ''fishery,'' and is defined as ''one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics...'' (50 CFR 600.305(c)(12)).

NMFS understands an ACL to mean a specified amount of a fish stock (e.g., measure of weight or numbers of fish) for a fishing year that is a target amount of annual total catch that takes into account projected estimates for landings and discard mortality from all user groups and sectors. Per the MSRA, the ACL must be set ''at a level such that overfishing does not occur in the fishery.'' Under the NS1 guidelines, overfishing of the stock occurs when MFMT is exceeded (50 CFR 600.310(d)(2)(i)). Thus, it is important to clarify the relationship between the ACL and the MFMT. While the MFMT is expressed as a rate of fishing, NMFS may recommend that FMPs be amended so that annual catch levels corresponding to MFMT—an overfishing level (OFL)—are specified along with ACLs in comparable units (e.g., weight or numbers of fish) to ACLs, to facilitate subsequent monitoring against the ACL. The OFL would be the maximum amount of annual catch from all sources (landings and discard mortality from all sectors) which does not result in overfishing. Once the ACL is reached, or projected to be reached, AMs established in the FMP will ensure that overfishing does not occur, or is appropriately mitigated (e.g., through payback provisions).

NMFS believes that the extent of future management success using ACLs will depend largely upon ACLs being set sufficiently below the OFL for a fish stock, i.e., the size of the buffer needed between the OFL and ACL, to reduce the chance of exceeding the OFL. The types of ACLs used for a stock may vary depending upon the quality of data available for a fish stock and the fishery management goals. The size of the buffer needed between the ACL and OFL would depend upon quality of data available including: Knowledge of the stock's life history; availability and accuracy of current fishing year landings and historical landings data; accuracy and precision of fishery independent surveys; accuracy and precision of fishery dependent data; time since last stock assessment or update; frequency of stock assessments; discard mortality; recreational catches; and the extent of knowledge of the rate and magnitude of success or failure of recent management measures in ending or preventing overfishing for a fish stock. For discussion purposes in this NOI, ''data poor stocks'' are those stocks for which stock abundance is unknown or stock status with respect to overfishing and overfished is unknown. ''Data rich'' stocks are those for which annual catch values are known, and estimates of stock abundance or its proxy are available and sufficient to make overfishing and overfished status determinations. A broad gradation of data quality, quantity, and timeliness exists for various stocks which affects the accuracy and precision of ''overfishing'' and ''overfished'' status determinations.

With regard to ''measures of accountability'' (referred to herein as accountability measures or AMs) required by MSRA section 104(a)(10), NMFS' initial interpretation is that they are part of the ACL mechanism and FMPs should contain AMs for each stock. AMs could also be used for each fishery sector. Because there are variances in: operation of fisheries, monitoring of a fishery within a fishing year, and availability of stock abundance information, it may not be feasible to set ACLs with the same level of precision for all stocks. AMs thus are intended to work with their associated ACLs to prevent overfishing of a stock from occurring. AMs could take the form of inseason management techniques that prevent the ACL from being exceeded in a given year (e.g., closures, or restrictions on retention of a stock), and/or corrective actions that will be implemented in subsequent fishing years to address overages of a stock's OFL in previous fishing years (e.g., reduction of a subsequent year's ACL), and to ensure that overfishing is ended.

MSRA Section 103(b) and (c)(3): Scientific and Statistical Committees (SSCs)

Section 103(b) of MSRA includes new provisions relating to SSCs and peer review processes. Among other things, it specifies that SSCs shall provide their Councils with ''ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts on management measures, and sustainability of fishing practices.'' Section 103(b) also provides for the establishment of peer review processes. With regard to ACLs, section 103(c)(3) provides that a Council shall ''develop ACLs for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g).''

NMFS views these provisions as providing the SSCs or peer review processes with an important role in Council development of ACL mechanisms. NMFS would expect that SSCs or peer review processes would not only need to produce calculations of ACL and OFL, but also the probability that an ACL in combination with other factors such as retrospective patterns in stock assessments, e.g., overestimating stock abundance and underestimating actual fishing mortality rate (F), would or would not result in OFL being exceeded.

MSRA Section 104(c) revises the rebuilding provisions of section 304(e) of the Magnuson-Stevens Act to require that, when a Council is notified that a stock is overfished, the Council shall — within 2 years after such notification — submit and implement an FMP, FMP amendment, or proposed regulations to end overfishing ''immediately,'' and rebuild the overfished stock in as short a time as possible. NMFS' preliminary review is that, because an FMP, FMP amendment, or regulations need to be implemented within 2 years of notification, a Council would need to submit the relevant action sufficiently in advance of the 2-year deadline (i.e., approximately one year and six months after notification) to ensure sufficient time (six months) for NMFS, on behalf of the Secretary, to finalize and implement the action.

Statutory Deadlines and Other Timing Considerations

Per MSRA section 104(b), the ACL and AM requirements take effect in fishing year 2010, for stocks determined by the Secretary to be undergoing overfishing. Thus, NMFS believes that the Councils and NMFS would have to plan to have ACL and AM mechanisms in place for all stocks in their FMPs that can be used beginning with the 2010 fishing year, because it is unknown what stocks NMFS will have determined as undergoing overfishing just before the beginning of the 2010

fishing year. Stocks not determined to be undergoing overfishing will need ACLs and AMs by the 2011 fishing year, including stocks with unknown or undefined status regarding overfishing (i.e., the new requirement applies also to data poor stocks).

MSRA section 104(c), which revises the requirements for rebuilding overfished fisheries, takes effect 30 months after the enactment of the MSRA, i.e., effective date of July 12, 2009. Thus, any fisheries determined to be overfished by the Secretary after that date would fall under the MSRA amendments to the rebuilding provisions of section 304(e)(3), instead of the current Magnuson-Stevens Act section 304(e)(3) provisions. Pursuant to the Magnuson-Stevens Act section 304(e)(3), within one year of being notified by NMFS, that a stock is overfished, a Council needs to prepare and submit an FMP, FMP amendment, or proposed regulations to rebuild the overfished stock and end overfishing. As discussed earlier, under the MSRA amendments to section 304(e)(3), within two years of being notified by NMFS, anytime on or after July 12, 2009, that a stock is overfished, a Council needs to prepare and NMFS needs to implement an FMP, FMP amendment, or proposed regulations to rebuild the overfished stock and end overfishing immediately.

NMFS intends to complete its revisions of the NS1 guidelines pertaining to this action before the end of 2007. Upon implementation of the final rule, NMFS will review each Council's current provisions for ACLs and AMs and recommend any revisions it deems are appropriate. Some FMPs may already contain management measures that will meet the definition (or forthcoming criteria) of ACLs and AMs. If not, the FMPs will need to be amended to establish or revise ACLs and associated AMs consistent with the MSRA requirement and revised NS1 guidelines, by the relevant statutory deadlines.

NMFS previously issued an advance notice of proposed rulemaking (68 FR 7492, February 14, 2003), and a proposed rule (70 FR 36240, June 22, 2005), to revise the NS1 guidelines. NMFS did not issue a final rule because it decided to wait to see if the Magnuson-Stevens Act would be reauthorized before revising the NS1 guidelines. This action is not expected to make the full set of revisions to the NS1 guidelines as was proposed in 2005, because of the urgency to establish guidance related to new provisions in the MSRA.

Issues Under Consideration

In considering potential guidance related to MSRA's overfishing provisions, NMFS has identified the following list of issues related to ACLs, AMs, and overfishing. NMFS seeks public comment on the scope of this NOI generally and the list of issues and potential alternatives for this action set forth below.

Issues for Developing Guidance for ACLs and AMs

- The role of the SSC and other peer review processes in setting ACLs and AMs
- The relationship between ACL and OY
- Revision of existing overfishing definitions to include OFL
- Variability in data currently available for each stock (e.g., data rich, data poor, and stocks with data quality falling between data rich and data poor)
- Setting ACLs for stocks with unknown status
- Circumstances in which a numerical ACL can not be set for a stock, and in such situations, recommendations for adequate and appropriate alternatives to setting a numerical ACL (e.g., prohibitions)
- Setting ACLs for stock complexes, stock assemblages, and similar stock groupings
- Variability in the accuracy of management approaches in achieving target fishing levels
- Setting a buffer between ACL and OFL to prevent overfishing, and how to determine the size of the buffer needed
- Establishing the appropriate probability that an ACL will prevent overfishing for a stock
- Establishing recommendations for inseason management authority and methods to be used as AMs to prevent overfishing
- Limiting the extent of overfishing, should it occur
- Establishing corrective actions to ensure accountability in a subsequent year for an overage of the OFL for a stock in a previous year
- Establishing AMs for various sectors of a stock, if an ACL is subdivided for a stock, and the need to still prevent exceeding the overall OFL for the stock

Preliminary ACL and AM alternatives

- No action. Do not publish ACL and AM guidelines. Councils are statutorily required to implement ACLs and AMs, but the statute provides little specificity about the meaning of these terms. Without guidelines, Councils may develop and submit FMP amendments that the Secretary determines to be inadequate. Secretarial disapproval of an FMP amendment will require the Council to modify their amendment and resubmit it, making it unlikely that measures can be implemented by the statutory deadline of 2010, for stocks subject to overfishing and 2011, for all other stocks.
- Alternative 2. Develop ACL and AM guidelines that provide performance standards that ACLs and AMs must meet, but do not provide guidance on specific mechanisms. Performance standards may be hard to develop, or it may be hard to adequately judge the degree to which proposed mechanisms will satisfy the performance standards.
- Alternative 3. Develop ACL and AM guidelines that provide performance standards that ACLs must meet, and develop ACL and AM guidelines that provide specific guidance on one or more mechanisms to implementing ACLs and AMs that NMFS considers to meet the statutory requirement and the standards for Secretarial approval.

Special Accommodations

The public meeting to be held in NMFS Silver Spring headquarters on March 9, 2007, will be accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Millikin (301–713–2341), by March 4, 2007.

Dated: February 9, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–681 Filed 2–9–07; 2:12 pm]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled the Application for the President's Higher Education Community Service Honor Roll to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and

Community Service, Mr. Robert Davidson at (202) 606–6906. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, *Attention:* Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: 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 Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on December 6, 2006. This comment period ended February 5, 2007. No comments were received. However, the Honor Roll's proposed new special focus area, college readiness services for underachieving disadvantaged youth, which was discussed in the earlier Notice, has received very positive support at several higher education community conferences over the last few months.

Description: The President's Higher Education Community Service Honor Roll and Awards program supports the President's Call to Service, the First Lady's Helping America's Youth initiative, and the Corporation's strategic goals, especially the goal of significantly increasing community service by college students. The Application for the President's Higher Education Community Service Honor Roll collects information from institutions of higher education about student community service activities, and—in this second year of the program—will include a special focus on educational and other college readiness services to underachieving youth in disadvantaged circumstances. Data from this application provide the basis for a national honor roll and awards program designed to promote awareness of higher education community service efforts and to inspire expanded and more effective service efforts in the future. This year's deadline for institutions to submit applications is July 31, 2007, based on information for the year ending June 30, 2007. It is expected that a similar application/ information collection activity will be repeated annually, with a similar annual deadline.

Type of Review: Revision.

Agency: Corporation for National and Community Service.

Title: Application for the President's Higher Education Community Service Honor Roll.

OMB Number: 3045–0102.

Agency Number: None.

Affected Public: All accredited U.S. degree-granting colleges and universities interested in being recognized for student community service activities.

Total Respondents: 1,000 estimated.

Frequency: Annual.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/ maintenance): None.

Dated: February 8, 2007.

Amy Cohen,

Director, Learn and Serve America.

[FR Doc. E7–2529 Filed 2–13–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 16, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 6, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Revision of a currently approved collection.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 10,800.

Abstract: The information contained in the Consolidated Annual Performance Report for Vocational Education is needed to monitor State performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998. The respondents include eligible agencies in 54 states and insular areas. This revision clarifies instructions and the collection of student enrollment data: 16 Career Clusters as well as the race and ethnicity.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3280. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* 202–245–6604. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–2535 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

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), Northern New Mexico. 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**. This meeting is being held in place of the January 31, 2007 meeting, which was cancelled due to inclement weather.

DATES: Monday, March 5, 2007, 2 p.m.–8:30 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov*.

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

2 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Christina Houston.
Establishment of a Quorum.
Welcome and Introductions by Chair, J. D. Campbell.
Approval of Agenda.
Approval of Minutes of September 27, 2006, Board Meeting.
Approval of Minutes of November 29, 2006, Board Meeting.
2:15 p.m. Board Business/Reports.
Old Business, Chair, J. D. Campbell.
Report from Chair, J. D. Campbell.
Report from Department of Energy (DOE), Christina Houston.
Report from Executive Director, Menice Santistevan.
Other Matters, Board Members.
New Business.
2:30 p.m. Facilitated Discussion on NNMCAB Member Expectations and Technical vs. Non-technical Work of the NNMCAB, Grace Perez and Pam Henline.
3 p.m. Break.
3:15 p.m. Committee Business/Reports.
A. Environmental Monitoring, Surveillance and Remediation Committee, Pam Henline.
B. Waste Management Committee, J. D. Campbell.
C. Ad Hoc Committee on Bylaws, Presentation of Proposed Amendments for First Reading, J. D. Campbell.
D. Appoint Ad Hoc Committee to Plan Agenda for Annual Retreat, J.D. Campbell.
4:15 p.m. Reports from Liaison Members.
U.S. Environmental Protection Agency, Rich Mayer.
DOE, George Rael.
Los Alamos National Security, Andy Phelps.
New Mexico Environment Department, James Bearzi.
5 p.m. Dinner Break.
6 p.m. Public Comment.
6:15 p.m. Consideration and Action on Recommendations to DOE.
6:45 p.m. Consideration and Action on Draft Public Participation Plan, J.D. Campbell.
7 p.m. Los Alamos National Laboratory Environmental Management Program under the estimated Fiscal Year 2007 funding.
8 p.m. Round Robin on Board Meeting and Presentations, Board Members.
8:15 p.m. Recap of Meeting: Issuance of Press Releases, Editorials, etc., J. D. Campbell.
8:30 p.m. Adjourn.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. 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 Menice Santistevan 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 of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Santistevan at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on February 8, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–2546 Filed 2–13–07; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

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: March 14, 2007 from 8:15 a.m. to 4 p.m.

March 15, 2007 from 8:15 a.m. to 5:30 p.m.

ADDRESSES: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Assistant Manager, Office of Intergovernmental Projects & Outreach, Golden Field Office, Energy Efficiency and Renewable Energy (EERE), 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 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

- (March 14, 2007)
  - —Presentations and discussion sessions will be provided by the following offices of the Department of Energy's office of Energy Efficiency and Renewable Energy: Office of Technology Development; Office of Technology Advancement & Outreach; Biomass Program.
  - —Discussion/response to presentations.
- (March 15, 2007)
  - —Presentations and discussion sessions will be provided by the following offices of the Department of Energy's office of Energy Efficiency and Renewable Energy: Geothermal Technologies Program; Wind and Hydrogen Technologies Program; Weatherization and Intergovernmental Program; and the FreedomCAR & Vehicle Technologies Program.
  - —Discussion/response to presentations.
  - —Strategy sessions for developing potential resolutions and recommendations.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. 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 presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. 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 at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 8, 2007.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–2548 Filed 2–13–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1284–000]

Blue Canyon Windpower, LLC; Notice of Issuance of Order

October 22, 2003.

Blue Canyon Windpower, LLC (Blue Canyon) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy, and the reassignment of transmission capacity at market-based rates. Blue Canyon also requested waiver of various Commission regulations. In particular, Blue Canyon requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Blue Canyon.

On October 15, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Blue Canyon should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 20, 2007.

Absent a request to be heard in opposition by the deadline above, Blue Canyon is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Blue Canyon, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Blue Canyon's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the e library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2531 Filed 2–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–028]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

February 7, 2007.

Take notice that on December 15, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing illustrative examples of how a rate is calculated along with explanations and assumptions used to calculate rates under certain negotiated rate formulas.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 14, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2481 Filed 2–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–61–002]

North Baja Pipeline, LLC; Notice of Amendment to Application

February 7, 2007.

Take notice that on February 1, 2007, North Baja Pipeline, LLC (North Baja), 1400 SW Fifth Avenue, Suite 900, Portland, Oregon 97201, filed in Docket No. CP06–61–002, an amendment, pursuant to section 7 of the Natural Gas Act (NGA), to its application filed on February 7, 2006, as amended on November 21, 2006, to remove the Blythe Energy Interconnect (BEI) Lateral. Specifically, North Baja's amendment addresses only the 40-feet of 8-inch diameter pipeline from the proposed Blythe-Arrowhead Meter Station to the existing Blythe Energy Facility I supply pipeline. North Baja does not propose any changes to the transportation capacity of its proposed expansion, all as more fully set forth in the request which is on file with 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Carl M. Fink, Associate General Counsel, North Baja Pipeline, LLC, 1400 SW. Fifth Avenue, Suite 900, Portland, Oregon, 97201 at (503) 833–4256 or *Carl_Fink@TransCanada.com.*

The facilities associated with the BEI Lateral are described in the draft environmental impact statement (EIS) for the North Baja Pipeline Expansion Project that was issued on September 22, 2006 for public comment. Environmental comments received on this amendment will be combined with those received on the draft EIS and will be addressed in the final EIS prepared for the North Baja Pipeline Expansion Project. The Commission staff will determine if this amendment will have an effect on the schedule for the environmental review of this project. If necessary, a revised Notice of Schedule for Environmental Review will be issued within 90 days of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 28, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2483 Filed 2–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

February 8, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–58–000.

Applicants: Lockhart Power Company; Milliken & Company.

Description: Milliken & Company and Lockhart Power Company submit a joint application, under Section 203 of the FPA, for disclaimer of jurisdiction or, in the alternative application for approval of internal corporate reorganization.

Filed Date: 2/2/2007.

Accession Number: 20070206–0047.

Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–38–000.

Applicants: Post Oak Wind, LLC.

Description: Post Oak Wind, LLC submits a notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 2/1/2007.

Accession Number: 20070201–5018.

Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–4122–021; ER00–2268–021; ER99–4124–017

Applicants: APS Energy Services Company; Pinnacle West Capital Corporation; Arizona Public Service Company.

Description: Pinnacle West Capital Corporation et al submit an errata to the Notice of a Non-Material Change in Status of generation capacity filed on 1/19/07.

Filed Date: 02/05/2007.

Accession Number: 20070206–0195.

Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER02–1330–007.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits an errata to their 1/17/07 compliance filing, pursuant to FERC's 12/18/06 Order.

Filed Date: 2/6/2007.

Accession Number: 20070208–0094.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Docket Numbers: ER04–47–003.

Applicants: PB Financial Services, Inc.

Description: PB Financial Services, Inc submits First Revised FERC Rate Schedule 1, Substitute Original Sheet 1 and an Updated Triennial Market Analysis.

Filed Date: 2/5/2007.

Accession Number: 20070206–0188.

Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER06–1099–003.

Applicants: Midwest Independent Transmission Operator, Inc.

Description: Midwest Independent Transmission Operator Inc submits its proposed revisions to its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 2/5/2007.

Accession Number: 20070207–0109.

Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER06–1453–002.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits a corrected version that addresses the errors found in its 1/9/07 filing of Wholesale Market Participation Agreement.

Filed Date: 1/31/2007.

Accession Number: 20070207–0067.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 21, 2007.

Docket Numbers: ER07–127–002.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits an errata to its 1/29/06 compliance filing.

Filed Date: 2/2/2007.

Accession Number: 20070207–0018.

Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–352–001.

Applicants: S.D. Warren Company.

Description: SD Warren Co submits a proposed Substitute Original Sheet 1 reflecting a change in Section 6 re its 12/22/06 filing of a petition for order.

Filed Date: 2/2/2007.

Accession Number: 20070207–0097.

Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–357–001.

Applicants: Fenton Power Partners I, LLC.

Description: Fenton Power Partners I, LLC submits its response to the Commission's additional Information Request.

Filed Date: 2/2/2007.

Accession Number: 20070202–5061.

Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–389–001.

Applicants: Power Provider, LLC.

Description: Power Provider, LLC submits a request that the effective cancellation date in its notice be revised from December 29 to December 30.

Filed Date: 1/25/2007.

Accession Number: 20070125–5010.

Comment Date: 5 p.m. Eastern Time on Thursday, February 15, 2007.

Docket Numbers: ER07–475–001.

Applicants: California Independent System Operator.

Description: California Independent System Operator Corp submits a replacement clean Tariff Sheet 346A that contains the omitted portion of proposed tariff Section 24.1.3 re the 1/27/07 compliance filing.

Filed Date: 2/2/2007.

Accession Number: 20070207–0094.

Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–494–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc on behalf Southern Companies submits an errata to its 2/1/07 compliance filing in accordance with Order 2006–B.

Filed Date: 2/2/2007.

Accession Number: 20070207–0020.

Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–503–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits a Notice of Cancellation of FERC Electric Tariff, Third Revised Volume 1, Revised Wholesale Power Service Tariff—Schedule W.

Filed Date: 2/2/2007.

Accession Number: 20070206–0127.

Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–505–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits a Notice of Cancellation of Standby Service Facilities Agreement with the City of New London Utilities.

Filed Date: 2/2/2007.

Accession Number: 20070206–0129.

Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–506–000.

Applicants: PSEG Energy Resources & Trade LLC.

Description: PSEG Energy Resources & Trade LLC submits its Second Substitute Original Sheet 2, to FERC Electric Tariff, Original Volume 2.
Filed Date: 2/2/2007.
Accession Number: 20070206–0128.
Comment Date: 5 p.m. Eastern Time on Friday, February 23, 2007.

Docket Numbers: ER07–513–000.
Applicants: Vermont Transco LLC.
Description: Vermont Transco LLC submits revisions to the 1991 Transmission Agreement that reflects the unique public-private partnership w/various entities located in Vermont.
Filed Date: 2/5/2007.
Accession Number: 20070206–0186.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER07–514–000.
Applicants: G&G Energy, Inc.
Description: G&G Energy, Inc submits a petition for acceptance of initial tariff, waivers and blanket authority.
Filed Date: 2/5/2007.
Accession Number: 20070206–0187.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER07–515–000.
Applicants: Domtar Corporation.
Description: Domtar Corp submits a petition for market-based rate authority, acceptance of initial rate schedule, waivers and blanket authority.
Filed Date: 2/5/2007.
Accession Number: 20070207–0093.
Comment Date: 5 p.m. Eastern Time on Monday, February 26, 2007.

Docket Numbers: ER07–517–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits a Transmission Interconnection Agreement with Great River Energy and Northern States Power Co.
Filed Date: 2/6/2007.
Accession Number: 20070207–0112.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Docket Numbers: ER07–518–000.
Applicants: Louisville Gas & Electric Company; Kentucky Utilities Company.
Description: Louisville Gas and Electric Co and Kentucky Utilities Co submit two service agreements for Cost-Based Sales of Capacity and Energy, Service Agreements 1 and 2, Original Volume No. 5.
Filed Date: 2/6/2007.
Accession Number: 20070207–0096.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Docket Numbers: ER07–519–000.
Applicants: Louisville Gas and Electric Company; Kentucky Utilities Company; LG&E Energy Marketing Inc.
Description: Louisville Gas & Electric Company and Kentucky Utilities Co submit amendments to their respective Tariffs for Cost-Based Sales of Capacity and Energy Tariffs to include pro forma service agreement to be effective 2/7/07.
Filed Date: 2/6/2007.
Accession Number: 20070207–0110.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Docket Numbers: ER07–520–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits an Amended & Restated Interconnection Agreement with the City of Lebanon, Ohio.
Filed Date: 2/6/2007.
Accession Number: 20070207–0108.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 27, 2007.

Take notice that the Commission received the following foreign utility company status filings:
Docket Numbers: FC07–8–000.
Applicants: Spectra Energy Corp; Union Gas Limited.
Description: Spectra Energy Corp submits a Notice of Self-Certification of Foreign Utility Company Status.
Filed Date: 02/01/2007.
Accession Number: 20070206–0052.
Comment Date: 5 p.m. Eastern Time on Thursday, February 22, 2007.

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.

Magalie R. Salas,
Secretary.
[FR Doc. E7–2539 Filed 2–13–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–98–002]

Columbia Gulf Transmission Company; Notice of Technical Conference

February 7, 2007.

Take notice that the Commission will convene a technical conference on Thursday, February 15, 2007, from 9 a.m. to 1 p.m., in Room 3M3 at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington DC 20426.

The technical conference will provide a forum to discuss Columbia Gulf Transmission Company's (Columbia Gulf) compliance filing of January 5, 2007 which proposes a 15° F cricondentherm hydrocarbon dewpoint (CHDP) safe harbor and related provisions. The Commission required Columbia Gulf to make this filing and established a technical conference for the filing in an order issued August 1, 2006.[1]

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail

[1] *Indicated Shippers* v. *Columbia Gulf Transmission Company,* 116 FERC ¶ 61,112 (2006).

to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Keith Pierce at (202) 502–8525 or e-mail *keith.pierce@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E7–2482 Filed 2–13–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Base Charge and Rates Adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment to the Boulder Canyon Project (BCP) electric service base charge and rates. The current base charge and rates expire September 30, 2007. The current base charge is not sufficient to pay all annual costs including operation, maintenance, replacements, and interest expense, and to repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to pay all annual costs and to repay investment obligations within the allowable period. A detailed rate package that identifies the reasons for the base charge and rates adjustment will be available in March 2007. The proposed base charge and rates are scheduled to become effective on October 1, 2007, and will remain in effect through September 30, 2008. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 15, 2007. Western representatives will explain the proposed base charge and rates at a public information forum on April 11, 2007, beginning at 10:30 a.m. MST, in Phoenix, Arizona (AZ). Interested parties can provide oral and written comments at a public comment forum on May 9, 2007, beginning at 10:30 a.m. MST, at the same location. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The meetings will be held at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, AZ. Send written comments to: J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *carlson@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post information about the rate process on its Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.* Western will post official comments received via letter and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification, such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, at the time of the meeting. Foreign nationals should contact Western at least 45 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposed base charge and rates for BCP electric service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payment to states, visitor services, and uprating payments. The total costs are offset by the projected revenue from water sales, visitor services, water pumping energy sales, facilities use charges, regulation and spinning reserve services, miscellaneous leases, and late fees. The projected annual revenue requirement is the base charge for electric service and is divided equally between capacity dollars and energy dollars. Annual energy dollars are divided by annual energy sales, and annual capacity dollars are divided by annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

The Deputy Secretary of Energy approved the existing rate formula for calculating the base charge and rates in Rate Schedule BCP–F7 for BCP electric service on August 11, 2005, (Rate Order No. WAPA–120, 70 FR 50316, August 26, 2005). The Federal Energy Regulatory Commission (Commission) confirmed and approved the rate formula on a final basis in Docket No. EF05–5091–000 issued June 22, 2006 (115 FERC ¶ 61,362). Rate Schedule BCP–F7 became effective on October 1, 2005, for the period ending September 30, 2010. Under Rate Schedule BCP–F7, for FY 2008, the base charge is $74,898,171, the forecasted energy rate is 9.33 mills per kilowatthour (mills/kWh), the forecasted capacity rate is $1.81 per kilowattmonth (kWmonth), and the composite rate is 18.65 mills/kWh.

Under Rate Schedule BCP–F7, the proposed rates for BCP electric service will result in an overall composite rate increase of about 10 percent. The following table compares the current and proposed base charge and rates.

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

	Current October 1, 2006 through September 30, 2007	Proposed October 1, 2007 through September 30, 2008	% Change Increase
Total Composite (mills/kWh)	17.02	18.65	10
Base Charge ($)	67,509,136	74,898,171	11
Energy Rate (mills/kWh)	8.51	9.33	10
Capacity Rate ($/kWmonth)	1.63	1.81	11

The increase in the electric service base charge and rates is primarily the result of higher annual costs associated with operation and maintenance, visitor services, uprating program payments, replacements, and no increase in revenue projections for the visitor services.

Legal Authority

Western will hold both a public information forum and a public comment forum. After considering comments, Western will recommend the proposed base charge and rates for final approval by the Deputy Secretary of Energy.

Western is establishing an electric service base charge and rates for BCP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Availability of Information

Interested parties may review and copy all brochures, studies, comments, letters, memorandums or other documents that Western initiates or uses to develop the proposed rates. These documents are at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, AZ. Many of these documents and supporting information are also available on its Web site located at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm*.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities, and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking specifically involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); the Council On Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: January 26, 2007.

Timothy J. Meeks,

Administrator.

[FR Doc. E7–2527 Filed 2–13–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2007–0042; FRL–8277–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Renewal of Information Collection Request for the National Oil and Hazardous Substances Pollution Contingency Plan Regulation Subpart J; EPA ICR No. 1664.06, OMB Control No. 2050–0141

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on 6/30/2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 16, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OPA–2007–0042, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Nichols.nick@epa.gov.*
- *Fax:* 202–564–2625.
- *Mail:* [EPA–HQ–OPA–2007–0042], Environmental Protection Agency, Mailcode: 5104A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Environmental Protection Agency, Mailcode: 5104A, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OPA–2007–0042. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: William ''Nick'' Nichols, Office of Emergency Management, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–1970; *fax number:* 202–564–2625; *e-mail address: Nichols.nick@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPA–2007–0042, which is available for online viewing at *www.regulations.gov*, or in-person viewing at the Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OPA Docket is 202–566–0270. Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

[Docket ID No. EPA–EPA–HQ–OPA–2007–0042]

Affected entities: Entities potentially affected by this action are Respondents including, but are not limited to, manufacturers of bioremediation agents, dispersants, surface collecting agents, surface washing agents and other chemical agents and biological additives used as countermeasures against oil spills. Affected private industries can be expected to fall within the following industrial classifications:

- Manufacturers of industrial inorganic chemicals (SIC 281/NAICS 325188),
- Manufacturers of industrial organic chemicals (SIC 286/NAICS 325199), and
- Manufacturers of miscellaneous chemical products (SIC 289/NAICS 325998).

Title: Renewal of Information Collection Request for the National Oil and Hazardous Substances Pollution Contingency Plan Regulation, Subpart J (40 CFR 300.900)

ICR numbers: EPA ICR No. 1664.06 OMB Control No. 2050–0141.

ICR status: This ICR is currently scheduled to expire on 6/30/2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 311(d)(2)(G) of the Clean Water Act (CWA), requires a product schedule, identifying ''dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out'' the National Contingency Plan (NCP). The authority of the President to implement the CWA is currently delegated to EPA by Executive Order 12777 (56 FR 54757, October 18, 1991). The use of dispersants, other chemical agents, and biological additives to respond to oil spills in U.S. waters is governed by Subpart J of the NCP (40 CFR 300.900). The information collected is mandatory if you wish to place a product on the Schedule. Most required information needs to be submitted on paper however, once a company contacts EPA, the Product Schedule Manager can allow some data and information to be sent electronically.

The Schedule is available for use by On-Scene Coordinators (OSC), Regional Response Teams, and Area Committees in determining the most appropriate products to use or prohibit in various spill scenarios. Under 40 CFR 300.910(a), RRTs and Area Committees are required to address the desirability of using the products on the Schedule in their REGIONAL CONTINGENCY PLANS (RCPs) and AREA CONTINGENCY PLANS (ACPs), respectively. The required information is needed from the respondent so that the OSCs, RRTs, and Area Committees can make informed decisions to safely employ chemical/biological countermeasures to control oil discharges. Correct product use is critical in emergency situations. Subpart J ensures that OSCs, RRTs, and Area Committees have necessary data regarding the toxicity, effectiveness, and other characteristics of different products.

To place a product on the Schedule, Subpart J requires that the manufacturer conduct specific toxicity and effectiveness tests and submit the corresponding technical product data and other required information to EPA Office of Emergency Management (OEM). EPA has established an effectiveness threshold for listing dispersants (40 CFR 300.920(a)(2)). Only those dispersants that meet or exceed

the established threshold will be listed on the Schedule.

At 40 CFR 300.915(d), EPA requires respondents to test bioremediation agents for effectiveness, using the testing protocol contained in Appendix C to part 300. The Bioremediation Agent Effectiveness Test is used to compare the effectiveness of different bioremediation agents. The objective of the effectiveness testing protocol is to provide empirical laboratory evidence that evaluates a bioremediation agent's ability to enhance biodegradation as compared to the natural population.

Practical Utility/Users of the Data

EPA places eligible oil spill mitigating agents on the Schedule if all the required data are submitted. The Schedule is available for use by OSCs, RRTs, and Area Committees in determining the most appropriate products to use in various spill scenarios. Under 40 CFR 300.910(a), RRTs and Area Committees are required to address the desirability of using the products on the Schedule in their RCPs and ACPs, respectively. The required information is needed from the respondent so that the OSCs, RRTs, and Area Committees can make informed decisions to safely employ chemical/biological countermeasures to control oil discharges. Correct product use is critical in emergency situations. Subpart J ensures that OSCs, RRTs, and Area Committees have the necessary data regarding the toxicity, effectiveness, and other characteristics of different products.

At 40 CFR 300.920(c), respondents are allowed to assert that certain information in the technical product data submissions is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked ''Confidential Business Information.'' If the applicant fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 57 to 122 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 14 per year.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1 response for each respondent.

Estimated total annual burden hours: 390 hours for all 14 respondents.

Estimated total annual costs: $100,092, this includes an estimated burden cost of $17,292 and an estimated cost of $82,800 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is no change of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. EPA anticipates the same number of annual burden hours or capital and O&M costs under this ICR renewal. The only modifications made to figures in this ICR supporting statement involve updates to the wage rates associated with respondent and EPA personnel activities. Labor costs are not reported in the OMB inventory.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 8, 2007.

Deborah Y. Dietrich,

Director, Office of Emergency Management.

[FR Doc. E7–2544 Filed 2–13–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0994; FRL–8115–2]

Exposure Modeling; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Exposure Modeling Public Meeting (EMPM) will be held for one day on February 27, 2007. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on February 27, 2007 from 9:00 am to 3:30 pm.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (South Bldg.), Rooms S-4370 and S-4380, 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Greg Orrick, Environmental Fate and Effects Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6140; fax number: (703) 305-6309; e-mail address: *orrick.greg@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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–OPPT–2006–0994. 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 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. Background

On a triannual interval, an Exposure Modeling Public Meeting will be held for presentation and discussion of current issues in modeling pesticide fate, transport, and exposure in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2006–0994, must be received on or before March 1, 2007.

IV. Tentative Agenda

9:00 am: Welcome, Introductions, and Brief Updates

9:30 am: Development of MUSS (Jimmy Williams, USDA/ARS)

10:15 am: Degradation Influenced by Soil Temperature under Cropped and Base Soil Conditions (Natalia Peranginangin, Syngenta Crop Protection, Inc.)

10:45 am: Factors Impacting Pesticide Runoff from Warm-Season Turf (Joe Massey, MSU)

11:30 am: Sediment Concentrations: Implications of the Current Conceptual Model (Paul Hendley, Syngenta Crop Protection, Inc.)

12:00 pm: Lunch

1:00 pm: Status Report on Field Evaluation and REMM Modeling of a Pesticide Runoff Buffer (Rob Everich, Makhteshim-Agan of North America)

1:15 pm: Forest Canopy Delivery of Pesticides to a Riparian Buffer Area (Cliff Rice, USDA/ARS)

1:45 pm: High Priority Changes for PRZM (Dirk Young, USEPA/EFED)

2:00 pm: GeoSTAC: GEOSpatial Tools and ACcess (Patrick Havens, Dow AgroSciences LLC)

2:45 pm: Kinetic Analysis of Metabolism Data (William Eckel, USEPA/EFED)

3:15 pm: Wrap-up

List of Subjects

Environmental protection, Modeling, Pesticides, Pest.

Dated: February 8, 2007.

Sidney Abel,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs

[FR Doc. E7–2561 Filed 2–13–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

February 6, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 16, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1033.

Title: Multi-Channel Video Program Distribution EEO Program Annual Report.

Form Number: FCC Form 396–C.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,200.

Estimated Time per Response: 10 minutes–2.5 hours.

Frequency of Response: Recordkeeping requirement; Annual reporting requirement; Every five year reporting requirement.

Total Annual Burden: 3,187 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Needs and Uses: The FCC Form 396–C is a collection device used to assess compliance with the Equal Employment Opportunity (EEO) program requirements by Multi-channel Video programming Distributors (MPVDs). It is publicly filed to allow interested parties to monitor a MPVD's compliance with the Commission's EEO requirements. All MVPDs must file annually an EEO report in their public file detailing various facts concerning their outreach efforts during the preceding year and the results of those efforts. MVPDs will be required to file their EEO public file report for the preceding year as part of the in-depth MVPD investigation conducted once every five years.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–2450 Filed 2–13–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 2, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 16, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit PRA comments identified by [CG Docket No. 03–123 and/or OMB Control Number 3060–1053], by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site*: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their PRA comments to *PRA@fcc.gov* and to Allison E. Zaleski at *Allison_E._Zaleski@omb.eop.gov*. Please include the docket number and/or OMB Control number in the subject line of the message.
- *Mail/Fax:* Parties who choose to file by paper should submit their PRA comments to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street SW., Washington, DC 20554, and to Allison E. Zaleski, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via fax at (202) 395–5167.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1053.

Title: 47 CFR 64.604—Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; IP Captioned Telephone Service, Declaratory Ruling, CG Docket No. 03–123.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.

Estimated Time per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 96 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personal identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Use: On August 1, 2003, the Commission released the *Declaratory Ruling*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67, FCC 03–190. In the *Declaratory Ruling*, the Commission clarified that one-line captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. The Commission also clarified that certain TRS mandatory minimum standards does not apply to one-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules for all current and future captioned telephone VCO service providers, for the same period of time beginning August 1, 2003. The waivers were contingent on the filing of annual reports, for a period of three years, with the Commission. Sections 64.604 (a)(1) and (a)(3) of the Commission's rules, which contained information collection requirements under the PRA became effective on March 26, 2004.

On July 19, 2005, the Commission released an *Order*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67 and CG Docket No. 03–123, FCC 05–141, that clarified two-line captioned telephone VCO service, like one-line captioned telephone VCO service, is a type of TRS eligible for compensation from the Interstate TRS Fund. Also, the Commission clarified that certain TRS mandatory minimum standards do not apply to two-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules, for providers who offers two-line captioned VCO service. This clarification increased the number of providers who will be providing one-line and two-line captioned VCO services.

On January 11, 2007, the Commission released a *Declaratory Ruling*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–182, granting a request for clarification that Internet Protocol (IP) captioned telephone relay service (IP CTS) is a type of TRS eligible for compensation from the Interstate TRS Fund when offered in compliance with the applicable TRS mandatory minimum standards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–2556 Filed 2–13–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

February 8, 2007.

SUMMARY: The Federal Communications Commission (Commission) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0292.
OMB Approval date: 1/10/2007.
Expiration Date: 1/31/2010.
Title: Part 69—Access Charges (Section 69.605, Reporting and Distribution of Pool Access Revenues.
Form No.: N/A.
Estimated Annual Burden: 15,000 responses; 11,250 total annual burden hours.
Needs and Uses: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies. Local telephone companies and states are required to submit information to the Commission and/or the National Exchange Carrier Association. The information is used to compute charges in tariffs for access service (or origination and termination) and to computer revenue pool distributions.

OMB Control No.: 3060–0743.
OMB Approval date: 1/16/2007.
Expiration Date: 1/31/2010.
Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128. Part 36—Separations.
Form No.: N/A.
Estimated Annual Burden: 10,071 responses; 118,137 total annual burden hours.
Needs and Uses: The Commission has rules and requirements implementing Section 276 of the Telecommunications Act of 1996. Among other things, the rules: (1) Establish fair compensation for every completed intrastate and interstate payphone call; (2) discontinue intrastate and interstate access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone.

OMB Control No.: 3060–0775.
OMB Approval date: 1/16/2007.
Expiration Date: 1/31/2010.
Title: Section 64.1903, Obligations of All Incumbent Local Exchange Carriers (LECs).
Form No.: N/A.
Estimated Annual Burden: 10 responses; 60,560 total annual burden hours.
Needs and Uses: Independent Local Exchange Carriers (LECs) wishing to offer international, inter-exchange services must comply with the separate affiliate requirements of the *Competitive Carrier Fifth Report and Order* in order to do so. One of these requirements is that the independent LEC's international, inter-exchange affiliate must maintain books of account separate from such LEC's local exchange and other activities. This regulation does not require that the affiliate maintain books of account that comply with the Commission's Part 32 rules; rather, it refers to the fact that as a separate legal entity, the international, inter-exchange affiliate must maintain its own books of account in the ordinary course of its business.

OMB Control No.: 3060–0952.
OMB Approval date: 1/10/2007.
Expiration Date: 1/31/2010.
Title: Proposed Demographic Information and Notifications, Second FNPRM, CC Docket No. 98–147 and Fifth NPRM, CC Docket No. 96–98.
Form No.: N/A.
Estimated Annual Burden: 10,071 responses; 118,137 total annual burden hours.
Needs and Uses: The Commission requires incumbent LECs to provide requesting carriers with demographic and other information regarding particular remote terminals similar to the information available regarding incumbent LEC central offices. Requesting carriers use demographic and other information obtained from incumbent LECs to determine whether they wish to collocate at particular remote terminals.

OMB Control No.: 3060–1096.
OMB Approval date: 2/05/2007.
Expiration Date: 2/28/2010.
Title: Prepaid Calling Card Service Provider Certification, WC Docket 05–68.
Form No.: N/A.
Estimated Annual Burden: 3,148 responses; 78,700 total annual burden hours.
Needs and Uses: Prepaid calling card service providers must now report quarterly the percentage of interstate, intrastate and international access charges to carriers from which they purchase transport services. Prepaid calling card providers must also file certifications with the Commission quarterly that include the above information and a statement that they are contributing to the federal Universal Service Fund based on all interstate and international revenue, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with the DoD or a DoD entity.

Federal Communications Commission.
William F. Caton,
Secretary.
[FR Doc. E7–2575 Filed 2–13–07; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Broadcast Proposals To Change the Community of License

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: The following applicants filed AM or FM broadcast proposals to change the community of license: AAA LICENSING LLC, BPH–20070119AAC, Station WEHM, Facility ID 52059, From SOUTHAMPTON, NY, To MANORVILLE, NY; ACE RADIO CORPORATION, BNPH–20060308AJG, Station NEW, Facility ID 166075, From MERTZON, TX, To WALL, TX; ACE RADIO CORPORATION, BMPH–20070119AHF, Station KRPH, Facility ID 166065, From YARNELL, AZ, To MORRISTOWN, AZ; ACE RADIO CORPORATION, BMPH–20070119AHW, Station KGRP, Facility ID 166069, From JENNER, CA, To CAZADERO, CA; AGM CALIFORNIA, BPH–20070119AHV, Station KGFM, Facility ID 36234, From BAKERSFIELD, CA, To EDISON, CA; AIM BROADCASTING–PHOENIX/TUCSON LLC, BP–20070119AFP, Station KSAZ, Facility ID 51079, From MARANA, AZ, To QUEEN CREEK, AZ. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Comments may be filed through April 16, 2007.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm*. A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

Additionally, the following applicants filed AM or FM broadcast proposals to change the community of license: ALELUYA CHRISTIAN BROADCASTING, INC, BP–20061208ACE, Station KBRZ, Facility ID 12156, From FREEPORT, TX, To MISSOURI CITY, TX; ALELUYA CHRISTIAN BROADCASTING, INC, BP–20070125ADS, Station KBRZ, Facility ID 12156, From FREEPORT, TX, To MISSOURI CITY, TX; ALEXXON CORP., BMPH–20070119AHD, Station NEW, Facility ID 166090, From GROVETON, NH, To LUNENBURG, VT; ALPINE BROADCASTING CORP., INC., BPH–20070119ADS, Station WAVV, Facility ID 1154, From MARCO, FL, To NAPLES PARK, FL; ANASTOS MEDIA GROUP, INC., BP–20070119AEY, Station WUAM , Facility ID 72620, From SARATOGA SPRINGS, NY, To WATERVLIET, NY; AURORA MEDIA, LLC, BMPH–20070119AIH, Station KMOA, Facility ID 164097, From CALIENTE, NV, To MOAPA, NV; BLUE CHIP BROADCASTING LICENSES, LTD, BPH–20070119AGF, Station WDHT, Facility ID 60252, From SPRINGFIELD, OH, To URBANA, OH; BLUE CHIP BROADCASTING LICENSES, LTD, BPH–20070119AGI, Station WKSW, Facility ID 10113, From URBANA, OH, To ENON, OH; BMP AUSTIN LICENSE COMPANY, L.P., BPH–20070119AER, Station KXXS, Facility ID 40762, From DRIPPING SPRINGS, TX, To BEE CAVE, TX; BONNEVILLE HOLDING COMPANY, BPH–20070119AFU, Station WTWP–FM, Facility ID 21636, From WARRENTON, VA, To MANASSAS, VA; BROADCAST COMMUNICATIONS, INC., BMPH–20070119AGW, Station WROG, Facility ID 49384, From CUMBERLAND, MD, To CHAMBERSBURG, PA; BROADCAST COMMUNICATIONS, INC., BPH–20070119AGZ, Station WANB–FM, Facility ID 32210, From WAYNESBURG, PA, To MOUNT PLEASANT, PA; BRUNDAGE MOUNTAIN AIR INC., BPH–20061020ACA, Station KMCL–FM, Facility ID 7377, From MCCALL, ID, To PARMA, ID; BURBACH OF DE, LLC, BPH–20070119AAU, Station WRZZ, Facility ID 41082, From ELIZABETH, WV, To PARKERSBURG, WV; BURBACH OF DE, LLC, BPH–20070119AAW, Station WXIL, Facility ID 52015, From PARKERSBURG, WV, To ELIZABETH, WV; CAMERON BROADCASTING, INC., BPH–20070119AIE, Station KFLG–FM, Facility ID 55495, From KINGMAN, AZ, To BIG RIVER, CA; CAPSTAR TX LIMITED PARTNERSHIP, BPH–20070119AFN, Station WVRR, Facility ID 46334, From NEWPORT, NH, To WESTMINSTER, VT; CCR–ST. GEORGE IV, LLC, BPH–20070108AAW, Station KSNN, Facility ID 60457, From ST. GEORGE, UT, To LOGANDALE, NV; CHAMPLIN BROADCASTING, INC., BMPH–20070119AHK, Station NEW, Facility ID 165312, From ALVA, OK, To NORTH ENID, OK; CHISHOLM TRAIL BROADCASTING CO., BMPH–20070119AHJ, Station KNID, Facility ID 37123, From ALVA, OK, To MUSTANG, OK; CITADEL BROADCASTING COMPANY, BPH–20070119AEM, Station WNKT, Facility ID 38900, From ST. GEORGE, SC, To EASTOVER, SC; CITICASTERS LICENSES, L.P., BPH–20070119ADL, Station WFUS, Facility ID 63984, From BRADENTON, FL, To GULFPORT, FL; CITICASTERS LICENSES, L.P., BPH–20070119AHS, Station WJBT, Facility ID 68760, From GREEN COVE SPRINGS, FL, To HASTINGS, FL; CLEAR CHANNEL BROADCASTING LICENSES, INC., BMPH–20070119AEB, Station KRVK, Facility ID 88406, From MIDWEST, WY, To BAR NUNN, WY; CLEAR CHANNEL BROADCASTING LICENSES, INC., BPH–20070119AED, Station KWYY, Facility ID 26300, From CASPER, WY, To MIDWEST, WY; CLEAR CHANNEL BROADCASTING LICENSES, INC., BPH–20070119AEK, Station WLDI, Facility ID 2680, From FORT PIERCE, FL, To JUNO BEACH, FL; CLEAR CHANNEL BROADCASTING LICENSES, INC., BPH–20070119AFQ, Station WTSM, Facility ID 4910, From SPRINGFIELD, VT, To SWANZEY, NH; CLEAR CHANNEL BROADCASTING LICENSES, INC., BPH–20070119AHM, Station WKGR, Facility ID 1245, From FORT PIERCE, FL, To WELLINGTON, FL; CLEAR CHANNEL BROADCASTING LICENSES, INC., BPH–20070119AHR, Station WPLA, Facility ID 51974, From JACKSONVILLE, FL, To GREEN COVE SPRINGS, FL; CMP KC LICENSING, LLC, BMPH–20070119AAK, Station KMJK, Facility ID 33713, From LEXINGTON, MO, To NORTH KANSAS CITY, MO; COCHISE BROADCASTING LLC, BMPH–20070119ABZ, Station NEW, Facility ID 166049, From TORREY, UT, To MILFORD, UT; COCHISE BROADCASTING LLC, BMPH–20070119AEF, Station NEW, Facility ID 166050, From TUBA CITY, AZ, To DONEY PARK, AZ; COMMONWEALTH BROADCASTING, LLC, BPH–20070119ADI, Station KSXY, Facility ID 72925, From MIDDLETOWN, CA, To GEYSERVILLE, CA; COMMONWEALTH BROADCASTING, LLC, BPH–20070119ADI, Station KSXY, Facility ID 72925, From MIDDLETOWN, CA, To GEYSERVILLE, CA; COX RADIO, INC., BPH–20070119AHN, Station WHIO–FM, Facility ID 73908, From PIQUA, OH, To SHARONVILLE, OH; CUMULUS LICENSING LLC, BPH–20070119AAG, Station WFAS–FM, Facility ID 14380, From WHITE PLAINS, NY, To BRONXVILLE, NY; CUMULUS LICENSING LLC, BPH–20070119AAH, Station WWIZ, Facility ID 23437, From MERCER, PA, To WEST MIDDLESEX, PA; CUMULUS LICENSING LLC, BMPH–20070119AAI, Station NEW, Facility ID 162261, From LANESBORO, MN, To CHATFIELD, MN; CUMULUS LICENSING LLC, BMPH–20070119ADF, Station NEW, Facility ID 164159, From HUMBOLDT, NE, To EFFINGHAM, KS; CUMULUS LICENSING LLC, BMPH–20070119ADH, Station NEW, Facility ID 162254, From DINOSAUR, CO, To PARACHUTE, CO; CUMULUS LICENSING LLC, BPH–20070119AFH, Station KNRQ–FM, Facility ID 12501, From EUGENE, OR, To TUALATIN, OR; EDUCATIONAL MEDIA FOUNDATION, BPH–20070119AFL, Station KLVS, Facility ID 70676, From GRASS VALLEY, CA, To CITRUS HEIGHTS, CA; EDUCATIONAL MEDIA FOUNDATION, BPH–20070119AGP, Station KYAR, Facility ID 36844, From GATESVILLE, TX, To LORENA, TX; EDUCATIONAL MEDIA FOUNDATION, BPH–20070119AHA, Station KLVA, Facility ID 2749, From CASA GRANDE, AZ, To MARICOPA, AZ; EDUCATIONAL MEDIA FOUNDATION, BPH–20070119AHG, Station KKLC, Facility ID 60022, From MT. SHASTA, CA, To FALL RIVER MILLS, CA; ELGIN BROADCASTING CO., INC., BPH–20070119AHP, Station WJKL, Facility ID 19221, From ELGIN, IL, To GLENDALE HEIGHTS, IL; ENTERCOM SACRAMENTO LICENSE, LLC, BP–20070119ACI, Station KCTC , Facility ID 67848, From

SACRAMENTO, CA, To WEST SACRAMENTO, CA; FARM & HOME BROADCASTING COMPANY, BPH–20070119AAL, Station WFRM–FM, Facility ID 21197, From COUDERSPORT, PA, To PORTVILLE, NY; FFD HOLDINGS I, INC., BPH–20070119AEH, Station KMOQ, Facility ID 64435, From BAXTER SPRINGS, KS, To COLUMBUS, KS; FFD HOLDINGS I, INC., BPH–20070119AFB, Station KCAR–FM, Facility ID 86554, From GALENA, KS, To BAXTER SPRINGS, KS; FFD HOLDINGS I, INC., BP–20070119AEP, Station KQYX , Facility ID 5268, From JOPLIN, MO, To GALENA, KS; FIRST BROADCASTING CAPITAL PARTNERS, LLC, BPH–20070122AKI, Station WAOL, Facility ID 56226, From RIPLEY, OH, To AMELIA, OH; FRANKLIN COMMUNICATIONS, INC., BPH–20070119ACO, Station WJZK, Facility ID 30563, From RICHWOOD, OH, To GRANDVIEW HEIGHTS, OH; FRANKLIN COMMUNICATIONS, INC., BPH–20070119ACQ, Station WQEL, Facility ID 7112, From BUCYRUS, OH, To RICHWOOD, OH; GAFFNEY BROADCASTING, INC., BMPH–20070119ACY, Station WAGI–FM, Facility ID 23006, From GAFFNEY, SC, To BESSEMER CITY, NC; GLADES MEDIA COMPANY LLP, BMPH–20070119AES, Station WAFC–FM, Facility ID 24230, From CLEWISTON, FL, To PALM BEACH GARDENS, FL; GLORY COMMUNICATIONS, INC., BPH–20070119AGD, Station WPDT, Facility ID 66643, From JOHNSONVILLE, SC, To COWARD, SC; GLORY COMMUNICATIONS, INC., BP–20070119AGC, Station WALD, Facility ID 27463, From WALTERBORO, SC, To JOHNSONVILLE, SC; GLORY COMMUNICATIONS, INC., BP–20070119AAM, Station WEAF, Facility ID 24146, From CAMDEN, SC, To SPRINGDALE, SC; HORIZON BROADCASTING GROUP LLC, BPH–20070119AAT, Station KWLZ–FM, Facility ID 13581, From WARM SPRINGS, OR, To WEST LINN, OR; HURON BROADCASTING, LLC, BPH–20070119AHU, Station KZLA, Facility ID 86866, From HURON, CA, To RIVERDALE, CA; J. L. BREWER BROADCASTING OF CLEVELAND, LLC, BPH–20070119AGX, Station WALV–FM, Facility ID 70784, From DAYTON, TN, To LAKESITE, TN; JACKMAN HOLDING COMPANY, LLC, BMPH–20070119AEL, Station NEW, Facility ID 166038, From STRATFORD, NH, To BRETTON WOODS, NH; JACKMAN PROPERTIES, LLC, BMP–20070119AHL, Station NEW, Facility ID 129643, From EXMORE, VA, To RUSHMERE, VA; JAMES FALCON, BMPH–20070119AHZ, Station NEW, Facility ID 164195, From SEYMOUR, TX, To PLEASANT VALLEY, TX; JOHN W. PIRKLE, BPH–20070119AAE, Station WNFZ, Facility ID 31837, From OAK RIDGE, TN, To POWELL, TN; KETELSEN, MATTHEW L, BMPH–20070119ACS, Station NEW, Facility ID 165993, From BELVIEW, MN, To WINTHROP, MN; KEVIN J. YOUNGERS, BMPH–20070119AET, Station KPCR, Facility ID 165960, From BURLINGTON, CO, To FOWLER, CO; KEVIN J. YOUNGERS, BMPH–20070119AGT, Station KEZZ, Facility ID 165959, From WALDEN, CO, To BERTHOUD, CO; KIXC–FM L.L.C., BPH–20070119ADM, Station KWFB, Facility ID 24249, From QUANAH, TX, To HOLLIDAY, TX; KM COMMUNICATIONS, INC., BMPH–20070119AIA, Station NEW, Facility ID 166046, From BRECKENRIDGE, TX, To CISCO, TX; KM RADIO OF INDEPENDENCE, L.L.C., BPH–20070119AEI, Station KQMG–FM, Facility ID 42080, From INDEPENDENCE, IA, To SOLON, IA; LANE COUNTY SCHOOL DISTRICT 4J, BPH–20070122AAD, Station KMKR, Facility ID 59346, From OAKRIDGE, OR, To CANYONVILLE, OR; LIFELINE MINISTRIES, INC., BPH–20070119ACU, Station WGTI, Facility ID 173, From WINDSOR, NC, To DUCK, NC; LINDA C. CORSO, BPH–20070119AAJ, Station KRDE, Facility ID 37577, From GLOBE, AZ, To SAN CARLOS, AZ; LIVEAIR COMMUNICATIONS, INC., BMPH–20070119AAX, Station WZNY, Facility ID 166014, From OLD FORGE, NY, To CALCIUM, NY; LOCALLY OWNED RADIO, LLC, BMPH–20061102ABF, Station KISY, Facility ID 164129, From TWIN FALLS, ID, To KIMBERLY, ID; LORENZ E. PROIETTI, BMPH–20070119AIB, Station NEW, Facility ID 166042, From SILVERTON, CO, To MOUNTAIN VILLAGE, CO; MACDONALD BROADCASTING COMPANY, BPH–20070119ADZ, Station WSAG, Facility ID 87624, From PINCONNING, MI, To LINWOOD, MI; MAPLETON COMMUNICATIONS, LLC, BPH–20070119AAP, Station KPYG, Facility ID 9851, From CAMBRIA, CA, To CAYUCOS, CA; MCDANIEL, JAMES D, BNPH–20060310ACD, Station NEW, Facility ID 166023, From BUTTE FALLS, OR, To TALENT, OR; MCMURRAY COMMUNICATIONS, INC., BPH–20070119AGE, Station KXKQ, Facility ID 40916, From SAFFORD, AZ, To MORENCI, AZ; MEDIA EAST, LLC, BPH–20070119AAO, Station WSTK, Facility ID 85793, From AURORA, NC, To HARKERS ISLAND, NC; QANTUM OF CAPE COD LICENSE COMPANY, LLC, BPH–20070119AEX, Station WRZE, Facility ID 54037, From NANTUCKET, MA, To DENNIS, MA; RADICK CONSTRUCTION, INC., BMPH–20070119AAF, Station KSCY, Facility ID 164231, From BIG SKY, MT, To FOUR CORNERS, MT; RADIO GREENBRIER, INC., BPH–20070119AGN, Station WRON–FM, Facility ID 54597, From RONCEVERTE, WV, To ELLISTON-LAFAYETTE, VA; RADIO ONE LICENSES, LLC, BPH–20070119AGJ, Station WHHL, Facility ID 74578, From JERSEYVILLE, IL, To HAZELWOOD, MO; RADIO ONE LICENSES, LLC, BPH–20070119AGK, Station WQOK, Facility ID 69559, From SOUTH BOSTON, VA, To CARRBORO, NC; RADIOACTIVE, LLC, BMPH–20070119ABH, Station NEW, Facility ID 166030, From BURNSVILLE, WV, To CRAIGSVILLE, WV; RADIOACTIVE, LLC, BMPH–20070119AGU, Station WANK, Facility ID 164242, From MOUNT VERNON, KY, To CRAB ORCHARD, KY; RADIOACTIVE, LLC, BMPH–20070119AGV, Station WUPG, Facility ID 164243, From CRYSTAL FALLS, MI, To REPUBLIC, MI; RADIOACTIVE, LLC, BMPH–20070119AHC, Station WUPZ, Facility ID 164246, From REPUBLIC, MI, To QUINNESEC, MI; RADIOACTIVE, LLC, BMPH–20070119AHE, Station NEW, Facility ID 166027, From DRUMMOND, MT, To FRENCHTOWN, MT; RADIOACTIVE, LLC, BMPH–20070122AAH, Station NEW, Facility ID 164251, From SARANAC LAKE, NY, To DANNEMORA, NY; RADIOACTIVE, LLC, BMPH–20070122AAK, Station NEW, Facility ID 164249, From DANNEMORA, NY, To KEESEVILLE, NY; RAINEY BROADCASTING, INC, BNP–20041029AIW, Station NEW, Facility ID 160861, From ELLISVILLE, MS, To LAUREL, MS; RBG LAS VEGAS LICENSES, LLC, BPH–20070122ALT, Station KVGS, Facility ID 25752, From LAUGHLIN, NV, To MEADVIEW, AZ; RHATTIGAN BROADCASTING (TEXAS), LP, BPH–20070119ADO, Station KVOU–FM, Facility ID 69621, From UVALDE, TX, To D'HANIS, TX; RIVERS, LP, BNP–20041029AHO, Station NEW, Facility ID 161445, From JACKSON, MS, To FLOWOOD, MS; SAGA COMMUNICATIONS OF NEW ENGLAND, LLC, BPH–20070119ADA, Station WSNI, Facility ID 9795, From WINCHENDON, MA, To SWANZEY, NH; SARANAC LAKE RADIO, L.L.C., BPH–20070119AIC, Station WYZY, Facility ID 73315, From SARANAC LAKE, NY, To SARANAC, NY; SEBAGO BROADCASTING COMPANY, BPH–

20061114ACF, Station WCTG, Facility ID 88405, From CHINCOTEAGUE, VA, To EDEN, MD; SHEILA CALLAHAN AND FRIENDS, INC., BMPH–20070119AAD, Station KMTZ, Facility ID 166087, From BOULDER, MT, To THREE FORKS, MT; SKYWEST MEDIA L.L.C., BMPH–20070119AGG, Station KRZX, Facility ID 164260, From MONTICELLO, UT, To REDLANDS, CO; SKYWEST MEDIA LLC, BMPH–20070119AHH, Station NEW, Facility ID 166055, From KAYCEE, WY, To EVANSVILLE, WY; SORENSON SOUTHEAST RADIO, LLC, BPH–20070119AGA, Station WZGA, Facility ID 26854, From HELEN, GA, To HAYESVILLE, NC; STEVEN M. GREELEY, BPH–20070122ALU, Station KJJJ, Facility ID 63410, From LAKE HAVASU CITY, AZ, To LAUGHLIN, NV; SUNBURST MEDIA-LOUISIANA, LLC, BPH–20070119ABG, Station KCIL, Facility ID 25520, From HOUMA, LA, To JEAN LAFITTE, LA; SUSQUEHANNA LICENSE CO, LIC, BP–20070119AEA, Station WGLD, Facility ID 55352, From RED LION, PA, To MANCHESTER, PA; THE GREAT MARATHON RADIO COMPANY, BPH–20070119AAQ, Station WGMX, Facility ID 65663, From MARATHON, FL, To LAYTON, FL; THE OPP BROADCASTING CO., INC., BPH–20070122AIT, Station WAMI–FM, Facility ID 66211, From OPP, AL, To FORT DEPOSIT, AL; THREE EAGLES OF LINCOLN, INC., BPH–20070119AFW, Station KFRX, Facility ID 34435, From LINCOLN, NE, To PAPILLION, NE; THROW FIRE PROJECT, BMP–20070119AFM, Station NEW, Facility ID 136921, From BAXTER, MN, To ROCKVILLE, MN; THUNDER ASSOCIATES, LLC, BPH–20070119ADP, Station WELD–FM, Facility ID 60922, From PETERSBURG, WV, To MOOREFIELD, WV; TWENTY-ONE SOUND COMMUNICATIONS, INC, BPH–20070119AGR, Station KNSX, Facility ID 68579, From STEELVILLE, MO, To HERMANN, MO; TWENTY-ONE SOUND COMMUNICATIONS, INC., BMPH–20070119AGO, Station KESY, Facility ID 79236, From CUBA, MO, To STEELVILLE, MO; VIRDEN BROADCASTING CORP., BPH–20070119AGY, Station WYEC, Facility ID 70277, From KEWANEE, IL, To CAMBRIDGE, IL; VIRDEN BROADCASTING CORP., BPH–20070119AGY, Station WYEC, Facility ID 70277, From KEWANEE, IL, To CAMBRIDGE, IL; WHITE PARK BROADCASTING, INC., BPH–20070119ACJ, Station KZDR, Facility ID 162407, From CHEYENNE, WY, To DEER TRAIL, CO; WHITE PARK BROADCASTING, INC., BMPH–20070119AEG, Station KTED, Facility ID 164285, From DOUGLAS, WY, To EVANSVILLE, WY; WHITE PARK BROADCASTING, INC., BMPH–20070119AEQ, Station KDAD, Facility ID 164286, From DOUGLAS, WY, To BAR NUNN, WY; WIKS LICENSE LIMITED PARTNERSHIP, BPH–20070119AEO, Station WIKS, Facility ID 72389, From NEW BERN, NC, To GRIFTON, NC; WILDCAT COMMUNICATIONS, L.L.C., BPH–20070119AAR, Station KQZR, Facility ID 86173, From CRAIG, CO, To GYPSUM, CO; WRHC BROADCASTING CORP., BP–20070119AGM, Station WRHC , Facility ID 73945, From CORAL GABLES, FL, To DORAL, FL; WVJT, LLC, BPH–20060918ABK, Station WXCF–FM, Facility ID 28340, From CLIFTON FORGE, VA, To RUSTBURG, VA; WVJT, LLC, BPH–20070119AGS, Station WIQO–FM, Facility ID 73158, From COVINGTON, VA, To FOREST, VA; WXNR LICENSE LIMITED PARTNERSHIP, BPH–20070119AEU, Station WXNR, Facility ID 64648, From GRIFTON, NC, To RIVER BEND, NC; YAVAPAI BROADCASTING CORPORATION, BPH–20070119AIF, Station KKLD, Facility ID 51642, From COTTONWOOD, AZ, To CLARKDALE, AZ.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E7–2424 Filed 2–13–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 07–13; DA No. 07–377]

David L. Titus, Amateur Radio Operator and Licensee of Amateur Radio Station KB7ILD

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing by directing David L. Titus to show cause in an adjudicatory proceeding before an administrative law judge why his amateur radio operating authority and license for Station KB7ILD should not be revoked on issues relating to his basic qualifications to be and remain a Commission licensee. The hearing will be held at a time and place to be specified in a subsequent order.

DATES: Persons desiring to participate as parties in the hearing (other than David L. Titus, who already is specified as a party in the hearing) shall file a petition for leave to intervene not later than March 16, 2007.

ADDRESSES: Please file documents with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Each document that is filed in this proceeding must display on the front page the document number of this hearing, ''EB Docket No. 07–13.''

FOR FURTHER INFORMATION CONTACT: Gary Schonman, Special Counsel, Enforcement Bureau, (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, DA 07–377, released on January 30, 2007. The full text of the Order to Show Cause is available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Thursday, or from 8 a.m. to 11:30 a.m. on Friday, at the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate document number, DA 07–377. The Order to Show Cause also is available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS). The Commission's Internet address for EDOCS is: *http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html*. Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format). Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Summary of the Order To Show Cause

In the Order to Show Cause, the Federal Communications Commission's Enforcement Bureau, pursuant to delegated authority, commences a hearing proceeding before an administrative law judge to determine whether David L. Titus is qualified to be and remain a Commission licensee and, if not, whether his license for Amateur Radio Station KB7ILD should be revoked. Information has come to the Commission's attention that David L. Titus was convicted in Benton County, Washington, on April 16, 1993, of having violated section 9.68A.090 of the Revised Code of Washington,

communicating with a minor for immoral purposes, a Class C felony. Titus was sentenced to serve 25 months in prison. In addition, David L. Titus is identified by the Seattle Police Department as a registered sex offender.

David L. Titus' felony conviction for at least one sexual-related offense involving children raises material and substantial questions as to whether he possesses the requisite character qualifications to be and remain a Commission licensee.

Thus, pursuant to 47 U.S.C. 312(a) and (c), the Order to Show Cause directs David L. Titus to show cause why his authorization for Amateur Radio Station KB7ILD should not be revoked, upon the following issues: (a) To determine the effect of David L. Titus' felony conviction(s) on his qualifications to be and to remain a Commission licensee; and (b) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether David L. Titus is qualified to be and to remain a Commission licensee; and (c) to determine, in light of the evidence adduced pursuant to the foregoing issues, whether the license of David L. Titus for Amateur Radio Station KB7ILD should be revoked. The hearing will be held at a time and place to be specified in a subsequent order. Copies of the Order to Show Cause are being sent to David L. Titus via Certified Mail, Return Receipt Requested, and by regular United States mail.

To avail himself of the opportunity to be heard, David L. Titus, in person or by his attorney, is directed by the Order to Show Cause, pursuant to 47 CFR 1.91(c), to file with the Commission, by March 1, 2007, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

Federal Communications Commission.

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. E7–2449 Filed 2–13–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2804]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 29, 2007.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by March 1, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Burkesville, Greensburg, Hodgenville, Horse Cave, Lebanon, Lebanon Junction, Lewisport, Louisville, Lyndon, New Haven, Springfield and St. Matthews, Kentucky, Edinburgh, Hope, Tell City and Versailles, Indiana, Belle Meade, Goodlettsville, Hendersonville, Manchester and Millersville, Tennessee) (MB Docket No. 06–77)

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–2426 Filed 2–13–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2007–N–04]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is seeking public comments concerning the information collection known as ''Members of the Banks,'' which has been assigned control 3069–0004 by the Office of Management and Budget (OMB). The Finance Board intends to submit the information collection to OMB for review and approval of a 3 year extension of the control number, which is due to expire on May 31, 2007.

DATES: Interested persons may submit comments on or before April 16, 2007.

Comments: Submit comments only once by any of the following methods:

E-mail: comments@fhfb.gov.

Fax: 202–408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006, ATTENTION: Public Comments.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Collection; Comment Request: Members of the Banks. 2007–N–04.

We will post all public comments we receive on this notice without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at *http://www.fhfb.gov/Default.aspx?Page=93.*

FOR FURTHER INFORMATION CONTACT: Jonathon F. Curtis, Senior Financial Analyst, Supervisory & Regulatory Policy, Office of Supervision, by e-mail at *curtisj@fhfb.gov*, by telephone at 202–408–2866, or by regular mail at the Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 4 of the Federal Home Loan Bank Act (Bank Act) establishes the eligibility requirements an institution must meet in order to become a member of a Federal Home Loan Bank (Bank). See 12 U.S.C. 1424. Part 925 of the Finance Board regulations—the membership rule—implements section 4 of the Bank Act. See 12 CFR part 925. The membership rule provides uniform requirements an applicant for Bank membership must meet and review criteria a Bank must apply to determine if an applicant satisfies the statutory and regulatory membership eligibility requirements.

More specifically, the membership rule implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy such requirements. The rule authorizes a Bank to approve or deny each membership application subject to the statutory and regulatory requirements and permits an applicant to appeal to the Finance Board a Bank's decision to deny certification as a Bank member. The rule also imposes a continuing obligation on a current Bank member to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory eligibility requirements.

The information collection is contained in sections 925.2 through 925.31 of the membership rule, 12 CFR 925.2–925.31, and chapter 2 of the Data Reporting Manual, which contains instructions addressing data definitions as well as requirements concerning data elements, reporting format, reporting method (e.g., electronic or paper), record retention, timeliness, reporting

frequency, and certification.[1] This information collection is necessary to enable a Bank to determine if a respondent satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a member eligible to obtain Bank advances. The Finance Board requires and uses the information collection to determine whether to uphold or overrule a Bank's decision to deny member certification to an applicant.

The OMB control number for the information collection is 3069–0004, which is due to expire on May 31, 2007. The likely respondents are institutions that want to be certified as or are members of a Bank.

B. Burden Estimate

The Finance Board estimates the total annual average number of applicants at 300, with 1 response per applicant. The estimate for the average hours per application is 21.5 hours. The estimate for the annual hour burden for applicants is 6,450 hours (300 applicants × 1 response per applicant × 21.5 hours per response).

The Finance Board estimates the total annual average number of maintenance respondents, i.e., current Bank members, at 8,100, with 1 response per member. The estimate for the average hours per maintenance response is 0.6 hours. The estimate for the annual hour burden for Bank members is 4,860 hours (8,100 members × 1 response per member × 0.6 hours per response). The estimate for the total annual hour burden for all respondents is 11,310 hours.

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: February 9, 2007.

By the Federal Housing Finance Board.

Neil R. Crowley,

Acting General Counsel.

[FR Doc. E7–2574 Filed 2–13–07; 8:45 am]

BILLING CODE 6725–01–P

[1] The Data Reporting Manual is available electronically on the Finance Board Web site: *http://www.fhfb.gov/Default.aspx?Page=101.*

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011638–003.

Title: Sea Girt Chassis Cooperative, L.L.C. Limited Liability Company Agreement.

Parties: China Ocean Shipping Container Lines Co., Ltd., CMA CGM, S.A.; Compania Sud Americana de Vapores, S.A. (CSAV); and Mediterranean Shipping Company.

Filing Party: Wayne Rhode, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment (1) substitutes COSCO Container Lines (Hong Kong) Co., Limited for China Ocean Shipping Container Lines as a party to the Agreement, (2) reflects the resignation of CSAV from the Agreement effective April 1, 2007, and (3) changes the contact information and address of CMA CGM.

Agreement No.: 011977–001.

Title: COSCON/WHL Space Charter Agreement.

Parties: COSCO Container Lines Company, Limited (COSCON) and Wan Hai Lines Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street, Suite 850; Irvine, CA 92614.

Synopsis: The amendment substitutes COSCO Container Lines (Hong Kong) Limited for COSCON as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: February 9, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–2536 Filed 2–13–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 018442F.
Name: AAC Perishables Logistics, Inc.
Address: 6300 NW 97th Avenue, Miami, FL 33178.
Date Revoked: December 12, 2006.
Reason: Failed to maintain a valid bond.

License Number: 008093N.
Name: American Freight International Lines Inc.
Address: 640 Dowd Avenue, Elizabeth, NJ 07201.
Date Revoked: January 31, 2007.
Reason: Surrendered license voluntarily.

License Number: 019355N
Name: Abad Air, Inc.
Address: 10411 NW 28th Street, Suite C–101, Doral, FL 33172
Date Revoked: December 8, 2006.
Reason: Failed to maintain a valid bond.

License Number: 000602F
Name: Buchholz and Kuttruff, Inc.
Address: 2640 Canal Street, New Orleans, LA 70119
Date Revoked: January 19, 2007.
Reason: Failed to maintain a valid bond.

License Number: 013843N.
Name: DCS Line, Inc.
Address: 2396 East Pacifica Place, Ste. 230, Rancho Dominguez, CA 90220
Date Revoked: December 16, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019495N.
Name: DS Logistics, Inc.
Address: 230–79 International Airport Center Blvd., Suite 245, Jamaica, NY 11413
Date Revoked: January 10, 2007.
Reason: Failed to maintain a valid bond.

License Number: 017126N.
Name: Daily Freight Cargo, Corp.
Address: 8426 NW 70th Street, Miami, FL 33166.
Date Revoked: January 19, 2007.
Reason: Failed to maintain a valid bond.

License Number: 016860F.

Name: Encompass Overseas Shipping, Inc. dba Hollywood Export Forwarding Co.
Address: 1601 N. Grower Street, Ste. 207, Hollywood, CA 90028.
Date Revoked: December 21, 2006.
Reason: Failed to maintain a valid bond.

License Number: 017861N.
Name: Fashion Container Line LLC.
Address: 800 Federal Blvd., Carteret, NJ 07008.
Date Revoked: February 5, 2007.
Reason: Surrendered license voluntarily.

License Number: 013657N.
Name: GFC Intermodal Container Line, Inc.
Address: 8915 So. La Cienega Blvd., Unit E, Inglewood, CA 90301.
Date Revoked: February 4, 2007.
Reason: Failed to maintain a valid bond.

License Number: 019846N.
Name: Gunhill Shipping & Receiving Headquarters, Inc.
Address: 1444 East Gunhill Road, Bronx, NY 10469.
Date Revoked: January 10, 2007.
Reason: Failed to maintain a valid bond.

License Number: 017381NF.
Name: HPK Logistics (USA) Inc.
Address: 18042 Cortney Court, 2nd Floor, City of Industry, CA 91748.
Date Revoked: January 26, 2007.
Reason: Failed to maintain valid bonds.

License Number: 002731NF.
Name: Hemisphere Forwarding, Inc.
Address: 7 Cerro Street, Inwood, NY 11696.
Date Revoked: December 15, 2006.
Reason: Surrendered license voluntarily.

License Number: 019783N.
Name: Integrated Creative Resources Initiatives Corporation dba Inquirer Golden Bells Cargo.
Address: 500 E. Carson Street, Suite 209, Carson, CA 90745.
Date Revoked: December 4, 2006.
Reason: Failed to maintain a valid bond.

License Number : 002336F.
Name: Inter-Commerce Enterprises, Inc.
Address: 5600 Northwest Central, Ste. 104, Houston, TX 77092.
Date Revoked: December 11, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019642N.
Name: JKC International Inc. dba JKC Logistics Inc.
Address: 1972 W. Holt Avenue, Pomona, CA 91768.
Date Revoked: December 7, 2006.
Reason: Failed to maintain a valid bond.

License Number: 001875F.
Name: L.M. Lewis Company.
Address: 1357 N. Great Neck Road, Virginia Beach, VA 23454.
Date Revoked: December 12, 2006.
Reason: Failed to maintain a valid bond.

License Number: 017496NF.
Name: Load Group International, Inc. dba Bosmas.
Address: 8378 NW 68th Street, Miami, FL 33166.
Date Revoked: December 13, 2006.
Reason: Failed to maintain valid bonds.

License Number: 019702NF
Name: Logimex Solutions International, LLC dba Logistar Express.
Address: 7985 NW 198th Terrace, Miami, FL 33015.
Date Revoked: December 17, 2006.
Reason: Failed to maintain valid bonds.

License Number: 019222N.
Name: Longyun Worldwide Forwarding Co. Ltd.
Address: No. 66, Weixing Xincun, Loagang Town, Nanhui District, Shanghai 201302 China.
Date Revoked: January 10, 2007.
Reason: Failed to maintain a valid bond.

License Number: 016501N.
Name: Maxx Express, Inc. dba Accord Logistics Korea-America.
Address: 2726 Fruitland Avenue, Vernon, CA 90058.
Date Revoked: January 10, 2007.
Reason: Failed to maintain a valid bond.

License Number: 003309F.
Name: Nelson International Inc.
Address: 6310 E. Virginia Beach Blvd., Norfolk, VA 23502.
Date Revoked: December 12, 2006.
Reason: Failed to maintain a valid bond.

License Number: 002929F.
Name: Reynhold Wilhelm Hilzinger dba Concorde International Freight Forwarding Co.
Address: 6100 N. Shepherd Drive, Houston, TX 77091.
Date Revoked: December 11, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019170N.
Name: Seabound Freight, LLC.
Address: 12972 SW 133rd Court, Suite A, Miami, FL 33182.
Date Revoked: December 13, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018764N.
Name: Seahawk Logistics, Inc.
Address: 520 Carson Plaza Court, Suite 110, Carson, CA 90746
Date Revoked: January 27, 2007.
Reason: Failed to maintain a valid bond.

License Number: 001774F.
Name: Tierra Mar Aire Packaging and Shipping, Inc. dba TMA PKG & Shipping Inc.
Address: 5217 69th Street, Maspeth, NY 11378.
Date Revoked: December 12, 2006.
Reason: Failed to maintain a valid bond.

License Number: 006861N.
Name: Transconex Incorporated dba Caribe Best Services.
Address: 450 Shattuck Avenue South, Suite 401, Renton, WA 98055.
Dated Revoked: January 25, 2007.
Reason: Failed to maintain a valid bond.

License Number: 003812F.
Name: Transglobe Express, Inc.
Address: 729 North Route 83, Suite 324, Bensenville, IL 60106.
Date Revoked: January 11, 2007.
Reason: Failed to maintain a valid bond.

License Number: 008260NF.
Name: Worldlink Logistics, Inc. dba APC Logistics.
Address: 2746 Uintah Court, Park City, UT 84060.
Date Revoked: December 15, 2006.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E7–2542 Filed 2–13–07; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
019355F	Abad Air, Inc., 10411 NW. 28th Street, Suite C–101, Doral, FL 33172	December 8, 2006.
017096N	Aero Costa International, Inc., 22010 S. Wilmington Ave., Suite 208, Carson, CA 90745	December 31, 2006.
016860N	Encompass Overseas Shipping, Inc., 1601 N. Grower Street, Suite 207, Hollywood, CA 90028	December 21, 2006.
000988F	H.E. Schurig & Co. Of Louisiana, 177 O.K. Ave., Harahan, LA 70123	November 17, 2006.
003309F	Nelson International, Inc., 6310 E. Virginia Beach Blvd., Norfolk, VA 23502	December 13, 2006.
003812N	Transglobe Express, Inc., 729 North Route 83, Suite 324, Bensenville, IL 60106	January 11, 2007.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–2543 Filed 2–13–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier—Ocean Transportation Intermediary Applicants:

Infinite Logistics Service Corp., 450 E. Carson Plaza Drive, Suite 217, Carson, CA 90746. *Officer:* Richard Tsiu, President (Qualifying Individual).

Seven Seas Shipping USA, Inc., 33 Partisan Place, Irvine, CA 92602. *Officer:* Hansel D'Souza, President (Qualifying Individual).

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

JB & C Group LLC dba JBC Business Service, dba JBC Shipping Services, 7015 Greenville Ave., #150, Dallas, TX 75231. *Officers:* Joe Onyema, President (Qualifying Individual).

K.B.B. Shipping Inc., 1145 Nostrand Avenue, Brooklyn, NY 11225. *Officers:* Kamal Abdul-Alemm, Treasurer (Qualifying Individual), Stanley Ballantyne, President.

BYG Services, Inc., 22926 Travis Street, Lake Forest, CA 92630. *Officers:* Benjamin Y. Glaraga, CEO (Qualifying Individual), Teresita R. Glarage, CFO.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Budget Freight Forwarding Corp., 2010 NW. 98th Way, Pembroke Pines, FL 33024. *Officer:* Steven James Sosa, President (Qualifying Individual).

Allen & Sally Associates, LLC dba USA Customs, Brokers & Freight Forwarders, 7094 Peachtree Industrial Blvd., Ste. 270, Norcross, GA 30071. *Officers:* Aizhong Gou, President (Qualifying Individual), Sally Hui Li, Co-President.

Dated: February 9, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–2533 Filed 2–13–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary Licenses; Correction

In the OTI Applicant Notice published in the **Federal Register** on January 18, 2007 (72 FR 2282) reference to the name of the Macro Transport Services, LLC is corrected to read: ''Marcotransport Services, LLC''

Dated: February 9, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–2534 Filed 2–13–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer — Michelle Shore — Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer — Mark Menchik — Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e–mail to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Written Security Program for State Member Banks

Agency form number: FR 4004

OMB Control number: 7100–0112

Frequency: On occasion

Reporters: State member banks

Annual reporting hours: 35 hours

Estimated average hours per response: 0.5 hours

Number of respondents: 70

General description of report: This recordkeeping requirement is mandatory pursuant to section 3 of the Bank Protection Act [12 U.S.C. § 1882(a)] and Regulation H [12 C.F.R. § 208.61]. Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act normally arises. However, copies of such documents included in examination work papers would, in such form, be confidential pursuant to exemption 8 of the Freedom of Information Act [5 U.S.C. § 552(b)(8)].

Abstract: Each state member bank must develop and implement a written security program and maintain it in the

bank's records. This program should include a requirement to install security devices and should establish procedures that satisfy minimum standards in the regulation, with the security officer determining the need for additional security devices and procedures based on the location of the banking office. There is no formal reporting form and the information is not submitted to the Federal Reserve.

Current Actions: On December 4, 2006, the Federal Reserve published a notice in the Federal Register (71 FR 70392) requesting public comment for 60 days on the extension, without revision, of the Written Security Program for State Member Banks. The comment period for this notice expired on February 2, 2007. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, February 8, 2007.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. E7–2484 Filed 2–13–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Cabool State Bank Employee Stock Ownership Plan, Cabool, Missouri; to acquire an additional 2 percent of the voting shares, for total ownership of 30.36 percent, of Cabool Bancshares, Inc., Cabool, Missouri, and thereby indirectly acquire Cabool State Bank, Cabool, Missouri.

Board of Governors of the Federal Reserve System, February 9, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–2517 Filed 2–13–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Alzheimer's Disease Demonstration Grants to States Program Standardized Data Collection

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by March 16, 2007.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, *Attn:* Carolyn Lovett, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Lori Stalbaum at 202–357–3452 or *e-mail*: *lori.stalbaum@aoa.hhs.gov*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The Alzheimer's Disease Demonstration Grants to States (ADDGS) Program is authorized through Sections 398, 399 and 399A of the Public Health Service (PHS) Act, as amended by Public Law 101–557 Home Health Care and Alzheimer's Disease Amendments of 1990. The ADDGS program funded through AoA helps states extend family support services provided by subgrantees to underserved populations, including those in rural communities.

The PHS Act requires AoA to ''provide for an evaluation of each demonstration project for which a grant is made.'' The PHS Act further states that ''not later than 6 months after the completion of such evaluations, submit a report to the Congress describing the findings made as a result of the evaluations.'' In compliance with the PHS Act, AoA developed a new State data collection protocol that will require future ADDGS state grantees (those funded starting in FY 2007) to transmit annual data information to AoA reported to the states by the project partners.

Many of the elements for the ADDGS Data Program Report are the same as those collected for Older Americans Act Title III and Title VII programs administered by AoA. To ensure inclusion of essential information the ADDGS Project Officer first contacted all current ADDGS grantees to find out what type of information they are already collecting. Then, the ADDGS Project Officer solicited information on key data elements from experts familiar with the previous ADDGS Program evaluation. Following this input, modifications were made to the data collection tool and input was solicited from all ADDGS state Project Directors and their project partners. Twenty-three (23) of thirty-eight (38) states, approximately 60% responded to the request for feedback. Again, modifications were made to fine tune the data collection tool into a format that would minimize burden on state grantees. Finally, ten (10) ADDGS Project Directors participated in a telephone focus group. The ten Project Directors were selected based on the detail of their responses to the original request for feedback.

The result of this input is the proposed data collection tool and accompanying definition of terms. AoA is aware that different states have different capabilities in terms of data collection. Thus, it is understood that following the approval of the proposed ADDGS data collection tool, AoA will

need to work with ADDGS grantees to ensure easy access to a reporting system as well as offer regular training to state grantees to ensure minimal burden.

AoA estimates the burden of this collection of information as follows: 950 hours.

Dated: February 9, 2007.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E7–2545 Filed 2–13–07; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–0255]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC, or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Information Collection of the Resources and Services Database of the National Prevention Information Network-Extension—National Center for HIV, STD, & TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV, STD, and TB Prevention (NCHSTP) proposes to continue data collection for the Resources and Services Database on CDC National Prevention Information Network.

The CDC, NCHSTP program has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, sexually transmitted diseases (STDs), tuberculosis (TB), and related infections, as well as for community-based HIV prevention activities, syphilis and TB elimination programs. To support NCHSTP's mission and to link Americans to prevention, education, and care services, the CDC National Prevention Information Network (NPIN) serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, STDs, and TB. NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, STDs, and TB, and provides services for persons infected with human immunodeficiency virus (HIV).

Established in 1988, the NPIN Resources and Services Database contains entries on approximately 15,000 organizations and is the most comprehensive listing of HIV/AIDS, STD and TB resources and services available throughout the country. This database describes national, state and local organizations that provide services related to HIV/AIDS, STDs, and TB, services such as; counseling and testing, prevention, education and support. The NPIN reference staff relies on the Resources and Services Database to respond to thousands of requests each year for information or referral from community based organizations, state and local health departments, and health professionals working in HIV/AIDS, STD and TB prevention. The CDC–INFO (formerly the CDC National AIDS Hotline) staff also uses the NPIN Resources and Services Database to refer up to 500,000 callers each year to local programs for information, services, and treatment. The American public can also access the NPIN Resources and Services database through the NPIN Web site. More than 24 million hits and 2 million visits by the public to the website are recorded annually.

A representative from each new organization identified will be administered the resource organization questionnaire via the telephone. Representatives may include registered nurses, social and community service managers, health educators, or social and human service assistants. As part of the update and verification process for organizations currently included in the Resources and Services Database, about 30 percent of the organization's representatives will receive a copy of their current database entry by electronic mail, including an introductory message and a list of instructions. The remaining 70 percent will receive a telephone call to review their database record. This request is for a 3-year renewal of clearance. There are no costs to respondents other than their time. The total estimated annual burden hours are 3,007.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Private Sector Organizations	Questionnaire (Telephone Script)	125	1	17/60
	Annual Update Request (Telephone)	7,000	1	10/60
	Annual Update Request (Email)	3,000	1	16/60
State and Local Government Organizations.	Questionnaire (Telephone Script)	75	1	17/60
	Annual Update Request (Telephone)	3,220	1	10/60
	Annual Update Request (Email)	1,380	1	16/60
Federal Government Organizations.	Annual Update Request (Telephone)	280	1	10/60
	Annual Update Request (Email)	120	1	16/60

Dated: February 8, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–2503 Filed 2–13–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP)

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), National Center for Environmental Health (NCEH) announces the following meeting of the aforementioned committee.

Times and Dates: March 14, 2007, 8:30 a.m.–5 p.m. March 15, 2007, 8:30 a.m.–12:30 p.m.

Place: Crowne Plaza Hotel, Atlanta-Buckhead, 3377 Peachtree Road, NE., Atlanta, GA 30326, telephone 404 233–7061.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Committee provides advice and guidance to the Secretary, Health and Human Services; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Update on Lead and pregnancy Workgroup activities, discussions of laboratory capacity to analyze BLL< 2 μg/dL, and actions needed to meet the 2010 elimination goal. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

For Further Information Contact: Claudine Johnson, Clerk (Contractor), Lead Poisoning Prevention Branch, Division of Environmental Emergency Health Services, NCEH, CDC, 4770 Buford Hwy, NE., Mailstop F–40, Atlanta, GA 30341, telephone 770 488–3629,fax 770 488–3635.

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: February 8, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–2515 Filed 2–13–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0452]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 16, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Agreement for Shipment of Devices for Sterilization—21 CFR 801.150(e) (OMB Control Number 0910–0131)—Extension

Under sections 501(c) and 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(e) (21 CFR 801.150(e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment; a practice that facilitates the processing of devices and is economically necessary for some firms. Under § 801.150(e), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment, (2) acknowledgment that the devices that are nonsterile are being shipped for further processing, and (3) specifications for sterilization processing.

This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices.

In the **Federal Register** of November 15, 2006 (71 FR 66543), FDA published a 60-day notice soliciting comments on the proposed collection of information. In response to that notice, no comments were received.

The respondents to this collection of information are device manufacturers and contact sterilizers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.150(e)	90	20	1,800	4	7,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
801.150(a)(2)	90	20	1,800	0.5	900

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the reporting burden is based on actual data obtained from industry over the past several years where there are approximately 90 firms subject to this requirement. It is estimated that each of these firms on the average prepares 20 written agreements per year. The recordkeeping requirements of § 801.150(a)(2) consist of making copies and maintaining the actual reporting requests which are required under the reporting section of this collection.

Dated: February 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–2467 Filed 2–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0041]

Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Procedures for the Clinical Laboratory Improvement Amendments of 1998 Categorization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension for an existing collection of information and to allow 60 days for public commein response to the notice. This notice solicits comments on administrative procedures for the Clinical Laboratory Improvement Amendments of 1988 (CLIA) categorization.

DATES: Submit written or electronic comments on the collection of information by April 16, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Administrative Procedures for CLIA Categorization (42 CFR 493.17)

A draft guidance document entitled ''Guidance for Administrative Procedures for CLIA Categorization'' was released for comment on August 14, 2000. The document describes procedures FDA will use to assign the complexity category to a device. Typically, FDA assigns complexity categorizations to devices at the time of clearance or approval of the device. In this way, no additional burden is incurred by the manufacturer since the labeling (including operating instructions) is included in the 510(k) or PMA. In some cases, however, a manufacturer may request CLIA categorization even if FDA is not simultaneously reviewing a 510(k) or PMA. One example is when a manufacturer requests that FDA assign CLIA categorization to a previously cleared device that has changed names since the original CLIA categorization. Another example is when a device is exempt from premarket review. In such cases, the guidance recommends that manufacturers provide FDA with a copy of the package insert for the device and a cover letter indicating why the manufacturer is requesting a categorization (e.g. name change, exempt from 510(k) review). The draft guidance recommends that in the correspondence to FDA the manufacturer should identify the product code and classification as well as reference to the original 510(k) when this is available.

A previous 60-day notice that published August 14, 2000 (65 FR 49582) announced the availability of a draft guidance and did not include a Paperwork Analysis Section. This 60-day notice for public comment supersedes that notice and is correcting that error.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Responses	Total Hours	Total Operating & Maintenance Costs
42 CFR 493.17	60	15	900	1 hr	900 hr	$45,000
Total	60	15	900	1 hr	900 hr	$45,000

[1] There are no capital costs associated with this collection of information.

The number of respondents is approximately 60. On average, each respondent will request categorizations (independent of a 510(k) or PMA) 15 times per year. The cost, not including personnel, is estimated at $50. Thisincludes the cost of copying and mailing copies of package inserts and a cover letter, which includes a statement of the reason for the request and reference to the original 510(k) numbers, including regulation numbers and product codes.

Dated: February 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–2468 Filed 2–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0203]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; User Fee Cover Sheet; Form FDA 3397

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''User Fee Cover Sheet; Form FDA 3397'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 2006 (71 FR 51195), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0297. The approval expires on January 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: February 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–2469 Filed 2–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0432]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on How to Use E-mail to Submit Information to the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 16, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Guidance for Industry on How to Use E-mail to Submit Information to the Center for Veterinary Medicine—21 CFR 11.2 (OMB Control Number 0910–0454)—Extension

The Center for Veterinary Medicine (CVM) accepts certain types of submissions electronically with no requirement for a paper copy. These types of documents are listed in public docket 1992S–0251 as required by 21 CFR 11.2. CVM's ability to receive and process information submitted electronically is limited by its current information technology capabilities and the requirements of the Electronic Records; Electronic Signatures final regulation. CVM's guidance entitled ''Guidance for Industry #108: How to Submit Information in Electronic Format by E-Mail'' outlines general standards to be used for the submission of any information by e-mail.

In the **Federal Register** of November 8, 2006 (71 FR 65533), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

The likely respondents for this collection of information are sponsors for new animal drug applications.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Response	Total Hours
11.2	25	5.62	140	.08	11.2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Electronic submissions received between July 1, 2005, and June 30, 2006.

The number of respondents in table 1 of this document is the number of sponsors registered to make electronic submissions (25). The number of total annual responses is based on a review of the actual number of such submissions made between July 1, 2005, and June 30, 3006. (140 x hours per response (.08) = 11.2 total hours.)

Dated: February 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–2470 Filed 2–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0277]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling; Notification Procedures for Statements on Dietary Supplements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 1, 2006 (71 FR 69569), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0331. The approval expires on January 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: February 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–2480 Filed 2–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0433]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; How to Use E-mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 16, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Guidance for Industry on How to Use E-mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter—21 CFR 514.117(b)(2) and 21 CFR 511.1(b)(5); (OMB Control Number 0910–0453)—Extension

The Center for Veterinary Medicine (CVM) monitors the final disposition of investigational animals where such animals do not enter the human food chain immediately at the completion of the investigational study. CVM's monitoring of the final disposition of investigational food animals is intended to ensure that unsafe residues of new animal drugs do not get into the food supply. CVM issues a slaughter authorization letter to investigational new animal drug (INAD) sponsors that sets the terms under which investigational animals may be slaughtered (21 CFR 511.1(b)(5)). Also in this letter, CVM requests that sponsors submit a notice of final disposition of investigational animals not intended for immediate slaughter (NFDA). NFDAs have historically been submitted to CVM on paper. CVM's guidance on ''How to Use E-mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter'' provides sponsors with the option to submit an NFDA as an e-mail attachment to CVM via the Internet.

In the **Federal Register** of November 9, 2006 (71 FR 65827), FDA published a 60-day notice soliciting public comment on the proposed collection of information requirements. In response to that notice, no comments were received.

The likely respondents for this collection are are INAD sponsors.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section / Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Response	Total Hours
511.1(b)(5)/ Form FDA 3487	25	1.44	36	.08	2.88

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]Electronic submissions received between July 1, 2005, and June 30, 2006.

The number of respondents in Table 1 are the number of sponsors registered to make electronic submissions (25). The number of total annual responses is based on a review of the actual number of such submissions made between July 1, 2005, and June 30, 2006. (36 x hours per response (.08) = 2.88 total hours).

Dated: February 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–2485 Filed 2–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0380]

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; Export of Medical Devices-Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 16, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Export of Medical Devices-Foreign Letters of Approval (OMB Control Number 0910–0264)—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or agency of the United States.

FDA uses the written authorization from the foreign country or the certification from a responsible company official in the United States to determine whether the foreign country has any objection to the importation of the device into their country.

In the **Federal Register** of September 22, 2006 (71 FR 55487), FDA published a 60-day notice soliciting public comments on the proposed information collection provisions for this requirement. In response to this notice, no comments were received. The agency is also correcting an error. The operating and maintenance cost, which was inadvertently omitted in the burden table for the 60-day notice, has been added as a column to the burden table for this notice.

The respondents to this collection of information are companies that seek to export medical devices.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency Per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
801(e)2	25	1	25	2.5	62.5	$6,250

[1]There are no capital costs associated with this collection of information.

These estimates are based on the experience of FDA's medical device program personnel. There are no capital costs associated with this collection of information. In addition, the respondent's costs of submission of a request to the foreign country for approval to import into that country, and subsequent submission of such approval to FDA, vary and are considered operating and maintenance costs. On average, it appears that it can cost a requester approximately $125 per page of translation. From review of our records, it appears that foreign approval letters average two pages. Therefore, the ''other'' estimated cost to requestors for processing a foreign approval letter is

approximately $6,250 (25 submissions per year x 2 pages = 50 pages x $125 per page = $6,250).

Dated: February 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–2489 Filed 2–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N -0431]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substantial Evidence of Effectiveness of New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 16, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Substantial Evidence of Effectiveness of New Animal Drugs—21 CFR 514.4(a) (OMB Control Number 0910–0356)—Extension

Section 512(d)(1)(E) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(d)(1)(E)), requires FDA to issue an order refusing to approve a new animal drug application (NADA), if there is a lack of substantial evidence that a new animal drug will have the effect it is purported or represented to have under the conditions of use prescribed in the proposed labeling. Therefore, substantial evidence must be submitted to us as part of the NADA to establish effectiveness of a drug. Section 21 CFR 514.4(a) specifies requirements for submitting adequate and well-controlled studies to provide substantial evidence of effectiveness for a new animal drug. This information collection requirement provides for submissions of substantial evidence of effectiveness information via electronic submissions to the Center for Veterinary Medicine (CVM).

CVM is continuously seeking ways through advances in information technology to reduce the burden on the government and sponsors. The Center continues to look at what information can be submitted electronically and will permit electronic submission of data to NADA files as technology and resources permit.

In the **Federal Register** of November 2, 2006 (71 FR 64535), FDA published a 60-day notice in the **Federal Register** soliciting public comment on the proposed collection of information collection requirements. In response to that notice, no comments were received.

The likely respondents for this collection of information are sponsors of NADA applications.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.4(a)	190	4,546	860	632.6	544,036

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate for the annual reporting burden for this collection of information was derived from discussion with industry and agency records.

Dated: February 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–2497 Filed 2–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Bureau of Primary Health Care (BPHC) Uniform Data System (OMB No. 0915–0193) Revision

The Uniform Data System (UDS) contains the annual reporting requirements for the cluster of primary care grantees funded by the Health Resources and Services Administration (HRSA). The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and other grantees under Section 330.

The authorizing statute is Section 330 of the Public Health Service Act, as amended.

HRSA collects data in the UDS which is used to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, BPHC requires a core set of data collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Universal Report	1,002	1	1002	27	27,054
Grant Report	234	1	234	18	4,212
Total	1,002		1,326		31,266

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 2, 2007.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.

[FR Doc. E7–2553 Filed 2–13–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Field of Use: Development of a Live Microbicide for Preventing Sexual Transmission of HIV

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, is contemplating the grant of an exclusive license to practice the invention embodied in:

(1) U.S. Patent No. 5,821,081, filed April 26, 1996, issued Oct. 13, 1998, entitled ''Nucleic Acids Encoding Antiviral Proteins and Peptides, Vectors and Host Cells Comprising Same, and Methods of Producing the Antiviral Proteins and Peptides'' (E–117–1995/1–US–01) (Inventors: Michael R. Boyd, Kirk R. Gustafson, Robert H. Shoemaker, and James B. McMahon) (NCI);

(2) U.S. Patent No. 5,843,882, filed April 27, 1995, issued Dec. 01, 1998, entitled ''Antiviral Proteins and Peptides, DNA, DNA-coding Sequences Therefore, and Uses thereof '' (E–117–1995/0–US–01) (Inventors: Michael R. Boyd, Kirk R. Gustafson, Robert H. Shoemaker, and James B. McMahon) (NCI);

(3) U.S. Patent No. 5,998,587, filed Nov. 13, 1997, issued Dec. 7, 1999, entitled ''Anti-cyanovirin Antibody'' (E–117–1995/1–US–02) (Inventors: Michael R. Boyd, Kirk R. Gustafson, Robert H. Shoemaker, and James B. McMahon) (NCI);

(4) U.S. Patent No. 6,015,876, filed Oct. 27, 1999, issued Jan. 18, 2000, entitled ''Method of Using Cyanovirins'' (E–117–1995/0–US–02) (Inventor: Michael R. Boyd, Kirk R. Gustafson, Robert H. Shoemaker, and James B. McMahon) (NCI);

(5) U.S. Patent No. 6,780,847, filed March 22, 2001, issued August 24, 2004, entitled ''Glycosylation-Resistant Cyanovirins and Related Conjugates, Compositions, Nucleic Acids, Vectors, Host Cells, Methods of Production and Methods of Using Nonglycosylated Cyanovirins'' (E–074–1999/3–US–01) (Inventors: Michael R. Boyd, Barry O'Keefe, Toshiyuki Mori (NCI) and Angela Gronenborn (NIDDK));

(6) U.S. Patent No. 7,048,935, filed July 1, 2002, issued May 23, 2006, entitled ''Cyanovirin Conjugates and Matrix-Anchored Cyanovirin and Related Compositions and Methods of Use'' (E–074–1999/1–US–03) (Inventor: Michael R. Boyd (NCI);

(7) U.S. Patent No. 7,105,169, filed September 12, 2001, issued September 12, 2006, entitled ''Cyanovirins Conjugates and Matrix-Anchored Cyanovirins and Methods of Use'' (E–074–1999/1–US–02) (Inventor: Michael R. Boyd (NCI);

(8) U.S. Patent No. 6,743,577, filed October 27, 1999, issued June 1, 2004, entitled '' Methods of Using Cyanovirins to Inhibit Viral Infection'' (E–074–1999/0–US–03) (Inventor: Michael R. Boyd (NCI);

(9) U.S. Patent No. 6,420,336, filed October 27, 1999, issued July 16, 2002, entitled ''Methods Of Using Cyanovirins Topically To Inhibit Viral Infection'' (E–074–1999/3–US–01) (Inventor: Michael R. Boyd (NCI)

to Osel, Inc. (Hereafter Osel), having a place of business in Santa Clara of California. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before April 16, 2007 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: Sally Hu, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *hus@od.nih.gov*; Telephone: (301) 435–5606; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: 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.

Cyanovirin-N (CV-N) is a novel, naturally occurring anti-HIV protein that was originally isolated from *Nastoc ellipipsosporum,* a blue-green algae. Cyanovirin is a protein with potent neutralizing activity against HIV1 and 2 by blocking the fusion reaction between HIV and CD4 target cells. Cyanorvirin is in the pre-IND development phase with several animal toxicology and irritation studies completed; initial chemical purification processes developed; and no human data to date. Dr. Boyd and his colleagues have demonstrated that a simple aqueous gel formulation of CV-N completely protected macaques against intravaginally or intarectally transmitted SHIV 89–9P (a chimeric simian/human immunodeficiency virus that causes ''AIDS'' in simians). Also importantly, there was no indication of any toxicity or other adverse effects of the CV-N to the macaques in these

preclinical microbicide evaluation studies. CV-N has the potential to become a microbicide useful in preventing sexual transmission of HIV. An effective anti-HIV microbicide could slow down the spread of the virus in the population, especially in the developing world, before an effective vaccine is available.

The field of use may be limited to the topical use of commensal bacteria that express cyanovirin-N.

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: February 2, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–2486 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Integrase Inhibitors for the Treatment of Retroviral Infection Including Human Immunodeficiency Virus-1

Description of Technology: Available for licensing and commercial development are stilbenedisulfonic acid derivatives for treatment of human immunodeficiency virus-1 (HIV–1) and other retroviral infections. Current HIV–1 therapeutic treatments target the viral protease and reverse transcriptase enzymes, which are essential for retroviral infection. However, these drugs often have limitations due to drug resistant variants, which render drugs ineffective. Additionally, such drugs are often toxic when administered in combination therapies. Thus, efficacious inhibitors of retroviral infection that are devoid of toxicity are presently needed.

The subject invention describes stilbenedisulfonic acid derivatives, which target the integrase enzyme of retroviruses. Similar to protease and reverse transcriptase activity, integrase function is essential for retroviral infection. Integrase catalyzes integration of reverse transcribed viral DNA into a host cell's genome. For this reason, integrase is considered a rational therapeutic target for HIV–1 infection. Further, integrase is a favorable target because the enzyme has no human cellular counterpart, which could interact with a potential integrase inhibitor and cause harmful side effects. Recent clinical data with an integrase inhibitor from Merck shows impressive clinical activity. The Merck compound is different from the current invention and is projected for FDA approval mid 2007. Thus, the subject invention is valuable for safe and effective treatment of HIV–1 and other retroviral infections.

Application: Treatment of HIV infection.

Development Status: The technology is ready for use in drug discovery and development.

Inventors: Yves Pommier (NCI), Elena Semenova (NCI), Christophe Marchand (NCI).

Patent Status: U.S. Provisional Application No. 60/849,718 filed 04 Oct 2006 (HHS Reference No. E–264–2006/0-US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Sally Hu, Ph.D.; 301/435–5606; *HuS@mail.nih.gov*.

Broadly Cross-Reactive Neutralizing Antibodies Against Human Immunodeficiency Virus Selected by ENV-CD4-CO-Receptor Complexes

Description of Technology: This invention provides a novel anti-HIV human monoclonal antibody named X5. This antibody demonstrates promise over conventional anti-HIV antibodies because the X5 antibody exhibits a unique binding activity compared to its counterparts. It has been established that the initial stage of HIV–1 entry into cells is mediated by a complex between the viral envelope glycoprotein (Env) such as gp120-gp41, a receptor CD4 and a co-receptor CCR5. The X5 antibody binds to an epitope on gp120 that is induced by interaction between gp120 and the receptor CD4 and enhanced by the co-receptor CCR5. The X5 antibody also shows strong activity at very low levels (in the range from 0.0001–0.1 Mg/ml concentration is dependent on the isolate). Because it is a human antibody, it can be administered directly into patients so that it is an ideal candidate for clinical trials. It also can be easily produced because it was obtained by screening of phage display libraries and its sequence is known. Finally, since it has neutralized all virus envelope glycoproteins, including those from primary isolates of different clades, the epitope is highly conserved and resistance is unlikely to develop. Therefore, this antibody and/or its derivatives including fusion proteins with CD4 are good candidates for clinical development.

Additional information on the current research in Dr. Dimitrov's laboratory may be found at *http://www-lecb.ncifcrf.gov/dimitrov/dimitrov.html*.

Applications: Antibody for HIV research, diagnostics and therapeutic development.

Development Status: Preclinical data is available at this time.

Inventors: Dimiter Dimitrov (NCI), Xiadong Xiao (NCI), Yuuei Shu (NCI), Sanjay Phogat (NIAID), *et al.*

Patent Status: Patent Cooperation Treaty Serial No. PCT/US02/33165 filed 16 Oct 2002; National Stage Filing in United States, India, Canada, Australia, Europe (HHS Reference No. E–130–2001/0).

Availability: Available for licensing and commercial development, excluding the field of use of the development of the PEGylated X5, PEGylated X5 derivatives, mutants of PEGylated X5 or a derivative.

Licensing Contact: Sally Hu, Ph.D.; 301/435–5606; *HuS@mail.nih.gov*.

Collaborative Research Opportunity: The NCI Center for Cancer Research Nanobiology Program (CCRNP) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize antibodies for HIV research, diagnostics and therapeutic development. Please contact John D. Hewes, Ph.D. at (301)

435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: February 2, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–2494 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Conditional Expression of the Transcription Factor ARNT in a Mouse Model

Description of Technology: The aryl hydrocarbon receptor nuclear translocator (Arnt) protein is a transcription factor that plays an important role in mammalian development and physiological homeostasis. A member of the PAS domain/bHLH family of transcription factors, it is an obligate dimerization partner with other members of this family, such as the aryl hydrocarbon receptor (AHR) and hypoxia-inducible factor 1alpha (HIF1alpha). It was shown to be a critical factor in control of gene expression in a number of tissues including ovary, vascular endothelium, keratinocytes, and T-cells.

Available for licensing is a mouse line homozygous for floxed alleles of the *Arnt* gene. This mouse line can be used to disrupt the Arnt gene in different tissues by breeding the *Arnt*-floxed mice with transgenic mice in which the Cre recombinase is under the control of tissue-specific promoters. These mice can be used as a research tool for drug development where PAS/bHLH transcription factors are targeted.

Applications: Tool for drug studies targeting PAS/bHLH transcription factors; Tool to probe the role of the Arnt protein in a tissue-specific manner.

Inventors: Frank J. Gonzalez (NCI).

Related Publications:

1. S. Tomita, C.J. Sinal, S.H. Yim, and F.J. Gonzalez. Conditional disruption of the aryl hydrocarbon receptor nuclear translocator (Arnt) gene leads to loss of target gene induction by the aryl hydrocarbon receptor and hypoxia-inducible factor 1alpha. Mol Endocrinol. 2000 Oct;14(10):1674–1681.
2. S.H. Yim, Y. Shah, S. Tomita, H.D. Morris, O. Gavrilova, G. Lambert, J.M. Ward, and F.J. Gonzalez. Disruption of the Arnt gene in endothelial cells causes hepatic vascular defects and partial embryonic lethality in mice. Hepatology. 2006 Sep;44(3):550–560.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Patent Status: HHS Reference No. E–047–2007/0—Research Tool.

Licensing Contact: Tara L. Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov.*

Nanopore Structured Biosensors

Description of Technology: Available for licensing and commercial development is a new glucose monitor system developed for direct glucose measurement without the use of mediators and glucose enzymes. Nanopore structured glucose sensors with special membrane bearing receptors mimic the function of the glucose oxidase and show the ability to directly measure glucose with high precision and accuracy; especially for measuring hypoglycemia and hyperglycemia ranges. These inventions provide improvements for type I and type II diabetes patients over commercial meters which lack the accuracy at the lower glucose range.

Application: Diagnostics.

Market: Diabetes.

Development Status: Early-stage.

Inventors: Ellen T. Chen (FDA) et al.

Related Publications:

1. E.T. Chen and J. Thornton. Novel nanopore structured glucose biosensors promote reagentless glucose concentration measurements in the hypoglycemic range. Abstract presented at FDA Science Forum, April 2005, Washington, DC.
2. E.T. Chen. Amperometric biomimetic enzyme sensors based on modified cyclodextrin as electrocatalysts. U.S. Patent No. 6,582,583 issued 24 Jun 2003.

Patent Status: U.S. Provisional Application No. 60/792,902 filed 19 Apr 2006 (HHS Reference No. E–185–2006/0-US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301/435–5019; *shmilovm@mail.nih.gov.*

Human Neutralizing Monoclonal Antibodies to Respiratory Syncytial Virus and Human Neutralizing Antibodies to Respiratory Syncytial Virus

Description of Technology: This invention is a human monoclonal antibody fragment (Fab) discovered utilizing phage display technology. It is described in Crowe et al., Proc Natl Acad Sci USA. 1994 Feb 15;91(4):1386–1390 and Barbas et al., Proc Natl Acad Sci USA. 1992 Nov 1;89(21):10164–10168. This MAb binds an epitope on the RSV F glycoprotein at amino acid 266 with an affinity of approximately $10^9 M^{-1}$. This MAb neutralized each of 10 subgroup A and 9 subgroup B RSV strains with high efficiency. It was effective in reducing the amount of RSV in lungs of RSV-infected cotton rats 24 hours after treatment, and successive treatments caused an even greater reduction in the amount of RSV detected.

Applications: Research and drug development for treatment of respiratory syncytial virus.

Inventors: Robert M. Chanock (NIAID), Brian R. Murphy (NIAID), James E. Crowe, Jr. (NIAID), et al.

Patent Status: U.S. Patent 5,762,905 issued 09 Jun 1998 (HHS Reference No. E–032–1993/1–US–01); U.S. Patent 6,685,942 issued 03 Feb 2004 (HHS Reference No. E–032–1993/1–US–02); U.S. Patent Application No. 10/768,952 filed 29 Jan 2004 (HHS Reference No. E–032–1993/1–US–03).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Dated: February 2, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–2495 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Develop Automated Methods to Identify Environmental Exposure Patterns in Satellite Imagery Data.

Date: March 6, 2007.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 611, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rhonda J. Moore, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Suite 701, Room 7151, Bethesda, MD 20892–8329, 301–451–9385, *morerh@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovations in Cancer Sample Preparation.

Date: March 14, 2007.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 210, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 8057, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Software Systems Population Based Cancer Surveillance Data.

Date: March 15, 2007.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 611, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rhonda J. Moore, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Suite 701, Room 7151, Bethesda, MD 20892–8329, 301–451–9385, *morerh@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, using Social Marketing to Disseminate Evidence-Based Energy Balance Intervention, Approaches to Worksites.

Date: March 20, 2007.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 611, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rhonda J. Moore, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Suite 701, Room 7151, Bethesda, MD 20892–8329, 301–451–9385, *morerh@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants for Behavioral Research in Cancer Control.

Date: March 29, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. 7149, Bethesda, MD 20892, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Application of Emerging Technologies for Cancer Research.

Date: April 3–4, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Marvin L. Salin, PhD, Scientific Review Administrator, National Cancer Institute, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC8329, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 2, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–649 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: March 8, 2007.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Keith McKenney, PhD, Scientific Review Administrator, NHGRI, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 7, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–646 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, Image Guided Intervention RFA.

Date: March 14–15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Washingtonian Center, 204 Broadwalk Place, Gaithersburg, MD 20878.

Contact Person: Ruixia Zhou, PhD, Scientific Review Administrator, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov.*

Dated: February 7, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–641 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: March 7–9, 2007.

Open: March 7, 2007, 2 p.m. to 2:30 p.m.

Agenda: To review procedures and discuss policy.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: March 7, 2007, 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: March 8, 2007, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: March 9, 2007, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD., Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: March 7–9, 2007.

Open: March 7, 2007, 3:30 p.m. to 4 p.m.

Agenda: To review procedures and discuss policy.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Closed: March 7, 2007, 4 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Closed: March 8, 2007, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Closed: March 9, 2007, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John F. Connaughton, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 916, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 07, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–642 Filed 2–13–07; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Differentiation in the GI Tract.

Date: March 22, 2007.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *is38oz@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Receptors in Health and Disease.

Date: March 23, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Clinical Research Studies.

Date: March 28, 2007.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Protein Kinases.

Date: March 30, 2007.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloom@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 7, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–643 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NRSA Training Grants.

Date: March 6, 2007.

Time: 12 p.m. to 1 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: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6154, MSC 9609, Rockville, MD 20852, 301–443–0004, *sechu@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: February 7, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–644 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, DD–91 Special Emphasis Panel.

Date: February 28, 2007.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Room 3042, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Katrina L. Foster, PhD, Scientific Review Administrator, National Insitute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3042, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 7, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–645 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical and Treatment Subcommittee, March 1, 2007, 8:30 a.m. to March 2, 2007, 5 p.m., Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on December 7, 2006, 71 FR 75262.

New meeting location will be at Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: February 7, 2007.

Anna Snouffer

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–647 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Minority Biomedical Research Support.

Date: February 28, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 8506 Fenton Street, Silver Spring, MD 20910.

Contact Person: Lisa Dunbar, PhD, Office of Scientific Review, National Institute of General Medical Sciences. National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

Date: March 1, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD 20814.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Training Grant Application.

Date: March 2, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 6, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–648 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders C, February 28, 2007, 8 a.m. to March 1, 2007, 5 p.m. St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036 which was published in the **Federal Register** on January 31, 2007, 72 FR 4523.

The meeting scheduled for February 28–March 1, 2007 has been changed to March 1–2, 2007; 8 a.m. to 5 p.m. The meeting is closed to the public.

Dated: February 6, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–650 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d)(of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–34, Review R21s.

Date: February 27, 2007.

Time: 10 a.m. to 11:30 A.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–26, Review U54.

Date: March 13, 2007.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–38, Review R21.

Date: March 27, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 6, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–652 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.
Date: February 23, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Manzoor Zarger, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Science Education and Communication.
Date: February 26, 2007.
Time: 8 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Soffitel Lafayette Square, 806 15th Street, NW., Washington, DC 20005.
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–G(02)M: Chemoprevention.
Date: March 1, 2007.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *meyerjl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of SBIR HIV/AIDS Applications.
Date: March 2, 2007.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radiation Therapy.
Date: March 2, 2007.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biology and Therapy.
Date: March 5–6, 2007.
Time: 8 a.m. to 11:59 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Joanna M. Watson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, 301–435–1048, *watsonjo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pharmacogenetics of Fluoride (PAR–06–214).
Date: March 5, 2007.
Time: 9 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electromagnetic Devices.
Date: March 6, 2007.
Time: 1:30 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Antonio Sastre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral And Skin Sciences Integrated Review Group, Musculoskeletal Rehabilitation Sciences Study Section.
Date: March 7–9, 2007.
Time: 8 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Interventions for Chronic Conditions.
Date: March 8–9, 2007.
Time: 7 a.m. to 11:59 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Gabriel B. Fosu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral, and Skin Sciences Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.
Date: March 8–9, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854–4443.
Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, CIHB Members' Applications.
Date: March 8–9, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room, 3162,

MSC 7770, Bethesda, MD 20892, 301/435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.
Date: March 8, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, Pennsylvania Avenue at 15th Street, NW., Washington, DC 20004.
Contact Person: Shiv A. Prasad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodevelopment, Synaptic Plasticity and Neurodegeneration.
Date: March 8–9, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Vilen A. Movesesyan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Food Safety, non-HIV Infectious Agent Sterilization and Bioremediation.
Date: March 8–9, 2007.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Non-Viral Infectious Agent Detection and Diagnostics.
Date: March 8, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Soheyla Saadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RIBT and LIRR Member Conflicts.
Date: March 8, 2007.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardioprotection and Molecular Signaling.
Date: March 8, 2007.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Contractile Proteins.
Date: March 8, 2007.
Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Russell T. Dowell , PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropharmacology Small Business.
Date: March 9–10, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Boris P. Sokolov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–435–1197, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome, Fibromyalgia Syndrome and Temporomandibular Dysfunction SEP.
Date: March 9, 2007.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immune Cell Mechanisms.
Date: March 9, 2007.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Coagulation Factors and Proteases.
Date: March 9, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Teen and Adult Addictions.
Date: March 12–13, 2007.
Time: 7 a.m. to 11:59 p.m.
Agenda: To review and evaluate grant applications.
Place; National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Technology Development.
Date: March 12, 2007.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychopathology, Developmental Disabilities, Stress and Aging.
Date: March 12–13, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Profibrotic Signaling, Endothelial Dysfunction and Trigycerides.

Date: March 12, 2007.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, GTIE Member Conflict.

Date: March 12, 2007.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (310) 435–4511, *whitmarshb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Intervention for Obesity, Cancer and Sleep Apnea.

Date: March 12–14, 2007.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *mciklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Colon Cancer.

Date: March 12, 2007.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 6, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–651 Filed 2–13–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–27182]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, and certification of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: A MERPAC working group will meet on Monday, March 12, 2007, from 8:30 a.m. to 4:30 p.m., and on Tuesday, March 13, 2007, from 8:30 a.m. to 4:30 p.m. The full MERPAC committee will meet on Wednesday, March 14, 2007, from 8:30 a.m. to 4:30 p.m. and on Thursday, March 15, 2007, from 8:30 a.m. to 4:30 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before March 1, 2007. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before March 1, 2007.

ADDRESSES: The MERPAC working group will meet on March 12 and 13, 2007, at the North Pacific Fishing Vessel Owners' Association (NPFVOA) facility, located at 1900 W. Emerson Place, Suite 101, Seattle, WA 98119. Further information on the location of NPFVOA may be obtained by calling (206) 285–3383. The full MERPAC committee will meet on March 14 and 15, 2007, in the Washington Mutual Foundation Room, Level 4, of the Seattle Public Library, 1000 Fourth Avenue, Seattle, WA 98104. Attendees should use the 4th Avenue entrance of the library. Further directions regarding the location of the Seattle Public Library may be obtained at the following link: *http://www.spl.org/default.asp?pageID=branch_central_directions&branchID=1.*

Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (CG–3PSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Gould, Assistant to the Executive Director, telephone 202–372–1409, fax 202–372–1926, or e-mail *mark.c.gould@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Meetings on March 12–13, 2007

The working group for Task Statement 61, concerning merchant mariner medical waiver evaluation guidelines, will meet to conduct deliberations in preparation for delivering proposed MERPAC recommendations to the full committee.

Agenda of Meeting on March 14, 2007

The full committee will meet to discuss the objectives for the meeting. The working groups addressing the following task statements may meet to deliberate: Task Statement 30, concerning ''Utilizing Military Sea Service for STCW Certifications''; Task Statement 51, concerning ''Minimum Standard of Competence on Tanker Safety''; Task Statement 55, concerning ''Recommendations to Develop a Voluntary Training Program for Deck and Engine Department Entry Level Mariners on Domestic and Seagoing Vessels''; Task Statement 58, concerning ''Stakeholder Communications During MLD Program Restructuring and Centralization''; Task Statement 59, concerning ''Access to Shore Leave by Merchant Mariners''; Task Statement 60, concerning ''Recommendations on Sea Service Required to Obtain Propulsion Mode Credit at the Operational and Management Levels''; and Task Statement 61, concerning ''Merchant Mariner Medical Waiver Evaluation Guidelines''. In addition, new working groups may be formed to address issues proposed by the Coast Guard, MERPAC members, or the public. All task statements may be viewed at the MERPAC Web site at *http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.*

At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of Meeting on March 15, 2007

The agenda comprises the following:

(1) Introduction.

(2) Working Groups' Reports:

(a) Task Statement 30, concerning ''Utilizing Military Sea Service for STCW Certifications'';

(b) Task Statement 51, concerning ''Minimum Standard of Competence on Tanker Safety'';

(c) Task Statement 55, concerning ''Recommendations to Develop a Voluntary Training Program for Deck and Engine Department Entry Level Mariners on Domestic and Seagoing Vessels'';

(d) Task Statement 58, concerning ''Stakeholder Communications During MLD Program Restructuring and Centralization'';

(e) Task Statement 59, concerning ''Access to Shore Leave by Merchant Mariners'';

(f) Task Statement 60, concerning ''Recommendations on Sea Service Required to Obtain Propulsion Mode Credit at the Operational and Management Levels'';

(g) Task Statement 61, concerning ''Merchant Mariner Medical Waiver Evaluation Guidelines''; and

(h) Other task statements which may have been adopted for discussion and action.

(3) Other items which may be discussed:

(a) Standing Committee—Prevention Through People.

(b) Briefings concerning on-going projects of interest to MERPAC.

(c) Other items brought up for discussion by the committee or the public.

Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify Mr. Gould no later than March 1, 2007. Written material for distribution at a meeting should reach the Coast Guard no later than March 1, 2007. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to Mr. Gould no later than March 1, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Mr. Gould as soon as possible.

Dated: February 7, 2007.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention-Operations.

[FR Doc. E7–2541 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): National Customs Automation Program Test of Automated Truck Manifest for Truck Carrier Accounts; Deployment Schedule

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next group, or cluster, of ports to be deployed for this test.

DATES: The ports identified in this notice, in the states of Idaho and Montana, are expected to be fully deployed for testing by February 22, 2007. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson via e-mail at *james.d.swanson@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest would be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004.

A series of **Federal Register** notices have announced the implementation of the test, beginning with a notice published on May 31, 2005 (70 FR 30964). As described in that document, the deployment sites for the test have been phased in as clusters. The ports identified belonging to the first cluster were announced in the May 31, 2005 notice. Additional clusters were announced in subsequent notices published in the **Federal Register** including: 70 FR 43892 (July 29, 2005); 70 FR 60096 (October 14, 2005); 71 FR 3875 (January 24, 2006); 71 FR 23941 (April 25, 2006); 71 FR 42103 (July 25, 2006) and 71 FR 77404 (December 26, 2006).

New Cluster

Through this notice, CBP announces that the next cluster of ports to be brought up for purposes of deployment of the test, to be fully deployed by February 22, 2007, will be the following specified ports in the States of Idaho (ID) and Montana (MT): Eastport, ID; Porthill, ID; Roosville, MT; Whitlash, MT; Del Bonita, MT; Wildhorse, MT; Sweetgrass, MT; Piegan, MT; Willow Creek, MT; Turner, MT; Morgan, MT; Scobey, MT; Opheim, MT; Raymond, MT; and Whitetail, MT. This deployment is for purposes of the test of the transmission of automated truck manifest data only; the Automated Commercial Environment (ACE) Truck Manifest System is not yet the mandated transmission system for these ports. The ACE Truck Manifest System will become the mandatory transmission system in these ports only after publication in the **Federal Register** of 90 days notice, as explained by CBP in the **Federal Register** notice published on October 27, 2006 (71 FR 62922).

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: February 5, 2007.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E7–2567 Filed 2–13–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Sensitive Security Information Threat Assessments

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. TSA is seeking to renew the control number for the maximum three-year period in order to continue compliance with sec. 525 of the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act), and to continue the process TSA developed to determine whether the party or representative of a party seeking access to sensitive security information (SSI) in a civil proceeding in federal court may be granted access to the SSI.

DATES: Send your comments by April 16, 2007.

ADDRESSES: Comments may be mailed or delivered to Katrina Kletzly, Attorney-Advisor, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Kletzly at the above address, by telephone (571) 227–1995 or facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

TSA requested and subsequently received emergency clearance of this information collection request on January 12, 2007, which collection was assigned OMB control number 1652–0042. TSA is now seeking to renew the control number for the maximum three-year period in order to continue compliance with sec. 525 of the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act), and to continue the process TSA developed whereby a party seeking access to SSI in a civil proceeding in federal court that demonstrates a substantial need of relevant SSI in the preparation of the party's case, and that the party is unable without undue hardship to obtain the substantial equivalent of the information by other means, may request that the party or party's representative be granted conditional access to the SSI at issue in the case. Additionally, court reporters who are required to record or transcribe testimony containing specific SSI and do not have a current clearance required for access to classified national security information as defined by E.O. 12958 will need to request to be granted access to SSI. In order to determine if the individual may be granted access to SSI for this purpose, TSA will conduct a threat assessment that includes: (1) A fingerprint-based criminal history records check (CHRC); (2) a name-based check to determine whether the individual poses or is suspected of posing a threat to transportation or national security, including checks against terrorism, immigration or other databases TSA maintains or uses; and (3) a professional responsibility check (if applicable).

TSA will use the information collected to conduct the threat assessment for the purpose of determining whether the provision of such access to the information for the proceeding presents a risk of harm to the nation. The results of the threat assessment will be used to make a final determination on whether the individual may be granted access to the SSI at issue in the case. TSA estimates that the total annual hour burden for this collection will be 180 hours, based on an estimated 180 annual respondents and a one hour burden per respondent.

Issued in Arlington, Virginia, on February 8, 2007.

Peter Pietra,

Director of Privacy Policy and Compliance.

[FR Doc. E7–2552 Filed 2–13–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5122–N–01]

Notice of Proposed Information Collection: Comment Request; Evaluation of Lead-Based Paint Hazard Reduction Grantee Unit Costs

AGENCY: Office of Healthy Homes and Lead Hazard Control, 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:* April 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by and/or OMB Control Number and should be sent to: Lillian Deitzer, QDAM, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410 or *Lillian__Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Robert F. Weisberg, LM, Program Management and Assurance Division, Office of Healthy Homes & Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8236, Washington, DC 20410; e-mail *Robert__F.__Weisberg@hud.gov*, telephone (202) 402–7687 (this is not toll-free number) for other available information. If you are a hearing- or speech-impaired person, you may reach the above telephone numbers through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Evaluation of Lead-Based Paint Hazard Reduction Grantee Unit Costs.

OMB Control Number, if applicable: New.

Description of the need for the information and proposed use: Evaluation of Lead-Based Paint Hazard Reduction Grantee Unit Costs to use as baseline for planning and evaluation.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 840, number of respondents is 35, frequency of response is ''once,'' and the hours per response is 24.

Status of the proposed information collection: This is a review of records required to be retained under grant agreements.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 7, 2007.

Warren Friedman,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 07–679 Filed 2–13–07; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–18]

Notice of Submission of Proposed Information Collection to OMB; Ginnie Mae Multiclass Securities Program Documents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection of information is required in connection with the Multiclass Securities Program. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attach new sources of capital for federally insured or guaranteed residential loans.

DATES: *Comments Due Date:* March 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2503–0030) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Ginnie Mae Multiclass Securities Program Documents.

OMB Approval Number: 2503–0030.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This collection of information is required in connection with the Multiclass Securities Program. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attach new sources of capital for federally insured or guaranteed residential loans.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	19	8	....	140.4	....	21,346

Total Estimated Burden Hours: 21,346.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 8, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–2509 Filed 2–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–19]

Notice of Submission of Proposed Information Collection to OMB; Application for the Resident Opportunities and Self Sufficiency (ROSS) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application for the ROSS grant program: Resident Service Delivery Models-Family/Homeownership, Resident Service Delivery Models-Elderly/Persons with Disabilities, and Family Self-Sufficiency for Public Housing.

DATES: *Comments Due Date:* March 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0229) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for the Resident Opportunities and Self Sufficiency (ROSS) program.

OMB Approval Number: 2577–0229.

Form Numbers: HUD–52751, HUD–52752, HUD–52753, HUD–52754, HUD–52755, HUD–52756, HUD–52757, HUD–52763, HUD–52764, HUD–52767, SF–424, HUD–424–CB, HUD–424–CBW, HUD–2880, HUD–2990, HUD–2991, SF–LLL, HUD–27300, HUD–96010

Description of the Need for the Information and Its Proposed Use: Application for the ROSS grant program: Resident Service Delivery Models-Family/Homeownership, Resident Service Delivery Models-Elderly/Persons with Disabilities, and Family Self-Sufficiency for Public Housing.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	650	1		16.08		10,458

Total Estimated Burden Hours: 10,458.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 9, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–2570 Filed 2–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5124–N–04]

Financial Standards for Housing Agency-Owned Insurance Entities

AGENCY: Office of the Assistant Secretary for Public and Indian 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:* April 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed

information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Financial Standards for Housing Agency-Owned Insurance Entities.

OMB Control Number: 2577–0186.

Description of the Need for the Information and Proposed Use: Collection of this information is required by the HUD Appropriations Act for FY 1992, Public Law 102.139, 105 Stat. 736 (approved October 28, 1991). The Act provided that public housing agencies (PHAs) could purchase insurance coverage without regard to competitive selection procedures, if the insurance was purchased from a nonprofit insurance entity owned and controlled by PHAs approved by HUD, in accordance with standards established by regulation. A PHA-owned insurance entity selected by a PHA to provide coverage must submit a certification to HUD, stating that the entity management and underwriting staff have certain levels of experience. For initial approvals, the entity must also submit proper organizational documentation. The nonprofit entity must submit copies of audits every year, actuarial reviews every year, and management reviews every three years.

Agency Form Number: N/A.

Members of Affected Public: Public Housing Agencies.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents: There are 22 audit respondents annually at eight hours per response. There are approximately 22 claims responses over a three-year period, for an average of seven responses per year at two hours per response. Average response time per respondent is 6.55 hours.

Status of the Proposed Information Collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 7, 2007.

Bessy Kong,

Deputy Assistant Secretary, Policy, Program and Legislative Initiatives.

[FR Doc. E7–2572 Filed 2–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–53]

Delegation of Procurement Authority and Designation of Senior Procurement Executive and Chief Acquisition Officer

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary of HUD delegates all procurement authority to the Chief Procurement Officer. The Chief Procurement Officer will continue to serve as the Department's Senior Procurement Executive. The Secretary also designates the Deputy Secretary as the Department's Chief Acquisition Officer.

DATES: *Effective Date:* February 1, 2005.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, Assistant Chief Procurement Officer for Policy and Systems, Office of the Chief Procurement Officer, 451 Seventh Street, SW., Room 5276, Washington, DC 20410–3000, (202) 708–0294 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Secretary is issuing this delegation to eliminate duplicative delegation of procurement authority to the Assistant Secretary for Administration/Chief Information Officer and the Chief Procurement Officer (CPO). This notice also implements Section 1421 of the Services Acquisition Reform Act of 2003 by designating the Deputy Secretary as the Department's Chief Acquisition Officer. The CPO will report directly to the Deputy Secretary and will be responsible for all departmental procurement activities. The CPO is also designated as the Senior Procurement Executive. This delegation changes only the reporting level of the CPO position pursuant to the Department's implementation of Section 1421. This delegation does not add, eliminate, or redistribute any functions or duties within the Office of the CPO.

Accordingly, the Secretary of Housing and Urban Development hereby revokes, designates, and delegates as follows:

Section A. Authority Revoked

This notice revokes the Notice of Delegation of Authority published in the **Federal Register** on August 20, 2003 (68 FR 50157), which delegated all procurement authority to both the Assistant Secretary for Administration/Chief Information Officer and the CPO, delegated to the Assistant Secretary for Administration/Chief Information Officer responsibility for administrative oversight of all departmental procurement activities, and designated the CPO as the Senior Procurement Executive.

Section B. Designation and Delegation of Authority

The Deputy Secretary is designated as the Department's Chief Acquisition Officer.

The CPO continues to serve as the Department's Senior Procurement Executive and is delegated the authority to exercise all duties, responsibilities, and powers of the Secretary with respect to departmental procurement activities. The authority delegated to the CPO includes the following duties, responsibilities, and powers:

1. Authority to enter into, administer, or terminate all procurement contracts, as well as interagency agreements entered into under the authority of the Economy Act, and make related determinations and findings. This includes the authority to order, pursuant to HUD's regulations at 24 CFR part 24, the sanctions of debarment, suspension, or limited denial of participation.

2. Responsibility for procurement program development, including:

a. Implementation of procurement initiatives, best practices, and reforms;

b. In coordination with the Office of Federal Procurement Policy, determination of specific areas where governmentwide performance standards should be established and applied, and development of governmentwide procurement policies, regulations, and standards;

c. Establishment and maintenance of an evaluation program for all procurement activities within the Department;

d. Development of programs to enhance the professionalism of the Department's procurement work force, including the establishment of educational, training, and experience requirements for procurement personnel; and

e. Development of all departmental procurement policy, regulations, and procedures.

Section C. Authority To Issue Rules and Regulations

The CPO is authorized to issue rules and regulations as may be necessary to carry out the authority delegated under Section B.

Section D. Authority To Redelegate

The authority delegated to the CPO under Section B may be redelegated to qualified employees of the Department.

Authority: 41 U.S.C. 414; Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Editorial Note: This document was received at the Office of the Federal Register February 8, 2007.

Dated: February 1, 2005.

Alphonso Jackson,

Secretary.

[FR Doc. E7–2499 Filed 2–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5131–N–01]

Notice of Realignment of HUD's Freedom of Information Act (FOIA) Processing Functions

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice advises the public that HUD has realigned its Freedom of Information Act (FOIA) processing functions from the Office of General Counsel to the Office of the Executive Secretariat in the Office of Administration. The realignment of FOIA processing functions will improve the efficiency and consistency of HUD's FOIA operations.

FOR FURTHER INFORMATION CONTACT: Vicky Lewis, Assistant Executive Secretary, Freedom of Information Act (FOIA) Office, Office of the Executive Secretariat, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10139, Washington, DC 20410–0001; telephone (202) 708–3866 (this is not a toll-free number). 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: The Freedom of Information Act (5 U.S.C. 552) provides the means by which the public can obtain information regarding federal agencies. Under FOIA, the public can request records from any agency, which the agency must provide, subject to certain statutory exemptions and exclusions. HUD's regulations at 24 CFR part 15, entitled ''Public Access to HUD Records under the Freedom of Information Act and Testimony and Production of Information by HUD Employees,'' describe the policies and procedures governing public access to HUD records under FOIA.

On December 14, 2005, President Bush issued Executive Order 13392, entitled ''Improving Agency Disclosure of Information,'' which acknowledged the importance of participation by an informed citizenry in the effective functioning of our constitutional democracy. Executive Order 13392 was published in the **Federal Register** on December 19, 2005 (70 FR 75373). It required federal agencies to develop agency-wide plans to ensure the efficient and timely administration of FOIA requests. Such plans were to include specific activities that the agency would implement to eliminate or reduce the agency's FOIA backlog, and activities that would increase public awareness of the agency's FOIA processing. HUD submitted its plan to the Office of Management and Budget (OMB) and the Attorney General on June 14, 2006. (See *http://www.hud.gov/offices/ogc/foia/hudfoiaplanfinal.pdf.*) An integral part of HUD's plan is the realignment of FOIA processing functions from the Office of General Counsel to the Office of the Executive Secretariat in the Office of Administration. The realignment of FOIA processing functions will improve the efficiency and consistency of HUD's FOIA operations.

This notice announces to the public that HUD has realigned its FOIA processing functions from the Office of General Counsel to the Office of the Executive Secretariat in the Office of Administration. FOIA requests that were formerly submitted to the Office of General Counsel should now be submitted to the FOIA Office in the Office of the Executive Secretariat in the Office of Administration. Members of the public requesting records from HUD may continue to use the FOIA electronic request form on HUD's Internet site at *http://www.hud.gov/offices/ogc/foia/foia.cfm.* HUD is also undertaking rulemaking to update its FOIA regulations in 24 CFR part 15 to reflect the realignment of the Department's FOIA processing functions. This notice advises the public of the realignment, pending issuance of HUD's updated regulations.

Dated: February 5, 2007.

Keith A. Nelson,

Assistant Secretary for Administration.

[FR Doc. E7–2571 Filed 2–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–61]

Office of the Chief Procurement Officer Revocation and Redelegation of Procurement Authority

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Notice.

SUMMARY: In this Notice, the Chief Procurement Officer revokes all current redelegations of procurement authority and redelegates procurement authority to qualified Departmental employees.

DATES: *Effective Date:* January 30, 2007.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, Assistant Chief Procurement Officer for Policy and Systems, Office of the Chief Procurement Officer, Room 5276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0294 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Office of the Chief Procurement Officer has recently undergone a significant reorganization to re-align it within the Department's management structure and to consolidate all contracting authority and activity (headquarters and field-based) under the Chief Procurement Officer. The reorganization also creates four Assistant Chief Procurement Officer positions, three of which are responsible for operational contracting activities. The fourth is responsible for procurement policy and systems.

The Secretary of HUD has designated the Chief Procurement Officer as the Department's Senior Procurement Executive and transferred all Departmental procurement authority to the Chief Procurement Officer.

In this Notice, the Chief Procurement Officer revokes all existing procurement

authority previously redelegated, and redelegates authority as follows:

Section A. Authority Revoked

This document revokes the Notice of Revocation and Redelegation of Procurement Authority published in the **Federal Register** on October 13, 1998 (63 FR 54723).

Section B. Authority Redelegated

1. The Chief Procurement Officer, designated as the Department's Senior Procurement Executive, hereby:

a. Designates the Deputy Chief Procurement Officer, the Assistant Chief Procurement Officer for Program Operations, the Assistant Chief Procurement Officer for Support Operations, and the Assistant Chief Procurement Officer for Field Operations as contracting officers; and

b. Redelegates to the Commercial Credit Card Program Administrator authority for credit card purchases within the micro-purchase threshold established in FAR Part 13. The Commercial Credit Card Program Administrator may further redelegate this authority to qualified headquarters employees.

2. In addition, the Chief Procurement Officer may redelegate authority to:

a. Qualified Office of the Chief Procurement Officer personnel, by way of Certificates of Appointment as contracting officers, to enter into, administer, and/or terminate all procurement contracts, and interagency agreements entered into under the authority of the Economy Act, for property and services required by the Department (including the placement of paid advertisements in newspapers), and make related determination and findings; and

b. Qualified Departmental employees, to engage in the following purchasing procedures:

Simplified acquisitions (FAR Part 13); and

Issuance of orders under contracts established by other Government sources in accordance with FAR Part 8, or under pre-priced indefinite-delivery contracts established by the Department.

Section C. No Authority To Further Redelegate

Except as provided above in paragraph B.1.b, the authority redelegated in Section B, does not include the authority to further redelegate.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 30, 2007.

Joseph A. Neurauter,

Chief Procurement Officer.

[FR Doc. E7–2500 Filed 2–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 58 Species in California and Nevada; Availability of Completed 5-Year Reviews in California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of 5-year reviews; availability of completed 5-year reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the initiation of a 5-year review of 58 species under section 4(c)(2)(B) of the Endangered Species Act (Act). The purpose of a 5-year review is to ensure that the classification of a species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants is accurate and based on the best scientific and commercial data available at the time of the review. We are requesting submission of any such information that has become available since the original listing of each of these 58 species. Based on the results of these 5-year reviews, we will make the requisite findings under section 4(c)(2)(A) of the Act. We also indicate in this notice the 5-year reviews we completed for species in California and Nevada in FY 2006.

DATES: We must receive your information no later than April 16, 2007. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for instructions on how to submit information and review the information that we receive on these species.

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate individual listed under ''Public Solicitation of New Information.'' For contact information about completed 5-year reviews, see ''Completed 5-Year Reviews.''

SUPPLEMENTARY INFORMATION:

Background

Why Do We Conduct a 5-Year Review?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), we maintain a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the 58 species listed in Table 1.

TABLE 1.—SUMMARY OF LISTING INFORMATION FOR 58 SPECIES IN CALIFORNIA AND NEVADA

Common name	Scientific name	Status	Where listed	Final listing rule
Animals				
Bighorn (Sierra Nevada DPS)	*Ovis canadensis californiana*	Endangered	U.S.A. (CA—Sierra Nevada).	65 FR 20 (03–JAN–00).
California tiger salamander (Santa Barbara County DPS).	*Ambystoma californiense*	Endangered	U.S.A (Santa Barbara County, CA).	65 FR 57241 (21–SEP–00).
Clover Valley speckled dace	*Rhinichthys osculus oligoporus*	Endangered	U.S.A. (NV)	54 FR 41448 (10–OCT–89).

TABLE 1.—SUMMARY OF LISTING INFORMATION FOR 58 SPECIES IN CALIFORNIA AND NEVADA—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Coachella Valley fringe–toed lizard.	*Uma inornata*	Threatened	U.S.A. (CA)	45 FR 63812 (25–SEP–80).
Desert slender salamander	*Batrachoseps aridus*	Endangered	U.S.A. (CA)	38 FR 14678 (04–JUN–73).
El Segundo blue butterfly	*Euphilotes battoides allyni*	Endangered	U.S.A. (CA)	41 FR 22041 (01–JUN–76).
Hiko White River springfish	*Crenichthys baileyi grandis*	Endangered	U.S.A. (NV)	50 FR 39123 (27–SEP–85).
Independence Valley speckled dace.	*Rhinichthys osculus lethoporus*	Endangered	U.S.A. (NV)	54 FR 41448 (10–OCT–89).
Lahontan cutthroat trout	*Oncorhynchus clarki henshawi*	Threatened	U.S.A. (CA, NV, OR, UT).	40 FR 29863 (16–JUL–75).
Lange's metalmark butterfly	*Apodemia mormo langei*	Endangered	U.S.A. (CA)	41 FR 22041 (01–JUN–76).
Lotis blue butterfly	*Lycaeides argyrognomon lotis*	Threatened	U.S.A. (CA)	41 FR 22041 (01–JUN–76).
Pacific pocket mouse	*Perognathus longimembris pacificus.*	Endangered	U.S.A. (CA)	59 FR 49752 (29–SEP–94).
Palos Verdes blue butterfly	*Glaucopsyche lygdamus palosverdesensis.*	Endangered	U.S.A. (CA)	45 FR 44939 (02–JUL–80).
Railroad Valley springfish	*Crenichthys nevadae*	Threatened	U.S.A. (NV)	51 FR 10857 (31–MAR–86).
San Clemente loggerhead shrike.	*Lanius ludovicianus mearnsi*	Endangered	U.S.A. (CA)	42 FR 40682 (11–AUG–77).
Tipton kangaroo rat	*Dipodomys nitratoides nitratoides*	Endangered	U.S.A. (CA)	53 FR 25608 (08–JUL–88).
White River springfish	*Crenichthys baileyi baileyi*	Endangered	U.S.A. (NV)	50 FR 39123 (27–SEP–85).
Plants				
Antioch Dunes evening primrose.	*Oenothera deltoides* ssp. *howellii*	Endangered	U.S.A. (CA)	43 FR 17910 (26–APR–78).
Applegate's milk vetch	*Astragalus applegatei*	Endangered	U.S.A. (OR)	58 FR 40547 (28–JUL–93).
Ash-grey (Indian) paintbrush	*Castilleja cinerea*	Threatened	U.S.A. (CA)	63 FR 49022 (14–SEP–98).
Beach layia	*Layia carnosa*	Endangered	U.S.A. (CA)	57 FR 27848 (22–JUN–92).
Ben Lomond wallflower	*Erysimum teretifolium*	Endangered	U.S.A. (CA)	59 FR 5499 (04–FEB–94).
Bear Valley sandwort	*Arenaria ursina*	Threatened	U.S.A. (CA)	63 FR 49006 (14–SEP–98).
Braunton's milk vetch	*Astragalus brauntonii*	Endangered	U.S.A. (CA)	62 FR 4172 (29–JAN–97).
Burke's goldfields	*Lasthenia burkei*	Endangered	U.S.A. (CA)	56 FR 61173 (02–DEC–91).
California taraxacum	*Taraxacum californicum*	Endangered	U.S.A. (CA)	63 FR 49006 (14–SEP–98).
Contra Costa goldfields	*Lasthenia conjugens*	Endangered	U.S.A. (CA)	62 FR 33029 (18–JUN–97).
Contra Costa wallflower	*Erysimum capitatum* var. *angustatum.*	Endangered	U.S.A. (CA)	43 FR 17910 (26–APR–78).
Few-flowered navarretia	*Navarretia leucocephala* ssp. *pauciflora* (=N. *pauciflora*).	Endangered	U.S.A. (CA)	62 FR 33029 (18–JUN–97).
Fish Slough milk vetch	*Astragalus lentiginosus* var. *piscinensis.*	Threatened	U.S.A. (CA)	63 FR 53596 (06–OCT–98).
Gowen cypress	*Cupressus goveniana* ssp. *goveniana.*	Endangered	U.S.A. (CA)	63 FR 43100 (12–AUG–98).
Greene's tuctoria	*Tuctoria greenei*	Endangered	U.S.A. (CA)	62 FR 14338 (26–MAR–97).
Hoover's spurge	*Chamaesyce hooveri*	Threatened	U.S.A. (CA)	62 FR 14338 (26–MAR–97).
Island barberry	*Berberis pinnata* ssp. *insularis*	Endangered	U.S.A. (CA)	62 FR 40954 (31–JUL–97).
Island phacelia	*Phacelia insularis* ssp. *insularis*	Endangered	U.S.A. (CA)	62 FR 40954 (31–JUL–97).
Lake County stonecrop	*Parvisedum leiocarpum*	Endangered	U.S.A. (CA)	62 FR 33029 (18–JUN–97).
Loch Lomond coyote thistle	*Eryngium constancei*	Endangered	U.S.A. (CA)	51 FR 45904 (23–DEC–86).
Lyon's pentachaeta	*Pentachaeta lyonii*	Endangered	U.S.A. (CA)	62 FR 4172 (29–JAN–97).

TABLE 1.—SUMMARY OF LISTING INFORMATION FOR 58 SPECIES IN CALIFORNIA AND NEVADA—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Many-flowered navarretia	*Navarretia leucocephala* ssp. *plieantha.*	Endangered	U.S.A. (CA)	62 FR 33029 (18–JUN–97).
Marsh sandwort	*Arenaria paludicola*	Endangered	U.S.A. (CA)	58 FR 41378 (03–AUG–93).
Mexican flannelbush	*Fremontodendron mexicanum*	Endangered	U.S.A. (CA)	63 FR 54956 (13–OCT–98).
Monterey spineflower	*Chorizanthe pungens* var. *pungens*	Threatened	U.S.A (CA)	59 FR 5499 (04–FEB–94).
Palmate-bracted bird's-beak	*Cordylanthus palmatus*	Endangered	U.S.A. (CA)	51 FR 23765 (01–JUL–86).
Purple amole	*Chlorogalum purpureum*	Threatened	U.S.A. (CA)	65 FR 14878 (20–MAR–00).
Salt marsh bird's-beak	*Cordylanthus maritimus* ssp. *maritimus.*	Endangered	U.S.A. (CA)	43 FR 44810 (28–SEP–78).
San Bernardino bluegrass	*Poa atropurpurea*	Endangered	U.S.A. (CA)	63 FR 49006 (14–SEP–98).
San Benito evening–primrose	*Camissonia benitensis*	Threatened	U.S.A. (CA)	50 FR 5755 (12–FEB–85).
San Joaquin Orcutt grass	*Orcuttia inaequalis*	Threatened	U.S.A. (CA)	62 FR 14338 (26–MAR–97).
San Joaquin wooly-threads	*Monolopia* (=*Lembertia*) *congdonii*	Endangered	U.S.A. (CA)	55 FR 29361 (19–JUL–90).
Santa Cruz cypress	*Cupressus abramsiana*	Endangered	U.S.A. (CA)	52 FR 675 (08–JAN–87).
Santa Cruz Island fringepod	*Thysanocarpus conchuliferus*	Endangered	U.S.A. (CA)	62 FR 40954 (31–JUL–97).
Sebastopol meadowfoam	*Limnanthes vinculans*	Endangered	U.S.A. (CA)	56 FR 61173 (02–DEC–91).
Soft bird's-beak	*Cordylanthus mollis* ssp. *mollis*	Endangered	U.S.A. (CA)	62 FR 61916 (20–NOV–97).
Solano grass	*Tuctoria mucronata*	Endangered	U.S.A. (CA)	43 FR 44810 (28–SEP–78).
Sonoma sunshine	*Blennosperma bakeri*	Endangered	U.S.A. (CA)	56 FR 61173 (02–DEC–91).
Southern mountain wild buck-wheat.	*Eriogonum kennedyi* var. *austromontanum.*	Threatened	U.S.A. (CA)	63 FR 49006 (14–SEP–98).
Suisun thistle	*Cirsium hydrophilum* var. *hydrophilum.*	Endangered	U.S.A. (CA)	62 FR 61916 (20–NOV–97).
Vail Lake ceanothus	*Ceanothus ophiochilus*	Threatened	U.S.A. (CA)	63 FR 54956 (13–OCT–98).

What Information Do We Consider in the Review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading ''How Do We Determine Whether a Species is Endangered or Threatened?''); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen as a Result of Our Review?

If we find information concerning the 58 species listed in Table 1 indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered; (b) reclassify the species from endangered to threatened; or (c) remove the species from the List. If we find that a change in classification is not warranted, the species will remain on the List under its current status.

Public Solicitation of New Information

To ensure that these 5-year reviews are complete and based on the best available scientific and commercial information, we solicit new information from the public, concerned governmental agencies, Tribes, the scientific community, environmental

entities, industry, and any other interested parties concerning the status of the species.

If you wish to provide information for any species included in these 5-year reviews, submit your information and materials as follows:

For Coachella Valley fringe-toed lizard, desert slender salamander, El Segundo blue butterfly, Pacific pocket mouse, Palos Verdes blue butterfly, San Clement loggerhead shrike, ash-grey (Indian) paintbrush, Bear Valley sandwort, California taraxacum, Mexican flannelbush, salt marsh bird's-beak, San Bernardino bluegrass, southern mountain wild buckwheat, and Vail Lake ceanothus, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011. Information may also be submitted electronically at *fw8cfwocomments@fws.gov.* To obtain further information, contact Scott Sobiech at the Carlsbad Fish and Wildlife Office at (760) 431–9440.

For the Sierra Nevada DPS of bighorn, the Santa Barbara County DPS of California tiger salamander, Ben Lomond wallflower, Braunton's milk-vetch, Fish Slough milk-vetch, Gowen cypress, island barberry, island phacelia, Lyon's pentachaeta, marsh sandwort, Monterey spineflower, purple amole, San Benito evening primrose, Santa Cruz cypress, and Santa Cruz Island fringepod, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Information may also be submitted electronically at *fw1vfwo5year@fws.gov.* To obtain further information on bighorn and California tiger salamander, contact Mike McCrary at the Ventura Fish and Wildlife Office at (805) 644–1766. To obtain further information on the plant species, contact Connie Rutherford at the Ventura Fish and Wildlife Office at (805) 644–1766.

For Lange's metalmark butterfly, Tipton kangaroo rat, Antioch Dunes evening primrose, Burke's goldfields, Contra Costa goldfields, Contra Costa wallflower, few-flowered navarretia, Greene's tuctoria, Hoover's spurge, Lake County stonecrop, Loch Lomond coyote thistle, many-flowered navarretia, palmate-bracted bird's-beak, San Joaquin Orcutt grass, San Joaquin wooly-threads, Sebastopol meadowfoam, soft bird's-beak, Solano grass, Sonoma sunshine, Suisun thistle, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. Information may also be submitted electronically at *fw1sfo5year@fws.gov.* To obtain further information, contact Craig Aubrey at the Sacramento Fish and Wildlife Office at (916) 414–6600.

For Clover Valley speckled dace, Hiko White River springfish, Independence Valley speckled dace, Lahontan cutthroat trout, Railroad Valley springfish, and White River springfish, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, NV 89502. Information may also be submitted electronically at *fw1nfwo_5yr@fws.gov.* To obtain further information on Hiko White River springfish and White River springfish, contact Cynthia Martinez at the Southern Nevada Field at (702) 515–5230. To obtain further information on Clover Valley speckled dace, Independence Valley speckled dace, Lahontan cutthroat trout, and Railroad Valley springfish, contact Laurie Sada at the Nevada Fish and Wildlife Office at (775) 861–6300.

For lotis blue butterfly and beach layia, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 11655 Heindon Road, Arcata, CA 95521. Information may also be submitted electronically at *lotisblue@fws.gov* for Lotis blue butterfly and *beachlayia@fws.gov for* beach layia. To obtain further information on Lotis blue butterfly, contact Jim Watkins at the Arcata Fish and Wildlife Office at (707) 822–7201. To obtain further information on beach layia, contact Dave Imper at the Arcata Fish and Wildlife Office at (707) 822–7201.

For Applegate's milk-vetch, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 1936 California St., Klamath Falls, OR 97601. Information may also be submitted electronically at *kfalls@fws.gov.* To obtain further information, contact Ron Larson at the Klamath Falls Fish and Wildlife Office at (541) 885–8481.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. We will not consider anonymous comments, however. To the extent consistent with applicable law, we will make all 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

Completed 5-Year Reviews

We also take this opportunity to inform the public of 12 5-year reviews that we completed in FY 2006 for species in California and Nevada. These 12 reviews can be found at *http://www.fws.gov/cno/es/5yr.html.* Any recommended change in listing status will require a separate rulemaking process. The table below summarizes the results of these reviews:

TABLE 2.—SUMMARY OF SPECIES IN CALIFORNIA AND NEVADA FOR WHICH 5-YEAR REVIEWS WERE COMPLETED IN FY 2006

Common name	Scientific name	Recommendation	Lead Fish and Wildlife Office	Contact
Animals				
California least tern	*Sterna antillarum browni*	Downlist	Carlsbad	Jane Hendron at (760) 431–9440
Giant garter snake	*Thamnophis gigas*	No status change	Sacramento	Al Donner at (916) 414–6600

TABLE 2.—SUMMARY OF SPECIES IN CALIFORNIA AND NEVADA FOR WHICH 5-YEAR REVIEWS WERE COMPLETED IN FY 2006—Continued

Common name	Scientific name	Recommendation	Lead Fish and Wildlife Office	Contact
Island night lizard	*Xantusia riversiana*	Downlist San Clemente Island.	Carlsbad	Jane Hendron at (760) 431–9440
Least Bell's vireo	*Vireo bellii pusillus*	Downlist	Carlsbad	Jane Hendron at (760) 431–9440
Morro shoulderband snail	*Helminthoglypta walkeriana*	Downlist Morro shoulderband and delist Chorro shoulderband.	Ventura	Lois Grunwald at (805) 644–1766
San Francisco garter snake	*Thamnophis sirtalis tetrataenia*	No status change	Sacramento	Al Donner at (916) 414–6600
Smith's blue butterfly	*Euphilotes enoptes smithi*	Downlist	Ventura	Lois Grunwald at (805) 644–1766
Valley elderberry longhorn beetle.	*Desmocerus californicus dimorphus*	Delist	Sacramento	Al Donner at (916) 414–6600
Western snowy plover (Pacific Coast DPS).	*Charadrius alexandrinus nivosus*	No status change	Arcata	Al Donner at (916) 414–6600
Plants				
Hidden Lake bluecurls	*Trichostema austromontanum ssp. compactum.*	No status change	Carlsbad FWO	Jane Hendron at (760) 431–9440
Kneeland Prairie pennycress	*Thlaspi californicum*	No status change	Arcata FWO	Al Donner at (916) 414–6600
Santa Cruz Island rockcress	*Sibara filifolia*	No status change	Carlsbad FWO	Jane Hendron at (760) 431–9440

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 7, 2007.

Ken McDermond,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E7–2504 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bear Butte National Wildlife Refuge; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft comprehensive conservation plan; request for comments; correction.

Correction

In notice document E7–1988, appearing on page 5990, in the issue of Thursday, February 8, 2007, make the following correction:

On page 5990, in the first column, the third and fourth paragraphs should read:

ADDRESSES: A copy of the document may be obtained by writing to Michael Spratt, Planning Team Leader, U.S. Fish and Wildlife Service, Division of Refuge Planning, Box 25486, Denver, Colorado 80225–0486; or electronically to *Michael_Spratt@fws.gov* or downloaded from *http://mountain-prairie.fws.gov/planning*. Please provide written comments to the address above.

FOR FURTHER INFORMATION CONTACT: Michael Spratt at 303–236–4366; fax: 303–236–4792; or e-mail: *Michael_Spratt@fws.gov*.

Dated: February 8, 2007.

Richard A. Coleman,

Assistant Regional Director, Region 6.

[FR Doc. E7–2514 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Hannahville Tribe of Potawatomi Indians' Hotel and Casino Project, Romulus, MI

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with Hannahville Tribe of Potawatomi Indians (Tribe) as a cooperating agency, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed hotel and casino project to be located on 9.8 acres of a 24.8 acre parcel owned by the Tribe in Romulus, Michigan. The purpose of the proposed action is to help address the socioeconomic needs of the Tribe. This notice also announces a public scoping meeting to identify public and agency concerns and alternatives to be considered in the EIS. The Tribes' application seeks to have a portion of

the off-reservation parcel taken into trust pursuant to Section 5 of the Indian Reorganization Act and implementing regulations in 25 CFR part 151, and requests a Secretarial determination pursuant to Section 20(b)(1)(A) of the Indian Gaming Regulatory Act that a proposed gaming establishment on the parcel would be in the best interest of the Tribe and its members, and not detrimental to the surrounding community. We are aware that some members of the public have expressed concerns about off-reservation gaming. In this case, the parcel is located over 450 miles from the Tribe's reservation. We are soliciting and will consider accommodating the views of elected officials (State, county, city, etc.) and community members in the local areas as part of our decision-making process. We also plan a more detailed consideration of the broad implications associated with new gaming operations within established communities where gaming is not currently conducted.

DATES: The public hearing will be held March 8, 2007, starting at 7 p.m. and continuing until all those who wish to make statements have been heard. Written comments on the scope and implementation of this proposal must arrive by March 26, 2007.

ADDRESSES: The public scoping meeting will be at the Crowne Plaza Hotel Detroit Metro Airport, 800 Merriman Road, Romulus, Michigan 48174. It will be co-hosted by the BIA and the Tribe. You may mail or hand-carry written comments to Terrance L. Virden, Regional Director, Midwest Region, Bureau of Indian Affairs, Bishop Henry Whipple Federal Building, One Federal Drive, Room 550, Ft. Snelling, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Scott Doig, (612) 725–4514.

SUPPLEMENTARY INFORMATION: The proposed project is located on a 24.8-acre site in the City of Romulus, Michigan. The site is situated north of the Detroit Metropolitan Airport, approximately 0.5 miles north of Interstate 94 and 20 miles east of Detroit, Michigan. As part of the project, the U.S. Department of the Interior, on behalf of the Tribe, will consider whether or not to take 9.8 acres of the 24.8-acre project site into federal trust. In addition to the proposed action, a reasonable range of alternatives, which will include a no-action alternative and may include an on-reservation alternative, will be considered during the NEPA compliance process.

The Tribe consists of approximately 780 members. A Tribal Council, under a federally approved constitution, governs tribal affairs. The United States presently holds approximately 5,800 acres of land in the upper peninsula of the State of Michigan in trust for the Tribe.

Public Comment Availability

Comments including names and addresses of respondents, will be available for public review at the BIA address show in the ADDRESSES section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM8.

Dated: February 8, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 07–678 Filed 2–13–06; 8:45 am]

BILLING CODE 4310–W7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–090–06–1220–PM]

Revision of Recreation Use Restrictions for Indian Creek Canyon Corridor: Closure of the Newspaper Rock Camping Area: Notice of Closure of 987 Acres of Public Land to Camping

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that effective immediately, the Bureau of Land Management (BLM), Monticello Field Office, is closing 987 acres of public lands in the Indian Creek Canyon near Monticello, Utah, to overnight camping. The public lands affected by this closure are located along Utah State Highway 211, in the following sections of T. 31 S., R. 22 E., section 31, W½ and in sections of T. 32 S., R. 22 E., section 5, SW¼; section 6, E½; section 7, E½; section 8, W½; section 14, SW¼; section 15, SE¼; section 16, SW¼; section 17; section 20, NE¼; section 21, N½; section 22, N½. The purpose of the closure is to provide for public health and safety, and to protect soils and vegetation that have been adversely impacted or are at risk of being adversely impacted by recreational use. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Sandra Meyers, Field Office Manager, Monticello Field Office, Bureau of Land Management, P.O. Box 7, Monticello, Utah 84535; (435) 587–1500.

SUPPLEMENTARY INFORMATION: The BLM is implementing this action on 987 acres of public land in San Juan County, in southeast Utah. The BLM's Monticello Field Office has observed and documented a high probability of flash flood danger in the Newspaper Rock Area. Adverse effects to soils and vegetation from overnight camping use are also present in the area. Based on this information, BLM's authorized officer has determined that overnight camping in this area is causing, or will cause, unsafe camping opportunities for the public and considerable adverse effects upon soils and vegetation. Consequently, this area is being closed to overnight camping use. A map showing the closure area is available for public inspection at the BLM's Monticello Field Office, at the above address. Camping use on the remainder of the public lands in San Juan County, Utah, administered by the BLM, will be managed according to existing **Federal Register** orders and the 1991 San Juan Resource Area Resource Management Plan. This closure order does not apply to:

(1) Any Federal, state or local government law enforcement officer engaged in enforcing this closure order or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any BLM employee, agent, contractor, or cooperator while in the performance of an official duty.

This order shall not be construed as a limitation on BLM's future planning efforts. The BLM will periodically monitor resource conditions and trends in the closure area and may modify this order or implement additional limitations or closures as necessary.

The authority for this order is 43 CFR 8364.1(a) and 9268.3(d).

Dated: January 9, 2007.

Sandra A. Meyers,

Field Office Manager.

[FR Doc. E7–2415 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1220–MA]

Notice of Temporary Restriction Order

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), Arcata Field Office will establish temporary restrictions pursuant to the Code of Federal Regulations, 43 CFR 8341.2 and 8364.1, to implement interim management guidelines for certain BLM-administered public lands hereafter referred to as ''Lost Coast Headlands,'' located in Township 2 North, Range 3 West, portions of Sections 13 and 24, Humboldt County, California. Lost Coast Headlands consists of approximately 400 acres and is located along the coastal bluffs approximately 6 miles southwest of Ferndale, CA. These restrictions are needed on a temporary basis until a Resource Management Plan (RMP) Amendment, which will be initiated in 2007, is completed for the area. The area is now open to dispersed recreation with an emphasis on accommodating pedestrian and equestrian access to the coastline. The temporary restrictions are as follows:

The area will be open to day use, from one hour before sunrise to one hour after sunset; overnight camping, campfires, firearms use, and archery use will not be allowed; and motorized vehicle use off maintained roads and parking areas will not be allowed.

Employees, agents, and permitees of the BLM may be exempt from these restrictions for administrative and emergency purposes only.

Penalties include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, and violators may be subject to the enhanced penalties under 18 U.S.C. 3571 and 18 U.S.C. 3581.

These restrictions are necessary to (1) Protect aquatic and terrestrial species from the effects of unregulated impacts, (2) ensure public safety, (3) reduce the potential for wildfires in this wildland urban interface, and (4) minimize inadvertent trespass onto adjoining private property. They will remain in effect until the RMP Amendment, with full public participation, is completed.

DATES: These temporary restrictions will be effective on March 16, 2007 and once they are posted at the designated site location and the BLM Arcata Field Office.

ADDRESSES: Maps and supporting documentation are available for review at the following location: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA, 95521.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, BLM, Arcata Field Manager, 1695 Heindon Road, Arcata, CA 95521. Ms. Roush may also be contacted by telephone: (707) 825–2300.

SUPPLEMENTARY INFORMATION: The BLM recently acquired two parcels, totaling approximately 400 acres, thanks to the cooperative effort and funding by the California Coastal Conservancy and The Conservation Fund as a third party cooperator. The parcels cover approximately 3 miles of rugged coastal bluffs and include 2 small beach areas at the mouths of Guthrie Creek and Fleener Creek. Located at the south end of the area is a small parking area and hiking/equestrian trail that provides access to the beach. At the north end of the area, another parking area exists with a beach access trail to be constructed during the summer of 2006.

A considerable amount of public scoping occurred during the acquisition process. During the scoping, adjoining residents and ranchers and other members of the public expressed concerns regarding trespassing onto private property, safety of the public and adjacent residents related to firearms use, and the increased fire danger that would occur from overnight camping and associated campfires. The BLM assured these neighboring owners that their concerns would be addressed in a comprehensive plan for the area that incorporated full public involvement.

The BLM will limit use of the Lost Coast Headlands to daytime access, that is, beginning one hour before sunrise and ending one hour after sunset. Motorized vehicles will be limited to use along the county road and designated parking areas. These two temporary restrictions will provide interim protection for a threatened species, the Northern California Steelhead, and its aquatic habitat and associated riparian vegetation. By taking this interim action, the BLM contributes to the conservation of a threatened species in accordance with Section 7(a)(1) of the Endangered Species Act, 16 U.S.C. 1536(a)(1). The camping and campfire restriction will also reduce the potential for wildfires, which could otherwise occur in this area of flashy fuels (dry grass). The temporary firearms and archery use restrictions are needed to prevent accidents and ensure public safety in this relatively small public land area, due to the proximity of these lands to residences and cattle pastures. Inadvertent trespass onto adjoining private lands will be reduced.

These temporary restrictions will be posted in the BLM Arcata Field Office and at places near and/or within the affected public lands.

Dated: December 18, 2006.

Donald Holmstrom,

Assistant Arcata Field Manager.

[FR Doc. E7–2420 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Eastern Gulf of Mexico (GOM), Oil and Gas Lease Sale 224 for 2008

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations/Notice of Intent (Call/NOI) to Prepare a Supplemental Environmental Impact Statement (SEIS).

SUMMARY: The purpose of the Call/NOI is to gather information on oil and gas leasing, exploration, and development that might result from an OCS oil and gas lease sale tentatively scheduled in early 2008. As mandated in the recently enacted Gulf of Mexico Energy Security Act (GOMESA) of 2006 (Pub. L. 109–432, December 20, 2006), MMS shall offer a portion of the ''181 Area,'' located in the Eastern Planning Area, more than 125 miles from Florida for oil and gas leasing. The NOI seeks input for scoping a SEIS.

DATES: Comments must be received no later than March 16, 2007 at the address specified below.

FOR FURTHER INFORMATION CONTACT: For information on this Call, please contact Mr. Carrol Williams, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2803. For information on the NOI, you may contact Mr. Dennis Chew, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2793.

SUPPLEMENTARY INFORMATION: The recently enacted Gulf of Mexico Energy Security Act (GOMESA) of 2006, (Pub.

L. 109–432, December 20, 2006), mandated MMS to offer a portion of the ''181 Area'' located in the newly defined Eastern Planning Area, more than 125 miles from Florida, and west of the Military Mission Line (86 degrees, 41 minutes West longitude) for oil and gas leasing ''as soon as practicable, but not later than 1 year, after the date of enactment of this Act.'' The Act mandates offering this area ''notwithstanding the omission of the 181 Area * * * from any outer Continental Shelf leasing program under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344).'' However, this action is not exempted from other legal requirements, such as the National Environmental Policy Act (NEPA) or the Coastal Zone Management Act. The MMS has decided to prepare a supplemental EIS to the original Sale 181 Area EIS (2001) in order to address these requirements. The earliest MMS would be able to meet these requirements and offer this area would be approximately March 2008. To meet the 1-year requirement of the Act, this sale should be held no later than December 2007; however, MMS feels that it is in the best interests of all parties, including the American public as owners of these resources, that MMS take the time necessary to fully comply with all pertinent laws, rules and regulations and allow the public an opportunity to participate in the NEPA process. It also is more economical and efficient for the government and industry to hold this sale in conjunction with Central Gulf of Mexico Sale 206 at the same time and location. The area to be offered in Sale 224 is small, approximately 130 tracts. Recent Central Gulf sales have offered over 4,000 tracts. The logistics of holding a sale are intensive and relatively costly; therefore, it makes sense to hold the smaller sale in conjunction with a larger sale. Additionally, holding Sale 224 in conjunction with Sale 206 would help ensure that a sufficient number of companies would be represented in bidding, which may enhance the number of bids and possibly the revenue generated by more competitive bidding.

This Call/NOI is the initial step in the prelease process for the sale. The SEIS associated with this NOI will update the environmental and socioeconomic analyses in the Gulf of Mexico OCS Oil and Gas Lease Sale 181 Final EIS (OCS EIS/EA MMS 2001–051) which addressed the original ''Sale 181 Area.'' The MMS plans to complete National Environmental Policy Act (NEPA), OCS Lands Act, and Coastal Zone Management Act (CZMA) coverage for the proposed lease sale.

Call for Information and Nominations

1. Authority

This Call is published pursuant to the OCSLA as amended (43 U.S.C. 1331–1356), and the regulations issued thereunder (30 CFR part 256).

2. Purpose of Call

The purpose of the Call is to gather information for the following tentatively scheduled OCS Lease Sale in a portion of the ''181 Area'':

Lease Sale, OCS Planning Area:

Lease Sale 224, Eastern GOM (portion).

Tentative Lease Sale Date:

March 2008.

Information on oil and gas leasing, exploration, development and production within this portion of the Eastern Planning Area is sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCSLA and regulations at 30 CFR part 256.

This Call is in response to the mandate for a lease sale contained in the GOMESA. Final delineation of this area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the NEPA, CZMA and OCSLA. Established Departmental procedures will be employed.

3. Description of Area

The general area of this Call encompasses about 134 unleased blocks covering approximately 584,817 acres in that portion of the ''181 Area'' that is west of the Military Mission Line and more than 125 miles from Florida. A standard Call for Information Map depicting this portion of the Eastern Planning Area is available without charge from: Minerals Management Service, Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or telephone: 1–800–200–GULF. The map is also available via the MMS Web site at *http://www.mms.gov.*

4. Instructions on Call

Comments must be received no later than 30 days following publication of this document in the **Federal Register** in envelopes labeled ''Comments on the Call for Information and Nominations for Proposed Lease Sale 224 for 2008,'' submitted to the Gulf of Mexico Region's Leasing Activities Section (Attention: Mr. Carrol Williams) at the previously noted address.

The standard Call for Information Map delineates the Call area, all of which has been identified by the MMS as having potential for the discovery of accumulations of oil and gas.

Comments are sought from all interested parties about particular geological, environmental (including natural disasters), biological, archaeological and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of this area. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed lease sale and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

5. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. First, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. Comments on environmental and other use conflicts will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A second purpose for this Call is to use the comments collected in the scoping process to develop proposed actions and alternatives. Third, comments may be used in developing lease terms and conditions to ensure environmentally safe offshore operations, and, fourth, comments may be used to assess potential conflicts between offshore gas and oil activities and a State CMP.

6. Existing Information

The MMS routinely assesses the status of information acquisition efforts and the quality of the information base for potential decisions on a tentatively scheduled lease sale. An extensive environmental studies program has been underway in the GOM since 1973. The emphasis, including continuing studies, has been on ''environmental analysis'' of biologically sensitive habitats, physical oceanography, ocean-

circulation modeling, and ecological effects of oil and gas activities. In response to impacts from Hurricanes Katrina and Rita, the MMS is funding studies regarding hurricane risks to onshore structures and their surrounding communities and environment. Socioeconomic profiles of communities with a high concentration of OCS-related activity will assess the social and environmental impacts of the 2005 hurricanes. These studies will also evaluate the effects of hurricane-related employment shifts on onshore labor and coastal communities. In addition, MMS recently awarded a number of studies to determine the impact of Hurricane Ivan on offshore oil and gas structures. These studies were designed to analyze and assess the damage to structures and pipelines, determine the effectiveness of current design standards and pollution-prevention systems, and develop recommendations for potential changes to industry standards and MMS regulations, if needed. Results of these studies will also apply to the impacts of Hurricanes Katrina and Rita and future hurricanes.

You may obtain a complete listing of available study reports and information for ordering copies from the Public Information Unit referenced above. You may also order the reports for a fee, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or telephone (703) 605–6000 or (800) 553–6847. In addition, you may obtain a program status report for continuing studies in this area from the Chief, Environmental Sciences Section (MS 5430), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or telephone (504) 736–2752, or via the MMS Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/studiesprogram.html.*

7. Tentative Schedule

MILESTONES FOR PROPOSED LEASE SALE 224 FOR 2008

NOI to Prepare a SEIS	February 2007.
Call for Information and Nominations	February 2007.
Comments received on Call/NOI	March 2007.
Scoping Meetings	March 2007.
Area Identification Decision	March 2007.
Draft SEIS published	June–July 2007.
Public Hearings on Draft SEIS	August–September 2007.
Final SEIS	October–November 2007.
Proposed Notice and Coastal Zone Management Consistency Determination	5 months before lease sale.
Final Notice of Sale	1 month before lease sale.
Tentative Lease Sale Date	March 2008 (Lease Sale 224).

Notice of Intent to Prepare a Supplemental Environmental Impact Statement

1. Authority

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

2. Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provisions of NEPA, MMS is announcing its intent to prepare a SEIS on an oil and gas lease sale tentatively scheduled in early 2008 in the Eastern GOM offshore the States of Louisiana, Mississippi, Alabama, and Florida. The SEIS will update the analyses in the Gulf of Mexico OCS Oil and Gas Lease Sale 181 Final Environmental Impact Statement (OCS EIS/EA MMS 2001–051). The NOI also serves to announce the scoping process for this SEIS. Throughout the scoping process, Federal, State, and local government agencies, and other interested parties have the opportunity to aid MMS in determining the significant issues and alternatives for analysis in the SEIS. The SEIS analysis will focus on the potential environmental effects of oil and natural gas leasing, exploration, development, and production in the proposed lease sale area.

3. Supplemental Information

As mandated in the recently enacted Gulf of Mexico Energy Security Act of 2006, MMS shall offer the ''181 Area'' for oil and gas leasing pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*). In October 2007, proposed Lease Sale 205 would offer the portion of the ''181 Area'' located in the Central Planning Area, and this is being addressed by a separate EIS. The MMS is proposing to prepare a SEIS to address the proposed lease sale in the remaining portion of the ''181 Area.'' (see map). The resource estimates and scenario information for the SEIS analyses will be presented as a range that would encompass the resources and activities estimated for the proposed lease sale. At the completion of this SEIS process, a decision will be made for the proposed sale in 2008. This SEIS will supplement the Gulf of Mexico OCS Oil and Gas Lease Sale 181 Final Environmental Impact Statement (OCS EIS/EA MMS 2001–051), which addressed the original ''181 Area.'' For more information on the SEIS, you may contact Dennis Chew, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394 or e-mail *environment@mms.gov.* You may also contact Mr. Chew by telephone at (504) 736–2793.

4. Cooperating Agency

The MMS invites other Federal agencies and State, tribal, and local governments to consider becoming cooperating agencies in the preparation of the SEIS. We invite qualified government entities to inquire about cooperating agency status for the SEIS. Following the guidelines from the Council of Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and note that an agency's role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any other agency involved in the NEPA process. Upon request, MMS will provide potential cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of predecisional information. The MMS anticipates this summary will form the basis for a Memorandum of Understanding

between MMS and each cooperating agency. Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. A copy of this document is available at *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

The MMS, as the lead agency, will not provide financial assistance to cooperating agencies. Yet, even if an organization is not a cooperating agency, opportunities exist to provide information and comments to MMS during the normal public input phases of the NEPA/SEIS process. If further information about cooperating agencies is needed, please contact Mr. Dennis Chew at (504) 736–2793.

5. Comments

Federal, State, and local government agencies, and other interested parties are requested to send their written comments on the scope of the SEIS, significant issues that should be addressed, and alternatives that should be considered in one of the following three ways:

1. Electronically using MMS's Public Connect on-line commenting system at *https://ocsconnect.mms.gov.* From the Public Connect ''Welcome'' screen, search for ''Lease Sale 224 SEIS'' or select it from the ''Projects Open for Comment'' menu.

2. In written form enclosed in an envelope labeled ''Comments on the Lease Sale 224 SEIS'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

3. Electronically to the MMS e-mail address: *environment@mms.gov.*

Comments should be submitted no later than 30 days from the publication of this NOI.

Notice of Public Scoping Meetings on the Supplemental Environmental Impact Statement

Summary: Pursuant to the regulations implementing the procedural provisions of the NEPA (42 U.S.C. 4321, *et seq.*), the MMS will hold public scoping meetings in Louisiana and Florida on the SEIS for the tentatively scheduled 2008 oil and gas leasing proposal in the Eastern Gulf of Mexico. The purpose of these meetings will be to solicit comments on the scope of the SEIS.

The public scoping meetings are scheduled as follows:

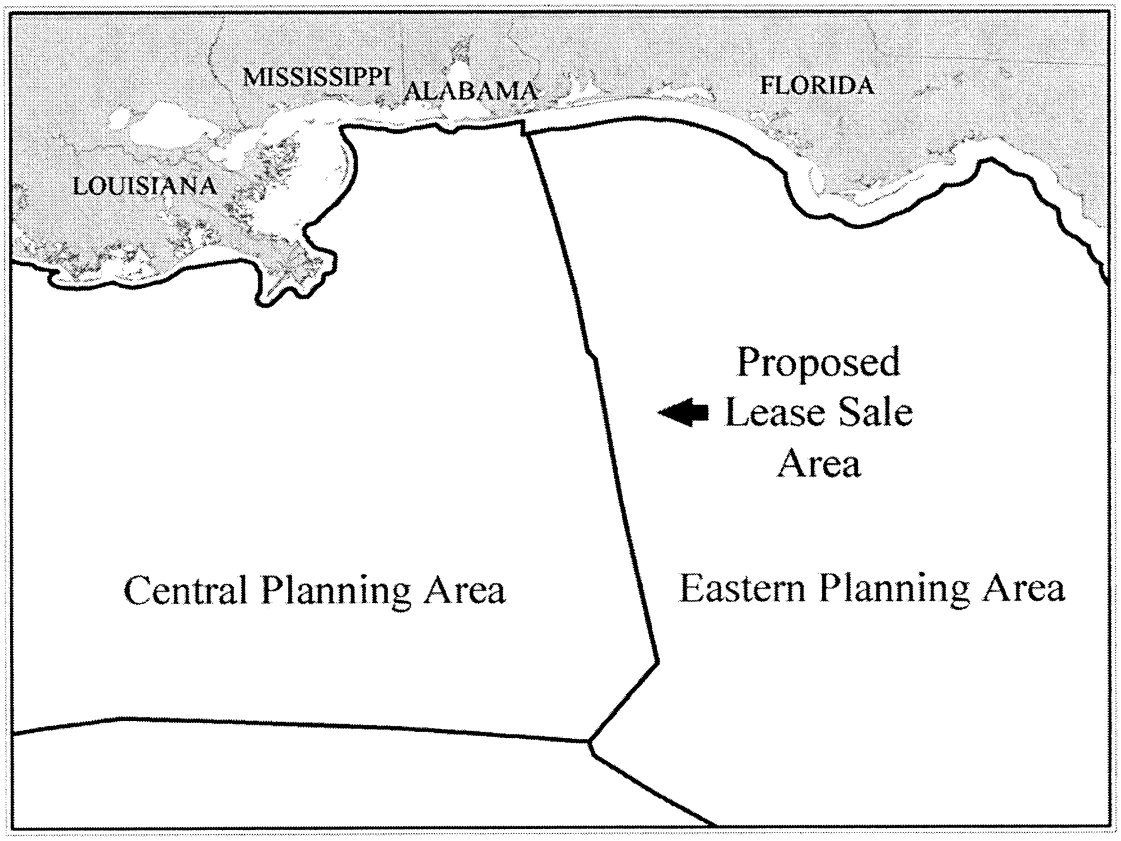
- Thursday, March 1, 2007, New World Landing, 600 South Palafox Street, Pensacola, Florida, 3 p.m. and 7 p.m.
- Wednesday, March 7, 2007, Larose Civic Center, Larose Regional Park, Larose, Louisiana, 7 p.m.

For further information about the scoping meetings contact Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Dennis Chew, telephone (504) 736–2793.

Dated: February 8, 2007.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.



[FR Doc. E7–2498 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: The Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB# 1024–0029).

DATES: Public comments will be accepted on or before April 16, 2007.

ADDRESSES: Send comments to Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240; e-mail: *jo_pendry@nps.gov*. All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concessions Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. *Phone:* 202/513–7144; *Fax:* 202/371–2090.

SUPPLEMENTARY INFORMATION:

Title: Concessioner Annual Financial Report.

Bureau Form Number(s): 10–356, 10–356a, 10–356b.

OMB Control Number: 1024–0029.

Expiration Date of Approval: April 30, 2007.

Type of Request: Extension of a currently approved information collection.

Description of Need: The regulations at 36 CFR Part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which requires that the Secretary of the Interior exercise authority in a manner consistent with a reasonable opportunity for a concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed. It also requires that franchise fees be determined with consideration to the opportunity for net profit in relation to both gross receipts and capital invested. The financial information being colleted is necessary to provide insight into and knowledge of the concessioner's operation so that this authority can be exercised and franchise fees determined in a timely manner and without an undue burden on the concessioner. This program will measure performance in meeting goals as required by the 1995 Government Performance and Results Act.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Frequency of Collection: Annually.

Description of Respondents: National Park Service concessioners.

Total Annual Responses: 500.

Estimate of Burden: Approximately 20 hours per response.

Total Annual Burden Hours: 3,800.

Total Non-hour Cost Burden: None.

Dated: January 8, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–656 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection Information; Opportunity for Public Comment

AGENCY: The Department of the Interior, National Park Service.

ACTION: Notice of request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB #1024–0231).

DATES: Public comments will be accepted on or before April 16, 2007.

ADDRESSES: Send comments to Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240; e-mail: *jo_pendry@nps.gov;* All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C St., NW., (2410), Washington, DC 20240. *Phone:* 202–513–7144; *Fax:* 202–371–2090.

SUPPLEMENTARY INFORMATION:

Title: Concession Contract—36 CFR 51.

Form Number(s): None.

OMB Control Number: 1024–0231.

Expiration Date of Approval: April 30, 2007.

Type of Request: Extension of a currently approved information collection.

Description of Need: The information is being collected to meet the requirements of Sections 403(7) and (8) of the NPS Concessions Management Improvement Act of 1998 (the Act), concerning the granting of a preferential right to renew a concession contract, Section 405 of the Act, regarding the construction of capital improvements by concessioners, and Section 414 of the Act, regarding recordkeeping requirements of concessioners. The information will be used by the agency in considering appeals concerning preferred offeror determinations, agency review and approval of construction projects and determinations with regard to the leasehold surrender interest value of such projects, and when necessary, agency review of a concessioner's books and records related to its activities under a concession contract. This program will also measure performance in meeting goals as required by the 1995 Government Performance and Results Act.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the agency's burden hour estimate; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you

should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Frequency of collection: Once.

Description of Respondents: NPS concessioners, and, in the case of appeals of preferred offeror determinations, offerors in response to concession prospectuses.

Total Annual Responses: 758.

Estimated Total Burden: 8 hours per response.

Total Annual Burden Hours: 3,276.

Dated: January 22, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–657 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Temporary Concession Contract for Whiskeytown National Recreation Area, CA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of proposed award of temporary concession contract for Marina and other services within Whiskeytown National Recreation Area, CA.

SUMMARY: Pursuant to 36 CFR 51.24, public notice is hereby given that the National Park Service proposes to award a temporary concession contract for the conduct of certain visitor services within Whiskeytown National Recreation Area, California for a term not to exceed 1 year. The visitor services include a marina, retail and other services. This action is necessary to avoid interruption of visitor services.

DATES: The term of the temporary concession contract will commence (if awarded) as of January 1, 2007, which is the date of expiration of an expired concession contract with CC–WHIS001–83.

SUPPLEMENTARY INFORMATION: The temporary concession contract is proposed to be awarded to Oak Bottom Marina, LLC, a qualified person.

The National Park Service has determined that a temporary contract is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. This action is consistent with congressional intent that temporary contracts be used where a new park unit or land is added to the National Park System and an existing business is providing visitor services that the Secretary of Interior wishes to continue without interruption. S. Rep. No. 105–202 at 33 (1998).

This action is issued pursuant to 36 CFR 51.24(a). This is not a request for proposals.

Dated: December 17, 2006.

Sue Masica,

Acting Deputy Director, National Park Service.

[FR Doc. 07–669 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operation does not affect any rights with respect to selection for award of a new concession contract.

Conc. ID No.	Concessioner name	Park
FOMC001–96	Evelyn Hill Corporation	Fort McHenry National Memorial and Shrine.
STLI002–88	Evelyn Hill, Inc	Statue of Liberty National Monument.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–658 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
AMIS002–89	Rex Maughn	Amistad National Recreation Area.

Conc ID No.	Concessioner name	Park
AMIS003–87	Rough Canyon Marina	Amistad National Recreation Area.
BRCA003–84	Xanterra Parks & Resorts, Inc.	Bryce Canyon National Park.
CACH001–84	White Dove Inc., dba Thunderbird Lodge	Canyon de Chelly National Monument.
CAVE001–70	Cavern Supply Company, Inc.	Carlsbad Caverns National Park.
GLAC001–89	Glacier Park Boat Company, Inc.	Glacier National Park.
GLCA003–69	ARAMARK	Glen Canyon National Park.
GRCA002–85	Xanterra Parks & Resorts, Inc.	Grand Canyon National Park.
GRCA004–88	Jerman-Mangum Enterprises, Inc.	Grand Canyon National Park.
GRCA005–88	Verkamps, Inc.	Grand Canyon National Park.
GRCA006–96	Arizona Raft Advetures, Inc.	Grand Canyon National Park.
GRCA007–96	Arizona River Runners, Inc.	Grand Canyon National Park.
GRCA010–96	Canyoneers, Inc.	Grand Canyon National Park.
GRCA011–96	Colorado River & Trail Expeditions, Inc.	Grand Canyon National Park.
GRCA015–96	Grand Canyon Expeditions, Inc.	Grand Canyon National Park.
GRCA016–96	Canyon Expeditions, Inc.	Grand Canyon National Park.
GRCA017–96	Diamond River Adventures, Inc.	Grand Canyon National Park.
GRCA018–96	Ted C. Hatch River Expenditions, Inc.	Grand Canyon National Park.
GRCA020–96	Moki Mac River Expenditions, Inc.	Grand Canyon National Park.
GRCA021–96	O.A.R.S. Grand Canyon Inc.	Grand Canyon National Park.
GRCA022–96	John R. Vail	Grand Canyon National Park.
GRCA024–96	ARAMARK	Grand Canyon National Park.
GRCA025–96	Tour West, Inc.	Grand Canyon National Park.
GRCA026–96	Western River Expeditions, Inc.	Grand Canyon National Park.
GRCA028–96	Canyon Explorations, Inc.	Grand Canyon National Park.
GRCA029–96	Grand Canyon Discovery, Inc.	Grand Canyon National Park.
GRTE003–97	Rex G. and Ruth G. Maughan	Grand Teton National Park.
LAMR002–87	Rex Maughan	Lake Meredith National Recreation Area.
MEVE001–82	ARAMARK	Mesa Verde National Park.
PEFO001–85	Xanterra Parks & Resorts, LLC	Petrified Forest National Park.
ZION003–85	Xanterra Parks & Resorts, LLC	Zion National Park.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo. A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–659 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service, Interior

Concession Contract and Permits

AGENCY: National Park Service, Interior

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

SUPPLEMENTARY INFORMATION: The listed concession authorizations will expire by their terms on or before December 31, 2006. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. these extensions will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering these operations.

Conc ID No.	Concession name	Park
CANY031–02	Holiday River Expeditions, Inc	Canyonlands National Park.
CANY032–02	Escape Adventures, Inc	Canyonlands National Park.
CANY033–02	Mike & Maggie Adventures, LLC	Canyonlands National Park.
CANY034–02	Rim Tours, Inc	Canyonlands National Park.
CANY035–02	Western Spirit Cycling, Inc	Canyonlands National Park.
GLAC002–81	Glacier Park, Inc	Glacier National Park.
GRTE022–02	Jenny Lake Boating, Inc	Grand Teton National Park.
YELL001–03	Medcor, Inc	Yellowstone National Park.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–660 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

DATES: *Effective Date:* January 1, 2007.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
NACE005–92	Langston Legacy Golf Corp	National Capital Parks-East.
ROCR003–89	Golf Course Specialists, Inc	Rock Creek Park.
PRWI001–88	Prince William Travel Trailer Village, Inc	Prince William Forest Park.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–661 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not to exceed 1 year from the date of contract expiration.

DATES: *Effective Date:* January 1, 2007.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not to exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

CONCID No.	Concessioner name	Park
BLRI002–83	Northwest Trading Post, Inc.	Blue Ridge Parkway.
BLRI001–93	Southern Highland Handicraft Guild	Blue Ridge Parkway.
BLRI007–82	Forever NPC Resorts, LLC	Blue Ridge Parkway.
BUIS015–98	MileMark, Inc.	Buck Island Reef National Monument.
CAHA001–98	Avon-Thornton Limited Partnership	Cape Hatteras National Seashore.
CAHA002–98	Cape Hatteras Fishing Pier, Inc.	Cape Hatteras National Seashore.
CAHA003–84	Hatteras Island Motel Limited Partnership	Cape Hatteras National Seashore.
CAHA004–98	Oregon Inlet Fishing Center, Inc.	Cape Hatteras National Seashore.
CALO003–98	Morris Marina, Kabin Kamps & Ferry Service, Inc.	Cape Lookout National Seashore.
EVER001–80	Xanterra Parks and Resorts, Inc.	Everglades National Park.
EVER002–82	Everglades National Park Boat Tours, Inc.	Everglades National Park.
EVER005–89	Florida National Parks & Monuments Assoc.	Everglades National Park.
FOSU001–86	Fort Sumter Tours, Inc.	Fort Sumter National Monument.
GRSM002–83	Leconte Lodge Limited Partnership	Great Smoky Mountains National Park.
MACA002–82	Forever Resorts, LLC/Forever Resorts, Inc.	Mammoth Cave National Park.
VIIS001–71	Caneel Bay, Inc.	Virgin Islands National Park.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–662 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2006. The National Park Service has determined that the proposed short-term extensions are

necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
HOSP002–94	Buckstaff Bath House Company	Hot Springs National Park.
VOYA002–96	Kettle Falls Hotel	Voyageurs National Park.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–663 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2006. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for a new long-term concession contracts covering these operations.

Conc ID No.	Concession name	Park
DENA901–02	Alaska Remote Guide Service	Denali National Park & Preserve.
DENA904–02	Kichatna Guide Service	Denali National Park & Preserve.
KATM001–01	Katmailand, Inc	Katmai National Park & Preserve.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–664 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

CONCID No.	Concessioner name	Park
OZAR001–88	Shane and Kimberly Van Steenis (Alley Spring Canoe Rental).	Ozark National Scenic Riverway.
OZAR012–88	Akers Ferry Canoe Rental, Inc.	Ozark National Scenic Riverway.
OZAR016–89	Carr's Grocery & Canoe Rental	Ozark National Scenic Riverway.
SLBE005–86	G. Michael Grosvenor (Manitou Island Transit)	Sleeping Bear Dunes National Landmark.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–665 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

DATES: *Effective Date:* January 1, 2007.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
CHIS003–98	Truth Aquatics	Channel Islands National Park.
DEVA001–84	Xanterra Parks & Resorts, Inc.	Death Valley National Monument.
DEVA002–81	Xanterra Parks & Resorts, Inc.	Death Valley National Monument.
GOGA008–88	Demosthemes Hontalas, Thomas Hontalas & William Hontalas.	Golden Gate National Recreation Area.
LACH003–94	Lake Chelan Recreation, Inc.	Lake Chelan National Recreation Area.
LAME001–73	Rex G. Maughan & Ruth G. Maughan	Lake Mead National Recreation Area.
LAME002–82	Lake Mead RV Village, LLC	Lake Mead National Recreation Area.
LAME003–94	Seven Resorts, Inc.	Lake Mead National Recreation Area.
LAME005–97	Rex G. Maughan	Lake Mead National Recreation Area.
LAME006–74	Las Vegas Boat Harbor, Inc	Lake Mead National Recreation Area.
LAME007–84	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAME008–88	Overton Beach Resort, Inc	Lake Mead National Recreation Area.
LAME009–88	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAME010–71	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAVO001–82	California Guest Services, Inc	Lassen Volcanic National Park.
MUWO001–85	ARAMARK Sports & Entertainment, Inc	Muir Woods National Monument.
OLYM002–89	Log Cabin Resort, Inc	Olympic National Park.
OLYM005–87	Forever Resorts, LLC	Olympic National Park.
ROLA003–87	Ross Lake Resort, Inc	Ross Lake National Recreation Area.
YOSE001–98	Best's Studio, Inc	Yosemite National Park.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–666 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Purusant to 36 CFR 51.23, public notice is hereby given that the National Park Service propses to extend the following expiring concession contracts for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2006. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
GRBA001–98	Raven's Roost	Great Basin National Park.
LARO001–92	Dakota Columbia Rentals	Lake Roosevelt National Recreation Area.
YOSE003–88	Vaughn, Vaughn & Carter (El Portal Market)	Yosemite National Park.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–667 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the

National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2006. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	*Concessioner name*	*Park*
SHEN001–85	ARAMARK	Shenandoah National Park.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240; Telephone 202/513–7156.

December 16, 2006.

John Wessels,

Acting Assistant Director, Business Services.

[FR Doc. 07–668 Filed 2–13–07; 8:45am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Notice of Public Open Houses for Calendar Year 2007

Notice is hereby given that public Open Houses of the Golden Gate National Recreation Area (GGNRA) will be scheduled in calendar year 2007 to distribute information and provide public involvement on issues related to management of the GGNRA. These Open Houses are scheduled for the following dates in San Francisco and at locations yet to be determined in San Mateo County and Marin County, California:

Tuesday, February 27, 4 p.m.—Marin County, CA location (TBA).

Tuesday, May 22, 4 p.m.—Park Headquarters, Fort Mason, San Francisco, CA.

Tuesday, September 18, 4 p.m.—Pacific, CA location (TBA).

Tuesday, November 27, 4 p.m.—Park Headquarters, Fort Mason, San Francisco, CA.

All Open Houses will start at 4 p.m. Information confirming the time and location of all public meetings or cancellations of any meetings can be received by calling the Office of the Public Affairs at (415) 561–4733. Public Open House agendas and all documents for public scoping and public comment on issues listed below can be found on the park Web site at *http://www.nps.gov/goga.*

Anticipated possible agenda items at meetings during calendar year 2007 include:

- Redwood Creek Coastal Wetland Restoration Project (Big Lagoon Wetland and Creek Restoration Project) Draft Environmental Impact Statement [DEIS].
- Marin Headlands-Fort Baker Transportation Plan Draft Environmental Impact Statement [DEIS].
- Golden Gate National Recreation General Management Plan Update Draft Environmental Impact Statement [DEIS].
- San Francisco Muni E–Line Extension Project Environmental Impact Statement [EIS].
- GGNRA Dog Management Plan.
- Crissy Marsh Expansion Project NEPA Document.
- Mori Point Trail and Restoration Plan Environmental Assessment [EA].
- Dias Ridge and Coast View Trails Rehabilitation and Access Improvement Project Environmental Assessment [EA].
- Maintenance Facility Interim Relocation Project Environmental Assessment [EA].
- Equestrian Planning Project Environmental Assessment [EA].
- Lower Redwood Creek Restoration Project Environmental Assessment [EA].
- Headlands Institute Campus Improvement Project Environmental Assessment [EA].
- Tennessee Valley Trail Improvement Project.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733. They are also noticed on the Golden Gate National Recreation Area Web site *http://www.nps.gov/goga* under the section ''Public Meetings''.

All Open Houses are open to the public. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556–2766. For copies of the agendas contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123, or call (415) 561–4733.

Dated: December 18, 2006.

Brian O'Neill,

General Superintendent, Golden Gate National Recreational Area.

[FR Doc. 07–655 Filed 2–13–07; 8:45 am]

BILLING CODE 4312–FN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Tea Pot Dome Water District.
- East Bay Municipal Utility District.

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination is invited at this time.

DATES: All public comments must be received by March 16, 2007.

ADDRESSES: Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact

at 916–978–5232 (TDD 916–978–5608), or e-mail at *lsharp@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Laurie Sharp at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.*, draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall ''* * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria must be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five-Year Revisions.

Reclamation will evaluate Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and the local area office. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, and we will honor such request to the extent allowable by law. There also may be circumstances in which Reclamation would elect to withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety. If you wish to review a copy of these Plans, please contact Ms. Laurie Sharp to find the office nearest you.

Dated: February 8, 2007.

Tracy Slavin,

Program Management Branch Chief, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. E7–2502 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Developing Refuge Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The ''Criteria for Developing Refuge Water Management Plans'' (Refuge Criteria), as applied in the following areas, are now available for public comment.

- Gray Lodge Wildlife Area.

The Refuge Criteria provides a common methodology, or standard, for efficient use of water by Federal Wildlife Refuges, State Wildlife Management Areas and Resource Conservation Districts that receive water under provisions of the Central Valley Project Improvement Act (CVPIA). They document the process and format by which Refuge Water Management Plans (Plans) should be prepared and submitted to Reclamation as part of the Refuge/District Water Supply Contracts and Memorandum of Agreements. The Refuge Criteria refers to Refuges, Wildlife Areas and Resource Conservation Districts as Refuges. Those Refuges that entered into water supply contracts with Reclamation, as a result of the CVPIA and subsequent Department of the Interior administrative review processes, are required to prepare Plans using the Refuge Criteria.

DATES: All public comments must be received by March 16, 2007.

ADDRESSES: Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California, 95825, 916–978–5232, or e-mail at *lsharp@mp.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information or to obtain a copy of any water management plans, please contact Ms. Sharp at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: In response to the Central Valley Project Improvement Act of 1992 and a 1995 Department of the Interior administrative review process, the Interagency Coordinated Program for Wetland and Water Use Planning (ICP) was formed. The ICP was comprised of representatives from the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the Grassland Water District/Grassland Resource Conservation District. The ICP developed the 1998 Task Force Report, which outlines past, present, and future wetland planning and management issues and a methodology for Refuge Criteria. To continue the work of the now disbanded ICP, an Interagency Refuge Water Management Team (IRWMT) was formed to continue working on wetland issues such as water delivery, including additional work on wetland Refuge Criteria. The IRWMT is also comprised of representatives from the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the Grassland Water District/Grassland Resource Conservation District. The IRWMT used the 1998 Task Force Report and Reclamation's 1999 Conservation and Efficiency Criteria as the foundation for developing the water management planning requirements or criteria included in these Refuge Criteria. The Refuge Criteria also incorporated comments, ideas, and suggestions from Refuge/District managers, biologists, water conservation specialists, engineers, the CALFED Bay-Delta Program, and other Central Valley stakeholders.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available

for public disclosure in their entirety. Public comments for the Refuge Criteria are now being accepted.

Dated: February 8, 2007.

Tracy Slavin,

Program Management Branch Chief, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. E7–2518 Filed 2–13–07; 8:45 am]

BILLING CODE 4310–MN–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(b) of the Code

AGENCY: Judicial Conference of the United States.

ACTION: Notice.

SUMMARY: Certain dollar amounts in title 11 and title 28, United States Code, are increased.

FOR FURTHER INFORMATION CONTACT: Francis F. Szczebak, Chief, Bankruptcy Judges Division, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1900.

SUPPLEMENTARY INFORMATION: Section 104(b) of title 11, United States Code, provides the mechanism for an automatic 3-year adjustment of dollar amounts in certain sections of titles 11 and 28. Bankruptcy Reform Act of 1994, Public Law No. 103–394, § 108(e), (1994) as amended by Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law No. 109–8, § 102(j), (2005). The provision states: (b)(1) On April 1, 1998, and at each 3-year interval ending April 1 thereafter, each dollar amount in effect under [the designated sections of the Code] and section 1409(b) of title 28 immediately before such April 1 shall be adjusted—

(A) To reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) To round to the nearest $25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1, thereafter, the Judicial Conference of the United States shall publish in the **Federal Register** the dollar amounts that will become effective on such April 1 under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) [of the Bankruptcy Code] and section 1409(b) of title 28.

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

Revision of Certain Dollar Amounts in Bankruptcy Code

Notice is hereby given that the dollar amounts are increased in the sections in title 11 and title 28, United States Code, as set out in the following chart. These increases do not apply to cases commenced before the effective date of the adjustments, i.e., April 1, 2007. Official Bankruptcy Forms 6E and 10 also will be amended to reflect these adjusted dollar amounts.

Dated: February 7, 2007.

Francis F. Szczebak,

Chief, Bankruptcy Judges Division.

	Dollar amount to be adjusted	New (adjusted) dollar amount
28 U.S.C.:		
1409(b)—a trustee may commence a proceeding arising in or related to a case to recover:		
(1)—money judgment of or property worth less than	$1,000	$1,100
(2)—a consumer debt less than	$15,000	$16,425
(3)—a non consumer debt against a non insider less than	$10,000	$10,950
11 U.S.C.:		
Section 101(3)—definition of assisted person	$150,000	$164,250
Section 101(18)—definition of family farmer	$3,237,000 (each time it appears)	$3,544,525 (each time it appears)
101(19A)—definition of family fisherman	$1,500,000 (each time it appears)	$1,642,500 (each time it appears)
101(51D)—definition of small business debtor	$2,000,000 (each time it appears)	$2,190,000 (each time it appears)
Section 109(e)—allowable debt limits for individual filing bankruptcy under chapter 13.	$307,675 (each time it appears)	$336,900 (each time it appears)
	$922,975 (each time it appears)	$1,010,650 (each time it appears)
Section 303(b)—minimum aggregate claims needed for the commencement of involuntary chapter 7 or chapter 11 bankruptcy:		
(1)—in paragraph (1)	$12,300	$13,475
(2)—in paragraph (2)	$12,300	$13,475
Section 507(a)—priority expenses and claims		
(1)—in paragraph (4)	$10,000	$10,950
(2)—in paragraph (5)	$10,000	$10,950
(3)—in paragraph (6)	$4,925	$5,400
(4)—in paragraph (7)	$2,225	$2,425
Section 522(d)—value of property exemptions allowed to the debtor		
(1)—in paragraph (1)	$18,450	$20,200
(2)—in paragraph (2)	$2,950	$3,225
(3)—in paragraph (3)	$475	$525
	$9,850	$10,775
(4)—in paragraph (4)	$1,225	$1,350
(5)—in paragraph (5)	$975	$1,075
	$9,250	$10,125
(6)—in paragraph (6)	$1,850	$2,025
(7)—in paragraph (8)	$9,850	$10,775
(8)—in paragraph (11)(D)	$18,450	$20,200
522(f)(3)—exception to lien avoidance under certain state laws	$5,000	$5,475
522(f)(4)—items excluded from definition of household goods for lien avoidance purposes.	$500 (each time it appears)	$550 (each time it appears)

	Dollar amount to be adjusted	New (adjusted) dollar amount
522(n)—maximum aggregate value of assets in individual retirement accounts exempted.	$1,000,000	$1,095,000
522(p)—qualified homestead exemption	$125,000	$136,875
522(q)—state homestead exemption	$125,000	$136,875
523(a)(2)(C)—exceptions to discharge:		
in subclause (i)(I)—consumer debts, incurred ≤ 90 days before filing owed to a single creditor in the aggregate.	$500	$550
in subclause (i)(II)—cash advances incurred ≤ 70 days before filing in the aggregate.	$750	$825
541(b)—property of the estate exclusions:		
(1)—in paragraph (5)(C)—education IRA funds in the aggregate.	$5,000	$5,475
(2)—in paragraph (6)(C)—pre-purchased tuition credits in the aggregate.	$5,000	$5,475
547(c)(9)—preferences, trustee may not avoid a transfer if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of property is less than.	$5,000	$5,475
707(b)—dismissal of a case or conversion to a case under chapter 11 or 13 (means test):.		
(1)—in paragraph (2)(A)(i)(I)	$6,000	$6,575
(2)—in paragraph (2)(A)(i)(II)	$10,000	$10,950
(3)—in paragraph (2)(A)(ii)(IV)	$1,500	$1,650
(4)—in paragraph (5)(B)	$1,000	$1,100
(5)—in paragraph 6(C)	$525	$575
(6)—in paragraph 7(A)	$525	$575
1322(d)—contents of chapter 13 plan, monthly income	$525 (each time it appears)	$575 (each time it appears)
1325(b)—chapter 13 confirmation of plan, disposable income	$525 (each time it appears)	$575 (each time it appears)
1326(b)(3)—payments to former chapter 7 trustee	$25	$25

[FR Doc. E7–2501 Filed 2–13–07; 8:45 am]
BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0042]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review National Clandestine Laboratory Seizure Report.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 237, page 71555 on December 11, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 16, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Clandestine Laboratory Seizure Report.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection:*

Form number: EPIC Form 143.

Component: El Paso Intelligence Center, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: None.

Abstract: Records in this system are used to provide clandestine laboratory seizure information to the El Paso Intelligence Center, Drug Enforcement Administration, and other Law enforcement agencies, in the discharge of their law enforcement duties and responsibilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are ninety-two (92) total respondents for this information collection. Seven thousand three hundred twenty-eight (7328) responded using paper at 1 hour a response and one thousand one hundred sixty-three

(1163) responded electronically at 1 hour a response, for eight thousand four hundred ninety-one (8491) annual responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 8491 annual burden hours associated with this collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: February 7, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–2551 Filed 2–13–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1466]

Announcement of Body Armor Standards and Testing Technical Workshop

AGENCY: National Institute of Justice, Office of Justice Programs, Justice.

ACTION: Announcement of public technical workshop.

SUMMARY: The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will hold a technical workshop in order to discuss, and obtain comments and technical input on, draft changes being considered for the NIJ standard for ballistic-resistance of personal body armor and for NIJ's voluntary body armor compliance testing program, including its activities generally related to conformity assessment. The workshop is jointly sponsored by NIJ and the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Office of Law Enforcement Standards.

The technical workshop will be open to body armor industry technical representatives, official representatives from public safety agencies and organizations, the research and development and scientific communities, and other stakeholders. We plan to make certain documents related to the draft changes under consideration available for review approximately two weeks prior to the workshop. Information about the availability of these documents can be found on the Web site referenced below.

Those individuals wishing to attend this workshop and/or provide comment or input as to the draft changes under consideration are directed to the following Web site: *http://www.justnet.org/nijnist*. To attend the workshop, individuals must register online by February 16, 2007 (non-U.S. citizens) or by February 21, 2007 (U.S. Citizens). Due to NIST security regulations, there will be no on-site registration allowed on the day of the workshop. No registration fee is required for this event. Directions to the facility and additional information can be found on the Web site.

DATES: The workshop will be held on Tuesday, February 27, 2007, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: James Wong, by telephone at 202–305–2703 [Note: this is not a toll-free telephone number], or by e-mail at *James.Wong@usdoj.gov*.

Dated: February 9, 2007.

David W. Hagy,

Deputy Assistant Attorney General, Office of Justice Programs and Acting Principal Deputy Director, National Institute of Justice.

[FR Doc. E7–2522 Filed 2–13–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60, 910]

HRU, Inc.; Technical Resources, Lansing, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2007 in response to a petition filed on behalf of workers of HRU, Inc., Technical Resources, Lansing, Michigan.

The petition regarding the investigation has been deemed invalid. The petition was signed by one dislocated worker. A petition filed by workers requires three signatures. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 7th day of February 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–2472 Filed 2–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,878]

Kimberly-Clark Global Sales, Inc.; Neenah, Wisconsin; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 1, 2007, in response to a worker petition filed by a company official on behalf of workers at Kimberly-Clark Global Sales, Inc., Neenah, Wisconsin.

The petitioning group of workers is covered by a duplicate petition (TA–W–60,835) filed on May 24, 2006 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 6th day of February, 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–2475 Filed 2–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 26, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 26, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of February 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 1/29/07 and 2/2/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
.				
60844	Lear Corporation—ISD Division (Comp)	Strasburg, VA	01/29/07	01/26/07
60845	Maida Development Company (Comp)	Hampton, VA	01/29/07	01/26/07
60846	M and B Metal Products Company, Inc. (Comp)	Leeds, AL	01/29/07	01/26/07
60847	Mid West Wire Products, Inc. (Comp)	Ferndale, MI	01/29/07	01/22/07
60848	WestPoint Home, Inc. (Comp)	West Point, GA	01/29/07	01/27/07
60849	C and D Technologies (CPAs), LLC (Wkrs)	Milwaukie, OR	01/29/07	01/05/07
60850	Alan White Company, Inc. (State)	Stamps, AR	01/30/07	01/29/07
60851	Mastercraft Fabrics LLC (Comp)	Cramerton, NC	01/30/07	01/29/07
60852	Rolls-Royce Energy Systems, Inc. (IAMAW)	Mount Vernon, OH	01/30/07	01/29/07
60853	Artistree (Comp)	Kernersville, NC	01/30/07	01/29/07
60854	Unifi, Inc. (Comp)	Yadkinville, NC	01/30/07	01/29/07
60855	Ixtlan Technology (Comp)	Adrian, MI	01/30/07	01/15/07
60856	Amery Technical Products, Inc. (Comp)	Amery, WI	01/30/07	01/25/07
60857	Asec Manufacturing (UAW)	Catoosa, OK	01/30/07	01/22/07
60858	Delphi Corporation (Comp)	Anderson, IN	01/30/07	01/23/07
60859	Eaton Corporation (Comp)	Phelps, NY	01/31/07	01/30/07
60860	Stabilus, Inc. (Comp)	Gastonia, NC	01/31/07	01/30/07
60861	Elastic Corporation of America, Inc. (Comp)	Columbiana, AL	01/31/07	01/26/07
60862	Springs Global, Hartwell Weaving and Yarn (Comp)	Hartwell, GA	01/31/07	01/30/07
60863	Intier Automotive (AFLCIO)	Lewisburg, TN	01/31/07	01/29/07
60864	Elcom, Inc. (Comp)	El Paso, TX	01/31/07	01/29/07
60865	Garrity Industries, Inc. (State)	Madison, CT	01/31/07	01/29/07
60866	Wolverine World Wide (Wkrs)	Rockford, MI	01/31/07	01/29/07
60867	Polymer Group, Inc.—Chicopee (Comp)	Gainesville, GA	01/31/07	01/30/07
60868	Pine Hosiery Mills, Inc. (Comp)	Star, NC	01/31/07	01/30/07
60869	International Legwear Group (Comp)	Hickory, NC	01/31/07	01/30/07
60870	Lear Corporation (Comp)	Sidney, OH	01/31/07	01/25/07
60871	Forefront Group Inc. (Wkrs)	Springfield, TN	01/31/07	01/16/07
60872	Silberline Manufacturing Co., Inc. (Comp)	Tamaqua, PA	01/31/07	01/22/07
60873	CML Innovative Technologies, Inc. (Wkrs)	Hackensack, NJ	01/31/07	01/19/07
60874	Superior Furniture Company (Wkrs)	Lowell, MI	01/31/07	01/26/07
60875	Vescom Corporation (Comp)	Hampden, ME	01/31/07	01/29/07
60876	Armstrong Wood Products Incorporated (AFLCIO)	Oneida, TN	02/01/07	01/31/07
60877	SYZYGY, Inc (Comp)	Waco, TX	02/01/07	01/31/07
60878	Kimberly-Clark Global Sales, Inc. (Comp)	Neenah, WI	02/01/07	01/24/07
60879	VIA Information Tools, Inc. (State)	Troy, MI	02/01/07	01/24/07
60880	Vantage Industries, LLC (Wkrs)	Hamilton, IN	02/01/07	01/31/07
60881	Schnadig Corporation (Comp)	Des Plaines, IL	02/01/07	01/31/07
60882	CAMACO (State)	Marianna, AR	02/01/07	01/31/07
60883	Gleason (Wkrs)	Rochester, NY	02/01/07	01/23/07
60884	C.A. Lawton Company (The) (Comp)	De Pere, WI	02/01/07	01/31/07
60885	Johnson Controls, Inc. (Comp)	Hudson, WI	02/02/07	02/01/07
60886	Liebert Corporation (Wkrs)	Irvine, CA	02/02/07	01/25/07
60887	Clayton Marcus Company—Plant #1—Bethlehem (Comp)	Hickory, NC	02/02/07	02/01/07
60888	Triplett Corporation (Wkrs)	Bluffton, OH	02/02/07	02/01/07
60889	United Technologies Corp.—Forney (Comp)	Carrollton, TX	02/02/07	01/31/07
60890	Maloney Tool and Mold, Inc. (Comp)	Meadville, PA	02/02/07	01/29/07
60891	Cheetah Chassis Corporation (Comp)	Berwick, PA	02/02/07	01/29/07
60892	Fenton Art Glass Company (USW)	Williamstown, WV	02/02/07	01/31/07
60893	Wayne Wire Air Bag Components, Inc. (Comp)	Kalkaska, MI	02/02/07	02/01/07
60894	Carpenter Company (State)	Leominster, MA	02/02/07	01/31/07
60895	General Binding Corporation (Wkrs)	Pleasant Prairie, WI	02/02/07	01/30/07

[FR Doc. E7–2473 Filed 2–13–07; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of January 22 through February 2, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–60,778; Northern Expediting Corporation, Union, NJ: January 9, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,281; Airtex Products LP, Marked Tree, AR: October 20, 2005.

TA–W–60,611; BMCI Rodgers Molding Corp., A Subsidiary of Bulk Molding Compounds, El Paso, TX: December 13, 2005.

TA–W–60,664; Hoffmann—La Roche, Inc., Biopharmaceutical Manufacturing Department, Nutley, NJ: December 21, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–60,728; Hoover Universal, Inc., d/b/a Johnson Controls, AG Division, Oklahoma City, OK: December 13, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,319; Rose Art Industries, LLC, Wood Ridge, NJ: October 24, 2005.

TA–W–60,319A; Rose Art Industries, LLC, Livingston, NJ: October 24, 2005.

TA–W–60,675; Pittsburgh Corning Corp., Glass Block Division, Port Allegany, PA: December 21, 2005.
TA–W–60,677; Win Depot, LLC, Long Island City, NY: December 27, 2005.
TA–W–60,680; Cecilware Corporation, Long Island City, NY: December 18, 2005.
TA–W–60,712; Keneric Corporation, Obion Plant, Obion, TN: December 28, 2005.
TA–W–60,712A; Keneric Corporation, Altamont Plant, Altamont, TN: December 28, 2005.
TA–W–60,713; Missouri Fabricated Products, Gleason Corporation, Caruthersville, MO: January 5, 2006.
TA–W–60,722; Kirchner Corporation, Golden Valley, MN: January 8, 2006.
TA–W–60,731; Best Manufacturing Co., Menlo, GA: January 9, 2006.
TA–W–60,749; Narrow Fabric Industries Corp., A Subsidiary of Cheynet Group, West Reading, PA: January 9, 2006.
TA–W–60,774; Rayloc, Inc., Stephenville, TX: January 16, 2006.
TA–W–60,803; Fluidyne Manufacturing/ Lorenz Industries, Staffworks, Inc., Ansonia, CT: January 19, 2006.
TA–W–60,815; Dicey Mills, Inc., Shelby, NC: January 22, 2007.
TA–W–60,445; Manchester Tool Co., Akron, OH: November 14, 2005.
TA–W–60,486A; Alma Products Co., Torque Converters, Alma, MI: November 22, 2005.
TA–W–60,500; Potlatch Forest Products Corporation, Warren Lumber Mill, Warren, AR: November 29, 2005.
TA–W–60,538; Hipwell Manufacturing Holding Co., Pittsburgh, PA: December 4, 2005.
TA–W–60,589; Ace Industries, LLC, Lineville, AL: December 11, 2005.
TA–W–60,591; Leggett and Platt, Inc., Bedding Division, Phoenix, AZ: December 5, 2005.
TA–W–60,592; South End Manufacturing, Lawrenceburg, TN: December 6, 2005.
TA–W–60,607; Stimson Lumber Company, Bonner Stud Mill, Bonner, MT: December 5, 2005.
TA–W–60,612; Riley Creek Lumber Company, Moyie Springs Mill, Moyie Springs, ID: December 13, 2005.
TA–W–60,761; Doyle Enterprises, Inc., Rock Mount, VA: January 11, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,637; Zomax, Inc., Plymouth, MN: December 18, 2005.
TA–W–60,649; Strattec Security Corp., Service Department, Milwaukee, WI: December 14, 2005.
TA–W–60,650; Bourns, Inc., Formerly Known As SSI Technologies, Inc., Janesville, WI: December 19, 2005.
TA–W–60,654; Badger Fire Protection / UTC Fire and Security, Badger Fire Protection Division, Charlottesville, VA: December 20, 2005.
TA–W–60,689; Ronfeldt Associates, Inc., Toledo, OH: December 21, 2005.
TA–W–60,690; Bestop, Inc., Broomfield, CO: January 2, 2006.
TA–W–60,701; Uniflex Holdings, Inc., Hicksville, NY: January 3, 2006.
TA–W–60,701A; Uniflex Holdings, Inc., Westbury, NY: January 3, 2006.
TA–W–60,711; Hurd Lock and Manufacturing Co., Greenville, TN: January 4, 2006.
TA–W–60,717; Lear Corporation, Seating Systems Division, Romulus, MI: January 5, 2006.
TA–W–60,718; Renfro Charleston, LLC, Cleveland, TN: January 2, 2006.
TA–W–60,720; Specialty Electronics, Inc., Delphi Connection Systems Division, Landrum, SC: January 15, 2007.
TA–W–60,723; Pechiney Plastic Packaging, Inc., A Subsidiary of Alcan, Tubes America Division, Washington, NJ: March 10, 2006.
TA–W–60,725; Birds Eye Foods, Inc., Watsonville, CA: January 9, 2006.
TA–W–60,730; Jabil Circuit, Inc., Auburn Hills, MI: May 14, 2006.
TA–W–60,732; Trend Tool, Inc., A Subsidiary of Magna International, Livonia, MI: December 19, 2005.
TA–W–60,736; Cooper Power System, Cooper Industries, Kearney Operations, Fayetteville, AR: January 27, 2007.
TA–W–60,737; Atwood Mobile Products, Division of Dura Automotive Systems, Inc., LaGrange, IN: January 3, 2006.
TA–W–60,746; D J, Inc., Adecco and Staff Store, El Paso, TX: January 10, 2006.
TA–W–60,752; Alcoa Engineered Plastic Components, AFL Automotive Division, El Paso, TX: January 11, 2006.
TA–W–60,766; Travel Tags, Inver Grove Heights, MN: January 12, 2006.
TA–W–60,784; Victaulic Company, Apex Valve Trim Assembly, New Village, NJ: January 17, 2006.
TA–W–60,829; F and M Hat Company, Inc., Denver, PA: January 24, 2006.
TA–W–60,858; Delphi Corporation, Automotive Holdings Group, Anderson, IN: January 23, 2006.
TA–W–60,616; APW Enclosures, Anaheim, CA: December 14, 2005.
TA–W–60,667; Icelandic USA, Inc., Cambridge, MD: December 22, 2005.
TA–W–60,669; Connor Corporation, Fort Wayne, IN: December 27, 2005.
TA–W–60,745; Bush Industries, Inc., Erie, PA: January 10, 2006.
TA–W–60,767; Portola Tech International, Staff-U-Smart, Woonsocket, RI: December 22, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,520; Lear Corporation, Electric Systems Division, Southfield, MI: November 30, 2005.
TA–W–60,622; ArvinMeritor, Inc, Light Vehicles, Olsten Staffing, Mullins, SC: December 5, 2005.
TA–W–60,641; Collis, Inc., A Subsidiary of SSW Holding Co., Evansville, IN: December 19, 2005.
TA–W–60,678; Keystone Powdered Metal Company, St. Mary's Division, St. Mary's, PA: December 28, 2005.
TA–W–60,679; Greenwood Mills, Inc., Mathews Plant, Greenwood, SC: December 19, 2005.
TA–W–60,706; Ameritex Yarn, LLC, Spartanburg Plant, Spartanburg, SC: January 2, 2006.
TA–W–60,727; Johnson Controls, Inc., Automotive Division, Chesapeake, VA: January 9, 2006.
TA–W–60,733; L and R Knitting, Inc., Hickory, NC: January 8, 2006.
TA–W–60,743; Atotech USA, Inc., Subsidiary of Total S.A., Express Personnel, On Assignment, Rock Hill, SC: January 9, 2006.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–60,778; Northern Expediting Corporation, Union, NJ.
TA–W–60,281; Airtex Products LP, Marked Tree, AR.

TA–W–60,611; BMCI Rodgers Molding Corp., A Subsidiary of Bulk Molding Compounds, El Paso, TX.

TA–W–60,728; Hoover Universal, Inc., d/b/a Johnson Controls, AG Division, Oklahoma City, OK.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,664; Hoffmann-La Roche, Inc., Biopharmaceutical Manufacturing Department, Nutley, NJ.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,631; Jay-Enn Corporation, Troy, MI.

TA–W–60,780; Cer-Tek, Inc., El Paso, TX.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,571; Caribe General Electric, Humacao, PR.

TA–W–60,714; Extreme Tool and Engineering, Wakefield, MI.

TA–W–60,741; E.J. Victor, Inc., Case Goods Division, Morganton, NC.

TA–W–60,754; Page Foam Cushioned Products, Johnstown, PA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,486; Alma Products Co., A/C Compressors, Alma, MI.

TA–W–60,490; Bollag International Corp., Greenwood, SC.

TA–W–60,516; Milliken and Company, Kingstree Mill Division, Kingstree, SC.

TA–W–60,530; Tower Automotive, Inc., Upper Sandusky, OH.

TA–W–60,577; Dixie Regency Foam, Division of Hickory Springs Mfg. Co., Hickory, NC.

TA–W–60,610; Belding Hausman, Inc., Southampton Textiles Division, Emporia, VA.

TA–W–60,625; Huntington Foam Pittsburgh Corp., A Subsidiary of Huntington Foam Corp., Mt. Pleasant, PA.

TA–W–60,626; Baseline Tool Company, Inc., Wawaka, IN.

TA–W–60,656; Carpenter Company, Consumer Products Division, Hickory, NC.

TA–W–60,775; Oxbow Machine Products, Livonia, MI.

TA–W–60,597; Mason County Forest Products, Shelton, WA.

TA–W–60,647; Ito Cariani Foods, Hayward, CA.

TA–W–60,685; ACE Style Intimate Apparel, Inc., New York, NY.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–60,505; Calstar Textiles, Inc., Vernon, CA.

TA–W–60,529; Hospira, Inc., Shared Services Department, Rocky Mount, NC.

TA–W–60,606; Pfizer, Inc., Pfizer Global Research and Development Group, Kalamazoo, MI.

TA–W–60,651; AOL LLC, Oklahoma City Call Center, Oklahoma City, OK.

TA–W–60,768; IDT Corporation, IDT Telecom, Newark, NJ.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA–W–60,495; Dumaine Investment Company, dba Industrial Tool and Engineering, Warrenville, SC.

I hereby certify that the aforementioned determinations were issued during the period of January 22 through February 2, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 6, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–2474 Filed 2–13–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,415]

United Healthcare Services, Inc., Contract Administration, Chico, California; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at United Healthcare Services, Inc., Contract Administration, Chico, California. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,415; United Healthcare Services, Inc., Contract Administration, Chico, California (February 7, 2007).

Signed at Washington, DC this 8th day of February 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–2471 Filed 2–13–07; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection, NATF Form 36, Microfilm Publication Order Form, used by customers/researchers for ordering roll(s) or microfiche of a microfilm

publication. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 16, 2007 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Microfilm Publication Order Form.

OMB number: 3095–0046.

Agency form number: NATF Form 36.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 600.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 100 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. The National Archives Trust Fund (NATF) Form 36 (09/05), Microfilm Publication Order Form, is used by customers/researchers for ordering a roll, rolls, or a microfiche of a microfilm publication.

Dated: February 8, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7–2521 Filed 2–13–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m., Thursday, February 15, 2007.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 07–700 Filed 2–12–07; 12:31 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation-Applicant Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by April 16, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: ''Antarctic Conservation Act Application Permit Form.''

OMB Approval Number: 3145–0034.

Expiration Date of Approval: September 30, 2007.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The current Antarctic Conservation Act Application Permit Form (NSF 1078) has been in use for several years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of object to be taken (plant, native mammal, or native bird.

Use of the Information: The purpose of the regulations (45 CFR part 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the

ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

Burden on the Public: The Foundation estimates about 25 responses annually at 30 minutes per response; this computes to approximately 12.5 hours annually.

Dated: February 8, 2007.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E7–2461 Filed 2–13–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

U.S. Chief Financial Officer Council; Grants Policy Committee

ACTION: Notice of open stakeholder Webcast meeting.

SUMMARY: This notice announces the second of a series of open stakeholder Webcast meetings sponsored by the Grants Policy Committee (GPC) of the U.S. Chief Financial Officer Council.

DATES: The GPC will hold a Webcast meeting on Thursday, March 8, 2007, 1:30 p.m. to 3 p.m., Eastern Standard Time. The Webcast will be broadcast live.

ADDRESSES: The GPC March 8 Webcast meeting will be hosted by and broadcasted from the U.S. Department of Agriculture (USDA). The meeting will be held in the USDA Jefferson Auditorium at 1400 Independence Ave., SW., Washington, DC 20250. Meeting registration is not required, but you must arrive early and bring a photo I.D. to ensure adequate time for USDA security to clear you to enter the building. The GPC encourages organizations to attend and to invite their staffs and members to attend the meeting in person or via Webcast.

Overview: This meeting will serve as an opportunity for the public to view and discuss the six proposed government-wide post-award forms for recipients of federal financial assistance: (1) Federal Financial Report; (2) Performance Progress Report; (3) Performance Progress Report for Research Programs; (4) Tangible Personal Property; (5) Real Property Status; (6) and Inventions Report. Prior to the March 8 Webcast meeting, these proposed forms will be posted on the Federal Grants Streamlining Initiative (FGSI) Web site at *http://www.grant.gov/aboutgrants/grants_news.jsp.*

For Further Information About the GPC Webcast: Questions on the webcast should be directed to Charisse Carney-Nunes, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; e-mail, *GPCWebcast@nsf.gov.* Information and materials that pertain to this Webcast meeting, including the call-in telephone number, the agenda, and the six proposed forms will be posted on the FGSI Web site at *http://www.grant.gov/aboutgrants/grants_news.jsp* under the March 8 Meeting Materials. The call-in telephone number may be used only DURING the live Webcast. The link to view the Webcast will be posted on this site, along with Webcast Instructions. Approximately one week following the Webcast meeting, the GPC will post a transcript for the hearing-impaired. Also, after the meeting, a link to its recording will be posted on the FGSI Web site for at least 90 days.

Comments Submission Information: You may submit comments during the Webcast meeting via telephone or e-mail. The e-mail address for comments both during and after the Webcast is *GPCWebcast@nsf.gov.* You may submit comments for ten working days following the March 8 meeting. All Webcast comments pertaining to the six proposed forms will be retained for consideration during the process of finalizing the forms prior to submitting them to the Office of Management and Budget (OMB) for formal approval.

Because the federal grant making agencies may use these forms to collet information from ten or more recipients of federal financial assistance (awardees), OMB approval/clearance must be obtained prior to their being used as information collection instruments (Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520).

SUPPLEMENTARY INFORMATION:

Purpose of the Webcast meeting: The purpose of the meeting is to continue the GPC's efforts to update and inform grant stakeholders about the GPC's past and ongoing activities related to the FGSI in accordance with Public Law (Pub. L.) 106–107.

Specifically, the March 8 webcast meeting will serve as an opportunity to solicit feedback and clarify any interested stakeholders' issues or concerns regarding the six proposed government-wide post-award forms.

Meeting structure and agenda: The March 8 Webcast meeting will have the following structure and agenda:

(1) Welcome by the host agency, USDA;

(2) Introduction and update by the Chair of the GPC;

(3) Update and explanation of forms from the post-award work group; and

(4) Participants' discussion, questions and comments.

As a result of stakeholder input received from the GPC's first webcast on October 25, 2006, the GPC has invited stakeholder organization representatives to present comments and questions relating to the post-award forms. Additionally, 60–75 minutes are scheduled for general participant input. Finally, please note that predecisional, internal governmental, and other nonpublic information cannot be discussed.

Background: Background about the FGSI is set forth in the **Federal Register** published on September 13, 2006 (71 FR 54098). The GPC post-award work group is responsible for streamlining policies and practices that pertain to federal monitoring of awardees and awardee performance, required reporting, and payments. The six forms to be discussed during the GPC's March 8 Webcast meeting are post-award work group products. These forms were developed to simplify reporting requirements; standardize, consolidate, and strengthen grant reporting; and improve the overall delivery of services to awardees.

Dated: February 9, 2007.

Joanna Rom,

Acting Chair, Grants Policy Committee of the U.S. Chief Financial Officer Council.

[FR Doc. 07–674 Filed 2–13–07; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meetings

DATE: Weeks of February 12, 19, 26; March 5, 12, 19, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of February 12, 2007

Thursday, February 15, 2007

9:25 a.m.

Affirmation Session (Public Meeting) (Tentative).

a. System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP) (Tentative).

9:30 a.m.

Briefing on Office of Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (*Contact:* Edward New, 301 415–5646).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 19, 2007—Tentative

There are no meetings scheduled for the Week of February 19, 2007.

Week of February 26, 2007—Tentative

Wednesday, February 28, 2007

9:30 a.m.
Periodic Briefing on New Reactor Issues (Public Meeting) (*Contact:* Donna Williams, 301 415–1322).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 5, 2007—Tentative

Monday, March 5, 2007

1 p.m.
Meeting with Department of Energy on New Reactor Issues (Public Meeting).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, March 6, 2007

1 p.m.
Discussion of Management Issues (Closed—Ex. 2).

Wednesday, March 7, 2007

9:30 a.m.
Briefing on Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting). (*Contact:* Miriam Cohen, 301 415–0260).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1 p.m.
Discussion of Security Issues (Closed—Ex. 1 and 3).

Thursday, March 8, 2007

10 a.m.
Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS) Programs, Performance, and Plans (Public Meeting) (*Contact:* Gene Peters, 301 415–5248).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1 p.m.
Briefing on Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (*Contact:* Reginald Mitchell, 301 415–1275).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 12, 2007—Tentative

There are no meetings scheduled for the Week of March 12, 2007.

Week of March 19, 2007—Tentative

Tuesday, March 20, 2007

1:30 p.m.
Briefing on Office of Information Services (OIS) Programs, Performance, and Plans (Public Meeting) (Contact: Edward Baker, 301–415–8700).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. *Contact person for more information:* Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, *TDD:* 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 8, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–694 Filed 2–9–07; 4:23 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of One Price Clothing Stores, Inc.; Order of Suspension of Trading

February 12, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of One Price Clothing Stores, Inc. (''One Price''), a Delaware Corporation formerly headquartered in Duncan, South Carolina, which trades in the Pink Sheets under the symbol ''ONPRQ,'' because it has not filed any periodic reports since the period ended November 1, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, It Is Ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, February 12, 2007 through 11:59 p.m. EST, on February 26, 2007.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 07–696 Filed 2–12–07; 11:08 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55251; File No. SR–CBOE–2006–84]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto To List and Trade Credit Default Options

February 7, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2006, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade credit default options (''Credit Default Options''). On December 21, 2006, CBOE filed Amendment No. 1 to the proposed rule change; on January 16, 2007, CBOE filed Amendment No. 2 to the proposed rule change; on February 2, 2007, CBOE filed Amendment No. 3, to the proposed rule change; and on February 7, 2007, CBOE filed Amendment No.4 to the proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. The

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

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to provide for the listing and trading of cash-settled, binary call options based on credit events in one or more debt securities of an issuer or guarantor. The text of the proposed rule change is available at (*http://www.cboe.org/legal*), CBOE, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 4 deleted the text of proposed Rule 29.16 and made typographical and clarifying corrections to the discussion sections of the Form 19b–4 and the Exhibit 1 **Federal Register** notice, and the product description contained in Exhibit 3 to the Form 19b-4.

Amendment 3 replaced Amendment 2 it its entirety. The purpose of Amendment 3 was to: (i) Eliminate the term ''event-style option'' from the proposed rule text; (ii) amend the definition of a ''Credit Event'' in the proposed rule text to explicitly include references to restructuring of the Relevant Obligation(s) as an underlying Credit Event in a Credit Default Option class; (iii) revise the cutoff times applicable to the occurrence of Credit Events, Redemption Events, and related confirmation periods; (iv) expand the definition of ''Reference Entity'' to include guarantors in addition to issuers; and (v) make conforming changes and clarifications to this ''Purpose'' section, as well as various typographical corrections to the proposed rule text.

Amendment 2 replaced Amendment 1 in its entirety. The purpose of Amendment 2 was to: (i) Modify the proposed margin requirements for Credit Default Options, (ii) modify the proposed definitions of the ''last trading day'' and the ''expiration date,'' (iii) modify the proposed definition of the ''Relevant Obligations,'' and (iv) make various conforming changes and clarifications to this ''Purpose'' section.

The purpose of Amendment 1, which replaced the original filing in its entirety, was to revise the rule text and related discussion in this ''Purpose'' section to make various changes and clarifications.

The purpose of the proposed rule change is to enable CBOE to list and trade Credit Default Options. With the introduction of Credit Default Options, as described more fully below, investors would be able to trade cash-settled options based on particular credit-related events that are confirmed to have occurred based on a particular debt security obligation or related debt security obligations of an issuer. Credit Default Options should provide investors with hedging and risk-shifting vehicles that correlate with the creditworthiness of the Reference Entity and its debt security obligations. Indeed, creditworthiness is viewed as a key component of the valuation of a debt security. Investors with substantial investments in debt securities would be able to use CBOE Credit Default Options to hedge their exposure and risk, or to supplement income by writing Credit Default Option calls. CBOE asserts that, as a result, these products would be useful to those with investments in debt securities, including institutional investors such as credit market participants and fixed income traders, as well as individual investors.

Credit Default Options would be structured as binary call options [3] that settle in cash based on confirmation of a Credit Event in a Reference Entity. A ''Reference Entity'' would be the issuer or guarantor [4] of the debt security underlying the Credit Default Option (referred to as the ''Reference Obligation'').

A ''Credit Event'' would occur:

(i) When the Reference Entity has a Failure-to-Pay Default on the Reference Obligation or any other debt security obligation(s) (the set of these obligations and the Reference Obligation are referred to as the ''Relevant Obligations''). A ''Failure-to-Pay Default'' would be defined in accordance with the terms of the Relevant Obligation(s); and/or

(ii) When the Reference Entity has any other Event of Default on the Relevant Obligation(s). Any applicable ''Event(s) of Default'' would be specified by the Exchange at the time the option class is initially listed in accordance with the procedures of proposed Rule 29.2 (described below) and, for each such Event(s) of Default specified, would be defined in accordance with the terms of the Relevant Obligation(s); and/or

(iii) When the Reference Entity has a change in the terms of the Relevant Obligation(s) (a ''Restructuring''). The terms of such a Restructuring would be specified by the Exchange in accordance with Rule 29.2 and, if so specified, would be defined in accordance with the terms of the Relevant Obligation(s).

To confirm, the particular Credit Events applicable to a Credit Default Option would be designated by the Exchange on a class-by-class basis. And, when designating the applicable Credit Events for a given Credit Default Option class, the Exchange would select from among the terms in the underlying instruments of the Relevant Obligation(s) of the particular Reference Entity.

The Exchange would confirm a Credit Event through at least two sources, which may include announcements published via newswire services or information services companies, the names of which would be announced to the membership via Regulatory Circular, and/or information contained in any order, decree, or notice of filing, however described, of or filed with the courts, the Commission, an exchange, or association, the Options Clearing Corporation (''OCC''), or another regulatory agency or similar authority. Every determination of a Credit Event would be within the Exchange's sole discretion and would be conclusive and binding on all holders and sellers of the Credit Default Option and not subject to review.

For a Credit Default Option to be automatically exercised, a Credit Event would need to have: (i) Occurred between the option's listing date and 10:59 p.m. (CT) on the option's last trading day which, subject to certain exceptions, would generally be the third Friday of the expiration month; and (ii) been confirmed by the Exchange no

[3] A ''binary call option'' is an option contract that will pay the holder of the option contract a fixed amount upon exercise.

[4] The Exchange has included ''guarantor'' within the proposed definition of ''Reference Entity'' in the event a succession occurs and the original issuer remains a guarantor of the debt security. Alternatively, the situation may arise in which the Reference Entity may not be the original issuer, but is a guarantor of the debt security.

later than the option's expiration date which, subject to certain exceptions, would generally be the fourth business day after the third Friday of the expiration month. If the Exchange confirms a Credit Event, the Credit Default Options class would be subject to an automatic exercise and the holders of long options positions would receive a fixed cash settlement amount payment equal to $100,000 per contract. Otherwise, if there is no Credit Event confirmed prior to the expiration date, the cash settlement amount would be $0. The last trading day, expiration day, and automatic exercise procedures are described in more detail below.

Given the binary nature of the product, a benefit of Credit Default Options is that the purchaser and writer of the options would know the expected return at the time the contract is entered. Further, since the payment is fixed, the risk (return) to the writer (purchaser) would be limited. CBOE believes that there are several other benefits to be realized by providing for the trading of Credit Default Options on its exchange marketplace. Among these benefits are the following: (i) By trading Credit Default Options in the CBOE's centralized, open-outcry auction market, with designated members having market-making responsibilities, investors would be better able to initiate and close out positions efficiently and at the best available prices; (ii) unlike the existing over-the-counter (''OTC'') market, CBOE's market would provide transparency as the result of the real-time dissemination of best bids and offers and reports of completed transactions in Credit Default Options; (iii) the role of the OCC as issuer and guarantor of Credit Default Options would eliminate concern over contra-party creditworthiness and assure performance upon automatic exercise of Credit Default Options; and (iv) subjecting Credit Default Options to CBOE's rules, regulations, and oversight would provide enhanced investor protection and market surveillance.

To accommodate the introduction of these new Credit Default Options, CBOE proposes to adopt new Chapter XXIX to its rules and to make corresponding amendments to CBOE's initial and maintenance listing rules and margin rules. An introductory section to Chapter XXIX would explain that the proposed rules in the Chapter are applicable only to Credit Default Options. The introductory section would further explain that the existing rules in Chapters I through XIX, XXIVA, and XXIVB are also applicable to Credit Default Options and, in some cases, are supplemented by the proposed rules in the Chapter, except for existing rules that would be replaced in respect of Credit Default Options in the Chapter and except where the context otherwise requires. Whenever a proposed rule in the Chapter supplements or, for purposes of the Chapter, replaces rules in Chapter I through XIX, XXIVA, and XXIVB, that fact would be indicated following the rule text. Each of the proposed rules and amendments to the existing rules are described below.

a. Definitions (Proposed Rule 29.1)

New Chapter XXIX would include definitions applicable to Credit Default Options in proposed Rule 29.1. In particular, the terms ''Credit Default Option,'' ''Credit Event,'' and ''Reference Entity'' are defined as described above. In addition, the term ''cash settlement amount,'' which is the amount of cash that a holder would receive upon automatic exercise, if the Exchange has confirmed the occurrence of a Credit Event in a Reference Entity between the listing date and the last trading day, is proposed to be a fixed amount of $100,000. The $100,000 amount is equal to an exercise settlement value of $100 multiplied by the contract multiplier of 1,000. If no Credit Event is confirmed, the cash settlement amount would be $0. As described in more detail below, the $100,000 cash settlement amount may be subject to adjustment if certain adjustment-related events are confirmed to have occurred.

Also included within the proposed definitions, the term ''last trading day'' would be defined as the third Friday of the expiration month (or, if that day is not a business day, the last trading day would be the preceding business day); provided, however, if a Credit Event is confirmed prior to that day, the series would cease trading at the time of the confirmation of the Credit Event and the last trading day would be accelerated to the confirmation date. In addition, within the proposed definitions, the term ''expiration date'' would be defined as the fourth business day after the third Friday of the expiration month (or, if that day is not a business day, the expiration date would be the fourth business day after the preceding business day); provided, however, if a Credit Event is confirmed by the Exchange to members and the OCC before the third Friday of the expiration month, the expiration date would be accelerated to the second business day immediately following the confirmation date.[5]

b. Designation, Withdrawal & Adjustment (Proposed Rules 29.2–29.4; Revised Rules 5.3 and 5.4)

Proposed Interpretation and Policy .11 to existing Rule 5.3, *Criteria for Underlying Securities*, would be added to provide the listing criteria for Credit Default Options. Under the proposed criteria, the Exchange could list and trade a Credit Default Option that overlies a Reference Obligation of a Reference Entity, provided that the Reference Entity satisfies the following: (i) the Reference Entity or the Reference Entity's parent, if the Reference Entity is a wholly-owned subsidiary, must have at least one class of securities that is duly registered and is an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Act;[6] and (ii) the registered equity securities issued by the Reference Entity must also satisfy the requirements for continued options trading on CBOE pursuant to existing Exchange Rule 5.4.[7]

Proposed Interpretation and Policy .15 to existing Rule 5.4, *Withdrawal of Approval of Underlying Securities,* would similarly provide that a Credit Default Option initially approved for trading shall be deemed not to meet the Exchange's requirements for continued approval, and the Exchange would not open for trading any additional series of options contracts of the class covering such options and may prohibit any opening purchases transactions in such series as provided in existing Rule 5.4, at any time the Exchange determines on the basis of information made publicly available that any of the listing

[5] The Exchange understands, based on discussions with the OCC, that the final settlement would occur on the first business day following the expiration date.

[6] This criterion is designed to ensure that there is adequate information publicly available regarding the issuer of a debt security that serves as a Reference Obligation underlying a Credit Default Option. The market for debt securities that would serve as Reference Obligations is largely an OTC market, and many debt securities, including those among the most actively traded, are not themselves registered under Section 12 of the Act, 15 U.S.C. 78*l*. The issuers of many unregistered debt securities, however, have equity securities that are duly registered and are ''NMS stocks'' as defined in Rule 600 of Regulation NMS, 17 CFR 242.600. These issuers are required to provide periodic reports to the public due to the equity registration, and the fact that their debt securities are unregistered does not diminish in practical terms the information provided by their periodic reports. Thus, the requirements, would enable a wide array of credit Default Options to be listed while ensuring sufficient public disclosure of information about any debt securities that serve as Reference Obligations underlying the exchange-traded Credit Default Options.

[7] The provisions of existing Rule 5.4.01 require that an equity security underlying an option be itself widely held and actively traded. The requirement that the securities of an issuer of a debt security meet the criterion of Rule 5.4.01 provides an additional assurance that such issuer's securities enjoy widespread investor interest.

requirements identified above are not satisfied.

Proposed Rule 29.2, *Designation of Credit Default Option Contracts*, would supplement existing Rules 5.1, *Designation of Securities*, 5.3, 5.5, *Series of Option Contracts Open for Trading*, and 5.8, *Long-Term Equity Option Series (LEAPS®)*. The text of proposed Rule 29.2 references the applicable listing requirements in proposed Rule 5.3.11 and also provides that each Credit Default Options class would be designated by reference to the Reference Entity, Reference Obligation, and the applicable Credit Event(s). The applicable Credit Event(s) would include a Failure-to-Pay Default and might also include any other Event of Default or Restructuring, if any, specified by the Exchange.

After a particular Credit Default Option class has been approved for listing and trading on the Exchange, the Exchange would from time to time open for trading series of options on that class. Only Credit Default Option contracts approved by the Exchange and currently open for trading on the Exchange would be eligible to be purchased or written on the Exchange. Prior to the opening of trading in a particular Credit Default Options series in a given class, the Exchange would fix the expiration month and year. To the extent possible, CBOE intends to have Credit Default Options recognized and treated like existing standardized options. Standardized systems for listing, trading, transmitting, clearing, and settling options, including systems used by OCC, would be employed in connection with Credit Default Options. Credit Default Options would also have a symbology based on the current system. For example, the ABC Dec-07 Calls would designate a Credit Default Option on Reference Entity ABC, which option would expire in December 2007 and would cease trading on the third Friday of that month (assuming that date is an Exchange business day and assuming no Credit Event has been determined by the Exchange before that date).

A Credit Default Option series would generally be listed up to 123 months ahead of its expiration date and could expire in the months of March, June, September, or December. The last trading day would be the close of business on the third Friday of the expiration month. However, if that day is not a business day, the series would cease trading at the close of business on the preceding business day. The Exchange usually would open one to four series for each year up to 10.25 years from the current expiration. For example, in December 2006, the Exchange would open the Jun-07 and Dec-07 series, as well as the Dec-08, Dec-09, Dec-10, and Dec-11 series. Additional series of options on the same Credit Default Option class could be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market or to meet customer demand. The opening of a new series of Credit Default Options on the Exchange would not affect any other series of options of the same class previously opened.

Proposed Rule 29.3, *Withdrawal of Approval of Underlying Reference Entity*, would provide that the requirements for continuance of approval of Credit Default Options would be in accordance with proposed Rule 5.4.15.

Proposed Rule 29.4, *Adjustments*, which for purposes of Credit Default Options would replace existing Rule 5.7, *Adjustments*, would contain information about adjustments due to succession or redemption events in the Reference Entity.

With respect to adjustments related to a succession, the proposed rule provides that each Credit Default Option would be replaced by one or more Credit Default Options derived from Reference Entities that have succeeded the original Reference Entity as a result of the Succession Event based on the applicable share of each Successor Reference Entity. For purposes of the proposed rule, a ''Successor Reference Entity'' and a ''Succession Event'' would be defined in accordance with the terms of the Relevant Obligation(s). In respect of each successor Credit Default Option, the cash settlement amount and contract multiplier would be based on the applicable share of each Successor Reference Entity. For example, if there are two Successor Reference Entities that each has an applicable share of 50%, the cash settlement for each replacement Credit Default Option would be $50,000 (equal to an exercise settlement value of $100 multiplied by the revised contract multiplier of 500). All other terms and conditions of each successor Credit Default Option would be the same as the original Credit Default Option unless the Exchange determines, in its sole discretion, that a change is necessary and appropriate for the protection of investors and the public interest, including but not limited to the maintenance of fair and orderly markets, consistency of interpretation and practice, and the efficiency of settlement procedures.

With respect to adjustments related to a redemption, the proposed rule provides that, once the Exchange has confirmed a Redemption Event, the Credit Default Option contract would cease trading on the confirmation date. If no Credit Event has been confirmed to have occurred prior to the effective date of the Redemption, the contract payout would be $0. If a Credit Event has occurred prior to the effective date of the Redemption, the cash settlement amount would be $100,000 per contract (or the applicable adjusted amount). The Credit Event confirmation period would begin when the Credit Default Option contact is listed and would extend to 3 p.m. (CT) on the fourth Exchange business day after the effective date of the Redemption. A ''Redemption Event'' would be defined in accordance with the terms of the Relevant Obligation(s) and would include the redemption of the Reference Obligation and of all other Relevant Obligations. However, if the Reference Obligation is redeemed but other Relevant Obligation(s) remain, a new Reference Obligation would be specified from among the remaining Relevant Obligation(s).

The Exchange would confirm adjustment events based on at least two sources, which could include announcements published via newswire services or information services companies, the names of which would be announced to the membership via Regulatory Circular, and/or information submitted to or filed with the courts, the Commission, an exchange or association, the OCC, or another regulatory agency or similar authority.

Proposed Rule 29.4 also would provide that every such determination made pursuant to the proposed rule would be within the Exchange's sole discretion and be conclusive and binding on all holders and sellers and not subject to review.

c. Determination of Credit Events, Automatic Exercise, and Settlement (Proposed Rules 29.9–29.10)

A Credit Default Option would be subject to automatic exercise upon the Exchange confirming that a Credit Event has occurred in a Reference Entity between the listing date and the last trading day. Under proposed Rule 29.9, the Credit Event confirmation period would begin when the Credit Default Option contract is listed and would extend to 3 p.m. (CT) on the expiration date.

The Exchange would confirm a Credit Event based on at least two sources, which could include announcements published via newswire services or information services companies, the names of which would be announced to the membership via Regulatory Circular,

or information submitted to or filed with the courts, the Commission, an exchange or association, the OCC, or another regulatory agency or similar authority. Proposed Rule 29.9 would also provide that every determination made pursuant to the proposed rule would be within the Exchange's sole discretion and be conclusive and binding on all holders and sellers and not subject to review.

Proposed Rule 29.10 would provide that the Exchange shall have no liability for damages, claims, losses, or expenses caused by any errors, omissions, or delays in confirming or disseminating notice of any Credit Event resulting from a negligent act or omission by the Exchange or any act, condition, or cause beyond the reasonable control of the Exchange, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

If the Exchange determines that a Credit Event in the underlying Reference Entity has occurred prior to 10:59 p.m. (CT) on the last trading day, the final cash settlement amount would be $100,000 per contract (or the applicable adjusted amount). Otherwise the final settlement price would be $0. As indicated above, if a Credit Event has been confirmed by the Exchange to have occurred prior to the last trading day, the Credit Default Option would cease trading upon confirmation of the Credit Event. Once a Credit Event is confirmed, the Exchange would also provide the OCC with notice of the Credit Event and notice of the applicable cash settlement value, similar to the notification procedures that are currently in place for existing index products trading on the Exchange. The rights and obligations of holders and sellers of Credit Default Options dealt in on the Exchange shall be set forth in the By-Laws and Rules of OCC.

d. Position Limits, Reporting Requirements, Exercise Limits, and Other Restrictions (Proposed Rules 29.5–29.8)

The Exchange is proposing that the position limits for Credit Default Option contracts be equal to 5,000 contracts on the same side of the market. The Exchange believes this amount is sufficiently low enough to minimize potential risks on firms as Credit Default Options are first introduced. However, over time and based on the Exchange's experience in trading Credit Default Options, CBOE anticipates these limits would be increased. Any such increase would be reflected through a rule filing submitted pursuant to Section 19(b) of the Act.[8]

In determining compliance with the Exchange's position limit requirements, proposed Rule 29.5 would provide that Credit Default Options shall not be aggregated with option contracts on the same or similar underlying security. CBOE believes that the ''all-or-none'' nature of Credit Default Options as well as the risk/return profile of these options provides significant differences to existing standardized options that render aggregation of such positions unnecessary. In addition, Credit Default Options shall not be subject to the hedge exemption to the standard position limits found in existing Rule 4.11.04. Instead, the following qualified hedge exemption strategies and positions shall be exempt from the established position limits: (i) A Credit Default Option position ''hedged'' or ''covered'' by an appropriate amount of cash to meet the cash settlement amount obligation (*e.g.*, $100,000 for a Credit Default Option with an exercise settlement value of $100 multiplied by a contract multiplier of 1,000); and (ii) a Credit Default Option position ''hedged'' or ''covered'' by an amount of an underlying debt security(ies) that serves as a Relevant Obligation(s) and/or other securities, instruments, or interests related to the Reference Entity that is sufficient to meet the cash settlement amount obligation. For example, a long Credit Default Option position could be offset by a long position in a debt security of the Reference Entity that is worth $100,000 per contract (or the applicable adjusted amount) and a short Credit Default Option position could be offset by a short position in a debt security of the Reference Entity that is worth $100,000 per contract (or the applicable adjusted amount).

The existing Market-Maker and firm facilitation exemptions to position limits currently available to members under existing Rules 4.11.05 and 4.11.06, respectively, would also apply. With respect to the Market-Maker hedge exemption, the Exchange is proposing that the positions must generally be within 20% of the applicable limits of the Credit Default Option before an exemption would be granted. With respect to the firm facilitation exemption, the Exchange is proposing that the aggregate exemption position could not exceed three times the standard limit of $5,000 and be applied consistent with the procedures described in existing Rule 4.11.06.

Under proposed Rule 29.6, *Reports Related to Position Limits and Liquidation of Positions*, the standard equity reporting requirements described in existing Rule 4.13, *Reports Related to Position Limits*, would be applicable to Credit Default Options. As such, in accordance with Rule 4.13(a), positions in Credit Default Options would be reported to the Exchange via the Large Option Positions Report when an account establishes an aggregate same side of the market position of 200 or more Credit Default Options. In computing reportable Credit Default Options under existing Rule 4.13, Credit Default Options could not be aggregated with non-Credit Default contracts. In addition, Credit Default Options on a given class shall not be aggregated with any other class of Credit Default Options. The applicable position reporting requirements described in existing Rule 4.13(b) would also apply, except that the reporting requirement would be triggered for a Credit Default Option position on behalf of a member's account or for the account of a customer in excess of 1,000 contracts on the same side of the market, instead of the normal 10,000 contract trigger amount. The data to be reported would include, but would not be limited to, the Credit Default Option positions, whether such positions are hedged, and documentation as to how such contracts are hedged. The Exchange believes that the reporting requirements and the surveillance procedures for hedged positions would enable the Exchange to closely monitor sizable positions and corresponding hedges.

Upon determination of a Credit Event, the Credit Default Option class would cease trading and all outstanding Credit Default Option contracts would be subject to automatic exercise. As a result and given the fixed payout nature of these options, there shall be no exercise limits for Credit Default Options. Proposed Rule 29.7 confirms this.

Proposed Rule 29.8 provides that Credit Default Options shall also be subject to existing Rule 4.16, *Other Restrictions on Options Transactions and Exercises*, which provides the Exchange's Board with the power to impose restrictions on transactions or exercises in one or more series of options of any class dealt in on the Exchange as the Board in its judgment determines advisable in the interests of maintaining a fair and orderly market or otherwise deems advisable in the public

[8] 15 U.S.C. 78s(b).

interest or for the protection of investors.[9]

CBOE believes the proposed safeguards would serve sufficiently to help monitor open interest in Credit Default Option series and significantly reduce any risks.

e. Margin Requirements (Amendment to Rules 12.3 and 12.5)

The Exchange is proposing to supplement its existing Rule 12.3, *Margin Requirements*, to include requirements applicable to the initial and maintenance margin required on any Credit Default Options carried in a customer's account. The requirements would be as follows: The initial and maintenance margin required on any Credit Default Option carried long in a customer's account would be 100% of the current market value of the Credit Default Option; provided, however, for the account of a qualified customer, the margin would be 20% of the current market value of the Credit Default Option. The initial and maintenance margin required on any Credit Default Option carried short in a customer's account would be the cash settlement amount, *i.e.*, $100,000 per contract; provided, however, for the account of a qualified customer, the margin would be the lesser of the current market value plus 20% of the cash settlement amount defined in proposed Rule 29.1 or the cash settlement amount.

The Exchange is also proposing to amend its existing Rule 12.5, *Determination of Value for Margin Purposes,* to provide that Credit Default Options carried for the account of a qualified investor that are listed or guaranteed by the carrying broker-dealer may be deemed to have market value for the purposes of the customer margin account provisions provided in existing Rule 12.3(c). For purposes of these proposed provisions, the term ''qualified customer'' would be defined a person or entity that owns and invests on a discretionary basis no less than $5,000,000 in investments.

Under the proposal, Credit Default Option margin requirements could be satisfied by a deposit of cash or marginable securities or by presentation to the member organization carrying such customer's account of a letter of credit in a form satisfactory to the Exchange and issued by a bank. Such a letter of credit would be required to: (i) Contain the unqualified commitment of the issuer to pay to the member or participant organization a specified sum of money equal to or greater than the amount of margin due with respect to such option position, immediately upon demand at any time prior to the expiration of such letter of credit; (ii) be irrevocable; and (iii) expire no earlier than the expiration of such option. Such a letter of credit would be permitted to serve as margin for more than one Credit Default Option position written by the customer for whose account the letter of credit is issued, provided that the margin due with respect to each such option position does not, in the aggregate, exceed the sum specified in such letter of credit and provided that such letter expires no sooner than the most distant expiration date of any of the options with respect to which it is designed to serve as margin.

The proposed margin provisions also would provide that a Credit Default Option carried short in a customer's account be deemed a covered position, and eligible for the cash account, provided any one of the following either is held in the account at the time the option is written or is received into the account promptly thereafter: (i) Cash or cash equivalents equal to 100% of the cash settlement amount as defined in Rule 29.1; or (ii) an escrow agreement. Under the proposal, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement: (i) Cash, (ii) cash equivalents, (iii) one or more qualified equity securities, or (iv) a combination thereof having an aggregate market value of not less than 100% of the cash settlement amount (*e.g.*, $100,000 in the case of an unadjusted Credit Default Option) and that the bank would promptly pay the member organization the cash settlement amount in the event of a Credit Event.

The Exchange notes that, in accordance with Rule 12.10, *Margin Required is Minimum*, the Exchange would also have the ability to determine at any time to impose higher margin requirements than those described above in respect of any Credit Default Option position(s) when it deems such higher margin requirements appropriate.

In setting the proposed margin requirements, particularly those with respect to qualified customers, and the proposed position limit and reporting requirements described above, the Exchange has been cognizant of the sophistication and capitalization of the particular market participants and their need for substantial options transaction capacity to hedge their substantial investment portfolios, on the one hand, and the potential for untoward effects on the market and on firms that might be attributable to excessive Credit Default Option positions, on the other. The Exchange has also been cognizant of the existence of the competitive OTC market, in which similar restrictions do not apply. For these reasons, the Exchange believes that the requirements set forth in the proposed rules strike a necessary and appropriate balance and adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in Credit Default Options.

f. Letter of Guarantee or Authorization (Proposed Rule 29.18)

Proposed Rule 29.18 would extend the general letter of guarantee requirement under existing Rule 8.5, *Letters of Guarantee*, to Market-Makers with appointments in Credit Default Options, thereby subjecting such Market-Makers to a focused creditworthiness review by their clearing members. Similarly, proposed Rule 29.18 would extend the general letter of authorization requirement under existing Rule 6.72, *Letters of Authorization*, to floor brokers that would represent orders in Credit Default Option contracts.

g. Trading Mechanics for Credit Default Options (Proposed Rules 29.11–29.17 and 29.19)

The Exchange intends to trade Credit Default Options similar to the manner in which it trades equity options on its Hybrid Trading System (''Hybrid''). The existing Hybrid equity option trading rules would apply largely unchanged to Credit Default Options, with a few distinctions noted below. Under the proposed rules, trading in Credit Default Options would be conducted in the following manner:

- *Days and Hours of Business (Proposed Rule 29.11 and Revised Rule 6.1):* Proposed Rule 29.11 would provide that, except under unusual conditions as may be determined by the Exchange, the hours during which Credit Default Options transactions could be made on the Exchange would be from 8:30 a.m. to 3 p.m. (CT). The Exchange is also proposing to include a cross-reference to proposed Rule 29.11 in existing Rule 6.1, *Days and Hours of Business,* to reflect that existing Rule 6.1 would be supplemented by proposed Rule 29.11.
- *Trading Rotations (Proposed Rule 29.12):* Trading rotations would generally be conducted through use of the Hybrid Opening System (''HOSS''), which is described in existing Rule 6.2B. Normally equity options open at a

[9] For example, it is possible that the Exchange would prohibit exercises in a Credit Default Option if a court, the Commission, or another regulatory agency having jurisdiction would impose a restriction which would have the effect of restricting the exercise of an option.

randomly selected time following the opening of the underlying security. Because Credit Default Options would not have a traditional underlying security, the opening rotation process would begin at a randomly selected time within a number of seconds after 8:30 a.m. (CT), unless unusual circumstances exist.

• *Trading Halts and Suspension of Trading (Proposed Rule 29.13):* The trading halt procedures contained in existing Rules 6.3 and 6.3B that are applicable to equity options shall also be applicable to Credit Default Options. In addition, proposed Rule 29.13 provides that another factor that may be considered by Floor Officials in connection with the institution of a trading halt under existing Rule 6.3 in Credit Default Options is that current quotations for the Relevant Obligation(s) or other securities of the Reference Entity are unavailable or have become unreliable.

• *Premium Bids and Offers & Minimum Increments, Priority and Allocation (Proposed Rule 29.14):* Bids and offers would have to be expressed in terms of dollars per the contract multiplier unit (*e.g.*, a bid of ''7'' shall represent a bid of $7,000 for a Credit Default Option with a contract multiplier of 1,000). In addition, the minimum price variation (''MPV'') for bids and offers would be $0.05 ($50 per contract) on both simple orders and multi-part complex orders. All bids or offers made for Credit Default Option contracts would be deemed to be for one contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract would be deemed to be for the amount thereof or a smaller number of option contracts. The rules of priority and order allocation procedures set forth in Rule 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, would apply to Credit Default Options.

• *Nullification and Adjustment of Credit Default Option Transactions (Proposed Rule 29.15):* The provisions in existing Rule 6.25, which pertain to the nullification and adjustment of equity option transactions, would be generally applicable to Credit Default Options. However, the conditions for determining an obvious error in a Credit Default Option would differ. For Credit Default Options, there would be two categories of errors. The first type of error pertains to an obvious pricing error, which occurs when the execution price of an electronic transaction is below or above the theoretical price range (*i.e.*, $0–$100) for the series by an amount equal to at least 5% per contract. Trading Officials would adjust such transactions to a price within 5% of the theoretical price range (*i.e.*, to −$5 or $105), unless both parties agree to a nullification. The second type of error pertains to electronic or open outcry transactions arising out of a verifiable disruption or malfunction in the use or operation of any Exchange automated quotation, dissemination, execution, or communication system. Trading Officials would nullify such transactions, unless both parties agree to an adjustment. All other provisions of existing Rule 6.25 related to procedures for review, and obvious error panel and appeals committee reviews, would apply unchanged.

• *Market-Maker Appointments & Obligations (Proposed Rule 29.17):* Proposed Rule 29.17 provides that the Market-Maker appointment process for Credit Default Option classes would be the same as the appointments for other options, as set out in existing Rules 8.3, *Appointment of Market-Makers;* 8.4, *Remote Market-Makers,* 8.15A; *Lead Market-Makers in Hybrid Classes;* and 8.95, *Allocation of Securities and Location of Trading Crowds and DPMs.* This proposed rule would further provide that an appointed Market-Maker could, but would not be obligated to, enter a response to a request for quotes in an appointed Credit Default Option class and need not provide continuous quotes or quote a minimum bid-offer spread. However, when quoting, the Market-Maker's minimum value size would have to be at least one contract. With respect to an appointed DPM or LMM, as applicable, there would be additional obligations to enter opening quotes in accordance with existing Rule 6.2B, *Hybrid Opening System (''HOSS''),* in 100% of the series in the appointed class and to enter a quote in response to any open-outcry request for quotes on any appointed Credit Default Option class. The Exchange also could establish permissible price differences for one or more series of classes of Credit Default Options as warranted by market conditions. These quoting mechanics would be similar to the mechanics that exist today for trading Flexible Exchange Options (''FLEX Options'') on the Exchange.

• *FLEX Trading Rules (Proposed Rule 29.19):* In addition to Hybrid, Credit Default Options also would be eligible for trading as FLEX Options. For proposes of existing Chapter XXIVA and proposed Chapter XXIVB, which chapters contain the Exchange's rules pertaining to FLEX Options, references to the term ''FLEX Equity Options'' would include a Credit Default Option and references to the ''underlying security'' or ''underlying equity security'' in respect of a Credit Default Option would mean the Reference Obligation as defined in proposed Rule 29.1. For purposes of existing Rule 24A.4 and Rule 24B.4,[10] a FLEX Equity Option that is a Credit Default Option would be cash-settled and the exercise-by-exception provisions of OCC Rule 805 would not apply.

These trading mechanics are designed to create a modified trading environment that takes into account the relatively small number of transactions that are likely to occur in this sophisticated, large-size market, while at the same time providing the Credit Default Options market with the price improvement and transparency benefits of competitive Exchange floor bidding, as compared to the OTC market. The Exchange believes that the resulting market environment would be fair, efficient, and creditworthy and, as such, would prove to be particularly suitable to the large sophisticated trades and investors that now resort to the OTC market to effect these types of options transactions.

h. Options Disclosure Document

To accommodate the listing and trading of Credit Default Options, it is expected that the OCC would amend its By-Laws and Rules to reflect the different structure of Credit Default Options. In addition, it is expected that OCC would seek a revision to the Options Disclosure Document (''ODD'') to incorporate Credit Default Options.

i. Systems Capacity

CBOE represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of Credit Default Options as proposed herein. Further, in light of the above-described proposed trading, quoting, and product structures, including that there would be a maximum of one series per quarterly expiration in a given Credit Default Option class, CBOE does not anticipate that there would be any additional quote mitigation strategy necessary to accommodate the trading of Credit Default Options.

j. Applicability of Rule 9b–1 Under the Act

The Exchange asks the Commission to clarify that Credit Default Options are standardized options under Rule 9b–1

[10] Chapter XXIVB and Rule 24B.4 are proposed to be adopted through a separate rule filing, SR–CBOE–2006–99.

under the Act.[11] Subsection (a)(4) of Rule 9b–1 [12] defines ''standardized options'' as ''options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.'' Credit Default Options are like existing standardized options trading on CBOE in every respect except for the exercise price. Credit Default Options: (i) Trade on a national securities exchange, (ii) have a specific expiration date, (iii) have fixed terms, (iv) have a specific exercise style,[13] and (v) would be issued and cleared by the OCC. All of these are attributes of ''standardized options'' as defined in Rule 9b–1. The one respect with which Credit Default Options differ from existing standardized options is in the exercise price.

''Exercise price'' is not a defined term in Rule 9b–1. However, the significance of having a specific exercise price term in a standardized option is that traditionally it, in conjunction with the specific exercise style (*e.g.*, American-, European-, or capped-style), symbolizes the formula for calculating the exercise settlement of the option that is publicly known and announced, objectively determined, and unalterable. For example, in the case of a physical delivery option, the exercise price (which is sometimes called the ''strike price'') is the price at which the option holder has the right either to purchase (in the case of a call) or to sell (in the case of a put) the underlying interest upon exercise.[14] In the case of a cash-settled option, the exercise price is the base used for determining the amount of cash, if any, that the option holder is entitled to receive upon exercise (referred to as the ''cash settlement amount'').[15] Traditionally, the cash settlement amount is the amount by which the exercise settlement value of the underlying interest of a cash-settled call exceeds the exercise price, or the amount by which the exercise price of a cash-settled put exceeds the exercise settlement value of the underlying interest, multiplied by the multiplier for the option.[16]

Whereas for traditional cash-settled options the cash settlement amount is determined by reference to the particular price of the underlying interest, the cash settlement amount for a Credit Default Option would be a fixed sum of $100,000 payable upon automatic exercise if a Credit Event in the underlying Relevant Obligation(s) is confirmed. As with traditional cash-settled options, the calculation of the cash settlement amount of a Credit Default Option would be established prior to the commencement of trading according to a formula that is publicly known and announced, objectively determined, and unalterable. Thus, as with a traditional cash-settled option, a party entering into a Credit Default Option would know exactly the terms under which a Credit Default Option would be automatically exercised and the option's cash settlement value, which would be an exercise settlement value of $100 multiplied by the contract multiplier of 1,000. In this regard, the Exchange believes that Credit Default Options, by their proposed terms, are standardized options within the meaning of Rule 9b–1.

If the Commission cannot determine that Credit Default Options are, by their proposed terms, standardized options, then the Exchange requests that the Commission use its authority under Rule 9b–1(a)(4) to otherwise designate options, such as Credit Default Options, as standardized options. The Commission used this authority in 1993 to designate ''FLEX Options'' as standardized options.[17] In making this designation, the Commission found that, ''[a]part from the flexibility with respect to strike prices, settlement, expiration dates, and exercise style, all of the other terms of [FLEX] Options are standardized.'' The Commission observed that standardized terms include matters such as ''exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules [and] margin requirements * * * .'' Credit Default Options share all of these characteristics and, in fact, are more standardized than FLEX Options in that the exercise settlement calculation, settlement, expiration dates, and exercise style of a given class may not vary.

k. Surveillance Program

The Exchange represents that it would have in place adequate surveillance procedures to monitor trading in Credit Default Options prior to listing and trading such options, thereby helping to ensure the maintenance of a fair and orderly market for trading in Credit Default Options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Exchange Act applicable to national securities exchanges and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change would 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 on the proposed rule change.

[11] 17 CFR 240.9b–1.

[12] 17 CFR 240.9b–1(a)(4).

[13] Credit Default Options would be automatically exercised at any time before expiration upon confirmation of a Credit Event. In this regard, the proposed exercise style of Credit Default Options is similar to capped-styled options, which are automatically exercised when the cap price is reached prior to expiration. The distinction between a Credit Default Option and a capped-styled option is that at expiration a capped-styled option is exercisable whereas a Credit Default Option is not (unless a Credit Event happens to occur and is confirmed at the same time as expiration). *See* existing CBOE Rule 1.1(ww) (which provides that, if the cap price is not reached prior to expiration, a capped-styled option can be exercised, subject to the provisions of rule 11.1 and to the Rules of the OCC, only on its expiration date).

[14] *See* ODD at 6–7.

[15] *See id.*

[16] Currently, instead of a variable amount, the cash settlement amount may instead be ''capped.'' A capped option will be automatically exercised prior to expiration if the options market on which the option is trading determines that the value of the underlying interest at a specified time on a trading day ''hits the cap price'' for the option. Capped options may also be exercised, like European-style options, during a specified period before expiration. Cash-settled options having a binary cash settlement amount based upon the price of the underlying security may be introduced for trading in the future.

[17] *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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–CBOE–2006–84 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2006–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–84 and should be submitted on or before March 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2477 Filed 2–13–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55247; File No. SR–ISE–2007–03]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Complex Order Fee Waiver

February 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') submitted to 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 ISE. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees to adopt a waiver for customer fees for certain Complex Orders.

The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com*, at the principal office of ISE, 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, ISE 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. ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend ISE's Schedule of Fees to adopt a waiver of customer fees for certain Complex Orders.[5] The Commission recently approved an Exchange proposed fee for customers that transact in Complex Orders, i.e., customer orders that interact with Complex Orders resident on the complex order book thereby taking liquidity from the complex order book.[6] The Exchange now proposes to waive this fee for the first 15,000 contracts transacted in a month by a member on behalf of its customers. This fee will apply once a member transacts more than 15,000 contracts in a month (whether on behalf of one or more than one of its customers) that take liquidity from the complex order book. As an example, a member who collectively transacts 17,500 contracts on behalf of its customers in a month will be assessed the complex order fee on 2,500 contracts, not on the entire 17,500 contracts.

In the filing that adopted this fee, the Exchange stated its belief that the proposed fee is objective in that it is based on the behavior of market participants and the type of orders submitted. Since the behavior of these customers is similar to the behavior of a broker dealer, it is fair for the Exchange to charge for these customer orders the same fees as those charged for broker dealer orders. The Exchange

[20] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Complex Orders are defined in ISE Rule 722(a).

[6] *See* Exchange Act Release No. 34–54751 (November 14, 2006), 71 FR 67667 (November 22, 2006).

believes that adopting a waiver for the first 15,000 contracts that a member transacts on behalf of its customers in a month is reasonable in that it furthers the Exchange's goal of deterring customers from acting as broker-dealers. The Exchange believes that customer orders that inadvertently interact with Complex Orders resident on the complex order book will never exceed 15,000 contracts in a month while customer orders of a member that intentionally engage in the business of taking liquidity from the complex order book are likely to exceed 15,000 contracts in a month.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act[7] that an exchange have an equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using its facilities.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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–ISE–2007–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2007–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2007–03 and should be submitted on or before March 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2530 Filed 2–13–07; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55255; File No. SR–NASDAQ–2006–060]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish NASDAQ Last Sale Data Feeds

February 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2006, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASDAQ. On January 26, 2007, NASDAQ submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to create the ''NASDAQ Last Sale For NASDAQ'' and ''NASDAQ Last Sale For NYSE/Amex'' data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the jointly-operated NASDAQ/NASD Trade Reporting Facility (''NASDAQ TRF''). The text of the proposed rule change is below. Proposed new language is in *italics*.

7039. NASDAQ Last Sale Data Feeds

(a) NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the Nasdaq/NASD Trade Reporting Facility.

(1) ''NASDAQ Last Sale for Nasdaq'' shall contain all transaction reports for Nasdaq-listed stocks; and

(2) ''NASDAQ Last Sale for NYSE/Amex'' shall contain all such transaction reports for NYSE- and Amex-listed stocks.

(b) Distributors of the NASDAQ Last Sale Data Feeds may elect between two alternate fee schedules, depending upon the ability of distributors to maintain either a username/ password entitlement system or a quote counting mechanism or both. All fees for the NASDAQ Last Sale Data Products are

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

[2] 17 CFR 240.19b–4.

''stair-stepped'' in that the fees are reduced for distributors with more users but the lower rates apply only to users in excess of the specified thresholds rather than applying to all users once a threshold is met. In addition, there shall be a maximum fee of $100,000 per month for NASDAQ Last Sale for NASDAQ and $50,000 per month for NASDAQ Last Sale for NYSE/Amex.

(1) Firms that have the ability to maintain either a username/password entitlement system or quote counting mechanism or both shall elect between paying a fee for each user or a fee for each query. A firm that elects to pay for each query may cap its payment at the monthly rate per user. Firms shall pay the following fees:

(A) NASDAQ Last Sale for NASDAQ

Users/mo	Price	Query	Price
1–9,999	$0.60/ usermonth	0–10M	$0.003/ query
10,000–49,999	$0.48/ usermonth	10M–20M	$0.0024/ query
50,000–99,999	$0.36/ usermonth	20M–30M	$0.0018/ query
100,000+	$0.30/ usermonth	30M+	$0.0015/ query

(B) NASDAQ Last Sale for NYSE/Amex

Users/mo	Price	Quotes	Price
1–9,999	$0.30/ usermonth	0–10M	$0.0015/ query
10,000–49,999	$0.24/ usermonth	10M–20M	$0.0012/ query
50,000–99,999	$0.18/ usermonth	20M–30M	$0.0009/ query
100,000+	$0.15/ usermonth	30M+	$0.000725/ query

(2) Firms that lack the ability to maintain either a username/password entitlement system or quote counting mechanism or both may distribute NASDAQ Last Sale Data Products under alternate fee schedules depending upon whether they distribute data via the Internet or via Television:

(A) The fee for distribution of NASDAQ Last Sale Data Products via the Internet shall be based upon the number of Unique Visitors to a website receiving such data. The number of Unique Visitors shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

(i) NASDAQ Last Sale for NASDAQ

Unique visitors	Monthly fee
1–100,000	$0.036/ Unique Visitor
100,000–1M	$0.03/ Unique Visitor
1M+	$0.024/ Unique Visitor

(ii) NASDAQ Last Sale for NYSE/Amex

Unique visitors	Monthly fee
1–100,000	$0.018/ Unique Visitor

(ii) NASDAQ Last Sale for NYSE/Amex—Continued

Unique visitors	Monthly fee
100,000–1M	$0.015/ Unique Visitor
1M+	$0.012/ Unique Visitor

(B) Distribution of NASDAQ Last Sale Data Products via Television shall be based upon the number of Households receiving such data. The number of Households to which such data is available shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

(i) NASDAQ Last Sale for NASDAQ

Households	Monthly fee
1–1M	$0.0096/ Household
1M–5M	$0.0084/ Household
5M–10M	$0.0072/ Household
10M+	$0.006/ Household

(ii) NASDAQ Last Sale for NYSE/Amex

Households	Monthly fee
1–1M	$0.0048/ Household
1M–5M	$0.0042/ Household
5M–10M	$0.0036/ Household

(ii) NASDAQ Last Sale for NYSE/Amex—Continued

Households	Monthly fee
10M+	$0.003/ Household

(C) A Distributor that distributes Nasdaq Last Sale Data Products via multiple distribution mechanisms shall pay all fees applicable to each distribution mechanism, provided that there shall be a discount from the applicable Television rate as follows:

(i) 10 percent reduction in applicable Television fees when a Distributor reaches the second tier of Users, Queries, or Unique Visitors for its non-Television users;

(ii) 15 percent reduction in applicable Television fees when a Distributor reaches the third tier of Users, Queries, or Unique Visitors for its non-Television users; and

(iii) 20 percent reduction in applicable Television fees when a Distributor reaches the fourth tier of Users, Queries, or Unique Visitors for its non-Television users.

(c) All Distributors of a Nasdaq Last Sale Data Feed shall also pay a monthly fee of $1,500.

(d) All Distributors of a Nasdaq Last Sale Data Feed shall also have the ability to distribute the Nasdaq Market

Analytics Data Package set forth in Rule 7036 at no additional distributor fee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NASDAQ provides real-time last sale information from its market center to the Security Information Processors (''SIPs'') for the national market system plans governing trading in NASDAQ, New York Stock Exchange LLC (''NYSE''), and American Stock Exchange LLC (''Amex'') listed securities. The SIPs then consolidate NASDAQ's last sale information with similar information from other market centers, and disseminate the consolidated last sale data to market data vendors. These consolidated products are known within the securities industry as ''Level 1'' products.

NASDAQ proposes to create two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ Data Product,'' a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the NASDAQ TRF. Second, NASDAQ will also create the ''NASDAQ Last Sale for NYSE/Amex Data Product'' that provides real-time last sale information including execution price, volume, and time for NYSE and Amex securities executions occurring within the NASDAQ system as well as those reported to the NASDAQ TRF. Both products would also include access to the NASDAQ Market Velocity and NASDAQ Market Forces information for their respective classes of securities, data which is currently available only via a separate, stand-alone data feed product.

NASDAQ developed these product proposals in consultation with industry members and also market data vendors and purchasers. These products are designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the SIP Level 1 products. NASDAQ also proposes to ease the administrative burden of market data vendors that are receiving and using data in new ways, particularly those that provide the data via the Internet and various Television media. Providing investors with new options for receiving market data, as NASDAQ proposes, was a primary goal of the market data amendments adopted in Regulation NMS.

NASDAQ proposes two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms will be eligible for a specified fee schedule for the NASDAQ Last Sale For NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. The pricing will be ''stair-stepped,'' meaning that the tiered fees would be effective for the incremental users in the new tier. For example, a distributor of the NASDAQ Last Sale for NASDAQ Product with 20,000 users would pay $0.60 for the first 10,000 users and $0.48 for the next 10,000 users. Distributors may instead elect to pay per query for their users if, for example, a substantial portion of their users request a relatively small number of queries each month. As with consolidated Level 1 data products, firms will be permitted to ''cap'' their payments for individual queries at the corresponding monthly user rate. NASDAQ believes this allows firms to manage their market data costs better.

Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms will also have multiple options for purchasing the NASDAQ Last Sale data. These firms will choose between a ''Unique Visitor'' model for Internet delivery or a ''Household'' model for Television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion.

The proposed pricing is stair-stepped, meaning that the tiered fees would be effective for the incremental users in the new tier. For example, a distributor of NASDAQ Last Sale for NASDAQ that reports 600,000 Unique Visitors would pay $0.036 for the first 100,000 visitors and $0.03 for the next 500,000 visitors. A Distributor that reports 3,000,000 households reached would pay $0.0096 for the first 1,000,000 households and $0.0084 for the next 2,000,000 households.

Industry members have noted to NASDAQ that these Internet and Television media types are converging, and that these two price schedules should therefore be blended. To reflect the growing confluence between these media outlets, NASDAQ proposes to offer a reduction in fees when a single Distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms. Specifically, NASDAQ will discount the applicable fees for distribution of NASDAQ Last Sale Data Products via Television for Distributors that also distribute those products via the Internet and have achieved a new pricing tier for Unique Visitors, Users, or Queries. This acknowledges distributors' perception that as Web sites grow, they may gain overlapping Web site users and Television viewers. NASDAQ proposes that there be a 10% discount to a firm's Television fees when they reach the second tier in Unique Visitors, Users, or Queries, a 15% discount when they reach the third tier, and a 20% discount when they reach the fourth tier.

In addition, NASDAQ proposes to establish a cap of $100,000 per month for NASDAQ Last Sale for NASDAQ and $50,000 per month for NASDAQ Last Sale for NYSE/Amex. NASDAQ believes that it is reasonable and appropriate to benefit small and medium-sized vendors by proposing a progressive fee schedule and to benefit large vendors by proposing to cap the monthly fees.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products would pay a single $1500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee will apply to all distributors and will not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the Internet and Television.

Finally, in order to promote the distribution of the NASDAQ Market Analytics Data Package, described in Rule 7036, NASDAQ proposes that Distributors of the NASDAQ Last Sale Data Products would gain access to the

NASDAQ Market Velocity and NASDAQ Market Forces content from the Market Analytics Package at no additional charge. Market Velocity and Market Forces are measures of market activity that provide unique transparency into NASDAQ trading. Market Velocity is a measure of the frequency and size of orders submitted to the trading system, and is akin to the audible noise and visible activity that traders use on a physical trading floor to detect changes in market direction, momentum, or liquidity. Market Forces uses the same order and share volume information used in Market Velocity, but categorizes the orders by whether they are buys or sells, thereby providing an indication of market direction. NASDAQ has made these data points available for separate purchase on a voluntary basis, and proposes to make them available to those that voluntarily subscribers to NASDAQ Last Sale products.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The NASDAQ Last Sale market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The NASDAQ Last Sale market data products will offer NASDAQ data in a new form not previously available to market data consumers. It will also offer a data product at a new price point not previously available to market data consumers. The product is completely optional in that no consumer is required to purchase it and only those consumers that deem the product to be of sufficient overall value and usefulness will purchase it.

To the extent that consumers do purchase NASDAQ Last Sale products, the revenue generated will offset NASDAQ's high fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. It will also help NASDAQ recapture the significant costs it incurred in developing that platform.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NASDAQ believes that, as a general matter, the Commission has long held the view that ''competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system.'' [5] The Commission has also stated ''that the notion of competition is inextricably tied with the notion of economic efficiency, and the Act seeks to encourage market behavior that promotes such efficiency, lower costs, and better service in the interest of investors and the general public.'' [6]

The Commission goes on to state its belief ''that the appropriate analysis to determine a proposal's competitive impact is to weigh the proposal's overall benefits and costs to competition based on the particular facts involved, such as examining whether the proposal would promote economically efficient execution of securities and fair competition between and among exchange markets and other market centers, as well as fair competition between the participants of a particular market.'' [7]

NASDAQ believes that the current proposal is designed to increase transparency and the efficiency of executions by enabling vendors to provide additional market data in a cost efficient manner. NASDAQ believes that there is significant competition for the provision of market data to broker-dealers and other market data consumers, as well as competition for the orders that generate the data. NASDAQ fully expects its competitors to quickly respond to this proposal as they have responded to other NASDAQ data products in the past. Moreover, market forces have shaped the market data fees that NASDAQ has charged for its market data product in the past and will continue to shape those fees in the future.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NASDAQ 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–NASDAQ–2006–060 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2006–060. 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

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[6] *See* Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291, 41298 (July 20, 2006).

[7] *Id.*

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2006–060 and should be submitted on or before March 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E7–2532 Filed 2–13–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55259; File No. SR–NSCC–2006–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change To Create Service To Facilitate the Exchange of Account Related Information on an Automated Basis Between Members

February 8, 2007.

I. Introduction

On December 21, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 5, 2007, amended [1] proposed rule change SR–NSCC–2006–18 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on January 18, 2007.[3] The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

II. Description

Currently, when a correspondent firm chooses to move its book of business from one NSCC member to another, there is no standard method for transmitting the detailed customer data between the members. This information is currently exchanged through tapes, CDs, and other means and is dependent on the proprietary data format and values defined by the clearing firm from which the correspondent is moving. The process is time-consuming and prone to incorrect interpretation of data values. It is made more inefficient because clearing firms maintain separate code for each other clearing firm for which they convert data.

NSCC is modifying its rules to create the Account Information Transmission Service (''AIT'') to facilitate the exchange of account related information during the movement of correspondent broker accounts between members or during other material events that result in the bulk movement of accounts between members. AIT will provide members with a standard mechanism to transmit customer data that will reduce the potential for lost and incorrectly interpreted data and will provide members with a secure facility for the exchange of data. The standard data model also will allow for the adoption of a single code base that is applicable for all conversion events. NSCC believes the single standard format could reduce costs, increase accuracy, and accelerate delivery time.

NSCC will develop and introduce AIT in two phases. The first phase is to create the mechanism by which members may transmit data between themselves. NSCC will implement the first phase on Monday, February 12, 2007. The second phase will involve the development of standardized data formats. NSCC will notify the Commission of phase two enhancements prior to their implementation.

Since AIT is only an information transmission service, NSCC is also amending its rules to clarify that NSCC is not responsible for the accuracy or completeness of any information transmitted through AIT or for any omissions or delays that may occur in the transmission of AIT data. Finally, NSCC is implementing a $200 monthly subscription fee for participation in AIT during phase one. NSCC will reevaluate AIT service fees as subsequent enhancements are completed.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[4] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The Commission finds that NSCC's rule change is consistent with these requirements because by reducing costs, increasing accuracy, and accelerating delivery time of bulk movement of accounts between members, the proposed rule change should better enable NSCC to promote the prompt and accurate clearance and settlement of securities transactions.[6]

The Commission believes there is good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because doing such will allow NSCC to implement AIT according to its system implementation schedule.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NSCC–2006–18) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E7–2540 Filed 2–13–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55254; File No. SR–Phlx–2006–88]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 712, Independent Audit

February 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[8] 17 CFR 200.30–3(a)(12).

[1] The amendment added the number of the new rule inadvertently omitted in the original filing.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 55082 (January 10, 2007), 72 FR 2319.

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

(''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act[5] and Rule 19b–4 thereunder,[6] proposes to amend Phlx Rule 712, *Independent Audit*, to clarify that in certain circumstances a member organization may request an extension of time to file its annual audit from the Exchange in writing prior to the due date of the annual audit, and to provide for the imposition of a fee to be assessed for the late filing of an annual audited financial statement (''annual audit'').

The proposed new language is set forth below, with new text italicized:

Rules of the Board of Governors

* * * * *

Independent Audit

Rule 712. Each member organization doing any business with the public shall at least once each calendar year cause to be made an audit of its affairs, conducted in accordance with applicable audit requirements of the Securities and Exchange Commission and such other requirements as deemed appropriate by the Exchange, by independent public accountants and shall have such accountants prepare an answer to the financial questionnaire of the Exchange based upon such audit.

Pursuant to Rule 17a–5(d), promulgated under the Exchange Act, all broker-dealers are required to file annually audited financial statements (''Annual Audits'') with their Designated Examining Authority and the SEC, no more than 60 days after the date of the year end financial statements. A member organization unable to meet the filing deadline for its Annual Audit as a result of exceptional circumstances may request an extension of time, in writing, prior to the filing due date. Annual Audits not received by the Exchange by the due date, or revised due date if an extension has been granted, will be subject to a late fee as set forth below for each week or any part thereof that the Annual Audit has not been filed, as calculated based on the due date or revised due date for filing the Annual Audit. (Implemented on a running three-year basis.)

(i) *$100 per week for the first late filing in a three-year period.*

(ii) *$300 per week for the second late filing in a three-year period.*

(iii) *$1,000 per week for the third late filing in a three-year period.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has substantially prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Rule 712 sets forth the provisions governing the requirements for an annual audit to be conducted in accordance with audit requirements as set forth by the Securities and Exchange Commission and other requirements as deemed appropriate by the Exchange. The proposed amendment is designed to clarify that, if a member organization is unable to meet the filing deadline for its annual audit as a result of exceptional circumstances, the member organization may request an extension of time to file its annual audit in writing prior to the due date of the annual audit.[7] In addition, the proposed amendment is intended to encourage the prompt filing of annual audits by those member organizations designated to the Exchange for examining purposes through the assessment of a late filing fee. Pursuant to the amended Rule, the Exchange may issue progressively higher fees for all subsequent violations within the running three-year time period.[8]

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[11] and paragraph (f)(2) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] Requests for extensions of time to file an annual audit should be submitted to the Exchange.

[8] The Exchange may present repeated or aggravated failures to file such annual audits on a timely basis to the Exchange's Business Conduct Committee for disciplinary action under Exchange Rules.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–88 on the subject line.

Paper Comments

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

All submissions should refer to File Number *SR–Phlx–2006–88.* This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–Phlx–2006–88* and should be submitted on or before March 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2549 Filed 2–13–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55256; File No. SR–Phlx–2005–68]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Deletion of Rule 702, Carrying Accounts

February 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on November 9, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Phlx. The Phlx filed Amendment No. 1 to the proposed rule change on January 18, 2007.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to delete Rule 702, Carrying Accounts. The text of Rule 702, proposed to be deleted, is set forth below. Brackets indicate deletion.

[Rule 702. Carrying Accounts

No member, doing business as an individual, shall carry accounts for customers, except as provided in Rule 903.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

[2] 17 CFR 240.19b-4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change to delete Rule 702, Carrying Accounts, is to eliminate an unnecessary and confusing Exchange rule. Currently, Rule 702 provides that ''[n]o member, doing business as an individual, shall carry accounts for customers, except as provided in Rule 903.''[4]

The term ''member'' (as opposed to ''member organization'') is defined in Exchange rules as a permit holder which has not been terminated in accordance with the by-laws and rules of the Exchange.[5] Currently, the only issued and outstanding Exchange permits are Series A–1 Permits, the terms and conditions of which are governed by Rule 908. Section (b) of Rule 908, Series A–1 Permits, provides in part that, with one narrow exception not relevant here, a Series A–1 permit shall only be issued to an *individual.*[6]

The Exchange believes that Rule 702 is unnecessary. Additionally, since virtually all members are individuals, Rule 702's proscription against the carrying of customer accounts by a member ''doing business as an individual'' is confusing. The Exchange has in the past interpreted the rule as prohibiting any individual member from carrying customer accounts. Rule 908

[4] The reference to Rule 903 is clearly an incorrect reference which should be to Rule 904, Use of a Partnership Name, which provides that ''[n]o member shall conduct business under a partnership firm name unless he has at least one general partner, provided, however, that if by death or otherwise a member becomes the sole general partner in a member organization that is a partnership he may continue business under the partnership name for such period as may be allowed by the Committee.''

[5] *See* Exchange By-Law Article I, Section 1(t) and Exchange Rule 1(n). Exchange By-Law Article XII, Section 1(b) provides in part that ''[e]xcept as otherwise set forth in the rules of the Exchange or any resolution of the Board of Governors authorizing a specific class or series of permits, a permit will confer upon and subject the holder thereof to all the privileges and obligations of a member pursuant to these By-Laws and the rules of the Exchange, * * * and to conduct business on the Exchange as provided in these By-Laws and such rules.''

[6] Rule 908(b) provides that a Series A–1 Permit may also be issued to ''a corporation meeting the requirements of Section 12–4 of the By-Laws.'' Section 12–4 of the By-Laws, Admission of Corporation, provides that ''[a] corporation may be issued a permit by the Exchange, provided such corporation is incorporated under the laws of the Commonwealth of Pennsylvania, and all of its capital stock is owned by the Exchange.'' This By-Law provision was intended to permit Exchange membership for the Exchange's subsidiary, Stock Clearing Corporation of Philadelphia.

requires any Series A–1 Permit Holder to maintain a primary affiliation with an eligible member organization at all times that such holder holds a permit. Member organizations, which do not include individuals but which are defined as ''a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization'' which meet certain criteria, are not covered by the Rule 702 prohibition.

The Exchange is proposing the deletion of Rule 702 not only because it is confusing, but also because a member's ability to carry customer accounts is in many ways dictated by the member's ability to comply with relevant securities laws and regulations including, but not limited to, Exchange Act Rules 15c3–1 and 15c3–3,[7] and related rules, which do not make distinctions on the basis of a member's organizational and corporate structure.[8] The Exchange believes that Rule 702 is therefore superfluous.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by eliminating a confusing and unnecessary Exchange rule.

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.

[7] 17 CFR 240.15c3–1 and 240.15c3–3.

[8] For example, the customer protection provisions of Rule 15c3–3 under the Act requires broker-dealers to maintain physical possession or control of customer fully-paid and excess margin securities. Further, Phlx member firms for which the Exchange is the DEA generally do not carry public customer accounts. If a Phlx member firm carries customer accounts it is required to become a member of a national securities association (*e.g.*, the National Association of Securities Dealers (''NASD'')). Under agreements that the Phlx has entered into with other self-regulatory organizations (''SROs'') in accordance with Rule 17d–2 under the Act, any Phlx member that is also a member of another SRO (including the NASD) would be assigned to another DEA.

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission shall: (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–Phlx–2005–68 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2005–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–68 and should be submitted on or before March 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E7–2550 Filed 2–13–07; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub.L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov*.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Application for Child's Insurance Benefits—20 CFR 404.350–404.368, 404.603, and 416.350—0960–0010. SSA uses the information collected by the SSA–4–BK to entitle children of living and deceased workers to monthly Social Security payments. Respondents are guardians completing the form on behalf of the children of living or deceased workers, or the children of living or deceased workers.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,740,000.

Estimated Annual Burden: 344,141 hours.

Type of request	Number of respondents	Frequency per response	Average burden per response (minutes)	Estimated annual burden
Life Claims	46,250	1	10	7,708
Life Claims—MCS	439,375	1	10	73,229
Life Claims—Signature Proxy	439,375	1	9	65,906
Death Claims	40,750	1	15	10,188
Death Claims—MCS	387,125	1	15	96,781
Death Claims—Signature Proxy	387,125	1	14	90,329
Totals	1,740,000			344,141

2. Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits—20 CFR 404.2015 and 416.615—0960–0024. The information collected on the SSA–787 is used to determine whether an individual is capable of handling his or her own benefits. This information is also used for leads in selecting a representative payee, if needed. The respondents are physicians of the beneficiaries or medical officers of the institution in which the beneficiaries reside.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 20,000 hours.

3. Modified Benefit Formula Questionnaire—Foreign Pension—0960–0561. The information collected on the SSA–308 is used to determine exactly how much (if any) of a foreign pension may be used to reduce the amount of Social Security retirement or disability benefits under the modified benefit formula. The respondents are applicants for Social Security retirement or disability benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

4. Authorization to Release Medical Report to Physician—20 CFR 401.55 & 401.100—0960–NEW. If the claimant, his or her court appointed representative, or a parent of a minor child wants the consultative examination (CE) report sent to the claimant's treating physician, he or she will complete the information requested on Form SSA–91 and send it to SSA for processing. SSA will use the information collected to send the CE report to the authorized physician. Respondents are applicants for disability claims.

Type of Request: Collection in use without an OMB number.

Number of Respondents: 7,922.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 660 hours.

5. Claimant Travel Reimbursement Request—20 CFR 404.999a–d—0960–NEW. The claimants have the right to be reimbursed for their travel expenses to and from a consultative examination (CE). In order to be reimbursed, the claimants must submit an itemized list of what they spent to travel round trip to the CE. The SSA–104 is sent to the claimants with the CE appointment notice. If the claimants want to be reimbursed for their travel expenses, they must complete, sign and return the SSA–104 to SSA. SSA uses the information collected on this form to determine the amount of reimbursement. Respondents are applicants for disability claims.

Type of Request: Collection in use without an OMB number.

Number of Respondents: 11,092.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,849 hours.

6. Treating Physician Consultative Examination Interest Form—20 CFR 404.1519g–i—0960–NEW. The individual's treating physician (TP) is the preferred source to perform a consultative examination (CE). SSA uses the SSA–84 to ascertain whether the TP is interested in performing the CE. This form is sent to the claimant's treating physician along with the medical evidence of record request letter. If the treating physician is interested in performing the CE, he or she indicates interest by completing the SSA–84 and returning it to SSA. If the form is not returned, SSA assumes that the TP is not interested in performing the CE. Respondents are the claimants' treating physicians.

Type of Request: Collection in use without an OMB number.

Number of Respondents: 168.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 14 hours.

7. Electronic Records Express—0960–NEW. Electronic Records Express (ERE) is a new Internet-based platform which facilitates the electronic submission of medical and school records needed for the disability process. These records are currently mailed as hard paper copies to SSA and state Disability Determination Services (DDSs) under the aegis of OMB No. 0960–0555, the Clearance of Information Collections Conducted by State Disability Determination Services on Behalf of SSA. While SSA and the DDSs will continue to accept paper copies, ERE offers respondents the

opportunity to submit these records electronically. The revised burden for the actual document submission will continue to be covered under 0960–0555; this new collection covers the ERE registration and user training process. The respondents are medical providers and school professionals who submit information to SSA on behalf of disability applicants or beneficiaries.

Type of Request: New information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,667 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Application of Circuit Court Law—20 CFR 404.985 & 416.1458—0960–0581. Under SSA regulations, persons may request re-adjudication on the basis that the application of an acquiescence ruling (AR) would change a prior determination or decision. We will use the information provided to determine whether they are entitled to re-adjudication of their claims in accordance with these regulations. We will review the available information in the requests to determine whether the issue(s) stated in the AR pertains to the claimant's case. If re-adjudication is appropriate, we will consider only those issue(s) covered by the AR. Any new determination or decision will be subject to administrative or judicial review in accordance with our regulations. Individuals who request readjudication are claimants for Social Security benefits and Supplemental Security Income payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 2,833 hours.

2. Physical Residual Functional Capacity Assessment and Mental Residual Functional Capacity Assessment—20 CFR 404.1545–404.1546 & 416.945–416.946—0960–0431. The information collected on forms SSA–4734–BK and SSA–4734–F4–SUP is needed by SSA to assist in the adjudication of disability claims involving physical and/or mental impairments. The forms assist the State DDS offices to evaluate the severity of impairments by providing standardized data collection forms. The use of these forms by the DDSs ensures nationally consistent evaluations presented in a concise, clear and readily understandable manner. The respondents are primarily doctors in DDSs funded and administered by SSA.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,397,646.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 799,215 hours.

3. Substitution of Party Upon Death of Claimant—20 CFR 404.957(c)(4) & 416.1457(c)(4)—0960–0288. The HA–539 is used to collect information from any individual who asks to be made a substitute party for a claimant for either Social Security benefits or Supplemental Security Income payments who dies while his or her request for a hearing is pending. This information is needed and used by SSA to afford these individuals their statutory right to a hearing and decision under the Social Security Act.

Respondents are individuals requesting to proceed with hearings as substitute parties for deceased claimants for Social Security benefits or Supplemental Security Income payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 4,320.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 360 hours.

4. Child Relationship Statement—20 CFR 404.355 & 404.731—0960–0116. The information collected on the SSA–2519 is used to help determine the entitlement of children to Social Security benefits under section 216(h)(3) of the Social Security Act (deemed child provision). Respondents are persons with knowledge of the relationship between the number holder and his/her alleged biological child who is filing for benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

5. Application for Lump Sum Death Payment—20 CFR 404.390–404.392—0960–0013. The Social Security Administration (SSA) needs the information collected on Form SSA–8–F4 to authorize payment of the lump sum death payment (LSDP) to a widow, widower, or children as defined in Section 202(i) of the Act. Respondents are applicants for LSDP.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 587,000.

Estimated Annual Burden: 93,187.

Collection method	Number of respondents	Estimated completion time (minutes)	Burden hours
MCS	278,825	10	46,471
MCS/Signature Proxy	278,825	9	41,824
Paper	29,350	10	4,892
Totals	587,000		93,187

6. Certificate of Support—20 CFR 404.370, 404.750, 404.408a—0960–0001. The information collected on the SSA–760–F4 is used to determine whether the parent of a deceased worker or the spouse meets the one-half support requirement specified in SSA regulations. Respondents are parents of deceased workers, or spouses who may qualify for an exception to Government Pension Offset.

Type of Request: Revision of an OMB approved information collection.

Number of Respondents: 18,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 4,500 hours.

7. Request for Reinstatement (Title II)—20 CFR 404.1592b–404.1592f—0960–NEW. Form SSA–371 is used by former beneficiaries for Title II benefits who wish to request Expedited Reinstatement (EXR) of their Title II disability benefits. SSA uses the SSA–371 to obtain a signed statement from the individual requesting EXR, and to verify that the applicant meets the EXR requirements. The form will be maintained in the disability folder of the applicant to demonstrate that the individual was aware of the EXR requirements and chose to request EXR. Respondents are applicants for EXR of Title II disability benefits.

Type of Request: Collection in use without an OMB number.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 333 hours.

8. Request for Reinstatement (Title XVI)—20 CFR 416.999–416.999d—0960–NEW. Form SSA–372 is used by former SSI claimants who wish to request Expedited Reinstatement (EXR) of their Title XVI disability payments. SSA uses the SSA–372 to obtain a signed statement from the individual requesting EXR and to verify that the requestor meets the EXR requirements. The form will be maintained in the disability folder of the applicant to demonstrate that the individual was aware of the EXR requirements and chose to request EXR. Respondents are applicants for EXR of Title XVI disability payments.

Type of Request: Collection in use without an OMB number.

Number of Respondents: 2,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 67 hours.

9. Vendor List Registration Form—0960–NEW. SSA maintains an Employer Wage Reporting and Instructions Vendor Web site. On this site, relevant vendors are allowed to list their products and services free of charge. Vendors wishing to list their information on the site can submit these requests via a written registration form or through the Web site itself. The respondents are vendors who offer employer wage reporting services and who want SSA to list their information on the relevant Web site.

Type of Request: New information collection.

Number of Respondents: 500.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 67 hours.

Dated: February 7, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–2418 Filed 2–13–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5696]

Culturally Significant Object Imported for Exhibition Determinations: ''Italian Women Artists From Renaissance to Baroque''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Italian Women Artists from Renaissance to Baroque'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the National Museum of Women in the Arts, Washington, DC, from on or about March 16, 2007, until on or about July 15, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 6, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–2559 Filed 2–13–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15660]

Notice of Request for Renewal of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the Department of Transportation's (DOT's) intention to request an extension for a currently approved information collection.

DATES: Comments on this notice must be received by April 16, 2007.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–2003–15660] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Vivian Jones, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 2590, (202) 366–0283.

SUPPLEMENTARY INFORMATION:

Title: Air Carrier's Claim for Subsidy and Air Carrier's Report of Departures Flown in Schedule Service.

OMB Control Number: 2106–0044.

Type of Request: Extension for a currently approved information collection.

Abstract: In 14 CFR part 271 of its Aviation Economic Regulations, the Department provided that subsidy to air carriers for providing essential air service will be paid to the carriers monthly, and that payments will vary according to the actual amount of service performed during the month. The reports of subsidized air carriers of essential air service performed on the Department's Forms 397, ''Air Carrier's Report of Departures Flown in Scheduled Service'' and 398 ''Air Carrier's Claim for Subsidy,'' establish the fundamental basis for paying these air carriers on a timely basis. Typically, subsidized air carriers are small businesses and operate only aircraft of limited size over a limited geographical area. The collection permits subsidized air carriers to submit their monthly claims in a concise, orderly, easy-to-process form, without having to devise their own means of submitting support for these claims.

The collection involved here requests only information concerning the subsidy-eligible flights (which generally constitute only a small percentage of the carriers' total operations) of a small number of air carriers. The collection permits the Department to timely pay air carriers for providing essential air service to certain eligible communities that would not otherwise receive scheduled passenger air service.

Respondents: Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

Frequency of the Respondents: Monthly.

Estimated Number of Respondents: 26.

Total Annual Response: 1380.

Estimated Total Burden on Respondents: 2080 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper functioning of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on February 8, 2007.

John DiLuccio,

Director, Resource Directorate.

[FR Doc. E7–2526 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–06]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption under part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 26, 2007.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2007–27103] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Tyneka Thomas (202) 267–7626, or Frances Shaver (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 8, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–27103.

Petitioner: Republic Airline, Inc.

Section of 14 CFR Affected: 14 CFR 121.434.

Description of Relief Sought: Republic Airline, Inc., requests an exemption from the requirements of 14 CFR 121.434 to the extent necessary to employ and use EMB–170 pilots that have been employed, trained and qualified by its affliated company, Shuttle America Corporation, without requiring the pilots to repeat the 25 hours of EMB–170 initial operating experience (IOE) requirements, and the pilots-in-command to repeat the FAA observation requirements, which were successfully accomplished either at Shuttle or through FAA Exemption 8586.

[FR Doc. E7–2547 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–7363, FMCSA–00–7918, FMCSA–02–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from

the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 7, 2007. Comments must be received on or before March 16, 2007.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–00–7363, FMCSA–00–7918, FMCSA–02–13411, using any of the following methods.

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 13 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Henry Ammons, Jr., Michael D. Archibald, Robert D. Bonner, David S. Carman, Cedric E. Foster, Glen T. Garrabrant, Alan L. Johnston, Dennis I. Nelson, Rance A. Powell, Shannon E. Rasmussen, James R. Rieck, Garfield A. Smith, Henry L. Walker.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) By an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification of his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 45817; 65 FR 77066; 68 FR 10300; 70 FR 7546; 65 FR 66286; 66 FR 13825; 67 FR 76439; 68 FR 10298; 70 FR 7545). Each of these 13 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safety in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 16, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and

31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 13 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on February 7, 2007.

Pamela M. Pelcovits,

Associate Administrator for Policy and Program Development, Acting.

[FR Doc. 07–654 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2007–27204]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes an existing collection of information for Federal Motor Vehicle Safety Standard (FMVSS) No. 106, for which NHTSA intends to seek renewed OMB approval.

DATES: Comments must be received on or before April 16, 2007.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The telephone number for the Docket Management System is (800) 647–5527. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov* Click on ''Help and Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, refer to the docket number of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Woods, Office of Crash Avoidance Standards, 400 Seventh Street, SW., DC 20590. Mr. Woods' telephone number is (202) 366–6206. His FAX number is (202) 366–7002. Please identify the relevant collection of information by referring to the OMB Control Number, 2127–0052.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How 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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Brake Hose Manufacturing Identification, Federal Motor Vehicle Safety Standard (FMVSS) No. 106.

OMB Control Number: 2127–0052.

Type of Request: Request for public comment on extension of a currently approved collection of information.

Abstract: 49 U.S.C. 30101 *et seq.*, as amended (''the Safety Act''), authorizes NHTSA to issue Federal Motor Vehicle Safety Standards (FMVSS). The Safety Act mandates that in issuing any Federal motor vehicle safety standards, the agency is to consider whether the standard is reasonable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed. Using this authority, FMVSS No. 106, Brake Hoses, was issued. This standard specifies labeling and performance requirements for all motor vehicle brake hose assemblers, brake hose and brake hose end fittings manufacturers for automotive vehicles. Prior to selling brake hoses, these entities must register their identification marks with NHTSA to comply with the labeling requirements of this standard. In accordance with the Paperwork Reduction Act, the agency must obtain OMB approval to continue collecting labeling information.

Currently, there are 1,612 manufacturers of hoses and assemblies registered with NHTSA. However, only approximately 20 respondents annually request to have their symbol added to or removed from the NHTSA database. To comply with this standard, each brake hose manufacturer or assembler must contact NHTSA and state that they want to be added to or removed from the NHTSA database of registered brake hose manufacturers. This action is usually initiated by the manufacturer with a brief written request via U.S. mail, facsimile, an e-mail message, or a telephone call. Currently, a majority of the requests are received via U.S. mail and the follow-up paperwork is conducted via facsimile, U.S. mail, or

electronic mail. The estimated cost for complying with this regulation is $100 per hour. Therefore, the total annual cost is estimated to be $3,000 (time burden of 30 hours × $100 cost per hour).

Affected Public: Business or other for profit.

Estimated Annual Burden: 30 hours.

Estimated Number of Respondents: 20.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: February 9, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–2555 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2007–27231]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 16, 2007.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The telephone number for the Docket Management System is (800) 647–5527. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov* Click on ''Help and Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, refer to the docket number of this document.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Samuel Daniel, Jr., NHTSA 400 Seventh Street, SW., Room 5313, NVS–122, Washington, DC. 20590. Telephone number is (202) 366–4921, fax number is (202) 366–7002. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how 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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR 571.116, Motor Vehicle Brake Fluids.

OMB Number: 2127—0521.

Type of Request: Extension of a currently approved collection.

Abstract: Federal Motor Vehicle Safety Standard No. 116, ''Motor Vehicle Brake Fluid,'' specifies performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. Section 5.2.2 specifies labeling requirements for manufacturers and packagers of brake fluids as well as packagers of hydraulic system mineral oils. The information on the label of a container of motor vehicle brake fluid or hydraulic system mineral oil is necessary to insure: The contents of the container are clearly stated; these fluids are used for their intended purpose only; and the containers are properly disposed of when empty. Improper use or storage of these fluids could have dire safety consequences for the operators of vehicles or equipment in which they are used.

Affected Public: Business or other for profit organizations.

Estimated Total Annual Burden: 7000 hours.

Estimated Number of Respondents: 200.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: February 9, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–2560 Filed 2–13–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34986]

Ashland Railroad, Inc.—Lease and Operation Exemption—Rail Line in Monmouth County, NJ

Ashland Railroad, Inc. (ASRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate approximately 1.5 miles of rail line owned by Grems-Kirk Railway, LLC, a noncarrier, in the Township of Freehold, in Monmouth County, NJ. ASRR will provide common carrier rail operations over the line and interchange with Consolidated Rail Corporation at Freehold on behalf of CSX Transportation, Inc. and Norfolk Southern Railway Company.

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 34987, *G. David Crane—Continuance in Control Exemption—Ashland Railroad, Inc.,* wherein G. David Crane seeks to continue in control of ASRR upon its becoming a Class III rail carrier.

ASRR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million. The earliest this transaction may be consummated is the March 1, 2007 effective date of the exemption (30 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 22, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34986, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John K. Fiorilla, Capehart & Scatchard, P.A., 8000 Midlantic Drive, Suite 300S, Mt. Laurel, NJ 08054.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 6, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–2315 Filed 2–13–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34987]

G. David Crane—Continuance in Control Exemption—Ashland Railroad, Inc.

G. David Crane (applicant) has filed a verified notice of exemption to continue in control of Ashland Railroad, Inc. (ASRR), upon ASRR's becoming a Class III rail carrier.

The earliest this transaction may be consummated is the March 1, 2007 effective date of the exemption (30 days after the exemption was filed).

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 34986, *Ashland Railroad, Inc.—Lease and Operation Exemption—Rail Line in Monmouth County, NJ.* In that proceeding, ASRR seeks to lease and operate approximately 1.5 miles of rail line owned by Grems-Kirk Railway, LLC, a noncarrier, in the Township of Freehold, in Monmouth County, NJ. ASRR will provide common carrier rail operations over the line and interchange with Consolidated Rail Corporation at Freehold on behalf of CSX Transportation, Inc. and Norfolk Southern Railway Company.

Applicant is a noncarrier and currently is the controlling stockholder in Ashland Railway, Inc. (ASRY), a Class II rail carrier.

Applicant states that: (1) The rail lines being operated by ASRY do not connect with the rail line to be leased and operated by ASRR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line to be leased and operated by ASRR with any railroad in applicant's corporate family; and (3) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of this transaction is to allow applicant to continue in control of ASRY and to control ASRR after it becomes a Class III rail carrier.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II and a Class III rail carrier, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 22, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34987, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John K. Fiorilla, Capehart & Scatchard, P.A., 8000 Midlantic Drive, Suite 300S, Mt. Laurel, NJ 08054.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 6, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–2322 Filed 2–13–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C.

chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to revise the reporting of risk-based capital information in the Consolidated Reports of Condition and Income (Call Report) for banks and the Thrift Financial Report (TFR) for savings associations, which are currently approved collections of information for the agencies. These proposed reporting revisions are based on the agencies' joint notice of proposed rulemaking (NPR) on proposed revisions to their existing risk-based capital framework, an approach known as Basel IA (71 FR 77445, December 26, 2006), the comment period for which ends on March 26, 2007. At the end of the comment periods for the Basel IA NPR and this reporting proposal, the agencies will review all comments and recommendations they receive on both proposals, which may result in modifications of the proposed Basel IA risk-based capital rules and these related proposed reporting revisions. Before any proposed Basel IA reporting revisions are implemented, the agencies will submit them to OMB for review and approval.

DATES: Comments must be submitted on or before April 16, 2007.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect comments by calling (202) 874–5043.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the OMB control number for this information collection in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*.
- *E-mail: comments@FDIC.gov*. Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Steven F. Hanft (202–898–3907), Clearance Officer, Attn: Comments, Room MB–2088, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–0023 (TFR: Schedule CCR),'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov*. Please include ''1550–0023 (TFR: Schedule CCR)'' in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ''1550–0023 (TFR: Schedule CCR).''
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: ''1550–0023 (TFR: Schedule CCR).''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*.

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below.

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the

Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise the reporting of risk-based capital information in the Call Report and the TFR, which are currently approved collections of information for the agencies. These proposed reporting revisions are based on the agencies' joint notice of proposed rulemaking (NPR) on proposed revisions to their existing risk-based capital framework, an approach known as Basel IA (71 FR 77445, December 26, 2006). At the end of the comment periods for the Basel IA NPR and this notice, the agencies will review the comments on both proposals and, as a result, may modify the proposed Basel IA risk-based capital rules and the proposed reporting requirements described in this notice. Before implementing any proposed changes to the Call Report or the TFR, the agencies will submit any such changes to OMB for review and approval.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).[1]

Form Number: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,900 national banks.

Estimated Time per Response: 44.57 burden hours.

Estimated Total Annual Burden: 338,732 burden hours.

Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 905 state member banks.

Estimated Time per Response: 51.32 burden hours.

Estimated Total Annual Burden: 185,778 burden hours.

FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,234 insured state nonmember banks.

Estimated Time per Response: 35.73 burden hours.

Estimated Total Annual Burden: 748,043 burden hours.

2. *Report Title:* Thrift Financial Report (TFR: Schedule CCR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OTS:

OMB Number: 1550–0023.

Estimated Number of Respondents: 854 savings associations.

Estimated Time per Response: 58.5 burden hours.

Estimated Total Annual Burden: 197,598 burden hours.

The estimated times per response shown above represent estimates of the ongoing average reporting burden per bank or savings association (institution) per response after those institutions that are expected to opt in to the proposed Basel IA risk-based capital rules have made the one-time systems and other recordkeeping changes needed to support their ability to measure their risk-based capital ratios under the proposed Basel IA approach and report the results of this measurement process in the proposed revised Call Report Schedule RC-R and TFR Schedule CCR. The agencies estimate that 428 institutions will choose to adopt the proposed Basel IA risk-based capital rules. The agencies also estimate that, on average, these institutions will incur an incremental ongoing burden of between 5 and 15 hours per quarter, which is reflected in the estimated time per response and estimated total annual burden shown above for each agency. Across all institutions supervised by the agencies, this represents an average estimated increase in reporting burden of 0.5 hours per institution.

In addition, the institutions that are expected to opt in to Basel IA will incur capital and start-up costs associated with implementing the one-time systems and other recordkeeping changes needed to support their reporting of Basel IA risk-based capital information in the Call Report and TFR. These costs will vary in amount from institution to institution depending upon an institution's individual circumstances and the extent of its involvement, if any, with the particular assets, derivatives, and off-balance-sheet items whose risk-based capital treatment under the Basel IA proposal differs from their treatment under the existing risk-based capital rules. For those institutions that opt in to the proposed Basel IA capital rules, the agencies estimate that the one-time capital and start-up costs that would be incurred to enable them to report risk-based capital information in the Call Report and TFR for those assets, derivatives, and off-balance-sheet items accorded a different treatment under the proposed Basel IA reporting revisions would range from $10,000 to $300,000 per institution.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464(v) (for savings associations). Except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

[1] The estimated times per response for the Call Report that are presented for the OCC, the Board, and the FDIC are averages that vary by agency because of differences in the composition of the banks under each agency's supervision (*e.g.*, size distribution of banks, types of activities in which they are engaged, existence of foreign offices, and risk-based capital rules used by banks). The average reporting burden for the Call Report on an ongoing basis is estimated to range from 16 to 645 hours per quarter, depending on an individual bank's circumstances.

Current Actions

I. Overview

On December 26, 2006, the agencies issued a joint notice of proposed rulemaking (NPR) requesting comment on an alternative approach for computing risk-weighted assets and credit equivalent amounts of off-balance-sheet items for purposes of calculating the risk-based capital ratios of banks, bank holding companies, and savings associations (banking organizations), an approach known as Basel IA (71 FR 77445). In general, the agencies proposed in the Basel IA NPR to:

(1) Expand the number of risk weight categories;

(2) Allow the use of external credit ratings to risk weight certain exposures;

(3) Expand the range of recognized collateral and eligible guarantors;

(4) Use loan-to-value ratios to risk weight most residential mortgages;

(5) Increase the credit conversion factor for certain commitments with an original maturity of one year or less;

(6) Assess a capital charge for securitizations of revolving exposures with early-amortization features; and

(7) Remove the 50 percent limit on the risk weight for certain derivative transactions.

As proposed in the Basel IA NPR, the application of the Basel IA risk-based capital rules would be optional. According to the Basel IA NPR, a banking organization would have to apply all of the proposed Basel IA changes to its risk-based capital calculations if it chose to use the Basel IA risk-based capital approach, which would affect the denominator of the organization's risk-based capital ratios. The agencies did not propose any changes to the numerator used in these ratios in the Basel IA NPR.

The agencies currently collect data pertaining to the composition of an institution's risk-based capital ratios under the current risk-based capital framework in Call Report Schedule RC–R, Regulatory Capital, and TFR Schedule CCR, Consolidated Capital Requirement. These schedules also collect data pertaining to a banking organization's leverage ratio. In their present forms, Schedule RC–R and Schedule CCR consist of sections in which banking organizations report the components of Tier 1 capital, Tier 2 capital, and total risk-based capital; the calculation of total assets for the leverage ratio; various adjustments to regulatory capital measures; leverage and risk-based capital ratios; the risk-weighting of on-balance-sheet assets; the credit conversion and risk-weighting of derivatives and off-balance-sheet items; the calculation of total risk-weighted assets; and the current credit exposure and remaining maturities of derivative contracts covered by the risk-based capital standards.

As proposed in the Basel IA NPR, unless a banking organization uses the risk-based capital framework proposed in the agencies' separate Basel II NPR (71 FR 55380, September 25, 2006), a banking organization could elect to adopt the proposed Basel IA capital rules or it could continue to calculate its risk-based capital ratios under the existing risk-based capital rules. Therefore, because the Basel IA proposal would affect the calculation of a banking organization's total risk-weighted assets, the agencies are proposing only to revise Call Report Schedule RC–R and TFR Schedule CCR. These proposed revisions would add a second set of sections in which institutions that opt to apply the Basel IA capital rules would report the risk-weighting of on-balance-sheet assets, the credit conversion and risk-weighting of derivatives and off-balance-sheet items, and the calculation of total risk-weighted assets. Basel IA institutions would complete this alternative set of risk-weighting sections in lieu of the comparable risk-weighting sections currently contained in Schedule RC–R and Schedule CCR that pertain to the existing risk-based capital rules. Institutions that continue to calculate their risk-based capital ratios under the existing risk-based capital rules would continue to complete the current set of risk-weighting sections in Schedule RC–R and Schedule CCR; they would not complete the proposed Basel IA alternative risk-weighting sections of these schedules.

In addition, the agencies would add a question to Schedule RC–R and Schedule CCR in which each institution would indicate whether it calculates its risk-based capital ratios under the existing risk-based capital rules or the Basel IA capital rules. Existing items within Schedule RC–R and Schedule CCR that cross-reference that schedule's item for ''total risk-weighted assets'' would be revised to refer to the ''total risk-weighted assets'' item determined under the existing risk-based capital rules or the Basel IA approach, as appropriate.

These proposed revisions to Call Report Schedule RC–R and TFR Schedule CCR, which have been approved for publication by the FFIEC, would take effect as of the first quarter-end Call Report and TFR date following the effective date of the agencies' final rule amending their risk-based capital standards to implement the Basel IA alternative risk-based capital framework.[2]

II. Proposed Basel IA Alternative Risk-Weighting Sections in Schedule RC–R and Schedule CCR

The current on-balance-sheet asset risk-weighting section of Schedule RC–R and Schedule CCR includes separate line items for the major asset categories along with columns (Schedule RC–R) and rows (Schedule CCR) for four of the five risk-weight categories in the agencies' existing risk-based capital framework: zero percent, 20 percent, 50 percent, and 100 percent. Assets subject to the 200 percent risk weight are handled through an adjustment that, in general, doubles the balance sheet amount of the asset.

The current section of Schedule RC–R for derivatives and off-balance-sheet items contains separate data items for the categories of these exposures that are covered by the existing risk-based capital framework. This section also includes columns for the credit equivalent amounts of these exposures and for the four risk-weight categories mentioned above. The current Schedule CCR does not include a separate section for off-balance-sheet items. Instead, these items are subject to a credit conversion factor and the credit equivalent amounts of the converted items are included in the appropriate risk weight category on Schedule CCR. The credit equivalent amounts of derivatives are included in a risk weight category no higher than 50 percent.

For each category of assets, derivatives, and off-balance-sheet items, an institution allocates the individual asset amounts or credit equivalent amounts within that exposure category across the risk-weight columns (Schedule RC–R) or into the risk-weight rows (Schedule CCR) based on the risk weight or weights appropriate to the individual asset or credit equivalent amount. In the current risk-weighted assets section of Schedule RC–R and Schedule CCR, the asset amounts and credit equivalent amounts in each risk weight category are totaled and then

[2] The Board currently collects data pertaining to the composition of a bank holding company's risk-based capital ratios under the existing risk-based capital rules in Schedule HC–R, Regulatory Capital, of the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128). Revisions comparable to those proposed to Call Report Schedule RC–R would be considered for the FR Y–9C, Schedule HC–R, and a separate notice and request for comment would be published in the **Federal Register** in the future. Comments received in response to the proposed Call Report revisions would be taken into consideration for the comparable proposed revisions to the FR Y–9C.

multiplied by the applicable risk weight to produce the institution's risk-weighted assets by risk weight category. The risk-weighted assets in each category, together with the institution's market risk equivalent assets (if the institution is subject to the market risk rule within the risk-based capital standards [3]), are summed to arrive at the institution's risk-weighted assets before any deductions for excess allowance for loan and lease losses and allocated transfer risk reserve. Following these deductions, the institution reports its total risk-weighted assets, which generally serves as the denominator for the institution's risk-based capital ratios.

The structure of the sections of existing Schedule RC–R and Schedule CCR that institutions use to report the risk-weighting of on-balance-sheet assets, the credit conversion and risk-weighting of derivatives and off-balance-sheet items, and the calculation of total risk-weighted assets, which have been described above, provides a suitable starting point for the Basel IA alternative version of these sections. Therefore, the agencies are proposing to add modified versions of these sections to Schedule RC–R and Schedule CCR and to designate them as the Basel IA alternative, which only those institutions that have opted in to Basel IA would complete. The proposed modifications are discussed in the following paragraphs.

The Basel IA proposal would increase the number of risk-weight categories to which on- and off-balance-sheet credit exposures may be assigned, specifically by adding risk weights of 35 percent, 75 percent, and 150 percent. Therefore, in the proposed Basel IA alternative risk-weighting sections of these revised schedules, the agencies would add columns (Schedule RC–R) and rows (Schedule CCR) for these three additional risk-weight categories. The agencies would also include in the proposed Basel IA alternative risk-weighting sections a specific column in Schedule RC–R and a specific row in Schedule CCR for the existing 200 percent risk-weight category that the current schedules provide for indirectly.[4]

The Basel IA proposal increases the credit conversion factor for various commitments with an original maturity of one year or less. Under this proposal, short-term commitments, to which the current risk-based capital standards generally apply a zero percent credit conversion factor, would be assigned a 10 percent credit conversion factor. The resulting credit equivalent amount would then be risk weighted according to the underlying asset(s) or the obligor after considering any applicable collateral, guarantees, or the external rating of the facility. Under the Basel IA proposal, commitments that are unconditionally cancelable would retain their existing zero percent credit conversion factor.

The current section of Schedule RC–R for risk-weighting the credit equivalent amount of derivatives and off-balance-sheet items includes data items for unused commitments that cover commitments with an original maturity exceeding one year and eligible liquidity facilities for asset-backed commercial paper programs with an original maturity of one year or less. Because other short-term commitments are generally subject to a zero percent credit conversion factor under the agencies' existing risk-based capital rules, they are not reported in the current Schedule RC–R. In order to implement the proposed Basel IA 10 percent credit conversion factor for these other short-term commitments (excluding commitments that are unconditionally cancelable), the banking agencies propose to add new data items for such commitments to the Basel IA alternative risk-weighting section in the revised Schedule RC–R. No additional data items are required for Schedule CCR.

Under the Basel IA proposal, loan-to-value (LTV) ratios would be used to determine the risk weight to which first lien and junior lien one-to-four family residential mortgage loans, including those held for sale and those held in portfolio,[5] would be assigned. The agencies have proposed this LTV approach for one-to-four family residential mortgages to increase the risk sensitivity of their risk-based capital standards while minimizing the overall burden to banks. To aid in minimizing burden, the Basel IA NPR includes a transitional rule that would provide an option for banking organizations opting in to the proposed Basel IA approach to continue to risk weight existing residential mortgages using the existing risk-based capital standard.

Given the significant change in approach to the risk-weighting of one-to-four family residential mortgages under the Basel IA proposal, the banking agencies are seeking the ability to monitor the effect of this LTV-based approach at individual banks under their supervision that opt in to Basel IA and across all such banks that opt in. Therefore, the banking agencies are proposing to add new data items to the Basel IA alternative risk-weighting section of Schedule RC–R for assets to enable them to track the allocation across the risk-weighting categories of residential mortgages to which the proposed Basel IA LTV-based risk-weighting approach has been applied. In these new data items, banks supervised by the banking agencies would report breakdowns by risk-weight category of (a) Their one-to-four family residential mortgages held for sale that are risk-weighted using the LTV-based approach separately from their other loans and all leases held for sale and (b) their one-to-four family residential mortgages held in portfolio that are risk-weighted using the LTV-based approach separately from their other loans and all leases held in portfolio.[6] The OTS believes that the current Schedule CCR captures sufficient information to meet this monitoring purpose. Therefore, OTS is not proposing any changes to Schedule CCR to address this allocation tracking function.

In the Basel IA NPR, the agencies proposed to risk weight mortgage loans with negative amortization features consistent with the risk-based capital treatment for other unfunded commitments (for example, lines of credit). Under the proposed approach, the unfunded portion of the maximum negative amortization amount would be handled separately from the funded portion of the loan. The unfunded portion would be treated as a commitment (based on the original maturity of the commitment, *i.e.*, the original time period the negative amortization feature would be available), converted to a credit equivalent amount, and then risk weighted based on the LTV for the maximum contractual loan amount (*i.e.*, the sum of the drawn amount of the loan and the unfunded portion of the maximum negative amortization amount). For banks, the unfunded portion of the maximum negative

[3] The OTS has not yet implemented a market risk rule for savings associations, but has proposed such a rule in a separate notice of proposed rulemaking. See 71 FR 55958 (September 25, 2006).

[4] The FDIC, the Board, and the OCC (the banking agencies) are also proposing to add a 200 percent risk-weight column to the existing Basel I risk-weighting sections of Schedule RC–R, thereby replacing the current indirect method of applying the 200 percent risk weight with a direct method. The OTS is proposing to add a row to Schedule CCR to also replace the current indirect method.

[5] Loans ''held in portfolio'' are those loans that the bank has the intent and ability to hold for the foreseeable future or until maturity or payoff.

[6] Banks that exercise the option to continue to risk weight existing residential mortgages using the existing risk-based capital standard would report these mortgages in the data items for their other loans and leases held for sale or held in portfolio.

amortization amount would be reported in the appropriate data item for unused commitments in the Basel IA alternative risk-weighting section for off-balance-sheet items in revised Schedule RC–R. The funded portion of a mortgage loan with negative amortization features would be risk-weighted based on the LTV of the funded portion and reported in the asset data item on revised Schedule RC–R for either (a) The one-to-four family residential mortgages held for sale that are risk-weighted using the LTV-based approach or (b) the one-to-four family residential mortgages held in portfolio that are risk-weighted using the LTV-based approach, as appropriate. Savings associations would compute the risk-weighted amount by applying the appropriate credit conversion factor to the amount of the unfunded commitment and including this amount in the appropriate risk weight category for the LTV of the loan on the Schedule CCR. As with other off-balance-sheet credit equivalent amounts under the Basel IA proposal, no additional data items are required for Schedule CCR.

Another feature of the Basel IA NPR is the proposed assessment of a risk-based capital charge for securitizations of revolving exposures with early-amortization features. The early-amortization capital charge would be levied against the credit equivalent amount of the off-balance-sheet investors' interest (that is, the total amount of securities or other interests issued by a trust or special purpose entity to investors that is not on the securitizing banking organization's balance sheet) and would be imposed only in the event that the excess spread on the securitization has declined to a predetermined percentage of the excess spread trapping point.[7] As the level of excess spread approaches the early amortization trigger, the credit conversion factor to be applied to the amount of investors' interest would increase from zero percent to 100 percent, thereby producing an increase in the capital charge.

Because no capital charge is imposed on investors' interests in revolving securitizations with early-amortization features under the existing risk-based capital framework, the banking agencies are proposing to add new data items for these investors' interests to the off-balance-sheet items section of revised Schedule RC–R for the purpose of reporting the credit equivalent amount of these interests and then risk-weighting this off-balance-sheet exposure. As with other off-balance-sheet credit equivalent amounts, no additional data items are required for Schedule CCR. However, when reporting on its revolving securitizations with early-amortization features on Schedule RC–R or Schedule CCR, an institution will need to determine the credit equivalent amount for each individual securitization based on the credit conversion factor specific to that securitization rather than applying a single credit conversion factor to the total of all investors' interests. The credit equivalent amount for each securitization would then be assigned to the risk weight category appropriate to the securitized assets.

The Basel IA proposed rule would remove the 50 percent risk-weight limit that applies to certain derivative contracts. The risk weight assigned to the credit equivalent amount of a derivative contract would instead be the risk weight assigned to the derivative counterparty after consideration of any collateral or guarantees. The data items for derivative contracts in the current section of Schedule RC–R for risk-weighting derivatives and off-balance-sheet items do not permit the credit equivalent amount of a derivative contract to be assigned a risk weight greater than 50 percent. As a consequence, the data items for derivatives in the Basel IA alternative risk-weighting section for derivatives and off-balance-sheet items in revised Schedule RC–R will permit these credit equivalent amounts to be assigned to the full range of risk-weight categories. No modification will be necessary on Schedule CCR to address this change in Basel IA.

The Basel IA proposed rule would expand the use of external credit ratings to risk-weight most categories of externally-rated exposures, including sovereign and corporate debt securities and rated loans. At present, external credit ratings can be used to risk-weight only asset-backed and mortgage-backed securities and other positions in securitization transactions (except credit-enhancing interest-only strips). The Basel IA proposal would also expand the range of recognized collateral to include a broader array of externally-rated, liquid, and readily marketable financial instruments. The agencies' existing risk-based capital standards recognize limited types of collateral, including cash on deposit and securities issued or guaranteed by the U.S. government, U.S. government agencies, and U.S. government-sponsored agencies. Finally, the Basel IA proposal would expand the range of eligible guarantors by recognizing entities that have long-term senior debt that, in general, is rated at least investment grade, provided the guarantee meets certain additional criteria. The agencies' existing risk-based capital standards limit the recognition of third party guarantees. Currently recognized guarantees include those provided by the U.S. government and U.S. government-sponsored agencies, U.S. depository institutions, and qualifying U.S. securities firms.

When risk-weighting on-balance-sheet assets and the credit equivalent amounts of derivatives and off-balance-sheet items in existing Schedule RC–R and Schedule CCR, institutions take currently recognized external credit ratings, collateral, and guarantees into account when they allocate assets and credit equivalent amounts to risk-weight categories. Institutions are not required to separately identify or report on their use of the ratings-based approach or eligible collateral or guarantees in existing Schedule RC–R and Schedule CCR. The agencies would maintain this same reporting approach for the expanded recognized external credit ratings, collateral, and guarantees in the Basel IA alternative risk-weighting sections for on-balance-sheet assets and for the credit equivalent amount of derivatives and off-balance-sheet items in revised Schedule RC–R and Schedule CCR.

III. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the Call Report and TFR collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among

[7] The excess spread trapping point is the point at which a banking organization is required by the documentation governing a securitization to divert and hold excess spread in a spread or reserve account, expressed as a percentage.

the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: February 8, 2007.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 6, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 8th day of February, 2007.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: February 6, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. 07–639 Filed 2–13–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On October 31, 2006, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report) for banks and the Thrift Financial Report (TFR) for savings associations, which are currently approved collections of information. After considering the comments, the FFIEC and the agencies have modified some of the proposed changes, which will be implemented March 31, 2007, as proposed. Additionally, OTS will incorporate in its OMB submission the proposed TFR changes published in the **Federal Register** on December 1, 2006 (71 FR 69619). These changes will also be implemented March 31, 2007, as proposed.

DATES: Comments must be submitted on or before March 16, 2007.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202–452–3819 or 202–452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- E-mail: *comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- Mail: Steven F. Hanft (202–898–3907), Clearance Officer, Attn: Comments, Room MB–2088, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–0023 (TFR: March 2007 Revisions),'' by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail address: infocollection.comments@ots.treas.gov. Please include ''1550–0023 (TFR: March 2007 Revisions)'' in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906–6518.
- Mail: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ''1550–0023 (TFR: March 2007 Revisions).''
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information

Collection Comments, Chief Counsel's Office, Attention: ''1550–0023 (TFR: March 2007 Revisions).''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm).* Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0).*

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are requesting OMB approval to revise and extend for three years the Call Report and the TFR, which are currently approved collections of information.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,900 national banks.

Estimated Time per Response: 44.33 burden hours.

Estimated Total Annual Burden: 336,925 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 905 state member banks.

Estimated Time per Response: 51.02 burden hours.

Estimated Total Annual Burden: 184,692 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,234 insured state nonmember banks.

Estimated Time per Response: 35.27 burden hours.

Estimated Total Annual Burden: 738,413 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 630 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title:* Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OTS

OMB Number: 1550–0023.

Estimated Number of Respondents: 845 savings associations.

Estimated Time per Response: 57.1 burden hours.

Estimated Total Annual Burden: 193,139 burden hours.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for savings associations). Except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

Current Actions

I. Overview

On October 31, 2006, the agencies requested comment on proposed revisions to the Call Report and the TFR (71 FR 63848). All four agencies proposed to replace certain information currently collected in the Call Report and TFR for deposit insurance assessment purposes with the information described in proposed amendments to Part 327 of the FDIC's regulations (71 FR 28790, May 18,

2006).[1] The four agencies also proposed to revise the information collected in the Call Report and TFR on time deposits, particularly with respect to certain retirement accounts affected by the FDIC's amended deposit insurance regulations.

In addition, the OCC, the Board, and the FDIC (the banking agencies) proposed to implement a number of other changes to the Call Report requirements, most of which are expected to apply to a small percentage of banks. First, the banking agencies proposed to revise the Call Report to collect certain data on fair value measurements from those institutions that choose, under generally accepted accounting principles, to apply a fair value option to one or more financial instruments and one or more classes of servicing assets and liabilities and from certain institutions that report trading assets and liabilities. The banking agencies also proposed to collect an item for regulatory capital calculation purposes to capture the change in the fair value of liabilities accounted for under a fair value option that is attributable to a change in a bank's own creditworthiness. Second, in order to meet supervisory data needs, the banking agencies proposed to collect certain data in the Call Report on 1–4 family residential mortgages with terms that allow for negative amortization. Finally, the banking agencies proposed to clarify the Call Report instructions for assets serviced for others by explicitly stating that such servicing includes the servicing of loan participations.

The OTS's other changes to the TFR were addressed separately in its notices published on July 31, 2006 (71 FR 43286), and December 1, 2006 (71 FR 69619). These changes will be incorporated in this OMB submission, and will take effect on March 31, 2007.

The revisions to the Call Report and the TFR set forth herein, which were approved for publication by the FFIEC, were proposed to take effect as of March 31, 2007, and, for certain deposit insurance assessment revisions, March 31, 2008. After considering the comments and other actions since the publication of the proposal, the agencies approved certain modifications to the initial set of proposed revisions. The agencies will move forward with these modified reporting changes on March 31, 2007, and March 31, 2008. For the March 31, 2007, report date only, institutions may provide reasonable estimates for any new or revised Call Report or TFR item for which the requested information is not readily available.

The agencies collectively received comments from five respondents: one banking organization, one national banking trade association, a trade association of community organizations, a financial institution data processing servicer, and a government agency. All of these respondents except the government agency addressed the proposed reporting of information on 1–4 family residential mortgages with negative amortization features. The trade association of community organizations supported the collection of the total amount of these mortgages in the Call Report while the banking organization and the banking trade association addressed the proposal to collect certain additional data on these mortgages from banks with a significant volume of negatively amortizing residential mortgages. The data processing servicer commented on the proposed March 31, 2007, effective date for reporting this information.

With respect to the other proposed revisions to the Call Report and the TFR, the banking organization stated that it ''generally supports the Agencies' ''proposed changes'' and the banking trade association expressed support for ''the majority of changes proposed by the agencies.'' This latter commenter observed that the proposed changes to the data reported for deposit insurance assessment purposes should be conformed to the FDIC's final rule on the operational procedures governing deposit insurance assessments that was published after the proposed changes to the Call Report and TFR were published for comment on October 31, 2006. This commenter also urged the agencies to proceed cautiously with the proposed reporting schedule that would capture data on banks' use of the fair value option under a yet-to-be issued final accounting standard.

A summary of the agencies' responses to the comments and the final revisions are presented below.

II. Discussion of Revisions

A. Deposit Insurance Assessment Revisions to the Call Report and TFR

On May 18, 2006, the FDIC issued proposed amendments to Part 327 of its regulations, ''Assessments,'' to improve and modernize its operational systems for deposit insurance assessments. Under these proposed amendments, the FDIC's computation of deposit insurance assessments for certain institutions would be determined using daily averages for deposits rather than quarter-end balances. On November 30, 2006, the FDIC published a final rule amending Part 327 of its regulations largely as proposed on May 18.

In conjunction with these amendments to Part 327 of the FDIC's regulations, the agencies proposed to revise and reduce the overall reporting requirements related to deposit insurance assessments in both the Call Report and the TFR in order to simplify regulatory reporting. The proposed revised reporting requirements contained the following key elements:

- Institutions would separately report (a) gross deposits as defined in Section 3(l) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(l)) before any allowable exclusions and (b) allowable exclusions;
- The same data items would be reported for both quarter-end and daily average deposits;
- All institutions would report using quarter-end deposits and allowable exclusions; and
- All institutions with $300 million or more in assets, and other institutions that meet specified criteria, would also report daily averages for deposits and allowable exclusions in addition to quarter-end amounts.

The proposal also provided an interim period covering the March 31, 2007, through December 31, 2007, report dates, during which institutions would have the option to submit Call Reports and TFRs using either the current or revised formats for reporting data for measuring their assessment base. An institution that chose to begin reporting under the revised format in any quarter during the interim period would be required to continue to report under the revised format through the rest of the interim period and would not be permitted to revert back to the current reporting format. The revised reporting format would take effect for all institutions on March 31, 2008, at which time the current reporting format would be eliminated. Although no institution that chose to report under the revised format during the 2007 interim period would be required to report daily averages during this period, any institution could elect to report daily averages as of any quarter-end report date in 2007. However, once an institution began to report daily averages (even during the interim period), it would be required to continue to report daily averages each quarter thereafter in its Call Report or TFR.

In its May 18, 2006, proposed amendments to Part 327 of its regulations, the FDIC proposed to revise

[1] On November 30, 2006, the FDIC published a final rule amending Part 327 of its regulations to improve and modernize its operational systems for deposit insurance assessments (71 FR 69270).

the definition of the assessment base to be consistent with Section 3(l) of the FDI Act. This was intended to eliminate the need for periodic updates to the FDIC's assessment regulations in response to outside factors and allow a simplification of the associated reporting requirements. In addition, the FDIC proposed to use daily average deposits and exclusions over the quarter instead of quarter-end totals for deposits and exclusions to compute the assessment base for institutions with $300 million or more in assets and other institutions who meet specified criteria. All other institutions could opt permanently to determine their assessment base using daily averages. In its final rule amending Part 327, the FDIC raised the size threshold for using daily average deposits and exclusions to compute an institution's assessment base from $300 million to $1 billion.

At present, 23 items are required in the Call Report to determine a bank's assessment base and eight items are required in the TFR to determine a savings association's assessment base. The agencies proposed to change the way the assessment base is reported in the Call Report and the TFR. As proposed, these changes would effectively reduce the number of reported items to as few as two for certain small institutions (without foreign offices) and no more than six for other institutions. Specifically, the banking agencies proposed to replace items 1 through 12 (including their subitems) on Schedule RC–O, ''Other Data for Deposit Insurance and FICO Assessments,'' and OTS proposed to replace the eight items in the section of Schedule DI, ''Consolidated Deposit Information,'' for ''Deposit and Escrow Data for Deposit Insurance Premium Assessments'' with the following six items:

- Total Deposit Liabilities Before Exclusions (Gross) as Defined in Section 3(l) of the FDI Act and FDIC Regulations;
- Total Allowable Exclusions (including Foreign Deposits);
- Total Foreign Deposits (included in Total Allowable Exclusions);
- Total Daily Average of Deposit Liabilities Before Exclusions (Gross) as Defined in Section 3(l) of the FDI Act and FDIC Regulations;
- Total Daily Average Allowable Exclusions (including Foreign Deposits); and
- Total Daily Average Foreign Deposits (included in Total Daily Average Allowable Exclusions).

The total amount of allowable exclusions from the assessment base would be reported separately for any institution that maintains such records as will readily permit verification of the correctness of its assessment base. The allowable exclusions, which are set forth in Section 3(l)(5) and other sections of the FDI Act and in the FDIC's regulations, include foreign deposits (including International Banking Facility deposits), reciprocal balances, drafts drawn on other depository institutions, pass-through reserve balances, depository institution investment contracts, and deposits accumulated for the payment of personal loans that are assigned or pledged to assure payment at maturity. The net amount of unposted debits and credits would no longer be considered within the definition of the assessment base.

In addition to quarter-end balance reporting, institutions that meet certain criteria would be required to report average daily deposit liabilities and average daily allowable exclusions to determine their assessment base effective March 31, 2008. The amounts to be reported would be averages of the balances as of the close of business for each day for the calendar quarter. For days that an office of the reporting institution (or any of its subsidiaries or branches) is closed (e.g., Saturdays, Sundays, or holidays), the amounts outstanding from the previous business day would be used. An office is considered closed if there are no transactions posted to the general ledger as of that date.

According to the agencies' October 31 reporting proposal, the requirement for an institution to report daily averages beginning March 31, 2008, would have applied to any institution that had $300 million or more in total assets either in its Call Report or TFR for March 31, 2007, regardless of its asset size in subsequent quarters. In addition, if an institution reported $300 million or more in total assets in two consecutive Call Reports or TFRs beginning with its June 30, 2007, report, daily average reporting would have begun on the later of March 31, 2008, or the report date six months after the second consecutive quarter. Daily average reporting beginning March 31, 2008, would also have applied to any institution that became newly insured after March 31, 2007. An institution reporting less than $300 million in total assets in its Call Report or TFR for March 31, 2007, would be permitted to continue to determine its assessment base using quarter-end balances until it met the two-consecutive-quarter asset size test for reporting daily averages unless it opted to determine its assessment base using daily averages. After an institution began to report daily averages for its total deposits and allowable exclusions, either voluntarily or because it was required to do so, the institution would not be permitted to switch back to reporting only quarter-end balances.

In its comment letter, the banking trade association ''point[ed] out that the threshold for average daily balance reporting requirements in the final FDIC ruling is $1 billion, which differs from the $300 million threshold proposed by the FDIC on May 18, 2006,'' and upon which the agencies' October 31 reporting proposal was based. The trade association added that the reporting threshold in the Call Report and the TFR ''must be revised to $1 billion to correspond with the final FDIC rule.'' The agencies concur and are revising the threshold for average daily balance reporting to $1 billion. In addition, institutions that become newly insured on or after April 1, 2008, would be required to report daily average balances beginning in the first quarterly Call Report or TFR that they file. An institution that becomes insured after March 31, 2007, but on or before March 31, 2008, would not be required to report daily average balances in its Call Report or TFR unless and until it exceeded the $1 billion asset size threshold.

B. Revision of Certain Time Deposit Information on the Call Report and TFR

The Federal Reserve uses data from Call Report Schedule RC-E, Deposit Liabilities, and from TFR Schedule DI, Consolidated Deposit Information, to ensure accurate construction of the monetary aggregates for monetary policy purposes.[2] In order to more accurately calculate the monetary aggregates, the banking agencies proposed to revise two Schedule RC-E items, Memorandum items 2.b, ''Total time deposits of less than $100,000,'' and 2.c, ''Total time deposits of $100,000 or more,'' and add a new Memorandum item 2.c.(1) to this schedule.

In Schedule RC–E, Memorandum item 2.b would be revised to include brokered time deposits issued in denominations of $100,000 or more that are participated out by the broker in shares of less than $100,000 as well as brokered certificates of deposit issued in

[2] In order to calculate the money stock measure M2, the Federal Reserve takes M1 (which consists of currency held by the public, traveler's checks, demand deposits, and other checkable deposits) and adds (1) savings deposits, (2) small-denomination time deposits (time deposits in amounts of less than $100,000) less Individual Retirement Account (IRA) and Keogh balances at depository institutions, and (3) balances in retail money market mutual funds, less IRA and Keogh balances at money market mutual funds.

$1,000 amounts under a master certificate of deposit (when information on the number of $1,000 amounts held by each of the broker's customers is not readily available to the bank). Memorandum item 2.c would be revised to exclude such brokered time deposits. In addition, because the deposit insurance limit for certain retirement plan deposit accounts increased from $100,000 to $250,000 in 2006, a new Memorandum item 2.c.(1) would be added to Schedule RC–E to separately identify the portion of the total time deposits of $100,000 or more reported in Memorandum item 2.c that represents IRA and Keogh Plan accounts.

For the same reasons, OTS proposed to add two new items to Schedule DI of the TFR. These data items would be (1) Time Deposits of $100,000 or More (excluding brokered time deposits participated out by the broker in shares of less than $100,000 and brokered certificates of deposit issued in $1,000 amounts under a master certificate of deposit) and (2) IRA/Keogh Accounts included in Time Deposits of $100,000 or More.

The agencies received no comments on the proposed time deposit reporting changes, which they will implement as proposed.

C. Reporting of Certain Fair Value Measurements and the Use of the Fair Value Option in the Call Report

On September 15, 2006, the Financial Accounting Standards Board (FASB) issued Statement No. 157, Fair Value Measurements (FAS 157), which is effective for banks and other entities for fiscal years beginning after November 15, 2007. Earlier adoption of FAS 157 is permitted as of the beginning of an earlier fiscal year, provided the bank has not yet issued a financial statement or filed a Call Report for any period of that fiscal year. Thus, a bank with a calendar year fiscal year may voluntarily adopt FAS 157 as of January 1, 2007. The fair value measurements standard provides guidance on how to measure fair value and would require banks and other entities to disclose the inputs used to measure fair value based on a three-level hierarchy for all assets and liabilities that are remeasured at fair value on a recurring basis.[3]

The FASB plans to issue a final standard, The Fair Value Option for Financial Assets and Financial Liabilities, in the first quarter of 2007. This standard would allow banks and other entities to report certain financial assets and liabilities at fair value with the changes in fair value included in earnings. The banking agencies anticipate that relatively few banks will elect to use the fair value option for a significant portion of their financial assets and liabilities.

According to the FASB's Web site (*http://www.fasb.org*), the FASB Board has tentatively decided to require that the effective date of the final fair value option standard be the same as the effective date of FAS 157. Thus, the final fair value option standard should be effective for financial statements issued for fiscal years beginning after November 15, 2007. The FASB Board has also tentatively decided to permit an entity to early adopt the final fair value option standard provided that the entity also adopts all of the requirements (measurement and disclosure) of FAS 157 concurrent with or prior to the early adoption of the final fair value option standard. Furthermore, the FASB Board would permit early adoption of the final fair value option standard within 120 days of the beginning of the entity's fiscal year, thereby making the fair value option election retroactive to the beginning of that fiscal year (or the date of initial recognition, if later) provided that the entity has not yet issued any interim financial statements for that fiscal year. Thus, a bank with a calendar year fiscal year that voluntarily adopts FAS 157 as of January 1, 2007, would also be able to adopt the final fair value option standard as of that same date.

The banking agencies proposed to clarify the Call Report instructions to explain where financial assets and liabilities measured under the fair value option should be reported in the existing line items of the Call Report. The banking agencies also proposed to add a new Schedule RC-Q to the Call Report to collect data, by major asset and liability category, on the amount of assets and liabilities to which the fair value option has been applied along with separate disclosure of the amount of such assets and liabilities whose fair values were estimated under level two and under level three of the FASB's fair value hierarchy. The categories are:

- Securities held for purposes other than trading with changes in fair value reported in current earnings;
- Loans and leases;
- All other financial assets and servicing assets;
- Deposit liabilities;
- All other financial liabilities and servicing liabilities; and
- Loan commitments (not accounted for as derivatives).

In addition, the banking agencies proposed to collect data on trading assets and trading liabilities in the new schedule from those banks that complete Schedule RC–D, Trading Assets and Liabilities, i.e., banks that reported average trading assets of $2 million or more for any quarter of the preceding calendar year. In the proposed new schedule, such banks would report the carrying amount of trading assets and trading liabilities whose fair values were estimated under level two and under level three of the FASB's fair value hierarchy.

The FASB's fair value measurements standard requires banks and other entities to consider the effect of a change in their own creditworthiness when determining the fair value of a financial liability. The banking agencies proposed to add one new item to Schedule RC–R, Regulatory Capital, for the cumulative change in the fair value of all financial liabilities accounted for under the fair value option that is attributable to changes in the bank's own creditworthiness. This amount would be excluded from the bank's retained earnings for purposes of determining Tier 1 capital under the banking agencies' regulatory capital standards.

Finally, the banking agencies proposed to clarify the instructions to Schedule RI for the treatment of interest income on financial assets and interest expense on financial liabilities measured under a fair value option. The instructions would be modified to instruct banks to separate the contractual year-to-date amount of interest earned on financial assets and interest incurred on financial liabilities that are reported under a fair value option from the overall year-to-date fair value adjustment and report these contractual amounts in the appropriate interest income or interest expense items on Schedule RI.

Only one commenter, the banking trade association, offered comments on fair value option reporting, urging ''the agencies to proceed cautiously with any major revisions to the Call Report or TFR prior to the official release of the Fair Value Option statement.'' The trade association also requested that the agencies delay the March 31, 2007, effective date of the proposed reporting revisions related to the fair value option if the release of the FASB's final fair

[3] The FASB's three-level fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). Level 1 inputs are quoted prices in active markets for identical assets or liabilities that the reporting bank has the ability to access at the measurement date (e.g., the Call Report date). Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. Level 3 inputs are unobservable inputs for the asset or liability.

value option standard is delayed beyond its expected issuance in the first quarter of 2007. The trade association did not address the proposed reporting revisions for the fair value option and fair value measurements themselves.

The banking agencies agree on the need for caution in implementing their proposed reporting revisions related to the fair value option and fair value measurements. Accordingly, once the FASB issues its final fair value option standard, only if banks are permitted to adopt this standard in the first quarter of 2007 for other financial reporting purposes would the fair value option reporting requirements in the Call Report take effect as of March 31, 2007. Otherwise, these reporting requirements would be delayed until banks can elect the fair value option for other financial reporting purposes. Additionally, the banking agencies will proceed with the new Schedule RC-R item for fair value changes included in retained earnings that are attributable to changes in a bank's own creditworthiness. This item will initially reflect the banking agencies' determination that banks should exclude from Tier 1 capital the cumulative change in the fair value of financial liabilities accounted for under a fair value option that is included in retained earnings and is attributable to changes in the bank's own creditworthiness. If the scope of the banking agencies' determination concerning changes in the fair value of liabilities attributable to changes in own creditworthiness is later modified, the new Schedule RC–R item would be modified accordingly.

D. Reporting of Certain Data in the Call Report on 1–4 Family Residential Mortgage Loans With Terms That Allow for Negative Amortization

The banking agencies proposed to collect certain Call Report items to monitor the extent of bank holdings of closed-end 1–4 family residential mortgage loan products whose terms allow for negative amortization. As proposed, all banks would report the total amount of their holdings of such closed-end mortgage loans in a new memorandum item in Schedule RC–C, Part I, Loans and Leases. The banking agencies also proposed to collect two additional memorandum items on Schedule RC-C and another new memorandum item on Schedule RI, Income Statement, from banks with a significant volume of negatively amortizing 1–4 family residential mortgage loans. The two additional Schedule RC–C memorandum items would be (1) the total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1–4 family residential properties and (2) the total amount of negative amortization on closed-end loans secured by 1–4 family residential properties that is included in the carrying amount of these loans. The Schedule RI memorandum item would be the year-to-date noncash income on closed-end loans with a negative amortization feature secured by 1–4 family residential properties.

The banking agencies' proposal stated that the threshold for identifying banks with a significant volume of negatively amortizing residential mortgage loans would be based on the aggregate amount of these loans being in excess of either a certain dollar amount, e.g., $100 million or $250 million, or a certain percentage of the total loans and leases (in domestic offices) reported on Schedule RC–C, e.g., five percent or ten percent. For reporting during 2007, a bank with negatively amortizing loans would determine whether it met the size threshold for reporting the three additional memorandum items using data reflected in its December 31, 2006, Call Report. For reporting in 2008 and subsequent years, the determination would be based on data from the previous year-end Call Report. Thus, banks with negatively amortizing 1–4 family residential mortgage loans in excess of the reporting threshold as of the end of any particular calendar year would report these three items for the entire next calendar year.

The banking agencies requested comment on the specific dollar amount and percentage of loans that should be used in setting the size threshold for additional reporting on negatively amortizing loans. As mentioned above, the comments from the banking organization and the banking trade association addressed this threshold. In this regard, the banking organization recommended that the agencies base their reporting threshold only on a percentage of an institution's total loans and leases and not also include a fixed dollar amount of negatively amortizing loans in the threshold test. The organization stated that using a percentage test ''is more in line with the Agencies' goals of ensuring the safety and soundness of institutions while minimizing the burden of information collection'' because ''safety and soundness concerns become more prominent only as an institution's concentration in these loans increases relative to the rest of its portfolio.''

In its comments, the banking trade association referred to the agencies' Interagency Guidance on Nontraditional Mortgage Product Risks, which they published at the beginning of October 2006,[4] noting that this guidance ''specifically states that the agencies did not intend to establish concentration caps for institutions that underwrite'' nontraditional mortgages, including the residential mortgages with negative amortization features on which data would be reported in the Call Report. The trade association expressed concern that the establishment of a reporting threshold for reporting certain data on these loans would be ''a de facto concentration limit above which heightened regulatory scrutiny could be implied for such loans.'' This ''would be inconsistent with the Interagency Guidance.'' As a consequence, the trade association suggested eliminating the entire proposed reporting requirement for negatively amortizing residential mortgage loans. Alternatively, if the proposed reporting requirement were to be retained, the trade association recommended eliminating the reporting threshold for the three additional items and requiring all banks to report these items.

The banking agencies have considered these comments that focus on the reporting threshold. The intent of the proposal to establish a reporting threshold for certain additional data on negatively amortizing residential mortgage loans was not to establish concentration limits for these mortgage products. Rather, as the agencies noted in their proposal, they currently ''have no readily available means of identifying the industry's exposure'' to these products, which led them to propose to collect certain data to assist them in ''monitor[ing] the extent of use of negatively amortizing residential mortgage loans in the industry.'' Thus, the reporting of data on these mortgages is intended to support agency analysis at both the institution level and the industry level. The threshold for reporting additional data on negatively amortizing residential mortgage loans that are present at an institution in a significant volume was designed to limit the reporting burden on institutions, particularly small banks, with a nominal volume of these loans. A threshold based solely on a percentage of total loans and leases would not enable the banking agencies to gain an industry perspective on the amount of remaining contractually permitted negative amortization, capitalized negative amortization, and noncash income from negative amortization and how they relate to the amount of negatively amortizing residential mortgages. Therefore, the banking agencies will

[4] See 71 FR 58609, October 4, 2006.

proceed with a reporting threshold for the three additional data items that incorporates both a dollar amount test and a percentage test. More specifically, banks would report the three additional data items pertaining to their negatively amortizing residential mortgages if the amount of these mortgages exceeds the lesser of $100 million or 5 percent of their total loans and leases (in domestic offices), both held for sale and held for investment.

The data processing servicer commented on the proposed March 31, 2007, effective date for reporting this information. The servicer observed that the end of the proposal's comment period is less than 90 days before this effective date, while it typically needs a minimum of 180 days to implement programming changes after requirements are finalized. As a consequence, the servicer stated that it would not be able to commit to completing the programming, testing, and implementation of changes to its mortgage software by March 31, 2007, to enable its client banks to report the proposed information on negatively amortizing residential mortgages.

The Interagency Guidance on Nontraditional Mortgage Product Risks indicates that management information and reporting systems ''should allow management to detect changes in the risk profile of its nontraditional mortgage loan portfolio. The structure and content should allow the isolation of key loan products, risk-layering loan features, and borrower characteristics.'' The guidance further provides that ''[a]t a minimum, information should be available by loan type,'' such as for the closed-end residential mortgage loans with negative amortization features that are the subject of this Call Report proposal, and ''by borrower performance (e.g., payment patterns, delinquencies, interest accruals, and negative amortization).'' These risk management expectations for information systems were set forth approximately 180 days before the March 31, 2007, effective date of the proposed Call Report items for negatively amortizing residential mortgages. In addition, as previously mentioned, for the March 31, 2007, report date, banks may provide reasonable estimates for these new Call Report items if the requested information is not readily available.

E. Call Report Instructional Clarification for Servicing of Loan Participations

Banks report the outstanding principal balance of loans and other assets serviced for others in Memorandum items 2.a, 2.b, and 2.c of Schedule RC-S, ''Servicing, Securitization, and Asset Sale Activities.'' The instructions for these Memorandum items do not explicitly state whether a bank that has sold a participation in a loan or other financial asset, which it continues to service, should include the servicing in Memorandum item 2.a, 2.b, or 2.c, as appropriate. Because the absence of clear instructional guidance has resulted in questions from bankers and has produced diversity in practice among banks, the banking agencies propose to clarify the instructions to these Schedule RC-S Memorandum items to explicitly state that the amount of loan participations serviced for others should be included in these items. The banking agencies received no comments specifically addressing this instructional clarification, which will be implemented as proposed.

III. Other Matters

Section 601 of the Financial Services Regulatory Relief Act of 2006 (Relief Act) removed several statutory reporting requirements relating to insider lending by banks and savings associations. One of these amendments, which became effective on October 13, 2006, eliminated the requirement that an institution include a separate report with its Call Report or TFR each quarter on any extensions of credit the institution has made to its executive officers since the date of its last Call Report or TFR.[5] Accordingly, institutions were no longer required to report on such extensions of credit beginning December 31, 2006, and the ''Special Report'' on loans to executive officers, which has been included with the Call Report and TFR in previous quarters, is being discontinued. Because the reporting burden of this ''Special Report'' has been included in the burden for the Call Report and TFR information collections, the agencies have adjusted the burden of these collections in response to this statutory change and the elimination of the reporting requirement.

To improve the timeliness with which Call Report data become available to the public, the banking agencies will start posting individual bank data on the Internet earlier than in the past. This change will occur in conjunction with the implementation of the FFIEC's Central Data Repository Public Data Distribution (CDR PDD) site as the Web site for obtaining individual bank Call Report data. At present, individual bank Call Reports for which the analyses have been completed are released to the public beginning the third Friday after the report date (e.g., January 19, 2007, for the December 31, 2006, report) and additional bank reports are posted each Friday thereafter. Beginning with the March 31, 2007, report, the banking agencies plan to begin posting individual bank Call Report data on the CDR PDD Web site 15 calendar days after the report date (e.g., April 15, 2007). However, no individual bank data will be posted until 72 hours after that data has been accepted by the banking agencies and is incorporated within the Central Data Repository.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the Call Report and TFR collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

[5] In keeping with the Relief Act, the Board amended Regulation O (12 CFR part 215) to eliminate the insider loan reporting requirements addressed in Section 601, effective December 11, 2006 (71 FR 71472, December 11, 2006). The FDIC repealed Part 349 of its regulations (12 CFR part 349), which covered certain insider loan reporting requirements addressed in Section 601, effective December 22, 2006 (71 FR 78337, December 29, 2006). The OCC's regulations (12 CFR part 31) and the OTS's regulations (12 CFR part 563) incorporate Regulation O by reference and, therefore, do not require amendment.

Dated: February 8, 2007.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 5, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 2nd day of February, 2007.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: January 31, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

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BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Narcotics Traffickers Pursuant to Executive Order 12978

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 five individuals and one entity whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the individuals and entity identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, occurred on February 2, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Houghton, Assistant Director, Designation Investigations, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President issued Executive Order 12978 (the ''Order'') pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code.

In the Order, the President declared a national emergency to address actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad. The Order imposes economic sanctions on foreign persons who are determined to play a significant role in international narcotics trafficking centered in Colombia; or materially to assist in, or provide financial or technological support for goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order; or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order.

The Order included 4 individuals in the Annex, which resulted in the blocking of all property or interests in property of these persons that was or thereafter came within the United States or the possession or control of U.S. persons. The Order authorizes the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to designate additional persons or entities determined to meet certain criteria set forth in EO 12978.

On February 2, 2007, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers the individuals and entity listed below, whose property and interests in property were blocked pursuant to EO 12978.

The list of the unblocked individuals and entity follows:

1. AGUADO ORTIZ, Luis Jamerson, c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o FLEXOEMPAQUES LTDA., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES COSMOVALLE LTDA., Cali, Colombia; c/o PLASTICOS CONDOR LTDA., Cali, Colombia; Cedula No. 2935839 (Colombia) (individual) [SDNT] -to-AGUADO ORTIZ, Luis Jamerson, c/o D'CACHE S.A., Cali, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o FLEXOEMPAQUES LTDA., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES COSMOVALLE LTDA., Cali, Colombia; c/o PLASTICOS CONDOR LTDA., Cali, Colombia; Cedula No. 2935839 (Colombia) (individual) [SDNT]

2. CAMACHO RIOS, Jaime, c/o CONSTRUCCIONES ASTRO S.A., Cali, Colombia; Cedula No. 14950781 (Colombia) (individual) [SDNT] GONZALEZ, Maria Lorena, c/o INVERSIONES Y CONSTRUCCIONES ATLASLTDA., Cali, Colombia; Cedula No. 31992548 (Colombia) (individual) [SDNT]

3. GUZMAN VELASQUEZ, Luz Marcela, c/o TAURA S.A., Cali, Colombia; Cedula No. 43568327 (Colombia) (individual) [SDNT]

4. RAMIREZ VALDIVIESO, Alfonso, Calle 114 No. 26–64, Bogota, Colombia; c/o INTERCONTINENTAL DE AVIACION S.A., Bogota, Colombia; DOB 5 May 1938; POB Cali, Colombia; Cedula No. 17035234 (Colombia); Passport AF058639 (Colombia); alt. Passport PE019394 (Colombia); alt. Passport PE004391 (Colombia) (individual) [SDNT]

5. WILSON GARCIA, Maria Ximena, c/o ALERO S.A., Cali, Colombia; DOB 15 Aug 1968; Cedula No. 31985601 (Colombia) (individual) [SDNT]

6. PREMIER SALES S.A., Avenida Ernesto T. Lefevre, Planta Baja, Panama; P.O. Box 4064, Panama [SDNT] -to- PREMIER SALES S.A., Avenida Ernesto T. Lefevre Edificio No. 10 Planta Baja, Panama; P.O. Box 4064, Panama; Apartado: 810–379 Zona 10, Panama [SDNT]

Dated: February 2, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–2568 Filed 2–13–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–536–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–536–89 (TD 8300), Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984 (§ 1.1998 to be assured of consideration).

DATES: Written comments should be received on or before April 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.

OMB Number: 1545–1132.

Regulation Project Number: INTL–536–89.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting and recordkeeping requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 5000.

Estimated Time per Respondent/Recordkeeper: 10 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 852.

The following paragraph applies to all of the collections of information covered by this notice:

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

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–2476 Filed 2–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106917–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106917–99 (TD 8996), Changes in Accounting Periods (§§ 1.441–2, 1.442–1, and 1.1378–1).

DATES: Written comments should be received on or before April 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Changes in Accounting Periods.

OMB Number: 1545–1748.

Regulation Project Number: REG–106917–99.

Abstract: Section 1.441–2(b)(1) requires certain taxpayers to file statements on their federal income tax returns to notify the Commissioner of the taxpayers' election to adopt a 52–53-week taxable year. Section 1.442–1(b)(4) provides that certain taxpayers must establish books and records that clearly reflect income for the short period involved when changing their taxable year to a fiscal taxable year. Section 1.442–1(d) requires a newly married husband or wife to file a statement with their short period return when changing to the other spouse's taxable year.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–2478 Filed 2–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8612

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8612, Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

DATES: Written comments should be received on or before April 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

OMB Number: 1545–1013.

Form Number: Form 8612.

Abstract: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981 of the Internal Revenue Code. The IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 9 hours, 48 minutes.

Estimated Total Annual Burden Hours: 196.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–2479 Filed 2–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–24–95 and CO–11–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, CO–24–95 (TD 8660), Consolidated Groups—Intercompany Transactions and Related Rules, and CO–11–91 (TD 8597), Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules (§ 1.1502–13).

DATES: Written comments should be received on or before April 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: CO–24–95, Consolidated Groups—Intercompany Transactions and Related Rules, and CO–11–91, Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules.

OMB Number: 1545–1433.

Regulation Project Numbers: CO–11–91 and CO–24–95.

Abstract: The regulations require common parents that make elections under regulation section 1.1502–13 to provide certain information. The information will be used to identify and assure that the amount, location, timing and attributes of intercompany transactions and corresponding items are properly maintained.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,200.

Estimated Time per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 1,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–2487 Filed 2–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–50–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–50–86 (TD 8110), Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form (§§ 1.65–12 and 1.1287–1).

DATES: Written comments should be received on or before April 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

OMB Number: 1545–0786.

Regulation Project Number: INTL–50–86.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest income and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 750,000.

Estimated Time Per Response: 3 minutes.

Estimated Total Annual Burden Hours: 39,742.

The following paragraph applies to all of the collections of information covered by this notice:

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

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–2488 Filed 2–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8913

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8913, Credit for Federal Telephone Excise Tax Paid.

DATES: Written comments should be received on or before April 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Federal Telephone Excise Tax Paid.

OMB Number: 1545–2051.

Form Number: 8913.

Abstract: The information on Form 8913 will allow filers of the form to correctly compute their federal telephone excise tax refund and the interest due on the refund.

Current Actions: A net increase of four lines was added to the form.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions and Farms.

Estimated Number of Respondents: 38,000,000.

Estimated Time per Respondent: 14 hours, 50 minutes.

Estimated Total Annual Burden Hours: 563,540,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2007.

Larnice Mack,

IRS Reports Clearance Officer.

[FR Doc. E7–2491 Filed 2–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–66–93 and PS–120–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, PS–66–93 (TD 8609), Gasohol; Compressed Natural Gas, and PS–120–90 (TD 8241), Gasoline Excise Tax (§§ 48.4041–21, 48.4081–2(c)(2), 48.4081–3(d)(2)(iii), 48.4081–3(e)(2)(ii), 48.4081–3(f)(3)(ii), 48.4081–4(b)(2)(ii), 48.4081–4(b)(3)(i), 48–4081–4(c), 48.4081–6(c)(1)(ii), 48.4081–7, and 48.4081–9).

DATES: Written comments should be received on or before April 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: PS–66–93, Gasohol; Compressed Natural Gas; and PS–120–90, Gasoline Excise Tax.

OMB Number: 1545–1270.

Regulation Project Number: PS–66–93 and PS–120–90.

Abstract: PS–66–93: This regulation relates to gasohol blending and the tax on compressed natural gas (CNG). The sections relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The sections relating to CNG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat. PS–120–90: This regulation relates to the federal excise tax on gasoline. It affects refiners, importers, and distributors of gasoline and provides guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

Current Actions: Section 48–4081–7(d)(3) was removed by TD 8609.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions, Farms and State, Local or Tribal Governments.

Estimated Number of Respondents: 3,410.

Estimated Time per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 366.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–2493 Filed 2–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Homeless Veterans will meet on February 28–March 1, 2007, at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting is open to the public, and the sessions are scheduled as follows: February 28, 8 a.m. until 4 p.m., Room 948. March 1, 8 a.m. until 12 noon, Room 742.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

During the meeting, the Committee will hear reports from VA officials and others on programs and policies affecting homeless veterans. Much of the activity at this meeting will be in preparation for the Committee's annual report and recommendations to the Secretary.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans.

Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: February 5, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–640 Filed 2–13–07; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 72, No. 30

Wednesday, February 14, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4878–N–02]

Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

Correction

In notice document 07–217 beginning on page 2732 in the issue of Monday, January 22, 2007 make the following correction:

On page 2747, in the second column, in the sixth line from the bottom ''JUH'' should read ''HUD''.

[FR Doc. C7–217 Filed 2–13–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
February 14, 2007

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Electrical Standard; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–108C]

RIN 1218–AB95

Electrical Standard

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising the general industry electrical installation standard found in Subpart S of 29 CFR Part 1910. The Agency has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, and that the requirements in the revised standard, which draw heavily from the 2000 edition of the National Fire Protection Association's (NFPA) Electrical Safety Requirements for Employee Workplaces (NFPA 70E), and the 2002 edition of the National Electrical Code (NEC), are reasonably necessary to provide protection from these hazards. This final rule focuses on safety in the design and installation of electric equipment in the workplace. This revision will provide the first update of the installation requirements in the general industry electrical installation standard since 1981.

OSHA is also replacing the reference to the 1971 NEC in the mandatory appendix to the general industry powered platform standard found in Subpart F of 29 CFR Part 1910 with a reference to OSHA's electrical installation standard.

DATES: This final rule becomes effective on August 13, 2007.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor of Labor, Room S4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Mr. Kevin Ropp, Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Mr. David Wallis, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

This final rule revises OSHA's existing standard for electrical installations, which is contained in §§ 1910.302 through 1910.308 of Subpart S, with relevant definitions in § 1910.399. It applies, as the existing standard does, to employers in general industry and in shipyard employment, longshoring, and marine terminals.

OSHA undertook the project to revise Subpart S for two major reasons. First, the Agency wanted the standard to reflect the most current practice and technology in the industry. The existing standard is based on a national consensus standard, the 1979 edition of Part I of NFPA 70E, entitled Standard for Electrical Safety Requirements for Employee Workplaces. That consensus standard has been updated several times since OSHA last revised its electrical installation requirements in 1981. The final rule being published today is based on Part I of the 2000 edition of NFPA 70E. Second, in implementing this rule, OSHA is responding to requests from stakeholders that the Agency revise Subpart S so that it reflects the most recent editions of NFPA 70E and the NEC.[1] These stakeholders argued that interested members of the public have had substantial input into the content of NFPA 70E and that industry is complying with that consensus standard in its present form. The revised standard will be more flexible and efficient for stakeholders, including small businesses, while improving safety for employees.

OSHA's existing electrical standard in §§ 1910.302 through 1910.308 is based on the 1979 edition of NFPA 70E, which is a national consensus standard developed by a cross section of industry, labor, and other allied interests. Consensus standards like the NEC and NFPA 70E provide nationally recognized safe electrical installation requirements. Additionally, the consensus process used in developing the 2000 edition of NFPA 70E, Part 1 of which is based on the NEC, ensures that requirements contained in that standard are current and at the forefront of electrical safety technology. Because the primary objective of this revision of Subpart S is to update the standard to recognize, and in some cases require, the more current electrical safety technology, OSHA believes that the more recent editions of NFPA 70E should be the foundation of the final standard.[2] Lastly, the Agency has determined that electrical hazards in general industry workplaces pose a significant risk and that the final standard will substantially reduce that risk.

The remainder of the preamble discusses the background of the final rule, the history of the standard, and the legal authority for the standard; provides a summary and explanation of the final standard; includes the final economic and regulatory flexibility analysis and the information collections associated with the rule; and covers other miscellaneous topics. The outline of the preamble is as follows:

I. Introduction
II. Background
III. History of the Standard
IV. Legal Authority
V. Summary and Explanation of the Final Standard
VI. Final Economic and Regulatory Screening Analysis
VII. State Plan Standards
VIII. Environmental Impact Analysis
IX. Unfunded Mandates
X. Federalism
XI. OMB Review under the Paperwork Reduction Act of 1995
XII. Effective Date and Date of Application

II. Background

A. Hazards Associated With Electricity

Electricity is widely recognized as a serious workplace hazard, exposing employees to electric shock, burns, fires, and explosions. According to the Bureau of Labor Statistics, 289 employees were killed by contact with electric current in 2002 (Ex. 2–8). Other employees have been killed or injured

[1] See, for example, letters from: Judith Gorman, Managing Director of the Institute of Electrical and Electronic Engineers; George D. Miller, President and Chief Executive Officer of the National Fire Protection Association; Frank K. Kitzantides, Vice President of Engineering at the National Electrical Manufacturers Association; and Kari P. Barrett, Director of Regulatory and Technical Affairs, Plant Operations, at the American Chemistry Council (Exhibit 2–62, 2–63, 2–64, 2–65).

[2] A newer edition of NFPA 70E was published shortly after OSHA issued the proposed rule. Whether the final rule should be based on this edition, NFPA 70E–2004, is one of the issues raised by comments on the proposal. See the discussion of this issue in section V, Summary and Explanation of the Final Standard.

in fires and explosions caused by electricity.

It is well known that the human body will conduct electricity. If direct body contact is made with an electrically energized part while a similar contact is made simultaneously with another conductive surface that is maintained at a different electrical potential, a current will flow, entering the body at one contact point, traversing the body, and then exiting at the other contact point, usually the ground. Each year many employees suffer pain, injuries, and death from such electric shocks.

Current through the body, even at levels as low as 3 milliamperes, can also cause injuries of an indirect or secondary nature in which involuntary muscular reaction from the electric shock can cause bruises, bone fractures and even death resulting from collisions or falls.

Burns suffered in electrical accidents can be very serious. These burns may be of three basic types: electrical burns, arc burns, and thermal contact burns. Electrical burns are the result of the electric current flowing in the tissues, and may be either skin deep or may affect deeper layers (such as muscles and bones) or both. Tissue damage is caused by the heat generated from the current flow; if the energy delivered by the electric shock is high, the body cannot dissipate the heat, and the tissue is burned. Typically, such electrical burns are slow to heal. Arc burns are the result of high temperatures produced by electric arcs or by explosions close to the body. Finally, thermal contact burns are those normally experienced from the skin contacting hot surfaces of overheated electric conductors, conduits, or other energized equipment. In some circumstances, all three types of burns may be produced simultaneously.

If the current involved is great enough, electric arcs can start a fire. Fires can also be created by overheating equipment or by conductors carrying too much current. Extremely high-energy arcs can damage equipment, causing fragmented metal to fly in all directions. In atmospheres that contain explosive gases or vapors or combustible dusts, even low-energy arcs can cause violent explosions.

B. Nature of Electrical Accidents

Electrical accidents, when initially studied, often appear to be caused by circumstances that are varied and peculiar to the particular incidents involved. However, further consideration usually reveals the underlying cause to be a combination of three possible factors: work involving unsafe equipment and installations; workplaces made unsafe by the environment; and unsafe work performance (unsafe acts). The first two factors are sometimes considered together and simply referred to as unsafe conditions. Thus, electrical accidents can be generally considered as being caused by unsafe conditions, unsafe acts, or, in what is usually the case, combinations of the two. It should also be noted that inadequate maintenance can cause equipment or installations that were originally considered safe to deteriorate, resulting in an unsafe condition.

Some unsafe electric equipment and installations can be identified, for example, by the presence of faulty insulation, improper grounding, loose connections, defective parts, ground faults in equipment, unguarded live parts, and underrated equipment. The environment can also be a contributory factor to electrical accidents in a number of ways. Environments containing flammable vapors, liquids, or gases; areas containing corrosive atmospheres; and wet and damp locations are some unsafe environments affecting electrical safety. Finally, unsafe acts include the failure to deenergize electric equipment when it is being repaired or inspected or the use of tools or equipment too close to energized parts.

C. Protective Measures

There are various ways of protecting employees from the hazards of electric shock, including insulation and guarding of live parts. Insulation provides a barrier to the flow of current. To be effective, the insulation must be appropriate for the voltage, and the insulating material must be undamaged, clean, and dry. Guarding prevents the employee from coming too close to energized parts. It can be in the form of a physical barricade, or it can be provided by installing the live parts out of employees' reach. (This technique is known as ''guarding by location.'')

Grounding is another method of protecting employees from electric shock; however, it is normally a secondary protective measure. To keep guards or enclosures at a common potential with earth, they are connected, by means of a grounding conductor, to ground. In addition, grounding provides a path of low impedance and of ample capacity back to the source to pass enough current to activate the overcurrent devices in the circuit. If a live part accidentally contacts a grounded enclosure, current flow is directed back to earth, and the circuit protective devices (for example, fuses and circuit breakers) can interrupt the circuit.

If it draws too much current, electric equipment can overheat, which can result in fires. Overheating can also lead to electric shock hazards if the insulation protecting a conductor melts. Protecting electric equipment from overcurrent helps prevent this from happening.

Designing and installing equipment to protect against dangerous arcing and overheating is also important in preventing unsafe conditions that can lead to fires, high energy electric arcs, and explosions. Employers and employees cannot usually detect improperly designed or rated equipment. Thus, OSHA relies on third-party testing and certification of electric equipment to ensure proper electrical design. This helps ensure, for example, that equipment will not overheat during normal operation and that equipment designed for use in a hazardous location will not cause a fire or explosion. It also helps ensure that equipment is appropriately rated and marked, allowing employees designing electrical installations and installing electric equipment to select equipment and size conductors in accordance with those ratings.[3] Many of the requirements in OSHA's electrical standards in turn depend on accurate ratings on equipment.

These protective measures help ensure the safe installation of electric equipment and are prescribed by the requirements presently contained in 29 CFR Part 1910, Subpart S. Addressing common unsafe conditions, these rules cover such safety considerations as guarding and insulation of live parts, grounding of equipment enclosures, and protection of circuits from overcurrent. This rulemaking updates those requirements to make them consistent with the latest editions of NFPA 70E. This revision will better protect employees by recognizing the latest techniques in electrical safety and by requiring installations to incorporate those techniques whenever necessary.

[3] Electric equipment is typically rated for use with certain voltages and current. For example, an electric hair dryer might be rated at 125 volts, 1875 watts. The voltage rating indicates the maximum voltage for which the equipment is rated. The wattage rating indicates how much power the equipment will draw when connected to a circuit at the maximum voltage. The current drawn by the equipment is the wattage rating divided by the voltage rating. Thus, the circuit voltage (120 volts, nominal) is less than the maximum rated voltage of the hair dryer (125 volts), and the circuit is rated for the current the equipment will draw (1875 watts/125 volts = 15 amperes). Thus, the hair dryer would be suitable for use on a 120-volt circuit capable of safely carrying 15 amperes.

D. Significant Risk and Reduction in Risk

As stated earlier, electricity has long been recognized as a serious workplace hazard exposing employees to dangers such as electric shock, electrocution, fires, and explosions. The 100-year-long history of the National Electrical Code, originally formulated and periodically updated by industry consensus, attests to this fact. The NEC has represented the continuing efforts of experts in electrical safety to address these hazards and provide standards for limiting exposure in all electrical installations, including workplaces. OSHA has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees and that this final rule, which draws heavily on the experience of the NEC, will substantially reduce this risk.

According to the U.S. Bureau of Labor Statistics, between 1992 and 2002, an average of 295 employees died per year from contact with electric current, and between 1992 and 2001 an average of 4,309 employees lost time away from work because of electrical injuries.[4] Overall, there has been a downward trend in injuries and illnesses, but the percentage has varied from year to year. From 1992 to 2001, the number of injuries involving days away from work decreased by 29 percent. From 1992 to 2002, the number of deaths decreased by 9 percent. This downward trend is due, in major part, to 30 years of highly protective OSHA regulation in the area of electrical installation, based on the NEC and NFPA 70E standards. The final standard carries forward most of the existing requirements for electrical installations, with the new and revised requirements intended as fine tuning, introducing new technology along with other improvements in safety. By complying with the final standard, employers will prevent unsafe electrical conditions from occurring.

While the number of deaths and injuries associated with electrical hazards has declined, contact with electric current still poses a significant risk to employees in the workplace, as evidenced by the numbers of deaths and serious injuries still occurring due to contact with electric current. This final rule will help further reduce the number of deaths and injuries associated with electrical hazards by providing additional requirements for installation safety and by recognizing alternative means of compliance.

[4] The Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational Injuries, *http://www.bls.gov/iif/home.htm#tables.*

III. History of the Standard

On February 16, 1972, OSHA incorporated the 1971 edition of the National Fire Protection Association's (NFPA) National Electrical Code (NEC), NFPA 70–1971, by reference as its electrical standard for general industry (37 FR 3431). The Agency followed the procedures outlined in Section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 655), which directed the Secretary to adopt existing national consensus standards as OSHA standards within 2 years of the effective date of the OSH Act. In incorporating the 1971 NEC by reference, OSHA made the entire 1971 NEC applicable to all covered electrical installations made after March 15, 1972. For covered installations made before that date, OSHA listed about 16 provisions from the 1971 NEC that applied. No other provisions of the 1971 NEC applied to these older installations. Thus, older installations were ''grandfathered'' so that they did not need to meet most of the requirements in the consensus standard.

On January 16, 1981, OSHA revised its electrical installation standard for general industry (46 FR 4034). This revision replaced the incorporation by reference of the 1971 NEC with relevant requirements from Part I of the 1979 edition of NFPA 70E. The revision simplified and clarified the electrical standard and updated its provisions to match the 1978 NEC (the latest edition available at the time). The standard was written to reduce the need for frequent revision and to avoid technological obsolescence. These goals were achieved—NFPA 70E had only minor changes over its initial 15 years of existence. The first substantial changes were introduced in the 1995 edition of NFPA 70E.

The 2000 edition of NFPA 70E contains a number of significant revisions, including a new, alternative method for classifying and installing equipment in Class I hazardous locations (see preamble Section I. N. Zone Classification, below). NFPA has recommended that OSHA revise its general industry electrical standards to reflect the latest edition of NFPA 70E, arguing that such a revision would provide a needed update to the OSHA standards and would better protect employees. This final rule responds to NFPA's recommendations with regard to installation safety. It also reflects the Agency's commitment to update its electrical standards, keep them consistent with NFPA standards, and ensure that they appropriately protect employees. The Agency intends to extend this commitment by using NFPA 70E as a basis for future revisions to its electrical safety-related work practice requirements and new requirements for electrical maintenance and special equipment.

The proposed rule was published in the **Federal Register** on April 5, 2004. The public had a 60-day comment period that ended on June 4, 2004. OSHA received 38 comments on the proposed revision of OSHA's electrical installation standard for general industry. The Agency received one hearing request on the proposal, which was subsequently withdrawn.

The comments addressed specific provisions in the proposal and raised several issues, including: (1) Whether OSHA should use the latest edition of NFPA 70E or the NEC to revise Subpart S; (2) whether OSHA should update the corresponding construction standard at the same time; (3) whether OSHA should address work practices and other revised provisions of NFPA 70E; and (4) what the effective date of the standard should be. (See section V, ''Summary and Explanation of the Final Standard,'' later in the preamble, for a discussion of the comments.)

IV. Legal Authority

The purpose of the OSH Act, 29 U.S.C. 651 et seq., is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 655(b) & 658.

A safety or health standard ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if:

- A significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk;
- It is technologically and economically feasible;
- It employs the most cost effective protective measures;
- It is consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency action;
- It is supported by substantial evidence; and

• In the event the standard is preceded by a consensus standard, it is better able to effectuate the purposes of the OSH Act than the standard it supersedes.

International Union, UAW v. *OSHA (LOTO II),* 37 F.3d 665, 668 (D.C. Cir. 1994).

OSHA has generally considered an excess risk of 1 death per 1000 employees over a 45-year working lifetime as clearly representing a significant risk (see *Industrial Union Dept.* v. *American Petroleum Institute (Benzene),* 448 U.S. 607, 655 (1980); *International Union* v. *Pendergrass (Formaldehyde),* 878 F.2d 389, 392–93 (D.C. Cir. 1989); *Building and Construction Trades Dept., AFL–CIO* v. *Brock (Asbestos),* 838 F.2d 1258, 1264–65 (D.C. Cir. 1988)).

A standard is considered technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed (see *American Iron and Steel Institute* v. *OSHA (Lead II),* 939 F.2d 975, 980 (D.C. Cir. 1991)). A standard is economically feasible when industry can absorb or pass on the costs of compliance without threatening the industry's long-term profitability or competitive structure (see *American Textile Mfrs. Institute* v. *OSHA (Cotton Dust),* 452 U.S. 490, 530 n. 55 (1981); Lead II, 939 F.2d at 980). A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection (see LOTO II, 37 F.3d at 668).

All OSHA standards must be highly protective (LOTO II, 37 F.3d at 669) and, where practical, ''expressed in terms of objective criteria and of the performance desired.'' 29 U.S.C. 655(b)(5). Finally, the OSH Act requires that when promulgating a rule that differs substantially from a national consensus standard, OSHA must explain why the promulgated rule is a better method for effectuating the purpose of the OSH Act. 29 U.S.C. 655(b)(8). As discussed earlier, OSHA is using NFPA 70E as the basis for its final rule, with some modifications as necessary, as explained in detail in the next section of the preamble.

V. Summary and Explanation of the Final Standard

This section discusses the important elements of the final standard, explains the purpose of the individual requirements, and explains any differences between the final standard and the existing standard. This section also discusses and resolves issues raised during the comment period, significant comments received as part of the rulemaking record, and any substantive changes that were made from the language of the proposed rule. References in parentheses are to exhibits in the rulemaking record. Except as noted, OSHA is carrying forward the language from the proposal into the final rule without substantive differences.

A. Issues

1. *Comments supporting the revision of Subpart S.* The vast majority of the comments supported OSHA's efforts to update the general industry electrical standards (Exs. 3–3, 3–4, 3–6, 3–7, 3–8, 3–9, 4–10, 4–24). For example, the National Petrochemical & Refiners Association expressed support for updating Subpart S so that it is consistent with the current editions of the NFPA 70E and the NEC, because, they stated, its members place a high priority on safety and understand the necessity for electrical installation standards (Ex. 3–4). The American Society of Safety Engineers (ASSE) also supported the proposal, stating: ''It is appropriate to move forward with this revision, given the seriousness of electrical hazards and the fact that nearly 300 workers are killed each year from contact with electrical current or as the result of injuries caused by fires and explosions related to electrical accidents [Ex. 3–5].''

The National Institute for Occupational Safety and Health (NIOSH) and the North Carolina Department of Labor also supported OSHA's proposed revision (Exs. 3–9, 5–2). NIOSH stated: ''The proposed revised standard will provide workers in general industry and maritime employment with improved protection against injuries and death from electrical hazards [Ex. 3–9].'' The North Carolina Department of Labor expressed a similar view, stating: ''The revisions proposed to the existing standard should provide a greater measure of protection to employees working on and around electrical equipment and installations [Ex. 5–2].''

OSHA appreciates the support of these commenters. The Agency believes that the final standard will better protect employees than the existing standard. The record overwhelmingly supports this view.

2. *OSHA should use the latest version of NFPA 70E or the NEC.* OSHA received several comments recommending that the standard be based on the latest version of NFPA 70E or the NEC (Exs. 3–8, 4–3, 4–6, 4–8, 4–11). Some of the commenters argued that, by using the 2000 edition of the NFPA 70E rather than the more recent 2004 edition, OSHA was not reflecting the most current practices and technology. For example, David Soffrin of the American Petroleum Institute stated:

> We applaud the reasons for the proposal, as stated by OSHA: (a) To reflect the most current practice and technology in the industry; and (b) to respond to requests from stakeholders that the electrical standards conform with the most recent editions of the National Fire Protection Association (NFPA) 70E, Standard for Electrical Safety Requirements for Employee Workplaces, and the National Electrical Code (NEC). However, the proposal follows the NFPA standard 70E–2000, while the NFPA Standards Council issued an updated version January 14, 2004, which supercedes NFPA 70E–2000. We believe that if the intent is to reflect the most current practice and technology, using a four-year-old standard, which will be even more dated by the time OSHA finalizes this standard, is inappropriate. We therefore recommend that OSHA revise the proposal using NFPA 70E–2004, Standard for Electrical Safety in the Workplace, or the 2002 NEC, which would require numerous modifications [Ex. 4–11].

John Paschal of the Bechtel Corporation wrote: ''Since NFPA 70E–2004 is now published and issued to the public, and since it contains significantly enhanced technical data that the NFPA 70E–2000 did not contain, I recommend that OSHA adopt NFPA 70E–2004 instead of NFPA 70E–2000 [Ex. 4–3].''

James Kendrick of ASSE noted that the major differences between the current versions of the OSHA electrical installation standards and the proposed rule fall into the following categories:

• Changes in the hardware specifications that are consistent with NEC requirements,

• Changes in installation practices that are consistent with the current, accepted installation practices followed by licensed electricians and other qualified persons,

• Clarification of existing requirements that add minimal new obligations or otherwise permit flexibility in compliance, and

• Requirements that do significantly modify electrical system and equipment installation practices or impose new documentation requirements (Ex. 3–5).

He was concerned that the OSHA final rule would be functionally obsolete when it is published and, thus, have diminished utility in the future since most electricians are currently learning the NEC 2002 coding system. He argued that it would be beneficial for OSHA to use the same standard as those involved in electrical work.

OSHA has decided not to base the final rule as a whole on NFPA 70E–2004, which was published on April 9, 2004, shortly after OSHA's proposal was published. The 2004 version of the national consensus standard was not placed in the rulemaking record; therefore, the Agency does not believe that the public would have had adequate notice of the many changes in the latest NFPA standard, to the extent that the Agency would have incorporated these changes in the final rule. Basing Subpart S on the latest edition of NFPA 70E would thus necessitate reproposing the rule. Given the time involved in reproposing and finalizing an OSHA standard, it is likely that NFPA 70E will be revised yet again within that timeframe. In addition, because NFPA 70E and OSHA's electrical installation standard were developed specifically to minimize the need for revision with every new version of the NEC, a final rule based on the 2000 edition of NFPA 70E will not be obsolete. Furthermore, several provisions in the final rule are based on corresponding requirements in the 2002 NEC, on which NFPA 70E–2004 is based. (See the distribution table later in this section of the preamble.) In proposing and finalizing this revision of Subpart S, OSHA carefully chose which NEC changes would have the greatest impact on employee safety. The Agency does not believe that delaying the substantial increase in employee safety that would result from the standard published in the final rule is warranted.

On the other hand, where the rulemaking record supports specific requirements that are consistent with the 2004 edition of NFPA 70E, OSHA has adopted those requirements in the final rule. For example, final § 1910.304(b)(3)(ii)(A) is based, in part, on Section 410.4(B)(1) of the 2004 edition of NFPA 70E rather than Part I, Chapter 2, Section 2.4 of the 2000 edition of NFPA 70E. (See the detailed explanation, later in the preamble, discussing the rationale for this provision, which requires a written assured equipment grounding conductor program where ground-fault circuit-interrupters are not available.) In these specific cases, the rulemaking record supports OSHA's using the language from the relevant provision in NFPA 70E–2004 and from the 2002 NEC, on which the new NFPA 70E requirement is based. This avoids the notice problem discussed earlier. In addition, OSHA will consider using later versions of NFPA 70E to update the electrical installation requirements adopted in this final rule when the Agency develops future proposals to revise Subpart S to update the existing electrical safety-related work practice requirements and to adopt new provisions on safety-related maintenance and special equipment.

3. *OSHA should update the Electrical Standard for construction at the same time this rule is being promulgated.* The Agency received one comment asking OSHA to consider revising the Electrical Standard for construction at the same time as the revision to the Electrical Standard for general industry (Ex. 4–2). Reliable Safety Solutions, LLC, stated that installing equipment in general industry and installing equipment in the construction industry is much the same (Ex. 4–2). They argued that the hazards encountered are the same and the safe work practices when working with electricity are the same. Thus, they said that to update one standard and not the other would allow for one standard to be out of date and certain hazards to exist.

The Agency is aware that the general industry and the construction industry both address similar electrical hazards and have similar safe work practices. OSHA is also aware that its electrical standards for construction in 29 CFR 1926, Subpart K also need updating. Like Subpart S, Subpart K is based on the 1979 edition of NFPA 70E. In addition, the electrical safety-related work practices in Subpart K are even older than their general industry counterparts. However, OSHA must consult with the Advisory Committee on Construction Safety and Health before publishing a proposal. In addition, OSHA would have to include the construction industry in its regulatory analysis and repropose the standard to address construction as part of this rulemaking. Although OSHA will consider updating Subpart K to make it consistent with Subpart S in the future, it is not possible to do so as part of this final rule.

4. *OSHA should update the safety-related work practice requirements in Subpart S at the same time this rule is being promulgated.* One commenter recommended that OSHA revise its electrical safety-related work practice standard in Subpart S based on the corresponding requirements in NFPA 70E (Ex. 4–5). He argued that electricians encounter exposed energized parts of electric circuits, which demonstrates the need for the protective clothing and safe work practices contained in NFPA 70E.

OSHA agrees that the latest editions of NFPA 70E provide improved protection to employees through better electrical safety-related work practices. In particular, the heightened focus on the hazards posed by electric arcs may substantially reduce injuries and fatalities associated with those hazards. However, revising the safety-related work practice requirements in Subpart S is beyond the scope of this rulemaking. The Agency is planning to update these requirements as the next phase of the project to update OSHA's electrical standards. Although OSHA expects this phase of the project to yield significant benefits, the Agency also expects it to take longer to promulgate a final rule on safety-related work practices owing to the more complex regulatory analysis required and the greater controversy that is likely to be encountered.

B. Scope

Existing §§ 1910.302 through 1910.308 of Subpart S apply to electrical installations and utilization equipment used and installed in workplaces in general industry and in shipyard employment, longshoring, and marine terminals. These sections do not apply to the following types of installations:

(1) Installations in ships, watercraft, railway rolling stock, aircraft, or automotive vehicles other than mobile homes and recreational vehicles;

(2) Installations underground in mines; [5]

(3) Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communication purposes;

(4) Installations of communication equipment under the exclusive control of communication utilities and located outdoors or in building spaces used exclusively for such installations; and

(5) Installations under the exclusive control of electric utilities for the purpose of communication or metering; or for the generation, control, transformation, transmission, and distribution of electric energy. These exempted installations must be located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased

[5] This exception was incorporated into the current OSHA standard to be consistent with language used in the NEC and NFPA 70E. However, it should be noted that OSHA does not have jurisdiction over mines in general, regardless of whether the mining activity takes place above ground or underground. Under the Mine Safety and Health Act (MSH Act) (30 U.S.C. 801 *et seq.*), the Mine Safety and Health Administration (MSHA) regulates safety and health in mines. For further information, see the Interagency Agreement between MSHA and OSHA (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=MOU&p_id=222*).

by the utility or on public highways, streets, roads, etc., or outdoors by established rights on private property.

These exempted installations present special design considerations that are not adequately addressed in Subpart S. For example, electric power transmission and distribution installations are typically installed where unqualified persons will not have access to them, and the only employees working on them are highly trained and skilled. Additionally, public safety considerations demand that these installations be capable of quick repair when weather or equipment failure disrupts electrical service. The National Electrical Safety Code (ANSI/IEEE C2), which is developed by experts in electric power generation, transmission, and distribution, contains design and installation requirements applicable to electric power generation, transmission, and distribution systems. Section 1910.269 contains OSHA's standard for the maintenance of electric power generation, transmission, and distribution installations. While it consists mostly of work-practice requirements, it does contain several installation requirements. For example, § 1910.269(u)(4) and (v)(4) cover guarding of rooms containing electric supply equipment in electric power generating stations and substations, respectively.

Installations in ships, watercraft, railway rolling stock, aircraft, or automotive vehicles (other than mobile homes and recreational vehicles) are designed to be transportable.[6] These transportability considerations make many of the design requirements in Subpart S irrelevant or infeasible. For example, attaching the grounded circuit conductor and the equipment grounding conductor to a permanent grounding electrode on a transportable wiring system is generally not feasible. Thus, some of the provisions in final § 1910.304(g), which contains requirements for grounding electrical systems, are inappropriate for the wiring of ships, watercraft, railway rolling stock, aircraft, or automotive vehicles. By contrast, however, wiring that is not a part of the wiring of the ship, watercraft, railway rolling stock, aircraft, or automotive vehicle would be covered by Subpart S, as appropriate. For example, a portable electric drill carried into the cargo area of a truck would be covered by Subpart S if it is plugged into the wiring of a service station.

In regard to ships, there has been some confusion about whether the ''exemption'' applies to all wiring or electrical installations brought on board a vessel during construction, repair, or ship scrapping even when the wiring is supplied by shore-based electric power—or whether it only applies to the ship's own wiring. OSHA is hereby clarifying the application of the exemptions.

The ''exempted'' types of installations in both the existing and final standards are identical to those ''exempted'' by the NEC and NFPA 70E, which form the basis of both standards. Installations covered under the existing standard continue to be covered under the final standard. For example, in longshoring operations and related employments, this final rule applies to electrical installations aboard vessels only if they are shore-based as stated in § 1918.1(b)(3). Electrical installations in marine terminals are also covered under Subpart S, as noted in § 1917.1(a)(2)(iv). (The marine terminals standard in Part 1917 applies to the loading, unloading, movement or other handling of cargo, ship's stores or gear within the terminal or into or out of any land carrier, holding or consolidation area, and any other activity within and associated with the overall operation and function of the terminal. This includes the use and routine maintenance of facilities and equipment and cargo transfer accomplished with the use of shore-based material handling devices. See § 1917.1(a).)

Section 1910.5 governs how the general industry standards apply to shipyard employment. According to § 1910.5(c), the general standards in Part 1910 apply to shipyard employment to the extent that no industry-specific standard applies to the ''same condition, practice, means, method, operation, or process.'' Part 1915 contains few requirements related to electrical safety. Paragraph (b) of § 1915.93 contains four such requirements, for grounding of vessels, the safety of the vessel's wiring, overcurrent protection, and guarding of infrared heat lamps. Section 1915.92 contains provisions on temporary electric lighting, and § 1915.132 contains requirements on portable electric tools. Section 1915.181 contains electrical safety-related work practices for deenergizing electric circuits and protecting employees against contact with live parts during electrical work. In addition, Part 1915 contains several other miscellaneous electrical safety-related work practices and electrical design requirements. These provisions continue to apply in lieu of any corresponding requirements in Subpart S of Part 1910. Conversely, where there is no specific electrical installation requirement for shipyard employment in Part 1915, Subpart S of Part 1910 applies.

As noted earlier, Subpart S does not cover installations in ships, but it does cover installations used on ships if the installation is shore-based (that is, not part of the vessel's original, internal electrical system). Thus, final § 1910.303(g)(2) (guarding live parts) applies to the shore-based wiring of the shipyard and to any wiring taken onto the ship when it is supplied by shore-based wiring. It does *not* apply to the ship's permanent wiring. The final rule does not change this coverage.

C. Grandfather Clause

The final rule, as does the current standard, exempts older electrical installations from meeting some of the provisions of the Design Safety Standards for Electrical Systems (that is, §§ 1910.302 through 1910.308). The extent to which OSHA's electrical installation standard applies depends on the date the installation was made. Older installations must meet fewer requirements than newer ones. The grandfathering of older installations, contained in paragraph (b) of final § 1910.302, is patterned after the current standard's grandfather provisions in existing § 1910.302(b). Most of the new provisions contained in the final rule only apply prospectively, to installations made after the effective date of the final rule.

The following paragraphs explain final § 1910.302(b) in the following order: Paragraph (b)(1), requirements applicable to all installations; paragraph (b)(4), requirements applicable only to installations made after the effective date of the revised standard; paragraph (b)(3), requirements applicable only to installations made after April 16, 1981; and paragraph (b)(2), requirements applicable only to installations made after March 15, 1972.

Requirements applicable to all installations. Paragraph (b)(1) of final § 1910.302 contains a list of provisions that would apply to all installations, regardless of when they were designed or installed. The few requirements in this short list are so essential to employee safety that even the oldest electrical installations must be modified, if necessary, to meet them. The list is unchanged from the current standard, except for the addition of: a prohibition on using grounding terminals and devices for purposes other than grounding (in final

[6] Although the wiring of recreational vehicles and mobile homes is transportable, it is also designed to be attached to specially designed, permanently installed power distribution outlets. This type of hybrid system must be designed for both permanent and transportable uses.

§ 1910.304(a)(3)); a documentation requirement for hazardous locations made under the zone classification system (in final § 1910.307(b)); and requirements covering the zone classification system (in final § 1910.307(g)).

New provisions applicable to all installations. Paragraph (a)(3) of § 1910.304 prohibits the use of a grounding terminal or grounding-type device on a receptacle, cord connector, or attachment plug for purposes other than grounding. OSHA's reasons for adding this requirement to the list of provisions applicable to all installations is discussed later in this section of the preamble.

Paragraph (b) of final § 1910.307 contains a new requirement that employers document areas designated as hazardous (classified) locations. This requirement would ensure that the employer has records of the extent and classification of each such area. The documentation will help employers to determine what type of equipment is needed in these locations and will inform employees of the need for special care in the maintenance of the electric equipment installed there. OSHA has carefully considered the need to document these areas and has tried to balance that need with the extensive burden that would be placed on employers who would have to survey and document their existing hazardous locations.

The current standard's division classification system has been in place for many years, and most employers and inspection authorities are familiar with the boundaries for Class I, II, and III, Division 1 and 2 locations. An employee servicing equipment in one of these locations can obtain this information relatively easily even if the employer has not documented the boundaries. Accordingly, OSHA believes that the benefit of documenting existing hazardous locations installed using the division classification system would be minimal. Therefore, for employers using the division system, OSHA is requiring documentation of boundaries only for new installations made after the effective date of the final standard. Employers would not need to document existing division-classified systems.

On the other hand, the zone classification system is relatively new. Most employers are not familiar with this system and have little experience determining how to draw the boundaries between the three zones. Relatively few NFPA or industry standards provide specifications for placing those boundaries. Furthermore, the existing OSHA electrical standard recognizes only installations made in accordance with the division classification system, not the zone classification system. Any existing installation made under the zone system is technically out of compliance with OSHA's existing standard. However, because the NEC represents standard industry practice, existing zone system installations will almost certainly have been installed in accordance with an edition of the NEC that recognizes the zone classification system (the 1999 and 2002 editions). These editions of the NEC explicitly require documentation of hazardous locations. Thus, an employer with an existing installation made under the zone classification system should already have the documentation required by final § 1910.307(b). For these reasons, OSHA is applying the documentation requirement to all hazardous location installations made under the zone classification system. This will provide employers, employees, and OSHA with information critical for determining which equipment is suitable in a given hazardous location.

The new requirements pertaining to zone classification in final § 1910.307(g) provide employers with an alternative installation method that the current standard does not permit.[7] Thus, applying these provisions to older installations would give employers greater flexibility without imposing any new costs. Furthermore, to the extent that employers are already using the zone classification system, those employers are likely already meeting final § 1910.307(g), which is based on provisions in the 1999 and 2002 editions of the NEC.

Requirements applicable only to installations made after the effective date of the final rule. Paragraph (b)(4) of final § 1910.302 makes the following provisions applicable only to installations made or overhauled[8] after the effective date of the final rule:

§ 1910.303(f)(4)	Disconnecting means and circuits—Capable of accepting a lock.
§ 1910.303(f)(5)	Disconnecting means and circuits—Marking for series combination ratings.
§ 1910.303(g)(1)(iv) and (g)(1)(vii)	600 Volts, nominal, or less—Space about electric equipment.
§ 1910.303(h)(5)(vi)	Over 600 volts, nominal—Working space and guarding.
§ 1910.304(b)(1)	Branch circuits—Identification of multiwire branch circuits.
§ 1910.304(b)(3)(i)	Branch circuits—Ground-fault circuit interrupter protection for personnel.
§ 1910.304(f)(2)(i)(A), (f)(2)(i)(B) (but not the introductory text to § 1910.304(f)(2)(i)), and (f)(2)(iv)(A).	Overcurrent protection—Feeders and branch circuits for over 600 volts, nominal.
§ 1910.305(c)(3)(ii)	Switches—Connection of switches.
§ 1910.305(c)(5)	Switches—Grounding.
§ 1910.306(a)(1)(ii)	Electric signs and outline lighting—Disconnecting means.
§ 1910.306(c)(4)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Operation.
§ 1910.306(c)(5)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Location.
§ 1910.306(c)(6)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Identification and signs.
§ 1910.306(c)(7)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Single-car and multicar installations.
§ 1910.306(j)(1)(iii)	Swimming pools, fountains, and similar installations—Receptacles.
§ 1910.306(k)	Carnivals, circuses, fairs, and similar events.
§ 1910.308(a)(5)(v) and (a)(5)(vi)(B)	Systems over 600 volts, nominal—Interrupting and isolating devices.
§ 1910.308(a)(7)(vi)	Systems over 600 volts, nominal—Tunnel installations.
§ 1910.308(b)(3)	Emergency power systems—Signs.

[7] See the discussion under the heading ''Zone Classification'' for an explanation of the zone classification system and its differences from the current standard's division classification system.

[8] See the discussion of the term ''overhaul'' later in this section of the preamble.

§ 1910.308(c)(3)	Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits—Separation from conductors of other circuits.
§ 1910.308(f)	Solar photovoltaic systems.

These provisions are based on requirements that have been added to the NEC since the 1978 edition. OSHA has never required employers to comply with these requirements, and the Agency believes that an increase in employee protection will result from compliance with them in new installations. At the same time, employers would incur minimal costs to achieve this increase in new installations. In local jurisdictions requiring compliance with the NEC, there should be no additional costs involved, because the installations would already conform to the new OSHA requirements. The Agency believes that even in other jurisdictions, the vast majority of installations already comply with the latest edition of the NEC, because compliance with the latest Code is standard industry practice. OSHA, however, does not believe that it is reasonably necessary and appropriate to require existing installations to conform to these provisions, particularly given the cost and difficulty associated with retrofitting older installations.

There are many provisions in the final rule that are not contained in the existing standard but cannot be considered totally ''new'' provisions. Most of these ''new'' requirements were actually contained in the 1971 NEC. Table 1 lists these ''new'' provisions and denotes their counterparts in the 1971 NEC. From March 15, 1972, until April 16, 1981, Subpart S incorporated the 1971 NEC by reference in its entirety. Accordingly, OSHA required employers to comply with every requirement in the 1971 NEC for any new installation made between those dates and for any replacement, modification, repair, or rehabilitation made during that period. The current standard, which became effective on April 16, 1981, omitted many of the detailed provisions of the NEC because they were already addressed by the more general requirements that were contained in the OSHA standard. For example, OSHA did not carry forward 1971 NEC Section 110–11, which required equipment to be suitable for the environment if it is installed where the environment could cause deterioration. However, the requirement for equipment to be suitable for the location in which it was installed is implicit in the more general requirements in existing § 1910.303(a) that equipment be approved and in existing § 1910.303(b)(2) that equipment be installed in accordance with any instructions included in its listing or labeling. (Equipment that is not suitable for installation in deteriorating environments, such as wet or damp locations, will include instructions warning against such installation. These instructions are required by the nationally recognized testing laboratory listing or labeling the product.)

Even though OSHA no longer specifically incorporates the 1971 NEC into Subpart S, the Agency believes that employers' installations actually do comply with those requirements. The vast majority of employers are following the entire NEC applicable to their installations, as noted in the Economic Analysis section of this preamble.[9] For these reasons, OSHA is not exempting installations made after March 15, 1972, from meeting any provision listed in Table 1 and is not including any of these provisions in final § 1910.302(b)(4) (the list of provisions that apply only to new installations).

TABLE 1.—''NEW'' PROVISIONS THAT WERE CONTAINED IN 1971 NEC[10]

Provision in the final standard	Equivalent 1971 NEC section	Subject
§ 1910.303(b)(3)	110–20	Insulation integrity.
(b)(4)	110–9	Interrupting rating.
(b)(5)	10–10	Circuit impedance and other characteristics.
(b)(6)	110–11	Deteriorating agents.
(b)(7)	110–12	Mechanical execution of work.
(b)(8)	110–4(a) and (d) 110–12 110–13	Mounting and cooling of equipment.
(c)(1)	110–14	Electrical connections, general.
§ 1910.304(b)(2)	210–21(b)	Branch circuits, receptacles and cord connectors.
(b)(4)	210–21	Branch circuits, outlet devices.
(b)(5)	210–22	Branch circuits, cord connections.
(e)(1)(iii)	230–70(c)	Services, disconnecting means.
(f)(1)(ix)	110–9 240–11	Overcurrent protection, 600 volts, nominal, or less, circuit breaker ratings.
(f)(2), except for (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(iv)(A).	240–5 240–11 240–15	Overcurrent protection, feeders and branch circuits over 600 volts, nominal.
§ 190.305(a)(4)(ii)	320–5	Open wiring on insulators, support.
(b)(1)(iii)	370–7 373–5	Conductors entering cabinets, boxes, and fittings, securing conductors.
(b)(2)(ii)	370–15(b)	Fixture canopy or pan installed in a combustible wall or ceiling.
(e)(1)	373–2 384–5	Airspace for enclosures installed in wet or damp locations.
(h)(3)	710–6	Portable cables, grounding conductors.

[9] All of the requirements in question appear in some form in every edition of the NEC since 1972.

[10] These provisions have no direct counterpart in existing Subpart S, but were in the 1971 National Electrical Code.

TABLE 1.—"NEW" PROVISIONS THAT WERE CONTAINED IN 1971 NEC [10]—Continued

Provision in the final standard	Equivalent 1971 NEC section	Subject
(j)(2)(i)	410–52(d)	Receptacles, cord connectors, and attachment plugs; no exposed energized parts.
(j)(2)(iv) through (j)(2)(vii)	410–54	Receptacles installed in wet or damp locations.
(j)(3)(ii)	422–20	Appliances, disconnecting means.
(j)(3)(iii)	422–30(a)	Appliances, nameplates.
(j)(3)(iv)	422–30(b)	Appliances, marking to be visible after installation.
(j)(6)(ii)(A)	110–9 110–10 460–8(c)(4)	Capacitor switches.
(j)(6)(ii)(B)	460–8(c)(1)	Capacitor disconnecting means.
§ 1910.306(c)(3)	620–51(a)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts; type of disconnecting means.
(c)(10)	620–72	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts; motor controllers.
(d)(1)	630–13 630–23	Arc welders, disconnecting means.
(g)(1)(iii)	665–34	Induction and dielectric heating equipment, detachable panels used for access to live parts.
(g)(1)(vi)	665–8	Induction and dielectric heating equipment, ampere rating of disconnecting means.
(j)(4)(iii)	680–20(a)(4)	Swimming pools, fountains, and similar installations, underwater fixtures facing upwards.
§ 1910.308(a)(2)	710–4	Systems over 600 volts, nominal; open installations of braid-covered insulated conductors.
(a)(3)(i)	710–6	Systems over 600 volts, nominal; insulation shielding terminations.
(a)(4)	710–8	Systems over 600 volts, nominal; moisture or mechanical protection for metal-sheathed cables.
(a)(5)(i)	710–21(a)	Systems over 600 volts, nominal; interrupting and isolating devices; guarding and indicating.
(a)(5)(ii)	240–11(a) 710–21(b)	Systems over 600 volts, nominal; interrupting and isolating devices; fuses.
(a)(5)(iii) and (a)(5)(iv)	710–21(b)	Systems over 600 volts, nominal; interrupting and isolating devices; fused cutouts.
(a)(5)(vi), but not (a)(5)(vi)(B)	710–21(c)	Systems over 600 volts, nominal; interrupting and isolating devices; load interrupter switches.
(a)(5)(vii)	710–22	Systems over 600 volts, nominal; interrupting and isolating devices; means for isolating equipment.
(b)(2)	700–14	Emergency systems, emergency illumination.

In addition, OSHA is not including in the list of new provisions in final § 1910.302(b)(4) any provision that merely provides an alternative means of compliance for an existing requirement. For example, as noted earlier, final § 1910.307(g) provides alternative requirements for installations in hazardous (classified) locations based on the zone classification system rather than the division classification system that is required under the existing standard. Such requirements accept alternative installation techniques recognized as being equally protective by the NEC and NFPA 70E, and there is no need to limit them to new installations.

OSHA also believes that there is no need to grandfather requirements that apply only to temporarily installed equipment and wiring.[11] The few new requirements applying to temporarily installed equipment and wiring have been in the NEC since at least 1999 and, in most cases, since before that. Employers should already be in compliance with such requirements since any existing temporary installations almost certainly were put into place well after 1999.[12] For example, final § 1910.304(b)(3)(ii) contains requirements for providing ground-fault circuit interrupter protection for temporary wiring installations that are used during maintenance, remodeling, or repair of buildings, structures, or equipment or during similar activities. Temporary wiring installations used for any of these purposes were likely to have been installed well after 1999. An employer who is complying with the 1999 or later edition of the NEC will already be complying with this provision of the rule. Even employers who are not complying with recent versions of the NEC for temporary wiring installations will face, in this example, only the minimal cost of providing ground-fault circuit interrupters; no changes would need to be made to any existing permanent wiring, which might involve considerably more costs.

Requirements applicable only to installations made after April 16, 1981. Paragraph (b)(3) of final § 1910.302 lists requirements that apply only to installations made after April 16, 1981.

[11] For the purposes of this discussion, "temporarily installed equipment or wiring" is wiring and equipment installed on a short-term rather than a long-term or permanent basis. It includes temporary wiring covered by proposed § 1910.305(a)(2) and other equipment and wiring similarly installed on a short-term basis.

[12] The limit for temporary wiring used for Christmas decorative lighting, carnivals, and similar purposes is 90 days (§ 1910.305(a)(2)(i)(B)). For other purposes, such as remodeling and repair, the limit is the duration of the activity. However, OSHA believes that it is highly unlikely that any particular temporary activity covered by Subpart S has been on-going since 1999.

This paragraph carries forward essentially the same list as is currently in § 1910.302(b)(3). No provisions have been added to or removed from the list.

Requirements applicable only to installations made after March 15, 1972. Paragraph (b)(2) of existing § 1910.302 requires all installations made after March 15, 1972, and every major replacement, modification, repair, or rehabilitation made after that date to meet all the installation requirements in Subpart S except for those listed in existing § 1910.302(b)(3). A note following existing § 1910.302(b)(2) indicates that ''[m]ajor replacements, modifications, repairs, or rehabilitations' include work similar to that involved when a new building or facility is built, a new wing is added, or an entire floor is renovated.''

Paragraph (b)(2) of final § 1910.302 will require all installations built or overhauled after March 15, 1972, to comply with all of the requirements of final §§ 1910.302 through 1910.308, except as provided in final § 1910.302(b)(3) and (b)(4). As discussed earlier, these latter two paragraphs limit the application of newer provisions of Subpart S to installations made during later periods.

In § 1910.302(b)(2) in the final rule, OSHA is introducing the term ''overhaul'' to include the types of activities that would trigger compliance with the otherwise grandfathered provisions of Subpart S for older installations. In § 1910.399 of the final rule, ''overhaul'' is defined as follows:

> *Overhaul* means to perform a major replacement, modification, repair, or rehabilitation similar to that involved when a new building or facility is built, a new wing is added, or an entire floor is renovated.

This new term incorporates all the elements of ''major replacement, modification, or rehabilitation'' in the text of existing § 1910.302(b)(2) and in the note following that provision. OSHA believes that using and defining the term ''overhaul'' in the final rule will simplify the standard without making any substantive change to the way in which Subpart S applies to older installations.

Comments on the grandfather clause. OSHA received several comments on the grandfather clause proposed in § 1910.302(b) (Exs. 3–7, 4–25). One commenter was concerned about the level of cross-referring an employer would need to do to determine what standards are applicable to a given installation (Ex. 3–7). He recommended that a simpler approach be adopted or that OSHA develop guidance materials to help employers determine which requirements apply to installations made during each of the periods addressed by the grandfather clause. Neither commenter proposed language that might accomplish this.

While OSHA acknowledges that some commenters believe that this clause is too complex, the Agency believes that the approach taken in the final standard is as simple as the Agency can make it. However, OSHA will provide compliance assistance tools that will help employers understand which requirements are applicable to their particular electrical installations. For example, the Agency is considering providing on the OSHA Website a color-coded version depicting requirements with different applicability dates with different colors or a version that lets the reader input the date of the installation and that hides inapplicable provisions. Such tools should enable employers to determine their compliance obligations quickly and easily. In addition, for questions about compliance with the standard, employers can contact OSHA through its toll-free telephone help line at 1–800–321–6742. Alternatively, employers can contact the OSHA Area Office or State Plan office nearest them.

Paragraph (b)(4) of final § 1910.302 lists § 1910.304(b)(3)(i) (proposed § 1910.304(b)(4)(i)), which requires ground-fault circuit interrupter protection for certain permanently installed receptacle outlets, as a provision that only applies to new installations. One commenter recommended that all of proposed § 1910.304(b)(4), which as noted previously contains requirements for ground-fault circuit interrupters on temporary receptacle outlets, apply only to new installations (Ex. 3–7). The commenter noted that this provision is new and should only be applied to new installations.

As noted earlier, OSHA believes that most employers are already complying with this provision. The National Electrical Code has required ground-fault circuit interrupters in a manner similar to that in the final rule since the 1996 edition of the NEC. In addition, the final rule sets an effective date 180 days after publication of the final rule in the **Federal Register**. OSHA believes that very few temporary installations that were in place before publication of the final rule will still be in place 6 months later. There may be some projects using temporary wiring that last more than 6 months, particularly in shipyards. However, even there, OSHA believes that temporary receptacle outlets will be moved around, installed, uninstalled, and reinstalled many times over the life of the project. Even if the Agency were to apply final § 1910.304(b)(3)(ii) only to installations made after the effective date, it would apply as soon as a receptacle outlet was installed (or reinstalled). OSHA does not believe that there is a compelling reason to exempt the very few remaining temporary receptacle outlets that may still be in place after the effective date. Therefore, OSHA has not adopted the commenter's recommendation.

Mr. Pat Kimmet of CHS Inc. and Mr. Rick Leicht of NCRA were concerned that provisions listed in proposed § 1910.302(b)(1), which were to apply to all installations regardless of age, would require employers to examine existing installations for compliance and possibly replace noncompliant equipment even when no significant hazard exists (Ex. 4–25). They specifically objected to the inclusion of wire bending space (proposed § 1910.303(b)(1)(iii)) on the list. They argued that this provision is a relatively recent addition to the NEC and that the NEC has revised the wire bending space requirements periodically. They believed that the proposal would have required employers to meet the wire bending space requirements in the 2000 edition of the NFPA 70E and the 2002 edition of the NEC.

OSHA believes that an installation that does not comply with the provisions listed in final § 1910.302(b)(1) poses a significant hazard to employees. Furthermore, as noted earlier, almost all of the provisions listed in that paragraph applied to all installations regardless of age since March 15, 1972. Thus, employers should already be in compliance with nearly all of the listed provisions.

The new provisions related to the zone classification system (including the documentation requirement) provide for an alternative compliance method to that required by the existing standard. The other new provision, the prohibition on using grounding terminals and devices for purposes other than grounding, as noted earlier, has been a long-standing NEC requirement. Thus, OSHA does not believe that very many existing installations are in violation of this new provision. Consequently, Mr. Kimmet's and Mr. Leicht's general concerns about widespread noncompliance are unfounded.

With respect to their specific concern with the inclusion of proposed § 1910.303(b)(1)(iii) in the list of provisions applicable to all installations, OSHA notes that wire bending space, as mentioned in this provision, is simply one of several

factors to be considered in judging electrical equipment for safety. Paragraph (b)(1) of final § 1910.303 reads, in part, as follows:

(b) *Examination, installation, and use of equipment.* (1) *Examination.* Electric equipment shall be free from recognized hazards that are likely to cause death or serious physical harm to employees. Safety of equipment shall be determined using the following considerations:

* * * * *

(iii) Wire-bending and connection space;

* * * * *

(viii) Other factors that contribute to the practical safeguarding of persons using or likely to come in contact with the equipment.

Paragraph (b)(1)(iii) of final § 1910.303 does not require compliance with the minimum wire bending space requirements in the NEC. Rather, wire bending space will be one of the relevant factors in judging the electrical safety of equipment in accordance with the introductory text of final § 1910.303(b)(1). OSHA does not consider this a new requirement. The current standard contains the catchall ''other factors'' language in existing § 1910.303(b)(1)(vii). The Agency construes wire bending space to be one of those ''other factors'' judged under the existing standard. Thus, OSHA is simply making explicit in the final rule a factor employers were required to consider under § 1910.303(b)(1)(vii) of the existing standard. If conductors are installed so tightly into enclosures that they overheat or that the insulation is damaged, a serious safety hazard would exist. Such an installation would violate the existing standard as well as the new one. For these reasons, OSHA has not adopted Mr. Kimmet's and Mr. Leicht's recommendation to remove § 1910.303(b)(1)(iii) from the list of provisions in final § 1910.302(b)(1) that apply to all installations.

Several commenters suggested that proposed § 1910.304(a)(3) be added to the list of requirements in § 1910.302(b)(1) applicable to all installations (Exs. 4–13, 4–17, 4–18, 4–21). Proposed § 1910.304(a)(3) read as follows:

A grounding terminal or grounding-type device on a receptacle, cord connector, or attachment plug may not be used for purposes other than grounding.

Mr. Bernie Ruffenach typified these commenters, reasoning as follows:

The use of the grounding terminal(s) of any device has never been permitted in any electrical standards, codes or other recognized practices at any time. Typically, the use of the grounding terminal for other than grounding purposes is due to improper wiring and occurs when an ungrounded (hot) conductor is applied. The result is an imminent danger electrocution hazard. [Ex. 4–17]

OSHA agrees that using a grounding terminal or device for purposes other than grounding can present a hazard threatening imminent death or serious injury. For example, using a grounding terminal as the attachment point for a circuit conductor can energize the frame of equipment used by employees. If an employee was to touch such miswired equipment and a grounded surface at the same time, he or she would receive an electric shock and possibly die of electrocution. As the commenters noted, compliance with this provision has been a long-standing common industry practice. Therefore, OSHA has adopted the suggestion of these commenters and has added § 1910.304(a)(3) to the list of provisions in final § 1910.302(b)(1) that are applicable to all installations.

D. Applicability of Requirements for Disconnecting Means

Several provisions in the final standard require electrical disconnecting means to be capable of being locked in the open position under certain conditions. For example, final § 1910.306(a)(2)(i) requires the disconnecting means for sign and outline lighting systems to be capable of being locked in the open position if they are out of the line of sight from any section that may be energized. These provisions ensure that employees servicing or maintaining the electric circuits supplied by the disconnecting means are protected against electric shock.

Sometimes, these disconnecting means also serve as energy isolating devices as defined in paragraph (b) of § 1910.147, OSHA's existing standard for the control of hazardous energy sources (lockout-tagout). Energy isolating devices physically prevent the transmission or release of energy. In the case of electric equipment, disconnecting means that meet the definition of energy isolating devices prevent the transmission of electric energy so that the equipment cannot start up and injure employees.

Paragraph (c)(2)(iii) of the lockout-tagout standard reads as follows:

After January 2, 1990, whenever replacement or major repair, renovation or modification of a machine or equipment is performed, and whenever new machines or equipment are installed, energy isolating devices for such machine or equipment shall be designed to accept a lockout device.

Paragraph (c) of final § 1910.302 clarifies that the provision in the lockout-tagout standard is in addition to any requirements in Subpart S for disconnecting means to be capable of being locked open. The requirements in Subpart S are intended for the protection of servicing and maintenance employees from electric shock, which is not covered by § 1910.147. The lockout-tagout standard on the other hand addresses nonelectric-shock hazards related to servicing and maintaining equipment. Thus, the requirements of both standards are necessary to protect employees from all servicing- and maintenance-related hazards.

OSHA received no comments on this provision in the proposal, and it is being carried into the final rule without change.

E. Summary of Changes in §§ 1910.303 Through 1910.308

The Distribution Table for Subpart S lists all the provisions and sections from §§ 1910.303 through 1910.308. This table summarizes changes being made to the standard that involve grammatical edits, additions, removals, and paragraph numbers. There are places in the standard where no substantial change is made. Most of the changes are editorial in nature. Substantive changes made to the existing standard are discussed in further detail following the Distribution Table.

DISTRIBUTION TABLE

OLD—section	NEW—section	Description of changes and rationale
See the note at the end of the table.		
§ 1910.303 General	§ 1910.303 General.	
1910.303(a)	1910.303(a)	No substantive change. A reference to the § 1910.399 definition of ''approved'' is added for clarification.
1910.303(b)(1), introductory text	1910.303(b)(1), introductory text	No substantive change.
1910.303(b)(1)(i)	1910.303(b)(1)(i)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.303(b)(1)(ii)	1910.303(b)(1)(ii)	No substantive change.
	1910.303(b)(1)(iii)	**Adds wire-bending and connection space to the explicit list of things to consider when judging equipment.
1910.303(b)(1)(iii)	1910.303(b)(1)(iv)	No substantive change.
1910.303(b)(1)(iv)	1910.303(b)(1)(v)	No substantive change.
1910.303(b)(1)(v)	1910.303(b)(1)(vi)	No substantive change.
1910.303(b)(1)(vi)	1910.303(b)(1)(vii)	No substantive change.
1910.303(b)(1)(vii)	1910.303(b)(1)(viii)	No substantive change.
1910.303(b)(2)	1910.303(b)(2)	No substantive change.
	1910.303(b)(3)	**Adds a requirement for completed wiring to be free from short circuits and grounds other than those required in the standard.
	1910.303(b)(4)	**Adds requirements for equipment intended to interrupt current to have adequate interrupting ratings.
	1910.303(b)(5)	**Adds requirements for the coordination of overcurrent protection for circuits and equipment.
	1910.303(b)(6)	**Adds a requirement for conductors and equipment to be identified for the purpose when installed in an environment containing deteriorating agents.
	1910.303(b)(7)	**Adds requirements for installing electric equipment in a neat and workmanlike manner.
	1910.303(b)(8)	**Adds requirements for equipment to be mounted securely and to allow for proper cooling.
	1910.303(c)(1)	**Adds requirements to ensure that electrical connections are secure and electrically safe.
	1910.303(c)(2)	**Adds requirements for connections at terminals and for the identification of terminals intended for connection to more than one conductor or to aluminum.
1910.303(c)	1910.303(c)(3)(i)	No substantive change.
	1910.303(c)(3)(ii)	**Adds a requirement that wire connectors or splicing means installed on directly buried conductors be listed for such use.
1910.303(d)	1910.303(d)	No substantive change.
1910.303(e)	1910.303(e)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.303(f)	1910.303(f)(1), (f)(2), and (f)(3)	No substantive change. (Individual requirements are placed in separate paragraphs).
	1910.303(f)(4)	Adds a requirement for disconnecting means required by Subpart S to be capable of accepting a lock. This provision is added to make the Subpart S requirements on disconnecting means consistent with § 1910.147(c)(2)(iii), which requires energy isolating devices (a generic term, which includes electrical disconnecting means) to be designed to accept a lockout device.
	1910.303(f)(5)	**Adds marking requirements for series combination ratings of circuit breakers or fuses.
1910.303(g)(1), introductory text	1910.303(g)(1), introductory text	No substantive change.
1910.303(g)(1)(i)	1910.303(g)(1)(i) Table S–1, Note 3.	**The final rule revises the language to clarify how wide and high the clear space must be. (See detailed explanation later in the preamble).
1910.303(g)(1)(ii)	1910.303(g)(1)(ii)	No substantive change.
1910.303(g)(1)(iii)	1910.303(g)(1)(iii)	No substantive change.
	1910.303(g)(1)(iv)	**Adds a requirement for a second entrance on equipment rated 1200 amperes under certain conditions.
1910.303(g)(1)(iv)	1910.303(g)(1)(i)(B)	**Reduces the minimum width of the clear space to 762 mm.
1910.303(g)(1)(v)	1910.303(g)(1)(v)	**Adds a prohibition against controlling illumination for working spaces by automatic means only.
1910.303(g)(1)(vi)	1910.303(g)(1)(vi)	**Increased the minimum height of the working space from 1.91m to 1.98m for new installations.
	1910.303(g)(1)(vii)	** Adds requirements for switchboards, panelboards, and distribution boards installed for the control of light and power circuits, and motor control centers to be installed in dedicated space and to be protected against damage.
1910.303(g)(2)	1910.303(g)(2)	No substantive change.
1910.303(h)(1)	1910.303(h)(1)	No substantive change.
1910.303(h)(2), introductory text	1910.303(h)(2)(i) and (h)(2)(ii)	**The minimum height of fences restricting access to electrical installations over 600 V is reduced from 2.44 m to 2.13 m.
1910.303(h)(2)(i) and (h)(2)(ii)	1910.303(h)(2)(iii), (h)(2)(iv), (h)(2)(v), and (h)(5)(iii).	**1. The final rule organizes these requirements based on whether the installations are indoors or outdoors. (The existing standard organizes them based on whether or not the installations are accessible to unqualified employees). 2. Adds requirements intended to prevent tampering by the general public. 3. Removes requirement to lock underground box covers weighing more than 45.4 kg.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.303(h)(3), introductory text	1910.303(h)(3)	No substantive change.
1910.303(h)(3)(i)	1910.303(h)(5)(i) Table S–2, Note 3.	**The distances in Table S–2 for the depth of working space in front of electric equipment are increased for new installations to match the distances in NFPA 70E–2000.
1910.303(h)(3)(ii)	1910.303(h)(5)(iv)	No substantive change.
1910.303(h)(3)(iii)	1910.303(h)(5)(v)	**The distances in Table S–3 for the elevations of unguarded live parts are increased for new installations to match the distances in NFPA 70E–2000.
1910.303(h)(4)(i)	1910.303(h)(4)(i)	**The existing standard requires a second entrance to give access to the working space about switchboards and control panels over 600 V if the equipment exceeds 1.22 m in width if it is practical to install a second entrance. The final rule requires an entrance on each end of switchboards and panelboards exceeding 1.83 m unless the working space permits a continuous and unobstructed way of travel or the working space is doubled. In addition, the final rule requires the lone entrance permitted under either of these exceptions to be at least the distance specified in Table S–2 from exposed live parts.
1910.303(h)(4)(ii)	1910.303(h)(4)(ii)	No substantive change.
	1910.303(h)(5)(ii)	**Adds requirements for equipment operating at 600 V or less installed in rooms or enclosures containing exposed live parts or exposed wiring operating at more than 600 V.
	1910.303(h)(5)(vi)	**Adds requirements limiting the installation of pipes or ducts that are foreign to electrical installation operating at more than 600 V.
§ 1910.304 Wiring design and protection.	§ 1910.304 Wiring design and protection.	
1910.304(a)(1)	1910.304(a)(1)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.304(a)(2)	1910.304(a)(2)	No substantive change.
1910.304(a)(3)	1910.304(a)(3)	No substantive change.
	1910.304(b)(1)	**Adds requirements for the identification of multiwire branch circuits.
	1910.304(b)(2)(i)	**Adds requirements that receptacles installed on 15- and 20-ampere circuits be of the grounding type and that grounding-type receptacles be installed in circuits within their rating.
	1910.304(b)(2)(ii)	**Adds a requirement for grounding contacts on receptacles to be effectively grounded.
	1910.304(b)(2)(iii)	**Adds requirements on the methods used to ground receptacles and cord connectors.
	1910.304(b)(2)(iv)	**Adds requirements on the replacement of receptacles.
	1910.304(b)(2)(v)	**Adds a requirement that receptacles installed on branch circuits having different voltages, frequencies, or types of current be non-interchangeable.
	1910.304(b)(3)	**Adds requirements for ground fault circuit interrupter protection. (See the discussion of these requirements later in this section of the preamble).
1910.304(b)(2)	1910.304(b)(4), introductory text	No significant change.
	1910.304(b)(4)(i)	**Adds requirements for ratings of lampholders.
	1910.304(b)(4)(ii)	**Adds requirements for ratings of receptacles.
	1910.304(b)(5)	**Adds requirements for receptacles to be installed wherever cords with attachment plugs are used.
1910.304(c), introductory text	1910.304(c), introductory text	No significant change. (The requirements in existing paragraph (c)(5) are placed in a separate paragraph (d)).
1910.304(c)(1)	1910.304(c)(1)	**Adds a requirement for the separation of conductors on poles.
1910.304(c)(2)	1910.304(c)(2)	Increases the minimum clearances for new installations of open conductors and service drops to match those in NFPA 70E–2000.
1910.304(c)(3)	1910.304(c)(3)(i)	No substantive change. (The final rule clarifies that paragraph (c)(2) applies to platforms, projections, or surfaces from which runs of open conductors can be reached).
	1910.304(c)(3)(ii)	**Adds restrictions for installing overhead service conductors near building openings through which materials may be moved.
1910.304(c)(4)	1910.304(c)(4)	**Adds an exception to the minimum clearance requirement for conductors attached to the side of a building. (The final rule also clarifies that paragraph (c)(2) applies to roof surfaces that are subject to pedestrian or vehicular traffic).
1910.304(c)(5)	1910.304(d)	No substantive change.
1910.304(d)(1)(i)	1910.304(e)(1)(i)	No substantive change.
1910.304(d)(1)(ii)	1910.304(e)(1)(ii)	No substantive change.
	1910.304(e)(1)(iii)	**Adds a requirement for service disconnecting means to be suitable for the prevailing conditions.
1910.304(d)(2)	1910.304(e)(2)	No substantive change.
1910.304(e)(1), introductory text	1910.304(f)(1), introductory text	No substantive change.
1910.304(e)(1)(i)	1910.304(f)(1)(i)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.304(e)(1)(ii)	1910.304(f)(1)(ii)	No substantive change.
1910.304(e)(1)(iii)	1910.304(f)(1)(iii)	**The types of circuits that are allowed to have a single switch disconnect for multiple fuses are now specified in the standard.
1910.304(e)(1)(iv)	1910.304(f)(1)(iv)	No substantive change.
1910.304(e)(1)(v)	1910.304(f)(1)(v)	**Adds a requirement to clarify that handles of circuit breakers and similar moving parts also need to be guarded so that they do not injure employees.
1910.304(e)(1)(vi)(A)	1910.304(f)(1)(vi)	No substantive change.
1910.304(e)(1)(vi)(B)	1910.304(f)(1)(vii)	No substantive change.
1910.304(e)(1)(vi)(C)	1910.304(f)(1)(viii)	**Adds circuit breakers used on 277-volt fluorescent lighting circuits to the types of breakers required to be marked ''SWD.''
	1910.304(f)(1)(ix)	**Adds a requirement to clarify ratings of circuit breakers.
1910.304(e)(2)	1910.304(f)(2)	**Adds specific requirements on how to protect feeders and branch circuits energized at more than 600 volts.
1910.304(f), introductory text	1910.304(g), introductory text	No substantive change.
1910.304(f)(1), introductory text	1910.304(g)(1), introductory text	No substantive change.
1910.304(f)(1)(i)	1910.304(g)(1)(i)	No substantive change.
1910.304(f)(1)(ii)	1910.304(g)(1)(ii)	No substantive change.
1910.304(f)(1)(iii)	1910.304(g)(1)(iii)	No substantive change.
1910.304(f)(1)(iv)	1910.304(g)(1)(iv)	No substantive change. (The specific voltage ratings in existing paragraphs (g)(1)(iv)(B) and (g)(1)(iv)(C) are being removed. However, this is not a substantive change as those are the voltages used in the described systems).
1910.304(f)(1)(v)	1910.304(g)(1)(v)	**Adds an exception to the requirement to ground systems for high-impedance grounded systems of 480 V to 1000 V under certain conditions.
1910.304(f)(2)	1910.304(g)(2)	**No substantive change. (The standard adds descriptions of which conductor is to be grounded for the different systems).
	1910.304(g)(3)	**Changes requirements for grounding portable and vehicle mounted generators so that the requirements are equivalent to those in OSHA's Construction Standards (§ 1926.404(f)(3)). The sentence in the construction standard reading: ''No other [nonneutral] conductor need be bonded to the generator frame'' has been dropped from the general industry version. This sentence is not regulatory in nature, and its omission has no effect on the requirement.
1910.304(f)(3)	1910.304(g)(4)	**No longer allows employers to use a cold water pipe as a source of ground for installations made or modified after the effective date.
1910.304(f)(4)	1910.304(g)(5)	**Adds a requirement that the path to ground be effective.
1910.304(f)(5)(i)	1910.304(g)(6)(i)	No substantive change.
1910.304(f)(5)(ii)	1910.304(g)(6)(ii)	No substantive change.
1910.304(f)(5)(iii)	1910.304(g)(6)(iii)	No substantive change.
1910.304(f)(5)(iv)	1910.304(g)(6)(iv) and (g)(6)(v)	**The exceptions for grounding fixed equipment operating at more than 150 V are extended to all fixed electric equipment regardless of voltage. Also, the final rule includes a new exception for double-insulated equipment.
1910.304(f)(5)(v)	1910.304(g)(6)(vi) and (g)(6)(vii)	**Adds the following equipment to the list of cord- and plug-connected equipment required to be grounded: stationary and fixed motor-operated tools and light industrial motor-operated tools.
1910.304(f)(5)(vi)	1910.304(g)(7)	**Adds frames and tracks of electrically operated hoists to the list of nonelectrical equipment required to be grounded.
1910.304(f)(6)	1910.304(g)(8)	No substantive change.
1910.304(f)(7)(i)	1910.304(g)(9), introductory text	No substantive change.
1910.304(f)(7)(ii)	1910.304(g)(9)(i)	No substantive change.
1910.304(f)(7)(iii)	1910.304(g)(9)(ii)	No substantive change.
§ 1910.305 Wiring methods, components, and equipment for general use.	§ 1910.305 Wiring methods, components, and equipment for general use.	
1910.305(a), introductory text	1910.305(a), introductory text	No substantive change.
1910.305(a)(1)(i)	1910.305(a)(1)(i)	**Adds a requirement that equipment be bonded so as to provide adequate fault-current-carrying capability. Also, clarifies that non-conductive coatings need to be removed unless the fittings make this unnecessary.
	1910.305(a)(1)(ii)	**Adds an exception to the bonding requirement for the reduction of electrical noise.
1910.305(a)(1)(ii)	1910.305(a)(1)(iii)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.305(a)(2), introductory text	1910.305(a)(2), introductory text	No substantive change. Removes the provision allowing temporary wiring to be of a class less than permanent wiring per the 2002 NEC. The change has no substantive effect because: (1) The term ''a class less than'' is not defined, and (2) temporary wiring is required to meet the same requirements regardless of the deleted language. (Both the final rule and the existing standard contain the following requirement: ''Except as specifically modified in this paragraph, all other requirements of this subpart for permanent wiring shall apply to temporary wiring installations.'').
1910.305(a)(2)(i), introductory text	1910.305(a)(2)(i), introductory text	No substantive change.
1910.305(a)(2)(i)(A)	1910.305(a)(2)(i)(A)	Removes demolition from the list of activities for which temporary wiring is permitted. Demolition is a form of construction work, which is not covered by the Subpart S installation requirements.
1910.305(a)(2)(i)(B)	1910.305(a)(2)(i)(C)	**Adds emergencies to the list of activities for which temporary wiring is permitted.
1910.305(a)(2)(i)(C)	1910.305(a)(2)(i)(B)	No substantive change.
	1910.305(a)(2)(ii)	**Clarifies that temporary wiring must be removed when the project or purpose for which it was used has been completed.
1910.305(a)(2)(ii)	1910.305(a)(2)(iii)	**Adds ''construction-like activities'' to the list of permitted uses for temporary electrical installations over 600 volts.
1910.305(a)(2)(iii)(A)	1910.305(a)(2)(iv)	**Feeders may now only be run as single insulated conductors when accessible to qualified employees only and used for experiments, development work, or emergencies. (Individual requirements are placed in separate paragraphs).
1910.305(a)(2)(iii)(B)	1910.305(a)(2)(v)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.305(a)(2)(iii)(C)	1910.305(a)(2)(vi)	No substantive change.
1910.305(a)(2)(iii)(D)	1910.305(a)(2)(vii)	No substantive change.
1910.305(a)(2)(iii)(E)	1910.305(a)(2)(viii)	**Adds a requirement that disconnecting means for a multiwire circuit simultaneously disconnect all ungrounded conductors of the circuit.
1910.305(a)(2)(iii)(F)	1910.305(a)(2)(ix)	**This provision no longer allows installing fixtures or lampholders more than 2.1 meters above the working surface as a means of guarding. Also, the final rule adds a requirement for grounding metal-case sockets.
1910.305(a)(2)(iii)(G)	1910.305(a)(2)(x)	No substantive change.
	1910.305(a)(2)(xi)	**Adds requirements for cable assemblies and flexible cords and cables to be adequately supported.
1910.305(a)(3)(i)(a)	1910.305(a)(3)(i)	No substantive change. (Some raceway and cable types that were included in generic terms have been explicitly added to the list of wiring methods acceptable in cable trays).
1910.305(a)(3)(i)(b)	1910.305(a)(3)(ii)	**Adds several types of cables and single insulated conductors to the list of types permitted in industrial establishments.
	1910.305(a)(3)(iii)	**Adds a requirement limiting the use of metallic cable trays as an equipment grounding conductor.
1910.305(a)(3)(i)(c)	1910.305(a)(3)(iv)	No substantive change.
1910.305(a)(3)(ii)	1910.305(a)(3)(v)	No substantive change.
1910.305(a)(4)(i)	1910.305(a)(4)(i)	No substantive change.
1910.305(a)(4)(ii)	1910.305(a)(4)(ii)	**Adds specific support requirements and limits the application of these requirements to conductors smaller than No. 8.
1910.305(a)(4)(iii)	1910.305(a)(4)(iii)	No substantive change.
1910.305(a)(4)(iv)	1910.305(a)(4)(iv)	No substantive change.
1910.305(a)(4)(v)	1910.305(a)(4)(v)	No substantive change.
1910.305(b)(1)	1910.305(b)(1)(i) and (b)(1)(ii)	No substantive change. (Individual requirements are placed in separate paragraphs).
	1910.305(b)(1)(iii)	**Adds requirements for supporting cables entering cabinets, cutout boxes, and meter sockets.
1910.305(b)(2)	1910.305(b)(2)(i)	No substantive change.
	1910.305(b)(2)(ii)	**Adds a requirement for any exposed edge of a combustible ceiling finish at a fixture canopy or pan to be covered with noncombustible material.
1910.305(b)(3)	1910.305(b)(3)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.305(c)(1)	1910.305(c)(1), (c)(2), and (c)(3)(i)	No substantive change. (Individual requirements are placed in separate paragraphs).
	1910.305(c)(3)(ii)	**Adds a requirement for load terminals on switches to be deenergized when the switches are open except under limited circumstances.
	1910.305(c)(4)	**Adds a specific requirement for flush-mounted switches to have faceplates that completely cover the opening and that seat against the finished surface.
1910.305(c)(2)	1910.305(c)(5)	**Adds a requirement to ground faceplates for snap switches.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.305(d)	1910.305(d)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.305(e)(1)	1910.305(e)(1)	**Adds a requirement for metallic cabinets, cutout boxes, fittings, boxes, and panelboard enclosures installed in damp or wet locations to have an air space between the enclosure and the mounting surface.
1910.305(e)(2)	1910.305)(e)(2)	No substantive change.
1910.305(f)	1910.305(f)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.305(g)(1)(i)	1910.305(g)(1)(i) and (g)(1)(ii)	**Adds the following to the types of connections permitted for flexible cords and cables: Portable and mobile signs and connection of moving parts. The final rule also clarifies that flexible cords and cables may be used for temporary wiring as permitted in final § 1910.305(a)(2).
1910.305(g)(1)(ii)	1910.305(g)(1)(iii)	No substantive change.
1910.305(g)(1)(iii)	1910.305(g)(1)(iv)	No substantive change. (Clarifies that flexible cords and cables may not be installed inside raceways).
1910.305(g)(1)(iv)	1910.305(g)(1)(v)	**Permits additional cord types to be used in show windows and show cases.
1910.305(g)(2)(i)	1910.305(g)(2)(i)	**Adds new types of cords to the list of those that must be marked with their type designation.
1910.305(g)(2)(ii)	1910.305(g)(2)(ii)	**Changes the minimum size of hard service and junior hard service cords that may be spliced from No. 12 to 14.
1910.305(g)(2)(iii)	1910.305(g)(2)(iii)	No substantive change.
1910.305(h)	1910.305(h), introductory text, (h)(1), (h)(2), (h)(3), (h)(6), (h)(7), and (h)(8).	**Permits the minimum size of the insulated ground-check conductor of Type G–GC cables to be No. 10 rather than No. 8. (Individual requirements are placed in separate paragraphs).
	1910.305(h)(4)	**Adds a requirement for shields to be grounded.
	1910.305(h)(5)	**Adds minimum bending radii requirements for portable cables.
1910.305(i)(1)	1910.305(i)(1)	No substantive change.
1910.305(i)(2)	1910.305(i)(2)	No substantive change.
1910.305(i)(3)	1910.305(i)(3)	**Also permits fixture wire to be used in fire alarm circuits.
1910.305(j)(1)(i)	1910.305(j)(1)(i)	No substantive change.
1910.305(j)(1)(ii)	1910.305(j)(1)(ii)	No substantive change. (Clarifies that metal-shell paper-lined lampholders may not be used for handlamps).
1910.305(j)(1)(iii)	1910.305(j)(1)(iii)	**Adds a requirement that the grounded circuit conductor, where present, be connected to the screw shell.
1910.305(j)(1)(iv)	1910.305(j)(1)(iv)	No substantive change.
	1910.305(j)(2)(i)	**Adds requirements to ensure that attachment plugs and connectors have no exposed live parts.
1910.305(j)(2)(i)	1910.305(j)(2)(ii)	No substantive change.
	1910.305(j)(2)(iii)	**Clarifies that nongrounding-type receptacles may not be used with grounding-type attachment plugs.
1910.305(j)(2)(ii)	1910.305(j)(2)(iv)	No substantive change.
	1910.305(j)(2)(v), (j)(2)(vi), and (j)(2)(vii).	**Adds requirements for receptacles outdoors to be installed in weatherproof enclosures appropriate for the use of the receptacle and for the location.
1910.305(j)(3)(i)	1910.305(j)(3)(i)	No substantive change.
1910.305(j)(3)(ii)	1910.305(j)(3)(ii)	**Adds a requirement to group and identify disconnecting means for appliances supplied by more than one source.
1910.305(j)(3)(iii)	1910.305(j)(3)(iii)	**Adds requirements for marking frequency and required external overload protection for appliances.
	1910.305(j)(3)(iv)	**Clarifies that markings must be visible or easily accessible after installation.
1910.305(j)(4), introductory text	1910.305(j)(4), introductory text	No substantive change.
1910.305(j)(4)(i)	1910.305(j)(4)(i)	No substantive change.
1910.305(j)(4)(ii)(A)	1910.305(j)(4)(ii)	No substantive change.
1910.305(j)(4)(ii)(B)	1910.305(j)(4)(iii)	No substantive change.
1910.305(j)(4)(ii)(C)		Removed. All disconnecting means must be capable of being locked in the open position by §§ 1910.302(c) and 1910.303(f)(4).
1910.305(j)(4)(ii)(D)	1910.305(j)(4)(iv)	No substantive change.
1910.305(j)(4)(ii)(E)	1910.305(j)(4)(v)	No substantive change.
1910.305(j)(4)(ii)(F)	1910.305(j)(4)(vi)	No substantive change.
1910.305(j)(4)(iii)	1910.305(j)(4)(vii)	No substantive change.
1910.305(j)(4)(iv)(A)		Removed. Covered by § 1910.303(g)(2), (h)(2), and (h)(4)(iii).
1910.305(j)(4)(iv)(B)	1910.305(j)(4)(viii)	No substantive change.
1910.305(j)(5)(i)	1910.305(j)(5)(i)	No substantive change.
1910.305(j)(5)(ii)	1910.305(j)(5)(ii)	No substantive change.
1910.305(j)(5)(iii)	1910.305(j)(5)(iii)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.305(j)(5)(iv)	1910.305(j)(5)(iv)	No substantive change. (Oil-insulated transformers installed indoors are presumed to present a hazard to employees since a transformer failure will lead to a fire within the building unless the transformer is installed in a vault).
1910.305(j)(5)(v)	1910.305(j)(5)(v)	No substantive change.
1910.305(j)(5)(vi)	1910.305(j)(5)(vi)	No substantive change.
1910.305(j)(5)(vii)	1910.305(j)(5)(vii)	No substantive change.
1910.305(j)(5)(viii)	1910.305(j)(5)(viii)	No substantive change.
1910.305(j)(6)(i)	1910.305(j)(6)(i)	No substantive change.
1910.305(j)(6)(ii), introductory text	1910.305(j)(6)(ii), introductory text	No substantive change.
	1910.305(j)(6)(ii)(A) and (j)(6)(ii)(B)	**Adds requirements to provide disconnecting means of adequate capacity for capacitors operating at more than 600 V.
1910.305(j)(6)(ii)(A)	1910.305(j)(6)(ii)(C)	No substantive change.
1910.305(j)(6)(ii)(B)	1910.305(j)(6)(ii)(D)	No substantive change.
1910.305(j)(7)	1910.305(j)(7)	No substantive change.
§ 1910.306 Specific purpose equipment and installations.	§ 1910.306 Specific purpose equipment and installations.	
1910.306(a)(1)	1910.306(a)(1)(i), (a)(2)(i), and (a)(2)(ii).	**Reorganized and clarified the requirements for disconnecting means for signs. The final rule does not apply these requirements to exit signs.
	1910.306(a)(1)(ii)	**Adds a requirement for the disconnects for signs located within fountains to be at least 1.52 m from the fountain wall.
1910.306(a)(2)	1910.306(a)(2)(iii)	No substantive change.
1910.306(b), introductory text	1910.306(b), introductory text	No substantive change.
1910.306(b)(1)(i)	1910.306(b)(1)	**Adds specific requirements for the type and location of disconnecting means for runway conductors.
1910.306(b)(1)(ii)	1910.306(b)(2)	No substantive change. (The final rule reorganizes these requirements).
1910.306(b)(2)	1910.306(b)(3)	No substantive change.
1910.306(b)(3)	1910.306(b)(4)	No substantive change.
1910.306(c)	1910.306(c), introductory text	**This paragraph now covers wheelchair lifts, and stairway chair lifts.
1910.306(c)(1)	1910.306(c)(1)	No substantive change.
1910.306(c)(2)	1910.306(c)(8)	No substantive change.
1910.306(c)(3)	1910.306(c)(2)	No substantive change.
	1910.306(c)(3)	**Adds requirements for the type of disconnecting means.
	1910.306(c)(4)	**Adds requirements for the operation of disconnecting means.
	1910.306(c)(5)	**Adds requirements for the location of disconnecting means.
	1910.306(c)(6)	**Adds requirements for the identification of disconnecting means.
	1910.306(c)(7)	**Adds requirements for disconnecting means for single car and multicar installations supplied by more than one source.
	1910.306(c)(9)	**Adds requirements for warning signs for interconnected multicar controllers.
	1910.306(c)(10)	**Adds exceptions related to the location of motor controllers.
1910.306(d)(1)	1910.306(d)(1)	**Adds requirements for the type and rating of the disconnecting means.
1910.306(d)(2)	1910.306(d)(2)	Clarifies that a supply circuit switch may be used as a disconnecting means if the circuit supplies only one welder.
1910.306(e)	1910.306(e)	**Adds a requirement to group the disconnecting means for the HVAC systems serving information technology rooms with the disconnecting means for the information technology equipment. The final rule exempts integrated electrical systems covered by § 1910.308(g). (The existing standard refers to this equipment as data processing equipment).
1910.306(f), introductory text	1910.306(f), introductory text	**Adds coverage of X-rays for dental or medical use.
1910.306(f)(1)(i)	1910.306(f)(1)(i)	No substantive change.
1910.306(f)(1)(ii)	1910.306(f)(1)(ii)	No substantive change.
1910.306(f)(2)(i)	1910.306(f)(2)(i)	No substantive change.
1910.306(f)(2)(ii)	1910.306(f)(2)(ii)	No substantive change.
1910.306(g)(1)	1910.306(g), introductory text	No substantive change.
1910.306(g)(2)(i)	1910.306(g)(1)(i)	No substantive change.
1910.306(g)(2)(ii)	1910.306(g)(1)(ii)	No substantive change.
1910.306(g)(2)(iii)	1910.306(g)(1)(iii)	**Adds a requirement for the installation of doors or detachable panels to provide access to internal parts. Adds a requirement that detachable panels not be readily removable.
1910.306(g)(2)(iv)	1910.306(g)(1)(iv)	No substantive change.
1910.306(g)(2)(v)	1910.306(g)(1)(v)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.306(g)(2)(vi)	1910.306(g)(1)(vi)	**Adds a requirement to ensure adequate rating of disconnecting means. The final rule also clarifies when the supply circuit disconnecting means may be used as the disconnecting means for induction and dielectric heating equipment.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.306(g)(3)	1910.306(g)(2)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.306(h)(1)	1910.306(h), introductory text	No substantive change.
1910.306(h)(2)	1910.399	No substantive change.
1910.306(h)(3)	1910.306(h)(1)	No substantive change.
1910.306(h)(4)(i) and (h)(4)(ii)	1910.306(h)(2)	No substantive change. (The two provisions are combined into one paragraph).
1910.306(h)(5)(i)	1910.306(h)(3)(i)	No substantive change.
1910.306(h)(5)(ii)	1910.306(h)(3)(ii)	No substantive change.
1910.306(h)(6)(i)	1910.306(h)(4)(i)	**Adds requirements limiting primary and secondary voltage on isolating transformers supplying receptacles for ungrounded cord- and plug-connected equipment. Also, adds requirement for overcurrent protection for circuits supplied by these transformers.
1910.306(h)(6)(ii)	1910.306(h)(4)(ii)	No substantive change.
1910.306(h)(6)(iii)	1910.306(h)(4)(iii)	No substantive change. (Individual requirements are placed in separate paragraphs).
1910.306(h)(7)(i) and (h)(7)(ii)	1910.306(h)(5)(i)	No substantive change.
1910.306(h)(7)(iii)	1910.306(h)(5)(ii)	No substantive change.
1910.306(h)(7)(iv)	1910.306(h)(5)(iii)	No substantive change.
1910.306(h)(8)	1910.306(h)(6)	No substantive change.
1910.306(h)(9)	1910.306(h)(7)	No substantive change.
1910.306(i)(1)	1910.306(i)(1)	No substantive change.
1910.306(i)(2)	1910.306(i)(2)	**Allows the disconnecting means for a center pivot irrigation machine to be located not more than 15.2 m (50 ft) from the machine if the disconnecting means is visible from the machine. (Individual requirements are placed in separate paragraphs).
1910.306(j)(1)	1910.306(j), introductory text	**Clarifies that hydro-massage bathtubs are covered by this paragraph.
1910.306(j)(2)(i)	1910.306(j)(1)(i)	No substantive change.
	1910.306(j)(1)(ii)	**Extends the boundary within which receptacles require ground-fault circuit interrupter protection from 4.57 m (15 ft) to 6.08 m (20 ft) for new installations.
	1910.306(j)(1)(iii)	**Adds requirements for the installation of at least one receptacle near permanently installed pools at dwelling units.
1910.306(j)(2)(ii)(A)	1910.306(j)(2)(i)	**Clarifies that ceiling suspended (paddle) fans are covered by this requirement.
1910.306(j)(2)(ii)(B)	1910.306(j)(2)(ii)	No substantive change.
1910.306(j)(3)	1910.306(j)(3)	No substantive change.
1910.306(j)(4)(i)	1910.306(j)(4)(i)	No substantive change.
1910.306(j)(4)(ii)	1910.306(j)(4)(ii)	No substantive change.
	1910.306(j)(4)(iii)	**Adds a requirement to guard lighting fixtures facing upward.
1910.306(j)(5)	1910.306(j)(5)	No substantive change.
	1910.306(k)	**Adds requirements for carnivals, circuses, fairs, and similar events.
§ 1910.307 Hazardous (classified) locations.	§ 1910.307 Hazardous (classified) locations.	
1910.307(a)	1910.307(a)	**Adds the Zone classification system for Class I locations. (See detailed discussion later in this section of the preamble).
	1910.307(b)	**Adds documentation requirements for hazardous locations classified using either the division or zone classification system. (See detailed discussion later in this section of the preamble).
1910.307(b), introductory text	1910.307(c), introductory text	No substantive change.
1910.307(b)(1)	1910.307(c)(1)	No substantive change.
1910.307(b)(2)(i)	1910.307(c)(2)(i)	No substantive change.
1910.307(b)(2)(ii), introductory text	1910.307(c)(2)(ii), introductory text	No substantive change.
1910.307(b)(2)(ii)(A)	1910.307(c)(2)(ii)(A)	No substantive change.
1910.307(b)(2)(ii)(B)	1910.307(c)(2)(ii)(B)	**Also permits fixtures approved for Class II, Division 2 locations to omit the group marking.
1910.307(b)(2)(ii)(C)	1910.307(c)(2)(ii)(C)	No substantive change.
1910.307(b)(2)(ii)(D)	1910.307(c)(2)(ii)(D)	No substantive change.
	1910.307(c)(2)(ii)(E)	**Adds a requirement that electric equipment suitable for an ambient temperature exceeding 40 °C (104 °F) be marked with the maximum ambient temperature.
1910.307(b)(3)	1910.307(c)(3)	No substantive change.
1910.307(b)(3), Note	1910.307(c)(3), Note	The last sentence of the note is removed to make it clear that the OSHA standard does not incorporate the National Electrical Code by reference. The NEC continues to be a guideline that employers may reference in determining the type and design of equipment and installations that will meet the OSHA standard.
1910.307(c)	1910.307(d)	No substantive change.
1910.307(d)	1910.307(e)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
	1910.307(f)	**The final rule adds a list of specific protective techniques for electrical installations in hazardous locations classified under the division classification system.
	1910.307(g)	**Adds the zone classification system as an alternative method of installing electric equipment in hazardous locations. This paragraph sets the protective techniques and other requirements necessary for safe installation of electric equipment in hazardous locations classified under the zone classification system. (See detailed discussion later in this section of the preamble).
§ 1910.308 Special systems	§ 1910.308 Special systems.	
1910.308(a), introductory text	1910.308(a), introductory text	No substantive change.
1910.308(a)(1)(i)	1910.308(a)(1)(i) and (a)(3)(ii)	**Adds the following wiring methods to those acceptable for installations operating at more than 600 V: Electrical metallic tubing, rigid nonmetallic conduit, busways, and cable bus. The proposal also removes the specific requirement to support cables having a bare lead sheath or a braided outer covering in a manner to prevent damage to the braid or sheath. This hazard is covered by § 1910.303(b)(1) and (b)(8)(i) and new § 1910.308(a)(4).
1910.308(a)(1)(ii)	1910.308(a)(1)(ii)	No substantive change.
	1910.308(a)(2) and (a)(3)(i)	** Adds requirements to ensure that high-voltage cables can adequately handle the voltage stresses placed upon them and to ensure that any coverings are flame retardant.
	1910.308(a)(4)	**Adds requirements for the protection of high-voltage cables against moisture and physical damage where the cable conductors emerge from a metal sheath.
1910.308(a)(2)(i)	1910.308(a)(5)(i)	No substantive change.
	1910.308(a)(5)(ii)	**Adds requirements for fuses to protect each ungrounded conductor, for adequate ratings of fuses installed in parallel, and for the protection of employees from power fuses of the vented type.
1910.308(a)(2)(ii)	1910.308(a)(5)(iii)	**Clarifies that distribution cutouts are not suitable for installation in buildings or transformer vaults.
	1910.308(a)(5)(iv)	**Adds requirements for fused cutouts to either be capable of interrupting load current or be supplemented by a means of interrupting load current. In addition, a warning sign would be required for fused cutouts that cannot interrupt load current.
	1910.308(a)(5)(v)	**Adds a requirement for guarding nonshielded cables and energized parts of oil-filled cutouts.
	1910.308(a)(5)(vi)	**Adds requirements to ensure that load interrupting switches will be protected against interrupting fault current and to provide for warning signs for backfed switches.
1910.308(a)(2)(iii)	1910.308(a)(5)(vii)	No substantive change.
1910.308(a)(3)	1910.308(a)(6)	No substantive change.
1910.308(a)(4)(i)	1910.308(a)(7), introductory text	No substantive change.
1910.308(a)(4)(ii)	1910.308(a)(7)(i) and (a)(7)(iii)	No substantive change. (Individual requirements are placed in separate paragraphs).
	1910.308(a)(7)(ii)	**Clarifies that multiconductor portable cable may supply mobile equipment.
1910.308(a)(4)(iii)	1910.308(a)(7)(iv) and (a)(7)(v)	No substantive change. (Individual requirements are placed in separate paragraphs).
	1910.308(a)(7)(vi)	**Limits the conditions under which switch or contactor enclosures may be used as junction boxes or raceways.
1910.308(a)(4)(iv)	1910.308(a)(7)(vii)	No substantive change.
1910.308(a)(4)(v)	1910.308(a)(7)(viii)	No substantive change.
1910.308(b)(1)	1910.308(b), introductory text	No substantive change.
1910.308(b)(2)	1910.308(b)(1)	No substantive change.
1910.308(b)(3)	1910.308(b)(2)	**Clarifies that emergency illumination includes all required means of egress lighting, illuminated exit signs, and all other lights necessary to provide required illumination.
	1910.308(b)(3)	**Adds requirements to provide signs indicating the presence and location of on-site emergency power sources under certain conditions.
1910.308(c)(1), introductory text	1910.308(c)(1), introductory text	No substantive change.
1910.308(c)(1)(i), (c)(1)(ii), and (c)(1)(iii).	1910.308(c)(1)(i), (c)(1)(ii), and (c)(1)(iii).	**Clarifies the power limitations of Class 1, 2, and 3 remote control, signaling, and power-limited circuits based on equipment listing.
1910.308(c)(2)	1910.308(c)(2)	No substantive change.
	1910.308(c)(3)	**Adds requirements for the separation of cables and conductors of Class 2 and Class 3 circuits from cables and conductors of other types of circuits.
1910.308(d)(1)	1910.308(d)(1)	No substantive change.
1910.308(d)(2), introductory text	1910.308(d)(2), introductory text	No substantive change.
1910.308(d)(2)(i)	1910.308(d)(2)(i)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.308(d)(2)(ii)	1910.308(d)(2)(ii)	**Adds a requirement for power-limited fire alarm circuit power sources to be listed and marked as such.
1910.308(d)(3)	1910.308(d)(3)(i)	No substantive change.
1910.308(d)(4)	1910.308(d)(3)(ii), (d)(3)(iii), and (d)(3)(iv).	**Clarifies the requirements for installing power-limited fire-protective signaling circuits with other types of circuits. (Individual requirements are placed in separate paragraphs).
1910.308(d)(5)	1910.308(d)(4)	No substantive change.
1910.308(e)(1)	1910.308(e), introductory text	No substantive change.
1910.308(e)(2)	1910.308(e)(1)	**Clarifies the requirement for listed primary protectors to make it clear that circuits confined within a block do not need protectors.
1910.308(e)(3)(i)	1910.308(e)(2)(i) and (e)(2)(ii)	No substantive change.
1910.308(e)(3)(ii)	1910.308(e)(2)(iii)	No substantive change.
1910.308(e)(3)(iii)	1910.308(e)(2)(iv)	No substantive change.
1910.308(e)(4)	1910.308(e)(3)	No substantive change.
1910.308(e)(5)	1910.308(e)(4)	No substantive change.
	1910.308(f)	**Adds requirements to separate conductors of solar photovoltaic systems from conductors of other systems and to provide a disconnecting means for solar photovoltaic systems.
	1910.308(g)	**Adds an exception to the provisions on the location of overcurrent protective devices for integrated electrical systems.

Note to table:
**These new and revised provisions are included in the 2000 and 2004 editions of NFPA 70E standard. The NFPA 70E Committee believes that these provisions, which were taken from the 1999 and 2002 NEC, respectively, are essential to employee safety. OSHA agrees with the consensus of NFPA's expert opinion that these requirements are reasonably necessary to protect employees and has included them in the final rule. On occasion, OSHA has rewritten the provision to lend greater clarity to its requirements. However, these editorial changes to the language of NFPA 70E do not represent substantive differences. NFPA's handling of these provisions and the rationale underpinning them is a matter of public record for the NEC and NFPA 70E and is part of the record for this rulemaking (Exs. 2–9 through 2–18). OSHA agrees with the rationale in this record as it pertains to the new and revised provisions the Agency is adopting.

F. General Requirements (§ 1910.303)

Paragraph (b) of proposed § 1910.303 contained a general requirement for electric equipment to be free of recognized hazards likely to cause death or serious physical harm to employees. This provision also contained criteria for judging the safety of electric equipment. One of the criteria was suitability for installation and use in accordance with Subpart S, and a note following paragraph (b)(1)(i) indicated that listing or labeling by a nationally recognized testing laboratory could be evidence of suitability.

The National Multihousing Council recommended adding a second note to this paragraph to indicate that nothing in this provision was to be taken as a directive that limits a local jurisdiction's authority to amend the adopted electrical code (Ex. 4–20).

Local electrical inspection authorities have jurisdiction over public safety as well as employee safety and this jurisdiction is not preempted by OSHA standards. OSHA does not believe that a note to the standard is necessary to clarify this authority. Indeed, the recommended note might serve to confuse employers and employees, leading them to believe that OSHA might enforce those local requirements. Therefore, § 1910.303(b)(1)(i) in the final standard does not include such a note.

In paragraph (g) of proposed § 1910.303, OSHA would have required the employer to maintain sufficient access and working space about electric equipment to permit ready and safe operation and maintenance of equipment. This paragraph would have required the access and working space to meet certain minimum dimensions. One commenter expressed concern regarding the physical space about electric equipment on ships (Ex. 3–7). This commenter argued that, in shipbuilding and repair, the limited space on a ship is a design concern for shore-based equipment. He stated that some shore-based electric equipment is placed in locations that ensure safe access to disconnect switches in the event of an emergency or routine connection of other equipment and that the working space in these locations can be limited. However, he stated that his company deenergizes and removes shore-based equipment before servicing or maintenance.

OSHA believes that this commenter's installation complies with final § 1910.303(g). The introductory text to paragraph (g)(1) contains the general requirement that sufficient access and working space shall be provided and maintained about all electric equipment to permit ready and safe operation and maintenance of such equipment. These provisions ensure that employees maintaining electric equipment while it is energized have enough room to work without danger of contacting energized parts and grounded parts or two circuit parts energized at different potentials simultaneously. The specific dimensions required by paragraph (g)(1)(i) apply only to equipment likely to require examination, adjustment, servicing, or maintenance while it is energized. As long as the employer implements, communicates, and enforces a policy to ensure that the equipment is deenergized before employees engage in any of these tasks that might expose them to contact with energized parts, paragraph (g)(1)(i) does not apply, and the equipment need not provide the specific amount of working space required by that provision. In the commenter's case, the employer not only deenergizes the equipment but removes it from the space in question altogether, thus providing an additional measure of safety. On the other hand, if the equipment were not deenergized, then employees would not be able to work on the equipment safely.

Table S–3 and § 1910.303(h)(5)(v) in the proposed rule would have required a minimum elevation of 2.8 m (9.0 ft) for unguarded live parts operating at 601 to 7500 V and located above working space. A note following proposed Table S–3 permitted the minimum elevation to be 2.6 m (8.5 ft) for installations built before the effective date of the final standard. However, Table S–3 in the existing standard provides for a minimum elevation of 2.4 m (8.0 ft) for

installations built before April 16, 1981, if the voltage is in the range of 601 to 6600 V. OSHA unintentionally omitted this exception for older installations from the footnote to Table S–3 in the proposal. The Agency does not intend for installations made before April 16, 1981, to be modified to provide an additional 0.2 m (0.5 ft) of elevation. Therefore, the Agency is carrying forward the language from the existing standard allowing for the reduced minimum elevation for those older installations.

G. Branch Circuits—Identification of Multiwire Branch Circuits

Identification requirements. Paragraph (b)(1) of final § 1910.304 adds requirements for identification of multiwire branch circuits. The rule requires that all ungrounded conductors of multiwire branch circuits in a building be identified, where accessible, by phase and system where more than one nominal voltage system exists. It goes on to add that the identification means shall be permanently posted at each branch circuit panelboard. For example, the identification means can be color coding, marking tape, or tagging.

For instance, a building served by both 208Y/120-volt and 480Y/277-volt multiwire branch circuits must use a wiring identification means. One method of meeting final § 1910.304(b)(1) would be to use a color-coded scheme with brown, orange, and yellow insulation for the 480-volt system's phase conductors and black, red, and blue insulation for the 208-volt system's phase conductors. A legend, which may include other information such as the panelboard identification, must be permanently affixed at each branch circuit panelboard to identify the respective phase and system color-coding scheme.

One commenter requested clarification of the term ''where accessible'' used in § 1910.304(b)(1) of the proposed rule (Ex. 4–14). He questioned whether the identification means must be posted at each pull and junction box. He suggested allowing a color-coding scheme identified in the employer's written electrical safety program.

OSHA believes that the typical means of complying with this provision, which was ultimately taken from 1999 NEC Section 210–4(d),[13] will be to use conductors with insulation of different colors for each system and post a legend identifying which colors are used with which systems at each panelboard. The color-coded conductors for each circuit are visible at each pull and junction box, which are locations where the conductors are accessible; thus, the employees can determine the voltage on a circuit and at utilization equipment or devices such as motors or receptacle outlets by referring to the legend at the panelboard supplying the circuit. Final § 1910.304(b)(1) requires the legend to be posted at the panelboard for each branch circuit, not at the pull and junction boxes.

The requirements proposed in § 1910.304(b)(1) and (b)(3) for ungrounded conductors of systems of different voltages to be identified were very similar. Proposed paragraph (b)(1) would have required identification of multiwire branch circuits[14] only, whereas paragraph (b)(3) would have required identification regardless of whether a circuit was a multiwire circuit. Paragraph (b)(1) was taken from NFPA 70E–2000 Section 2–2.1, and paragraph (b)(3) was taken from NFPA 70E–2000 Section 2–2.3 (Ex. 2–2). In addition, both NFPA sections are taken from 1999 NEC Section 210–4(d). Proposed paragraph (b)(3) inadvertently omitted language from the NFPA standard (Section 2–2.3) restricting its application to multiwire circuits. Although no one submitted comments on this problem, OSHA has decided to correct this error by not carrying proposed § 1910.304(b)(3) into the final rule.

H. Branch Circuits—Ground-Fault Circuit-Interrupters for Employees

Introduction. Each year many employees suffer electric shocks while using portable electric tools and equipment. The nature of the injuries ranges from minor burns to electrocution. Electric shocks produced by alternating currents (ac) at power line frequency passing through the body of an average adult from hand to foot for 1 second can cause various effects, starting from a condition of being barely perceptible at 1 milliampere to loss of voluntary muscular control for currents from 9 to 25 milliamperes. The passage of still higher currents, from 75 milliamperes to 4 amperes, can produce ventricular fibrillation of the heart; and, finally, immediate cardiac arrest at over 4 amperes. These injuries occur when employees contact electrically energized parts. Typically, the frame of a tool becomes accidentally energized because of an electrical fault (known as a ground fault) that provides a conductive path to the tool casing. For instance, with a grounded electric supply system, when the employee contacts the tool casing, the fault current takes a path through the employee to an electrically grounded object. The amount of current that flows through an employee depends, primarily, upon the resistance of the fault path within the tool, the resistance of the path through the employee's body, and the resistance of the paths, both line side and ground side, from the employee back to the electric power supply. Moisture in the atmosphere can contribute to the electrical fault by enhancing both the conductive path within the tool and the external ground path back to the electric power supply. Dry skin can have a resistance range of anywhere from about 500 to 500,000 ohms and wet skin can have a resistance range of about 200 to 20,000, depending on several factors, such as the physical characteristics and mass of the employee. More current will flow if the employee is perspiring or becomes wet because of environmental conditions. If the current is high enough, the employee will suffer a ground-fault electrocution.

One method of protection against injuries from electric shock is the ground-fault circuit-interrupter (GFCI). This device continually monitors the current flow to and from electric equipment. If the current going out to the protected equipment differs by approximately 0.005 amperes (5-milliamperes) from the current returning, then the GFCI will deenergize the equipment within as little as 25 milliseconds, quickly enough to prevent electrocution.

GFCI requirements. Paragraph (b)(3) of final § 1910.304 sets new requirements for ground-fault circuit-interrupter protection of receptacles and cord connectors used in general industry. Paragraph (b)(3)(i) requires ground-fault circuit protection for all 125-volt, single-phase, 15- and 20-ampere receptacles installed in bathrooms and on rooftops. As noted earlier, this provision only applies to installations made after the effective date of the final rule. Cord sets and cord- and plug-connected equipment in these locations can get wet and expose employees to severe

[13] Section 210–4(d) of the 1999 NEC reads as follows:

(d) *Identification of Ungrounded Conductors.* Where more than one nominal voltage system exists in a building, each ungrounded conductor of a multiwire branch circuit, where accessible, shall be identified by phase and system. This means of identification shall be permitted to be by separate color coding, marking tape, tagging, or other approved means and shall be permanently posted at each branch-circuit panelboard.

[14] A multiwire branch circuit is a branch circuit that consists of two or more ungrounded conductors that have a voltage between them and a grounded conductor that has equal voltage between it and each ungrounded conductor of the circuit and that is connected to the neutral or grounded conductor of the system.

ground-fault hazards. The NFPA 70E Technical Committee believes, and OSHA agrees, that using 125-volt, 15- and 20-ampere cord- and plug-connected equipment in these locations exposes employees to great enough risk of ground-fault electrocution (as noted earlier) to warrant the protection afforded by GFCIs.[15]

Paragraph (b)(3)(ii) of final § 1910.304 requires GFCI protection for all receptacle outlets on temporary wiring installations that are used during maintenance, remodeling, or repair of buildings, structures, or equipment, or during similar construction-like activities.[16] Such activities include cleanup, disaster remediation, and restoration of large electrical installations.

OSHA currently requires GFCI protection for 120-volt, single-phase, 15- and 20-ampere temporary receptacle outlets used on construction sites (§ 1926.404(b)(1)). In the 28 years that this requirement has been in effect, the Agency estimates that between about 650 and 1,100 lives have been saved because of it.[17] Temporary wiring associated with construction-like activities in general industry exposes employees to the same ground-fault hazards as those associated with temporary receptacle outlets on construction sites. In § 1910.304(b)(3)(ii), OSHA is extending the ground-fault protection requirement to temporary receptacles used in construction-like activities performed in general industry. At the same time, this final rule extends protection to temporary wiring receptacles of higher voltage and current ratings (such as 125-volt, single-phase, 30-ampere and 480-volt, three-phase receptacles). It better protects employees from ground-fault hazards than the construction rule because it covers other equipment that is just as subject to damage as 120-volt, single-phase, 15- and 20-ampere equipment and that is more prevalent today than when the construction rule was promulgated over 28 years ago.

The Agency had proposed not to permit the NFPA 70E ''Assured Grounding Program'' as an alternative to GFCIs in this rule. NFPA 70E's Assured Grounding Program, differs in several important respects from the assured equipment grounding conductor program in OSHA's construction standards (§ 1926.404(b)(1)). For example, NFPA 70E permits the Assured Grounding Program as an alternative to GFCI protection for personnel (1) for 125-volt, single-phase, 15- and 20-ampere receptacle outlets in industrial establishments only, with conditions of maintenance and supervision that ensure that only qualified personnel are involved, and (2) for receptacle outlets rated other than 125 volts, single-phase, 15, 20, or 30 amperes. The OSHA construction rule recognizes an assured equipment grounding conductor program as an alternative to GFCIs without restriction. Additionally, under its Assured Grounding Program, NFPA 70E requires electric equipment to be tested only when there is evidence of damage. This is in contrast to the assured equipment grounding conductor program required by OSHA's construction standard, which requires electric equipment to be tested after any incident that can reasonably be suspected to have caused damage.

During the development of the proposal, OSHA had considered including NFPA 70E's Assured Grounding Program or the construction standard's assured equipment grounding conductor program requirements as alternatives to GFCIs, but rejected them. In the preamble to the proposal, OSHA gave the following reasons for rejecting NFPA's Assured Grounding Program: (1) The differences between the general industry and construction requirements would have been too confusing for employers who are subject to both standards, and (2) the NFPA alternative would offer less protection for employees than the assured equipment grounding conductor program in OSHA's construction standard. Additionally, OSHA reasoned in the proposal that requiring GFCIs alone, without even the construction standard's assured equipment grounding conductor program as an alternative, would provide better protection for employees. The construction standard's assured equipment grounding conductor program demands constant vigilance on the part of employees to provide them with the same level of protection as GFCIs. Under that program, employers must perform rigorous inspections and tests of cord sets and cord- and plug-connected equipment generally at 3-month intervals and employees must inspect them daily. In contrast, GFCIs constantly monitor the circuit for ground faults and open the circuit when ground-fault current becomes excessive without the need for either the employer or the employee to take action. Because three fourths of all electrical accidents are caused by poor work practices (55 FR 31986), OSHA believes that GFCIs are a more reliable method of protecting employees.

OSHA received several comments generally supportive of the proposed requirement for GFCIs for 125-volt, single-phase, 15- and 20-ampere receptacles installed in bathrooms or on rooftops and for all 125-volt, single-phase, 15-, 20-, and 30-ampere receptacle outlets that are not part of the permanent wiring of the building or structure and that are in use by personnel (Exs. 3–5, 3–6, 3–10, 4–9, 4–23, 4–24). For example, the American Society of Safety Engineers (ASSE) supported the new requirements for GFCI protection of receptacles and cord connectors and for temporary wiring installations, stating that this is an important aspect of the rule (Ex. 3–5). ASSE stated that this requirement will greatly contribute to the rule's effectiveness in saving lives and it is also consistent with OSHA's current requirements in 29 CFR Part 1926 for construction sites. Another commenter supported OSHA's statement in the proposal that GFCIs for temporary wiring installations have been required in the NEC for many years and that the requirement overall does not impose any hardships on employers (Ex. 5–2). One of the commenters agreed that GFCIs provide continuous protection for employees (Ex. 4–9). A comment (Ex. 4–24) from the National Electrical Manufacturers Association (NEMA) stated that GFCIs provide better protection for employees and a safer workplace than the alternate assured equipment grounding conductor program included in OSHA's construction standard. NEMA added that GFCIs provide continuous protection whereas the assured equipment grounding conductor program requires monthly inspection. NEMA recommended that the assured

[15] Part I 2–2.4.1 of NFPA 70E, 2000 edition, requires GFCI protection for all 120-volt, single-phase, 15- and 20-ampere receptacles installed in bathrooms and on rooftops for other than dwelling units.

[16] See also the discussion of the term ''construction-like activities'' under the summary and explanation of final § 1910.305(a)(2), later in this section of the preamble. It should be noted that the discussion of the term ''construction-like activities'' is intended for application only to the use of this term in Subpart S.

[17] In the preamble to the final rule adopting a requirement for GFCIs on construction sites, OSHA estimated that there were between 30 and 45 deaths per year caused by 120-volt ground faults on construction sites, and the Agency determined that nearly all of those deaths could be prevented by the use of GFCI protection or an assured grounding program (41 FR 55701, December 21, 1976). OSHA fatality investigation data indicate that 46 deaths involving 120-volt ground-faults in temporary wiring occurred over the years 1990 to 1996 (the latest year for which data are complete). This is a death rate of only 6.6 per year. Thus, OSHA believes that the rule has saved between 23 and 39 lives per year or, over the 28 years the rule has been in effect, a total of between about 650 and 1,100 lives.

equipment grounding program not be added as an alternative to GFCIs in the general industry electrical installation standard.

Other commenters opposed OSHA's proposal not to include the assured grounding program as an alternative to GFCIs (Exs. 3–3, 3–6, 3–10, 4–11, 4–14, 4–19, 4–23). Some of them hinted that GFCI-type receptacles and circuit breakers at voltages above 125 volts, 15, 20, and 30 amperes may require constant attention because of nuisance tripping (Exs. 3–6, 3–10, 4–11, 4–19, 4–23). They added that it is possible and likely that construction-type portable equipment used in industry will trip GFCIs during normal operation. For example, Mike Johnson of International Paper argued that portable welding units for the repair of major pieces of equipment such as industrial boilers and other massive pieces of equipment pose a real concern (Ex. 3–6). He noted that the cord sets on such portable equipment are typically heavier and less prone to damage than cords furnished with 125-volt equipment. He further noted his experience with tripping of GFCIs during the normal use of hermetic compressors, which are used for temporary cooling of personnel. Some of those objecting to the omission of the assured equipment grounding conductor program alternative argued that to avoid nuisance tripping on circuits of more than 125 volts, they would be forced to keep circuits very short beyond the location of the GFCI protection (Exs. 4–11, 4–19). Another commenter, Alcoa, supported the use of GFCI protection for all temporary 125-volt, single-phase wiring, including the use of extension cord sets, but did not support the use of GFCI protection on 480-volt, three-phase extension cord sets or 480-volt temporary wiring (Ex. 4–14). Finally, some commenters argued that the lack of commercially available GFCIs at voltages higher than 125 volts makes it impossible to comply with § 1910.304(b)(4)(ii) as proposed (Exs. 4–11, 4–19, 4–23).

These commenters gave three reasons why the Agency should permit an assured equipment grounding conductor program as an alternative to GFCIs, particularly at voltages higher than 125 volts: (1) Because, they asserted, the assured equipment grounding conductor program is equally effective; (2) because of tripping caused by (a) the inherently high leakage current for some electric equipment or (b) the capacitive leakage on long circuits of voltages over 125 volts; and (3) because GFCIs are not available for all branch-circuit voltage and current ratings.

Nothing in the record has convinced the Agency that its preliminary conclusion that GFCIs are more effective protection than the assured equipment grounding conductor program is incorrect. In fact, the 2002 NEC, which permits its assured equipment grounding conductor program as an alternative to GFCIs only in very limited circumstances,[18] indicates that NFPA has reached the same conclusion. OSHA disagrees with the commenters' assertion that the assured equipment grounding conductor program provides protection equivalent to GFCIs. Thus, the Agency has determined based on the record that GFCIs are a more effective means of protecting employees than the assured equipment grounding conductor program.

The Agency cannot determine whether the commenters concerns about tripping caused by capacitive charging currents between the circuit conductors and the equipment grounding conductor at voltages over 125 volts are valid. For multiphase circuits, capacitive currents should balance out across the phases. Even on single-phase circuits, employers should be able to control leakage and capacitive currents by limiting the length of the conductors between the GFCI and the utilization equipment.

However, OSHA recognizes the limited availability of GFCIs for circuits operating at voltages above 125 volts to ground. Consequently, it would be very difficult, if not impossible, for employers to comply with a requirement for GFCI protection for all branch-circuit ratings. For this reason, OSHA has decided to permit an assured equipment grounding conductor program as an alternative to GFCIs when approved GFCIs are unavailable for the voltage and current rating of the circuit involved. However, the final rule does require employers to provide GFCI protection whenever these devices are available at the branch-circuit rating involved. The Agency anticipates that approved 1-, 2-, and 3-pole GFCIs for branch-circuits with ratings above 125 volts and 30 amperes will become available in the future. Employers will need to use those new devices for any temporary wiring installed after they do become available. OSHA will continue to monitor developments in this area and inform employers as appropriate of the availability of GFCIs.

Certain equipment designs cause tripping of GFCIs. For example, some motors, due to design or application, have higher leakage current to ground than a GFCI will allow. In other cases, GFCI tripping can result in undesired consequences. For example, the NEC requires GFCI-protected receptacles in garages at residences but allows for a non-GFCI receptacle for large appliances such as a food freezer. If the GFCI trips, the food in the freezer will spoil. An NEC exception to GFCI protection for temporary installations recognizes the incompatibility of these types of equipment on a GFCI-protected circuit and allows the assured equipment grounding conductor program in place of GFCIs under certain circumstances. Another NEC exception allows the assured equipment grounding conductor program for temporary installations where a greater hazard exists if power is interrupted by a GFCI. For example, a motor for a ventilation fan used to exhaust toxins in the atmosphere may not be compatible with GFCI protection. Loss of the fan because of tripping by a GFCI can pose a risk to employee health and safety. However, OSHA believes that even this type of equipment should not be subject to the risks associated with temporary cord- and plug-connected wiring. The Agency believes that hard-wired methods, which avoid the use of a plug-receptacle combination, afford better protection of employees relying on such critical equipment. Because the GFCI requirement applies only to receptacle outlets, employers can avoid having to install GFCIs by wiring the equipment directly to the circuit conductors at an outlet or panelboard.

Many of the commenters supporting the assured grounding alternative recommended that the Agency include an assured equipment grounding conductor program consistent with OSHA's existing requirements in 29 CFR 1926.404(b)(1)(iii) as an alternative to using GFCIs for protection of personnel (Exs. 3–3, 3–5, 3–6). For example, ASSE recommended that OSHA work at harmonizing this program with the assured equipment

[18] NEC Section 527.6 requires electric shock or electrocution protection for personnel using temporary wiring during activities such as construction, remodeling, maintenance, repair, demolition, and the like. GFCI protection or a written assured equipment grounding conductor program must be used to provide this protection. All 125-volt, single-phase 15-, 20-, and 30-ampere receptacle outlets must have GFCI protection except that in industrial establishments only, where only qualified personnel perform maintenance, the assured equipment grounding conductor program is permitted for specific situations. The limitations of the exception in industrial establishments only are for situations in which: (1) Qualified personnel are using equipment that is not compatible, by design, with GFCI protection or (2) a greater hazard exists if power was interrupted by GFCI protection.

For receptacle outlets other than those rated 125 volts, single phase 15, 20, and 30 amperes, personnel protection must be provided by either GFCI protection or a written assured equipment grounding conductor program.

grounding conductor program permitted under OSHA's construction standards (Ex. 3–5). ASSE did concur that OSHA's testing program in the construction standard, which requires testing after any incident that can reasonably be suspected to have caused damage, is preferable to the approach taken in NFPA 70E.

OSHA agrees with these commenters that any assured equipment grounding conductor program in the general industry standards must be consistent with the corresponding construction standard in § 1926.404(b)(1)(iii). The Agency maintains that the assured equipment grounding conductor program in the existing construction standards is more protective than NFPA's assured grounding program. OSHA's construction standard requires testing of all cord sets and receptacles whenever it can reasonably be suspected that an incident may have caused damage to the equipment, whereas the NFPA standard requires testing only if an incident produces evidence of damage. The purpose of the assured equipment grounding conductor program is designed to detect and correct damage to the equipment grounding conductor particularly when it is unseen. Demanding evidence of damage, as NFPA does, partially thwarts that purpose. Therefore, the Agency has brought the assured equipment grounding conductor program from § 1926.404(b)(1)(iii) into this revision of the general industry electrical installation standard. The final rule requires employers to use the assured equipment grounding conductor program whenever approved GFCIs are not available.

Although the assured equipment grounding conductor program in the final rule is consistent with the one in the construction standard, the final rule, unlike the construction standard, does not always permit it to be used as an alternative to GFCIs. The determination that GFCIs are a preferable form of protection and not to permit the assured equipment grounding conductor in all circumstances is based on the public record of this rulemaking. The final rule applies only to general industry and not to construction. OSHA will not enforce this rule for construction work; however, employers are encouraged to use GFCIs in accordance with the general industry standard even when the construction standard applies.

The assured equipment grounding conductor program in the construction standard relies on the definition of ''competent person'' in § 1926.32(f).[19] The assured equipment grounding conductor program in this final rule also requires one or more competent persons for implementation. Consequently, the Agency is bringing the definition of ''competent person'' from OSHA's construction standards into final § 1910.399.

OSHA received numerous comments concerning proposed § 1910.304(b)(4)(ii)(A). The pertinent part of this proposed provision read, ''receptacles on a 2-wire, single-phase portable or vehicle-mounted generator rated not more than 5 kW, where the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces, are permitted without ground-fault circuit-interrupter protection for personnel.'' This exemption from the GFCI requirement was taken from NFPA 70E–2000.

Several commenters recommended removing this exemption (Exs. 4–13, 4–15, 4–17, 4–18, 4–21). These commenters stated that this exemption has been removed from the most recent editions of the NEC and NFPA 70E. They argued that there was never any technical justification for this provision and, thus, its inclusion in the OSHA standard is unjustified.

OSHA agrees with these comments and has decided to remove this exemption to better align the final rule with the consensus standards. The proposed exemption from the GFCI requirement for portable and vehicle-mounted generators was based on 1999 NEC Section 305–6(a), Exception 1. The exemption in the 1999 NEC and the exemption in proposed § 1910.304(b)(4)(ii)(A) were the same as the exemption for portable and vehicle-mounted generators in OSHA's construction requirement for ground-fault circuit-interrupters (§ 1926.404(b)(1)(ii)). In promulgating the construction standard, OSHA gave the following rationale for exempting these generators from the requirement for GFCI protection:

> On generators whose supply wires are not required to be grounded, and are in fact not grounded, the return path for a ground-fault current to flow is not completed and the hazard which a GFCI would protect against is not present. Consequently, the rule as promulgated in [§ 1926.404(b)(1)(ii)] does not require the use of GFCI's on portable or vehicle-mounted generators of 5kW capacity or less if its output is a two-wire, single-phase system and its circuit conductors are insulated from the generator frame and all other grounded surfaces. [41 FR 55702, December 21, 1976]

The NEC used to require only neutral conductors to be bonded to the generator frame. (See, for example, 1981 NEC Section 250–6.) The NEC now requires single-phase, two-wire circuits to have one circuit conductor bonded to the generator frame. (See Sections 250–26 and 250–34(c) of the 1999 NEC and Sections 250.26 and 250.34(C) of the 2002 NEC.) Thus, the NEC no longer permits generators to be wired so as to meet the conditions in the proposed exemption. That is, because one of the circuit conductors must be bonded to the generator frame, the conductors cannot be ''insulated from the generator frame'' as required by the exemption.

In addition, connecting one conductor on a single-phase, two-wire generator to the generator frame facilitates the operation of a GFCI when a ground fault occurs. Even though the generator frame is not required to be grounded, it frequently is, through direct contact with ground or through grounding-type equipment, which has its equipment grounding conductor connected to the generator frame. Bonding one of the circuit conductors to the generator frame provides a path outside the circuit conductors for ground-fault current to flow. Such current will be detected by a GFCI. If the circuit conductors are insulated from the generator frame, it is more likely that any ground fault current will return through the circuit conductors and go undetected by a GFCI.[20]

For these reasons, OSHA has determined that the exemption from the GFCI requirement for single-phase generators is not warranted and has revised final § 1910.304(b)(3)(ii)(A) (proposed § 1910.304(b)(4)(ii)(A)) accordingly. In addition, the evidence in the record indicates that it is also necessary to revise the generator grounding requirements in final § 1910.304(g)(2) and (g)(3)(iii) to match Sections 250.26 and 250.34(C) of the 2002 NEC, respectively. (See the summary and explanation of these provisions later in this section of the preamble.) Removing the exception from final § 1910.304(b)(3)(ii)(A) without revising the generator grounding provisions would result in a requirement for GFCIs when they would not work as intended to protect employees. Incorporating the NEC

[19] Paragraph (f) of § 1926.32 reads as follows:

Competent person means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

[20] For a ground fault to occur on an ungrounded circuit, two faults must be present. If both faults are on the load side of the GFCI, then any leakage current will go undetected.

provisions on generator grounding will work in concert with the GFCI provisions to ensure that employees are adequately protected from ground faults.

OSHA proposed Note 2 to § 1910.304(b)(4)(ii)(A) to read as follows:

> Cord sets and devices incorporating listed ground-fault circuit-interrupter protection for personnel are acceptable forms of protection.

Several commenters suggested that the note be reworded to recognize portable GFCI protection only when it is placed at the end closest to the source of power (Exs. 4–13, 4–15, 4–17, 4–18, 4–21). They argued that GFCI protection should be provided for the entire cord set and that the only way to do so is to put the GFCI at the source of power.[21]

OSHA agrees with these commenters and has revised the note to read:

> Cord sets and devices incorporating the required ground-fault circuit-interrupter that are connected to the receptacle closest to the source of power are acceptable forms of protection.

This language, which was similar to that recommended by these commenters, will provide the most effective protection for employees using temporary wiring. Employers using portable GFCIs to comply with final § 1910.304(b)(3)(ii)(A) must install them at the first receptacle on the circuit (the end closest to the source of power). This will protect employees from faults in all downstream cord sets and equipment.

I. Accessibility of Overcurrent Devices

Proposed § 1910.304(f)(1)(iv) addressed the location of overcurrent devices. The first sentence of this provision would have required overcurrent devices to be accessible ''to each employee or authorized building management personnel.''

OSHA received a request to insert the word ''qualified'' before ''employee'' in that provision (Ex. 4–22). The commenter was concerned that the provision would require every employee at the workplace to have access to overcurrent devices.

This proposed provision is identical to existing § 1910.304(e)(1)(iv) and is consistent with § 240.24 of the 2002 NEC. The wording of this provision permits employers to restrict access to authorized building management personnel. Consequently, the proposed rule does not require access by every employee, and there is no need to revise the language of the rule.

J. Grounding

Proposed § 1910.304(g)(1) listed systems that would have been required to be grounded. Proposed paragraphs (g)(1)(iv) and (g)(1)(v) governed grounded and ungrounded ac systems of 50 to 1000 volts. These two paragraphs were substantively the same as paragraphs (f)(1)(iv) and (f)(1)(v) of existing § 1910.304, except that in the existing rule ac circuits of 480 to 1000 volts are permitted to use a high-impedance grounded neutral in lieu of a neutral with a direct connection to the grounding electrode.

In a joint comment, CHS Inc., and the National Cooperative Refinery Association (NCRA) expressed concern about these provisions (Ex. 4–25). These two companies requested that the Agency consider permitting the operation of three-phase ungrounded delta systems that have been utilized for many years by the refining industry and others for electrical systems. They argued that these systems became popular in the early 20th century because of the need to operate loads without interruption because of the operation of overcurrent protection devices on a short circuit. The comment referenced Soares Book on Grounding published by the International Association of Electrical Inspectors. Quoting this book, the commenter stated that the reason to operate a system in this manner is to ''obtain an additional degree of service continuity. Since the system is ungrounded, the occurrence of the first ground fault (as distinguished from a short circuit) on the system will not cause an overcurrent protective device to open.'' CHS and NCRA further noted that these ungrounded systems are used with ground detection equipment and that trained electrical maintenance personnel investigate and repair problems without causing an abrupt outage.

Electrical systems are grounded primarily to:

(1) Limit overvoltages caused by lightning, line surges, or contact with higher voltage systems;

(2) Stabilize voltage to earth during normal operation; and

(3) Facilitate the operation of overcurrent devices protecting the circuit. (See 1999 NEC Section 250–2.)[22]

An ac system that is connected for ungrounded operation is a system that is connected to ground via the capacitance of the insulating medium, be it air, rubber or thermoplastic insulation. The capacitance-to-ground varies resulting in system operating problems. The line-to-ground voltage is not constant. Such erratic voltage makes ungrounded systems difficult to troubleshoot.

OSHA views these conditions as hazardous to employees working near the power system. A hazard of this type of installation is the possibility for the frame of a piece of equipment to become energized at some voltage above ground. A shock hazard exists if an employee simultaneously touches the equipment and a grounded object such as a handrail.

In general, the NEC and the IAEI Soares Book on Grounding cite very similar if not the same recommendations for grounding of electrical systems, and the final rule parallels these requirements. In fact, contrary to the suggestions made by the commenters, the provisions in question are entirely consistent with the IAEI Soares Book on Grounding. Paragraph (g)(1)(iv) of final § 1910.304 requires delta systems of 50 to 1000 volts[23] to be grounded only if:

(1) They can be grounded so that the maximum voltage to ground on the ungrounded conductors does not exceed 150 volts (that is, a delta system with a phase-to-phase voltage of 150 volts or less),

(2) The system is a three-phase, four-wire delta circuit in which the midpoint of one phase is used as a circuit conductor, or

(3) A service conductor is uninsulated.

OSHA believes that few delta systems meet any of these conditions, in which case the final rule does not require them to be grounded. Even if one of those conditions is met, the circuit may

[21] The National Electrical Code Handbook for the 2002 NEC, in its explanation of the NEC requirements for GFCI protection for temporary installations, identifies a GFCI device as being designed for insertion at the line, or source, end of a flexible cord set. The short style of cord set shown in the Handbook lends itself to in-series connection with single or multiple, series-connected, cord sets.

[22] Soares Book on Grounding, a recognized reference on grounding to which CHS and NCRA referred, offers a list of known disadvantages of operating ungrounded three-phase ac systems as follows:

Disadvantages of operating systems ungrounded include but are not limited to the following:

1. Power system overvoltages are not controlled. In some cases, these overvoltages are passed through transformers into the premises wiring system. Some common sources of overvoltages include: lightning, switching surges and contact with a high voltage system.

2. Transient overvoltages are not controlled, which, over time, may result in insulation degradation and failure.

3. System voltages above ground are not necessarily balanced or controlled.

4. Destructive arcing burnouts can result if a second fault occurs before the first fault is cleared.

[23] Systems over 1000 volts are covered by final § 1910.304(g)(9), to which CHS and NRCA did not object.

operate using a high-impedance grounded neutral system as permitted by final § 1910.304(g)(1)(v)(E). Such systems provide higher system reliability in a manner similar to ungrounded systems in that a single ground fault triggers alarms on ground-detection equipment instead of causing the circuit protective devices to deenergize the circuit. However, these systems provide better protection against ground faults and overvoltages than do ungrounded systems.

Finally, the provisions to which CHS and NCRA refer are not new requirements. They are in the existing OSHA electrical standard and have been enforced by the Agency since 1972.

For all of these reasons, OSHA believes that grounded systems are a much more reliable method of protecting employees than ungrounded systems and has retained § 1910.304(g)(1)(iv) and (g)(1)(v) as proposed.

For the reasons presented under the summary and explanation of final § 1910.304(b)(3)(ii)(A) (proposed § 1910.304(b)(4)(ii)(A)), earlier in this section of the preamble, OSHA is revising the grounding requirements in Subpart S for consistency with 2002 NEC Sections 250.26 and 250.34(C). This revision is in two parts: A new provision (final § 1910.304(g)(2)) and a revised provision (final § 1910.304(g)(3)(iii), proposed § 1910.304(g)(2)(iii)). Final § 1910.304(g)(2), which had no counterpart in the proposal, adopts requirements from 2002 NEC Section 250.26 specifying which conductor in an ac system must be grounded. This new provision complements final § 1910.303(g)(1), which specifies which systems must be grounded. These two provisions ensure that the voltage to ground on ungrounded conductors is minimized. It should be noted that final § 1910.304(g)(2) requires a system conductor to be grounded only when that system is required to be grounded by § 1910.304(g)(1).

Paragraph (g)(3)(iii) of final § 1910.304 is revised to match 2002 NEC Section 250.34(C). The revised provision requires that any system conductor required to be grounded by final § 1910.304(g)(2) be bonded to the generator frame, which serves as the grounding electrode for the system. This requirement ensures that systems fed by portable and vehicle-mounted generators are wired consistently with service-supplied systems and provide a level of safety equal to that of service-supplied systems.

Proposed § 1910.304(g)(3)(iii) (final § 1910.304(g)(4)(iii)) stated, ''On extensions of existing branch circuits that do not have an equipment grounding conductor, grounding-type receptacles may be grounded to a grounded cold water pipe near the equipment.''

OSHA received several comments on the use of cold water pipes for equipment grounding connections (Exs. 4–4, 4–13, 4–15, 4–17, 4–18, 4–21). For example, Mr. Brooke Stauffer of the National Electrical Contractors Association (NECA) recommended deleting this requirement from the standard, arguing that this method of grounding is not permitted in the 2002 NEC (Ex. 3–2). He noted that Section 250.52 of the NEC states that an interior metal water pipe more than 1.52 meters (5 feet) from the point of entrance of the water pipe into the building is no longer allowed to serve as part of the grounding electrode system. Other comments stated that using an isolated equipment grounding conductor such as a cold water pipe may increase the risk of reactance along the equipment grounding conductor when an ac fault is involved (Exs. 4–4, 4–13, 4–15, 4–17, 4–18, 4–21). For example, one commenter stated that using a water pipe to ground equipment violates 2002 NEC Section 300.3(B), which requires all circuit conductors to be grouped together so magnetic fields are offset and reluctance is minimized (Exs. 4–13, 4–15). He further argued that plastic pipe makes water pipes an unreliable ground and that using water pipes to ground electric equipment can pose hazards to employees working on the piping system, as follows:

> Water pipes cannot be counted upon to serve the same function as an equipment grounding conductor, which is to prevent electrocution due to malfunctioning equipment on the branch circuit by allowing large amounts of current to flow and trip the overcurrent device. The use of water pipes as equipment grounding conductors is actually more likely to cause an electrocution in the event that a plumber, pipe-fitter or similar professional working on the water piping system would break a pipe connection involved in a fault, thereby exposing themselves to the full lethal circuit voltage and providing a path for current to flow. Unlike electrical workers working on branch circuits, there are no specific requirements for plumbers, pipe-fitters or similar professionals to deenergize and lock out electrical circuits in order to work on plumbing systems, nor should there be one.
>
> The advent of current technology and practice of using nonmetallic pipe in all or part of a plumbing system would cause metallic parts of equipment or sections of the water piping to become energized if a tool or equipment were to malfunction and expose anyone (plumber, pipe-fitter, general plant employee) to an electrocution hazard from simple contact with the piping system. [Ex. 4–13]

OSHA agrees with these comments. It is important for the equipment grounding conductor to be reliable and of low impedance. Water pipes are neither. In addition, as noted by this commenter, employees working on water pipes used in this manner can be exposed to hazardous differences in electrical potential across an open pipe. On the other hand, OSHA has allowed grounded cold water pipes to be used for grounding branch circuit extensions since 1972. (See, for example, existing § 1910.304(f)(3)(iii).[24]) Since there have been very few reported accidents, the Agency does not believe that the risk to employees, not to mention the substantial cost to employers, of rerunning these branch circuit extensions is worth the reduction in risk associated with the continued use of water pipes for grounding purposes. To redo a branch circuit extension, an employee would need to deenergize the existing circuit and run new conductors back to a point where an acceptable connection to the ground is available. (Section 250.130(C) of the 2002 NEC lists acceptable grounding points.) The risk of inadvertently contacting an energized part during the recircuiting process is likely to be at least as high as the risk of electric shock caused by using the water pipe as an equipment grounding conductor. Also, it may not be known which branch circuit receptacles are grounded to a water pipe; thus, employees may be introduced to hazards in the process of tracing the existing wiring installation. Consequently, the final rule allows using a grounded cold water pipe as the equipment grounding conductor on branch circuit extensions only in existing installations. The final rule would also require such equipment grounding connections to be replaced any time work is performed on the branch circuit. In such cases, the circuit would need to be deenergized anyway, and there would be no increased risk during the installation of a new equipment grounding conductor.

Proposed § 1910.304(g)(4) (final § 1910.304(g)(5)) would have required the path to ground from circuits, equipment, and enclosures to be permanent and continuous. The language in this proposed provision is identical to existing § 1910.304(f)(4).

[24] The existing standard permits the use of a grounded cold water pipe as an equipment grounding only for extensions of branch circuits that do not have an equipment grounding conductor.

Several commenters recommended adding the word ''effective'' in the requirement to ensure that the grounding path of the conductor is successful in providing a permanent and continuous path to ground (Exs. 4–4, 4–13, 4–15, 4–17, 4–18, 4–21). These commenters noted that the NEC has requirements on effective grounding and has had these requirements in the code for many years and that the proposed rule was inconsistent with the NEC, NFPA 70E, and other OSHA requirements. For example, Mr. Douglas Baxter stated:

> Equipment grounding is important enough for OSHA to require it to be effective as stated in the proposal at these locations:
>
> Page 17817–1910.304(b)(2)(ii) ''Receptacles and cord connectors having grounding contacts shall have those contacts effectively grounded.''
>
> Page 17823–1910.305(c)(5) ''Grounding. Snap switches, including dimmer switches, shall be effectively grounded and shall provide a means to ground metal faceplates.''
>
> It is unclear as to why OSHA believes that electrical circuits and equipment (which would be referenced under 1910.304(g)(4)) somehow will not present an electrocution hazard if not effectively grounded unlike receptacles or snap switches.
>
> Particularly noteworthy to underscore is the fact that as written in the proposal, 1910.304(g)(4) is not consistent with the 2004 (current) edition of NFPA 70E, nor is it consistent with any edition since the original 1979 Edition. The proposal should read the same as the 2000 edition of NFPA 70E, as shown above. [Ex. 4–17]

OSHA believes that the effectiveness of grounding is important and will save lives when done properly. Therefore, the final rule, in § 1910.304(g)(5), requires the equipment grounding conductor to be permanent, continuous, and effective.

The 2002 edition of NEC defines ''effectively grounded'' in Article 100 as:

> Intentionally connected to earth through a ground connection or connections of sufficiently low impedance and having sufficient current-carrying capacity to prevent the buildup of voltages that may result in undue hazards to connected equipment or to persons.

This same definition appears in Part I of the 2000 edition of NFPA 70E. OSHA proposed a similar definition of ''effectively grounded,'' which would have applied to voltages over 600 volts, nominal. To clarify the final standard and to maintain consistency with the NEC and NFPA 70E, OSHA is adopting the NEC definition of ''effectively grounded'' in § 1910.399 and is applying that definition in the final rule to all voltages. The term ''effectively grounded'' (or the equivalent) is used in final §§ 1910.304(b)(2)(ii), (g)(5), (g)(8)(ii), and (g)(8)(iii), 1910.305(c)(5), and 1910.308(a)(6)(ii), (a)(7)(viii), (e)(4)(ii), and (e)(4)(iii). OSHA believes that the definition adopted in the final rule accurately describes the intent of that term for all of these requirements. The adopted definition merely makes explicit what was implicit in the proposal.

Paragraph (g)(7)(ii) of proposed § 1910.304 (final § 1910.304(g)(8)(ii) and (g)(8)(iii)) would have recognized several methods of grounding electric equipment by means other than direct connection to an equipment grounding conductor. This provision would have permitted, for installations made before April 16, 1981, only, electric equipment to be considered effectively grounded if it was secured to, and in metallic contact with, the grounded structural metal frame of a building. This paragraph is the same as existing § 1910.304(f)(6)(ii).

Several commenters requested that OSHA totally remove the structural metal frame of a building as an acceptable grounding method (Exs. 3–2, 4–13, 4–15, 4–18, 4–21). For example, NECA believed that this grounding technique is obsolete and unsafe (Ex. 3–2). NECA noted that 2002 NEC Section 250.136(A) states: ''The structural metal frame of a building shall not be used as the required equipment grounding conductor for ac equipment.'' Other commenters argued that this allowance is incongruent with the 2004 and prior editions of NFPA 70E (Exs. 4–13, 4–15, 4–18, 4–21). For example, Mr. Michael Kovacic stated that this has been prohibited for ac circuits since the 1978 edition of the NEC. He presented the reason for this as follows:

> This requirement [in proposed paragraph (g)(7)(i) for equipment grounded by an equipment grounding conductor that is contained within the same raceway, cable, or cord, or runs with or encloses the circuit conductors] is to keep conductors grouped close together so magnetic fields generated by the flow of ac electricity, which reacts with the circuit conductors, will cancel each other out, thereby minimizing the total circuit impedance for safety reasons (preventing electrocution in the event of a breakdown or fault in the equipment by rapid operation of the overcurrent device). In the case of dc circuits, there are no pulsating magnetic fields and consequently no circuit reactance, which increases the circuit impedance to negatively affect the grounding path of equipment. [Ex. 4–18]

OSHA agrees with these comments. In fact, the Agency provided similar rationale in prohibiting the use of the metal structure of a building for grounding electric equipment when it adopted the existing standard in 1981 (46 FR 4034, 4046, January 16, 1981). However, at that time, the Agency also decided not to apply this prohibition retroactively, reasoning as follows:

> [F]rom the standpoint of employee safety, installations where electric equipment is secured to, and in metallic contact with, the grounded structural frame of a building are essentially free of electrical shock hazards. This condition occurs because the electric equipment enclosures and the metal building frame will be approximately at the same potential if a ground fault occurs and will provide a measure of employee safety. [46 FR 4046]

In that rulemaking, OSHA agreed with comments that it would be impractical to require changes to installations that had been permitted by the NEC for many years before 1978.

OSHA believes that this rationale continues to apply today. Nothing in the record has convinced the Agency that the conclusion drawn in the existing standard in 1981 is incorrect. Also, the Agency does not believe that the substantial cost to employers of changing these grounding connections is worth the slight possible reduction in risk associated with moving from the use of the structural metal frame of a building to a separate equipment grounding conductor. In addition, in actual practice, such a change might not lead to an overall reduction in risk at all. To reconfigure a branch circuit and run new conductors back to a point where an acceptable connection to the ground is available,[25] an employee would need to deenergize the existing circuits connected. An employee could inadvertently contact an energized part during the recircuiting process.

Consequently, the final rule in § 1910.304(g)(8)(iii) continues to allow the use of the grounded structural metal frame of a building as the equipment grounding conductor for equipment secured to, and in metallic contact with, the metal frame only for installations made before April 16, 1981. However, unlike the existing standard, the final rule requires such grounds to be replaced any time work is performed on the branch circuit. In such cases, the circuit needs to be deenergized anyway, and there would be no increased risk during the installation of a new equipment grounding conductor. Additionally, the costs of installing an acceptable equipment grounding conductor in such cases would be minimized.

[25] Section 250.130(C) of the 2002 NEC lists acceptable grounding methods.

K. Equipment for General Use (§ 1910.305)

Paragraph (a)(2) of proposed § 1910.305 would have applied to temporary wiring installations. According to proposed § 1910.305(a)(2)(iii), temporary installations over 600 volts would only be permitted for periods of tests, experiments, or emergencies.

Northrop Grumman-Newport News objected to this restriction on the use of temporary wiring of more than 600 volts (Ex. 3–7). It noted that employers performing shipbuilding and ship repair use temporary wiring to provide power to the ships that arrive at the shipyard, stating:

> During construction and major overhaul of a vessel, ship and shore-based electrical installations may be interconnected. For instance, permanent ship electrical systems will typically be powered by temporary shore power whenever a ship is not at sea. Ships are specifically designed in this manner. [Ex. 3–7–1]

It noted further that the ships must have their normal power source shut down and use the power source from connection points within the shipyards, which can be more than 600 volts. It stated that flexible cords and cables are used to supply power to these ships for repair and maintenance and that they are temporary wiring installations.

Paragraph (a)(2) of proposed § 1910.305 was taken from Article 305 of the 1999 NEC and section 3–1.2 in Part I of NFPA 70E–2000. Both of these standards permit temporary wiring of more than 600 volts to be used for construction in addition to the uses permitted in the OSHA proposal. The Agency did not include ''construction'' as a permitted use in the proposal (or, for that matter, in the existing standard) because construction work is covered by the construction standards in 29 CFR Part 1926. However, Northrop Grumman-Newport News's comments show that certain types of construction-like activities occur in general industry and maritime. The Agency believes that the NEC and NFPA 70E intend to permit high-voltage temporary wiring installations used for purposes like those described in the Northrop Grumman-Newport News comments. Thus, to permit this type of temporary installation and to improve consistency with the NEC and NFPA 70E, OSHA has added ''construction-like activities'' to the list of permitted uses for high-voltage temporary wiring in final § 1910.305(a)(2)(iii). OSHA intends this term to include such construction-like activities as ship building and ship repair without regard to whether the activity falls under OSHA's construction standards. As noted earlier, construction-like activities also include cleanup, disaster remediation, and restoration of large electrical installations.[26]

Proposed § 1910.305(a)(3)(v) would have permitted nonmetallic cable trays to be installed only in corrosive areas and in areas requiring voltage isolation. Two commenters objected to this provision (Exs. 3–8, 4–16, 4–22). Mr. Mark Spence, representing Dow Chemical Company (Exs. 3–8, 4–16), noted that the corresponding provision in the NEC, section 392.3(E), reads as follows:

> In addition to the uses permitted elsewhere in Article 392, nonmetallic cable tray shall be permitted in corrosive areas and in areas requiring voltage isolation.

He pointed out that section 392.3 specifically permits cable tray systems to be installed as support systems for services, feeders, branch circuits, communications circuits, control circuits, and signaling circuits. Thus, he concluded that the NEC does not restrict the use of nonmetallic cable trays as OSHA's proposal did.

OSHA agrees with Mr. Spence's comments and has not carried proposed § 1910.305(a)(3)(v) into the final rule. This action removes the proposed restriction on the use of nonmetallic cable trays. Under the final rule, nonmetallic cable trays can be used wherever metallic cable trays may be used.

Mr. Spence also objected to the application of proposed § 1910.305(j)(2)(iii) to all installations made after March 15, 1972 (Exs. 3–8, 4–16). This provision would have prohibited nongrounding-type receptacles from being used for grounding-type attachment plugs. He stated that Dow Chemical was concerned that this provision could pose problems with existing buildings with two-wire receptacles. He reasoned as follows:

This [proposed provision] is adapted from NFPA 70E § 420.10(C)(2), which states:

> Non-grounding-type receptacles and connectors shall not accept grounding-type attachment plugs.
>
> * * * * *

OSHA apparently considers that this proposed requirement is implicit in the existing Subpart S. The preamble to the proposed rule refers to this provision as a ''clarification'' (69 Fed. Reg. at 17788). However, the text of existing Subpart S does not address this issue, and Dow could not identify any previous OSHA interpretation of its existing requirements which reached the conclusion articulated in proposed § 1910.305(j)(2)(iii).

Accordingly, OSHA should include this requirement (and all others that are new to Subpart S) in section 1910.302(b)(4), requirements applicable only to installations made after the effective date of the final rule. [Ex. 4–16]

The NEC has required receptacles to be of the grounding type for decades. The 1972 NEC, which was adopted by reference in Subpart S from March 15, 1972, until April 16, 1981, contained many requirements for grounding-type receptacles. For example, Section 210–21(b) of the 1971 NEC required all receptacles on 15- and 20-ampere branch circuits to be of the grounding type. That section also requires grounding-type receptacles to be used as replacements for existing nongrounding-type receptacles unless it was impractical to reach a source of ground. Thus, the vast majority of receptacles installed since 1972 are of the grounding type. In addition, equipment supplied with an equipment grounding conductor is intended to have that conductor properly connected to ground. Using an adapter with such equipment is prohibited by existing § 1910.334(a)(3)(iii) if the adapter interrupts the equipment grounding conductor. Connecting or altering an attachment plug in a manner that prevents proper connection of the equipment grounding conductor is prohibited by existing § 1910.334(a)(3)(ii). Consequently, OSHA's current standards essentially prohibit connecting grounding-type attachment plugs to nongrounding-type receptacles. For these reasons, OSHA is carrying proposed § 1910.305(j)(2)(iii) forward unchanged into the final rule.

Proposed § 1910.305(j)(2)(v) would have required a receptacle installed outdoors in a location protected from the weather to have an enclosure that is weatherproof when the receptacle is covered. A note following that provision indicated that a receptacle is considered to be in a location protected from the weather where it is located under roofed open porches, canopies, marquees, or the like and where it will not be subjected to a beating rain or water runoff. OSHA received several comments on the language in the note (Exs. 3–2, 4–13, 4–17, 4–18, 4–21). These commenters argued that the word ''beating'' is not defined making this provision difficult to enforce. They recommended that OSHA remove this word from the note.

[26] It should be noted that the discussion of the term ''construction-like activities'' applies only to the use of this term in Subpart S.

The Agency is retaining the term ''beating rain'' in the final rule. The language in the note to final § 1910.305(j)(2)(v) mirrors that in section 406.8(A) of the 2002 NEC, which uses the same term in describing ''locations protected from the weather.'' More importantly, OSHA has determined that the word ''beating'' as used in the note is critical to the meaning of the note itself. Paragraph (j)(2)(v) in final § 1910.305 is intended to require weatherproof enclosures to ensure that water does not enter or accumulate within the enclosure.[27] If rain can strike the receptacle face directly, water will almost certainly enter and accumulate within the enclosure. Thus, the term ''beating rain'' as used in the note means a rain that directly contacts the receptacle face. This interpretation is consistent with the definition of ''damp location'' in the final rule.[28]

Proposed § 1910.305(j)(3)(iii) would have required each electric appliance to be provided with a nameplate with the identifying name and the rating in volts and amperes, or in volts and watts. This provision also would have required the marking to include frequency ratings if the appliance is to be used on specific frequencies. Finally, if motor overload protection external to the appliance is necessary, this paragraph would have required the appliance to be so marked.

Dow Chemical Company argued that the requirements to mark appliances when external overload protection is needed and when the appliance must be used on specific frequencies were new requirements that should be made applicable only to new installations built after the publication of the final rule (Exs. 3–8, 4–16). Dow noted that the counterpart in the existing standard, § 1910.305(j)(3)(iii), requires the marking to include only the rating in volts and amperes or volts and watts. They recommended that proposed § 1910.305(j)(3)(iii) be included in the list of requirements applicable only to installations made after the effective date of the final standard.

The requirement for appliances to be marked with any necessary frequency ratings was contained in section 422–30(a) of the 1971 NEC. The requirement for marking of the need for external overload protection was also contained in section 422–30(a) of the 1971 NEC. In addition, the existing OSHA standard in § 1910.303(e) requires electric equipment to be marked with voltage, current, wattage, or other ratings as necessary. The ratings required by the NEC are necessary for the safety of any employee installing or using affected appliances. Thus, the marking provisions proposed in § 1910.305(j)(3)(iii) are not new. The existing rule requires the markings implicitly. The final rule simply makes the requirement explicit. Therefore, OSHA has not added that paragraph to the list of requirements applicable only to new installations given in final § 1910.302(b)(4).

Proposed § 1910.305(j)(4)(ii) would have required that each motor controller be provided with an individual disconnecting means within sight of the controller. However, this provision would have permitted a single disconnecting means to be located adjacent to a group of coordinated controllers mounted adjacent to each other on a multi-motor continuous process machine. In addition, the proposed rule would have permitted the controller disconnecting means for motor branch circuits over 600 volts, nominal, to be out of sight of the controller, if the controller was marked with a warning label giving the location and identification of the disconnecting means to be locked in the open position.

Mr. Mark Spence of Dow Chemical requested that the standard allow disconnecting means for motor controllers of 600 volts, nominal, or less to be out of sight of the controller location if the disconnecting means is capable of being locked out (Exs. 3–8, 4–16). He pointed to an exception to section 430.102(B) of the 2002 NEC, which, under certain conditions, permits disconnecting means to be located out of sight of the motor when the disconnecting means is capable of being locked in the open position.

OSHA has not adopted Dow's recommendation. The proposed rule requires disconnecting means to be located within sight of the motor controller location whereas the NEC exception permits the disconnecting means to be out of sight of the motor, not the controller. The requirement in 2002 NEC section 430.102(A) for the disconnecting means to be within sight of the controller location still exists. Thus, proposed § 1910.305(j)(4)(ii) is consistent with the 2002 NEC, and OSHA is carrying it forward, unchanged, into the final rule.

L. Specific Purpose Equipment and Installations—§ 1910.306

Proposed § 1910.306(e) read as follows:

> A means shall be provided to disconnect power to all electronic equipment in an information technology equipment room. There shall also be a similar means to disconnect the power to all dedicated heating, ventilating, and air-conditioning (HVAC) systems serving the room and to cause all required fire/smoke dampers to close. The control for these disconnecting means shall be grouped and identified and shall be readily accessible at the principal exit doors. A single means to control both the electronic equipment and HVAC system is permitted.

This proposed provision is equivalent to existing § 1910.306(e), which requires data processing systems to have disconnecting means for electronic equipment in data processing or computer rooms and for the air conditioning system serving the area.

Several commenters noted that the 2002 edition of the NEC provided an exception to this requirement for integrated systems (Exs. 3–8, 4–11, 4–16, 4–19). Typifying these comments, the Dow Chemical Company argued as follows:

> Using disconnects for information technology systems that are part of integrated electrical systems may be an unsafe practice, since an orderly shutdown of such systems may be necessary for safety. Accordingly, OSHA should amend its proposal to include the NEC exception for integrated electrical systems. [Ex. 4–16]

OSHA agrees with these commenters that providing ready disconnecting means for integrated electrical systems can pose greater hazards for employees than having the data processing and air conditioning systems shut down as part of an orderly process. Integrated electrical systems, which are covered by final § 1910.308(g) provide for deenergizing of electric equipment in an orderly fashion to prevent hazards to people and damage to equipment. For example, in certain chemical processes, a cooling system is needed to maintain control over the chemical process. Deenergizing the cooling system for this process while the chemical reaction continues can lead to catastrophic failure of containment vessels, which lead to extensive property damage and employee injuries. Consequently, OSHA is including an exception to final § 1910.306(e) for integrated electrical systems covered by § 1910.308(g).

M. Carnivals, Circuses, Fairs, and Similar Events

Proposed § 1910.306(k) contained new requirements for carnivals,

[27] See final § 1910.305(j)(1)(iv) for fixtures, which contains a corresponding requirement for fixtures installed in wet or damp locations.

[28] The definition of ''damp location'' reads as follows:

> Partially protected locations under canopies, marquees, roofed open porches, and like locations, and interior locations subject to moderate degrees of moisture, such as some basements, some barns, and some cold-storage warehouses.

circuses, exhibitions, fairs, traveling attractions, and similar events. No comments were received concerning these provisions, and OSHA is carrying them forward into the final rule unchanged. The requirements in final § 1910.306(k), which are based on corresponding requirements in NFPA 70E, cover the installation of portable wiring and equipment for these temporary attractions. From 1991 to 2002, OSHA received reports of 46 serious accidents [29] associated with carnivals, circuses, exhibitions, fairs, and similar events (Ex. 2–7). Eleven of these accidents, resulting in 10 fatalities and 5 injuries, involved electric shock. Eight of those 11 cases (8 fatalities and 1 injury) involved electric wiring and equipment covered by the installation requirements in Subpart S. OSHA believes that the new electrical requirements for these events will prevent similar accidents in the future.

In paragraph (k) of final § 1910.306, OSHA is requiring mechanical protection of electric equipment (paragraph (k)(1)) and of wiring methods in and around rides, concessions, or other units subject to physical damage (paragraph (k)(2)). Inside tents and concession stands, the electrical wiring for temporary lighting must be secured and protected from physical damage (paragraph (k)(3)). In paragraph (k)(4), the final rule sets requirements for portable distribution and termination boxes. These new provisions will provide more electrical safety for employees working in and around this equipment.

Under final § 1910.306(k)(5), the disconnecting means must be readily accessible to the operator; that is, the fused disconnect switch or circuit breaker must be located within sight and within 1.83 meters (6 feet) of the operator for concession stands and rides. This provision provides protection by enabling the operator to stop the equipment in an emergency. The disconnecting means must also be lockable if it is exposed to unqualified persons, to prevent such persons from operating it.

N. Zone Classification

Introduction. Existing § 1910.307 contains OSHA's electrical safety requirements for locations that can be hazardous because of the presence of flammable or combustible substances. Hazardous locations are classified according to the properties of flammable vapors, liquids or gases, or combustible dusts or fibers that may be present. These locations are designated in the NEC and existing § 1910.307 as one of six types: Class I, Division 1; Class I, Division 2; Class II, Division 1; Class II, Division 2; Class III, Division 1; and Class III, Division 2. This system is called the ''division classification system,'' or the ''division system.'' The NEC first addressed this system in 1920. The OSHA website has a short but informative paper on this topic, which is available at *http://www.osha.gov/doc/outreachtraining/htmlfiles/hazloc.html.*

The 2000 edition of NFPA 70E incorporates an alternative system (in addition to the division classification system) for installing electric equipment in Class I locations. (Class II locations continue under the division system.) This system is called the ''zone classification system,'' or the ''zone system.'' The zone system designates three classifications: Class I, Zone 0; Class I, Zone 1; and Class I, Zone 2. The zone system is based on various European standards that were developed by the International Electrotechnical Commission (IEC).[30] A modified version of this system was first adopted into the NEC in the 1996 edition. Although the zone and division classification systems differ in concept, individual equipment can be approved for use under both systems when the equipment incorporates protective techniques for both systems (as determined by the nationally recognized testing laboratory that lists or labels the equipment). Based on the successful use of the zone system in European countries for many years and the acceptance of the zone system by the NEC and international standards, OSHA believes that an installation conforming to requirements for this system is as safe as one conforming to requirements for the division system.

The zone system incorporated in the final rule is an alternative method to the division system; employers may use either system for installations of electric equipment in Class I hazardous locations. OSHA will recognize the use of the zone system under § 1910.307 and any other OSHA standard that references § 1910.307.[31]

As noted earlier, OSHA is requiring employers to document the designation of hazardous locations within their facilities in final § 1910.307(b). The documentation must denote the boundaries of each division or zone so that employees who install, inspect, maintain, or operate equipment in these areas will be able to determine whether the equipment is safe for the location. As noted earlier, OSHA is requiring documentation for the division system only for new installations that use that system. The document requirement does apply, however, to all installations made under the zone system.

Several commenters supported the proposed requirement for documenting installations (Exs. 3–5, 3–9, 5–2). For example, NIOSH stated:

> An important addition to the proposed standard is the new requirement for employers to document the designation of hazardous locations within their facilities, thus allowing workers who install, inspect, maintain, or operate equipment in these areas to identify the correct equipment or system components to be used to ensure worker safety. This requirement would also ensure that the employer maintain a record of the boundaries of each hazardous location and its classification either under the current division system or the proposed zone system. [Ex. 3–9–1]

One commenter objected to the documentation requirement to the extent that it would apply to shipbuilding and ship repair (Ex. 3–7). The commenter argued as follows:

> [Proposed § 1910.307] requires documentation of each hazardous location, followed by design and installation of equipment meeting certain requirements. The standard does not appear to consider mobile operations and the difficulty in maintaining documentation for an interim operation. For instance, in shipbuilding and repair, ship modules and compartments must be spray painted. Therefore, at the time the compartment is being painted, it may meet the definition of a Class I, Division 2 area.
>
> There are over 3,000 compartments on an aircraft carrier that will be spraypainted at least twice during the course of construction. It is not feasible or realistic to expect shipyards to maintain a list of precisely which compartments are being spraypainted on any particular day. Furthermore, it provides no added protection since controls are already established as required by 29 CFR 1915, Subpart B. Subpart B—Confined and Enclosed Spaces and Other Dangerous Atmospheres, including 1915.13 (Cleaning and Other Cold Work), specifies the required

[29] These accidents were investigated by OSHA generally in response to employer reports of a fatality or three or more hospitalized injuries.

[30] The IEC prepares and publishes international standards for all electrical, electronic and related technologies. This global organization is made up of members from more than 60 participating countries, including the U.S.

[31] Several OSHA general industry standards outside Subpart S require electric equipment to meet the Subpart S requirements for Class I, Division 1 or 2 locations. For example, § 1910.103(b)(3)(ii)(*e*) requires electric equipment installed in separate buildings housing gaseous hydrogen systems to meet the Subpart S provisions for Class I, Division 2 locations. Although the Agency is not revising any of these other general industry standards to specifically accept installations meeting the Subpart S zone system requirements, OSHA will consider any nonconformance by an installation that the employer can demonstrate is properly classified and installed under the Subpart S zone system requirements as a *de minimis* violation.

controls for spraypainting and other cold work, including when explosion proof, self-contained lamps or other electric equipment must be approved and used. Based on our evaluation that current shipyard standards in Subpart B, 1915 provide equal or greater protection and the infeasibility of documenting mobile operations, we request that OSHA clarify in the applicability section or in the preamble to the final rule that Subpart B is applicable to the shipbuilding and repair industry in lieu of 1910.307. [Ex. 3–7–1]

OSHA does not agree that areas being spraypainted on a temporary basis are Class I locations. The areas described by the commenter are normally nonhazardous locations that are made hazardous through the temporary introduction of flammable gases and vapors; thus, they would not be considered a hazardous location. (See 55 FR 32008.) In most general industry applications, § 1910.334(d) applies to the temporary or occasional use of flammable materials. In the commenter's specific case, the shipyard employment standards in Subpart B of 29 CFR Part 1915 apply, as the commenter noted (Ex. 3–7–1).[32] Consequently, the employer is not required to document these locations unless the painting is done in a location that is hazardous when the spray painting operation is not being performed.

ORC Worldwide recommended that OSHA clarify what employers must include in their documentation of hazardous locations in a nonmandatory appendix. As noted earlier, final § 1910.307(b) requires documentation that denotes the boundaries of each division or zone. The documentation may be in the form of drawings that visually depict the boundaries or in text that precisely describes the extent of each hazardous location. Examples of acceptable documentation are contained in the NEC (see, for example, Figure 514.3, showing the extent of Class I, Division 1 and 2 locations surrounding motor fuel dispensers, commonly known as gasoline pumps) and in several national consensus standards included in Appendix A to Subpart S (see, for example, ANSI/API RP 505–1997, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1, or Zone 2). Because these standards are already listed in Appendix A, OSHA does not believe it is necessary to include a separate appendix on the documentation requirements in final § 1910.307.

Changes to OSHA's existing requirements for the division classification system. The term ''hazardous concentrations'' is currently used in various definitions of specific hazardous locations in § 1910.399. For example, § 1910.399 defines ''Class I, Division 1,'' in part, as follows:

> A Class I, Division 1 location is a location: (a) in which hazardous concentrations of flammable gases or vapors may exist under normal operating conditions * * *

The final standard replaces the term ''hazardous concentrations'' with ''ignitable concentrations'' in each of the definitions of Class I locations in § 1910.399. This change reflects changes already incorporated into the NEC (both the 1999 and 2002 editions) and the 2000 edition of NFPA 70E to make the definitions more specific about the hazard being addressed. The changes, which OSHA does not consider to be substantive, make these definitions clearer in addition to making the OSHA standard consistent with the latest editions of NEC and NFPA 70E.

OSHA is also adding a new paragraph (f) to final § 1910.307 that lists specific protection techniques under the division system. Neither the current Subpart S nor NFPA 70E explicitly list particular protection techniques that can be used in the division classification system; however, the NEC does provide specific protection techniques for installations made under the division classification system in various requirements throughout the Articles covering hazardous locations. OSHA has listed these techniques in one paragraph in the final rule to make the standard easier to use and to provide parallel requirements for both the division classification system and the zone classification system, which is addressed in final § 1910.307(g). Protective techniques other than those listed in final paragraph (f) are acceptable if the equipment is: (1) Intrinsically safe as specified in § 1910.307(c)(1); (2) approved for the specific hazardous location as specified in § 1910.307(c)(2); or (3) of a type and design that the employer demonstrates is safe for the specific hazardous location as specified in § 1910.307(c)(3). New paragraph (f) is intended to clarify the existing OSHA requirements for hazardous locations by explicitly listing the types of protective techniques that can be used under the division classification system. (The protection techniques are required implicitly under the existing standard through the requirements for approval and listing or labeling by a nationally recognized testing laboratory and through the reference to the NEC in the note following existing § 1910.307(c)(3).)

OSHA received one comment recommending the adoption of additional protection techniques for the division system (Ex. 4–22). This commenter recommended including protection techniques listed in Section 500.7 of the 2002 NEC, including nonincendive, hermetically sealed, and combustible gas detection protection techniques.

Paragraph (f)(5) of proposed § 1910.307 (final § 1910.307(f)(10)) recognized protection techniques not specifically listed in the preceding four paragraphs as long as the technique in question met proposed § 1910.307(c). Because the techniques mentioned by the commenter meet the 2002 NEC requirements for Class I hazardous locations, those techniques would have been recognized under proposed § 1910.307(f)(5). However, to clarify the standard, OSHA has included all the protective techniques listed in Section 500.7 of the 2002 NEC in final § 1910.307(f).

Brief background and description of the zone system. The zone system stemmed from the independent efforts of countries in Europe and elsewhere to develop an area classification system to address safety in locations containing hazardous substances. The IEC formalized these efforts into the zone system, which is now used to classify the majority of the world's hazardous location systems.[33]

Article 505 of the 1996 NEC included requirements for the U.S. version of the zone system for the first time. The 2000 edition of NFPA 70E includes requirements for the zone system based on the 1999 version of the NEC. OSHA is adopting zone system rules that are based on these NFPA 70E provisions. This will permit electric equipment approved for use in hazardous locations to be used in U.S. workplaces, under either the division or zone system.

Major differences between the division classification system and the zone classification system. The zone system can best be described by comparing it with the division system. Both systems characterize locations by the likelihood and circumstances under which flammable gases or vapors exist.

[32] Other provisions that may be applicable in shipyard employment include §§ 1915.35 and 1915.36.

[33] Brenon, M., Kelly, P., McManama, K., Klausmeyer, U., Shao, W., Smith, P., ''The Impact of the IECEx Scheme on the Global Availability of Explosion Protected Apparatus,'' Record of Conference Papers of the 1999 Petroleum and Chemical Industry Technical Conference, September 13–15, 1999, Paper No. PCIC–99–07, pp. 99–109.

The systems both define the types of gases or vapors that may exist and categorize them under a number of groups. Each system specifies an allowable range of operating temperature, and corresponding requirements, for electric equipment used in a particular division or zone.

In contrast to the division system, however, the zone system is only used to classify areas that are hazardous because of the presence of flammable gases or vapors (Class I locations). The division system must be used to classify areas that may contain combustible dusts or easily ignitable fibers or flyings (Class II and III locations, respectively).

The zone system defines three types of Class I locations (Zones 0, 1, and 2) rather than two locations under the division system (Divisions 1 and 2). Zones 0 and 1 equate to Division 1, whereas Zone 2 equates to Division 2. In a Class I, Division 1 location, flammable gases or vapors are or may be present in the air in ignitable concentrations. In a Class I, Zone 1 location, ignitable concentrations of flammable gases or vapors are not always present, but such concentrations may exist periodically even under normal conditions. By contrast, in a Class I, Zone 0 location, such gases or vapors are present either continuously or for long periods. (See Table 2.) Thus, a Class I, Zone 0 location is, in essence, a worst-case Class I, Division 1 location.

Each system classifies flammable gases and vapors into a number of groups. The division system has four such groups, designated A, B, C, and D, with group A containing the most volatile substances, and groups B, C, and D containing gases or vapors that are progressively less volatile. The zone system has three such groups, designated IIA, IIB, and IIC, with group IIC containing the most volatile gases, and groups IIA and II B containing gases or vapors that are progressively less volatile. Substances classified under groups A and B in the division system generally fall under group IIC of the zone system. However, some differences exist between the groups in the two systems. Thus, regardless of the classification system being used, equipment intended for use in a Class I hazardous location must indicate the groups for which it is approved, as required by final § 1910.307(c)(2)(ii) and (g)(5)(ii). Table 2 summarizes the similarities and differences between the two systems.

The other major differences concern the allowable protection schemes and the maximum allowable surface temperature of equipment under each system. The protection schemes acceptable for each division and zone are listed in Table 3, and the remainder of this paragraph discusses the differences in maximum allowable temperature. According to the NEC, equipment is acceptable for a hazardous location only if its surface temperatures will not approach the ignition temperature, or more specifically the autoignition temperature, of the particular gases and vapors that might be present in that location. There are 14 temperature limits, and corresponding identification codes, under the division system. Each limit specifies the maximum surface temperature for equipment labeled with the matching code. There are six such temperature limits and corresponding identification codes under the zone system. The six zone system limits correspond directly to 6 of the 14 division system temperature limits. However, as shown in Table 2, the remaining eight division temperature limits have values intermediate to the six zone system temperature limits. For example, the division system has 4 intermediate temperature limits, 215 °C, 230 °C, 260 °C, and 280 °C (T2D, T2C, T2B, and T2A, respectively), between the zone system's temperature limits of 200 °C (T3) and 300 °C (T2). Equipment approved for one of these intermediate values may be used under the zone system only for the higher (in temperature) of the two closest zone system values. For example, equipment marked T2A under the division system, which has a maximum surface temperature of 280 °C, could only be used in locations where the ignition temperature of the substance is greater than or equal to the T2 value, which is 300 °C. In essence, T2A equipment becomes derated to T2 equipment when it is installed using the zone classification system. It could not be used in zone-classified locations where the ignition temperature of the substance is less than or equal to the T3 value, which is 200 °C, because the equipment could become hot enough to cause ignition.

More details on the differences in gas groups. In the 1999 NEC, the definitions for each of the division system gas and vapor groups, except Group A,[34] were changed to make them comparable to the definitions of the zone system groups. A gas or vapor is classified in the division system's Group B, C, or D or the zone systems Group IIC, IIB, or IIA based on the gas's or vapor's maximum experimental safe gap (MESG)[35] or its minimum igniting current ratio (MIC ratio).[36] These values are established under standard experimental conditions for each gas and vapor.

The 1999 NEC indicates two factors that may affect MESG and MIC values: (1) Lower ambient temperatures (lower than minus 25 °C or minus 13 °F), and (2) oxygen enriched atmospheres. The 1999 NEC Handbook states that the latter factor can drastically change the explosion characteristics of materials. Such an atmosphere lowers the minimum ignition energy, increases the explosion pressure, and can reduce the maximum experimental safe gap. These factors would make it unsafe to use otherwise approved ''intrinsically safe'' and ''explosion-proof'' equipment, unless the equipment has been tested for the specific conditions involved. Employers must ensure that the equipment approval is valid for the actual conditions present where the equipment is installed. This is required generally for all electric equipment. However, it is essential in hazardous locations because of the dire consequences that may result.

Rationale for adopting the zone system requirements. As stated earlier, the zone system has been accepted in many countries. Such international acceptance has meant that U.S. manufacturers of electric equipment suitable for installation in hazardous locations have had to ensure that their equipment met the zone system requirements if they wished to sell such equipment in zone-system countries in addition to meeting the U.S. division system requirements. Also, U.S. employers that had hazardous locations in their workplaces have sought to use equipment approved for use only in zone-classified locations in this country. This, in turn, led NFPA to incorporate the zone system in the NEC starting in the 1996 edition.

OSHA has determined that employees can be protected from the hazards of explosion in Class I hazardous locations by the installation of electric equipment following the latest NEC requirements for the zone classification system (Article 505 of the 2002 NEC). Therefore, the Agency is incorporating

[34] Acetylene is the only Group A gas under the division system.

[35] The MESG is the maximum clearance between two parallel metal surfaces that has been found, under specified test conditions, to prevent an explosion in a test chamber from being propagated to a secondary chamber containing the same gas or vapor at the same concentration.

[36] The MIC ratio is the ratio of the minimum current required from an inductive spark discharge to ignite the most easily ignitable mixture of a gas or vapor, divided by the minimum current required from an inductive spark discharge to ignite methane under the same test conditions.

the zone system in this revision of the electrical installation requirements in Subpart S. Under the final standard, employers are able to comply with either the zone classification system or the division system for Class 1 hazardous locations.

New § 1910.307(g) and related definitions. In the final rule, OSHA is adding a new paragraph (g) to final § 1910.307 that covers the zone classification system. This new paragraph addresses the following topics related to the zone classification system: scope; location and general requirements; protection techniques; special precaution; and listing and marking. A brief description of the contents of each paragraph follows.

Paragraph (g)(1) permits employers to use the zone classification system as an alternative to the division classification system. As explained in paragraph (a)(4), the requirements in final § 1910.307 that are specific to installations built under the division classification do not apply to installations built under the zone classification system. Thus, paragraph (c), electrical installations; paragraph (d), conduits; paragraph (e), equipment in Division 2 locations; and paragraph (f), protection techniques do not apply to installations built under the zone system. Paragraph (g) contains counterparts to each of these requirements.

Paragraphs (g)(2)(i) and (g)(2)(ii) describe how hazardous locations are classified under the zone system. The employer must consider each individual room, section, or area separately and must designate locations according to the specific properties of the flammable gases, liquids, or vapors that might be present. The same requirements apply to the division system. (See final § 1910.307(a).)

Paragraphs (g)(2)(iii) and (g)(2)(iv) require that conduit threads be of certain types and that connections be made wrench tight. These provisions ensure that there is no arcing across conduit connections in the event that they have to carry fault current. Paragraph (d) contains similar requirements for division system installations.

Paragraph (g)(3) of final § 1910.307 presents the protection techniques that are acceptable in zone-classified hazardous locations. Electric equipment in these locations must incorporate at least one of these protection techniques, and the equipment must be approved for the specific hazardous location. The protection techniques listed in final § 1910.307(g)(3) have been taken directly from NFPA 70E–2000.

OSHA received two comments on this proposed provision (Exs. 4–11, 4–19). These comments recommended that OSHA modify proposed paragraph (g)(3) to include Exception 4 to Section 505.20(C) of the 2002 NEC, which states: ''In Class I, Zone 2 locations, the installation of open or nonexplosion-proof or nonflame-proof enclosed motors, such as squirrel-cage induction motors without brushes, switching mechanisms, or similar arc-producing devices that are not identified for use in a Class I, Zone 2 location shall be permitted.'' They argued that the 2002 NEC does not require these types of motors to use one of the listed protection types.

OSHA disagrees with these comments. The exception to which these commenters pointed is to a requirement that equipment in Class I, Zone 2 locations be specifically listed and marked as suitable for the location. (See 2002 NEC Section 505.20(C).) Final § 1910.307(g)(3), however, is based on 1999 NEC Section 505–4, which corresponds to 2002 NEC Section 505.8. The types of motors mentioned by the commenters fall under protection technique ''n'' (known as ''type of protection''). This protection technique is defined in Section 505.2 of the 2002 NEC as ''Type of protection where electrical equipment, in normal operation, is not capable of igniting a surrounding explosive gas atmosphere and a fault capable of causing ignition is not likely to occur.'' A nonexplosion-proof motor without arc producing devices must also have a surface temperature under normal operating conditions that will be lower than the ignition temperature of the gas or vapor involved to be safe in a Class I, Zone 2 location. By definition, these are locations that are subject, albeit infrequently, to the introduction of hazardous quantities of flammable gases or vapors. If the surface temperature of the motor is too high, an explosion could result in those unusual but foreseeable situations involving hazardous accumulations of flammable gases or vapors. Thus, OSHA concludes that motors addressed by the NEC exception must still meet the criteria imposed by protection technique ''n.''

On the other hand, it appears that such motors are acceptable under the 2002 NEC even though they are not marked with any protection technique.[37] Proposed § 1910.307(g)(5) would have required all equipment installed under the zone classification system to be marked either with an acceptable class and division marking or with relevant class and zone markings. Based on the 2002 NEC requirements for installing and marking electric equipment in installations made under the zone classification system, OSHA has determined that it is unnecessary for certain types of equipment to be marked as required by final § 1910.307(g)(5). Therefore, in paragraph (g)(5)(ii)(C), the Agency has added an exception to final paragraph (g)(5) for electric equipment that the employer demonstrates will provide protection from the hazards arising from the flammability for the gas or vapor and zone of location involved and will be recognized by employees as providing such protection. Employers may point to the NEC as evidence that the equipment is safe.

Paragraph (g)(4) of final § 1910.307 sets special precautions that must be taken with respect to hazardous locations classified under the zone system. First, the classification of areas and the selection of equipment and wiring must be under the supervision of a qualified registered professional engineer. This provision is contained in NFPA 70E–2000 and in the 1999 NEC. Because the zone system has been permitted in the U.S. only since 1997,[38] employers and installers in this country have had relatively little experience with installations made using the zone classification system. The technical committees that developed NFPA 70E and the NEC have determined that, for the zone system, it is essential for competent persons to classify the hazardous locations and select equipment for those locations. OSHA agrees with the consensus determination by these committees, which are composed of members (such as NRTLs, electric equipment manufacturers, electrical contractors, and affected employee organizations) with expertise in electrical safety in hazardous locations.

Some commenters objected to the requirement that the classification of areas and selection of equipment and wiring methods be under the supervision of a qualified registered professional engineer (Exs. 3–5, 3–8, 4–16). ASSE argued that qualified electricians and safety professionals should be permitted to classify areas

[37] The marking requirement is contained in Section 505.9(C) of the 2002 NEC.

[38] As noted earlier, the zone system was first incorporated into the NEC in the 1996 edition. This edition was adopted by various governmental jurisdictions beginning in 1997. Installations made using the zone system were not permitted by these jurisdictions before then. In addition, the existing OSHA standard does not permit classifying hazardous locations under the zone system, and employers have not been certain that installations made using the zone classification systems would be acceptable to OSHA.

and select equipment and wiring methods for installations made under the zone classification system (Ex. 3–5). They further stated that not all professional engineers possess the electrical background to qualify for these tasks. Dow Chemical Company urged the Agency to permit any qualified person to classify areas and select equipment for zone-classified locations. They pointed to the action the NFPA took in adopting new Article 506 for the next edition of the NEC (the 2005 NEC). Dow stated that this new article contains § 506.6, which reads as follows:

> Classification of areas, engineering and design, selection of equipment and wiring methods, installation, and inspection shall be performed by qualified persons [Ex. 3–8].

Thus, Dow argues that NFPA has endorsed using qualified persons not just qualified registered professional engineers to make these determinations.

OSHA does not agree with the rationale put forth by ASSE and Dow. The NEC design requirements for installations made under the zone classification system are general, performance-oriented provisions that demand sound engineering judgment on the part of persons responsible for designing the installation. Paragraph (g)(4) of final § 1910.307 requires the services of a qualified registered professional engineer to ensure that the person primarily responsible for the design of the installation is particularly suited to the task. A registered professional engineer who does not have an understanding of the construction and operation of the equipment and the hazards involved in zone-classified locations would not meet the criteria spelled out in final § 1910.307(g)(4) and in the definition of ''qualified person.'' [39] The NEC requirements for installations made under the division classification system, on the other hand, are far more detailed and are more specification oriented. Because the division system has been in existence in this country for so long, because electricians and safety professionals have had decades to become familiar with it, and because (as noted earlier) many consensus standards specifically delineate the boundaries of locations classified under the division system, it is much easier for an electrician or a safety professional with a strong electrical background to properly classify a hazardous location under the division classification system. Furthermore, because the NEC division-system requirements are so detailed, it is easy for an electrician or a safety professional to select equipment appropriate for such a location. It is considerably more difficult to perform those same duties under the zone classification system. It should be noted that the 2005 edition of the NEC was not available while the rulemaking record was open. However, the new article in the 2005 NEC cited by Dow does not apply to Class I locations, which are locations made hazardous because of the presence of flammable gases or vapors, but to Class II and III locations,[40] which are locations made hazardous because of the presence of combustible dust, fibers, and flyings. Class II and III locations are not as hazardous as Class I locations and do not warrant the same degree of caution. For these reasons, OSHA is carrying § 1910.307(g)(4) into the final rule unchanged.

Paragraph (g)(4) also indicates when it is safe to have locations classified using the division system on the same premises as locations classified under the zone system and vice versa. These provisions are also taken from NFPA 70E–2000.

Several commenters pointed out an error in a metric conversion in the note to proposed § 1910.307(g)(4) (Exs. 4–13, 4–15, 4–18, 4–21). The proposed note listed −13 °F as the English unit equivalent to −20 °C. The correct English value is −4 °F. The Agency has made this correction in the final rule.

Paragraph (g)(5) of final § 1910.307 contains requirements for marking equipment that is approved for hazardous locations classified under the zone system. These provisions are comparable to the corresponding marking requirements under the division system, but reflect the need to provide information necessary for safely installing equipment in a zone-classified location. As noted earlier, paragraph (g)(5)(ii)(C) contains an exception for equipment that the employer demonstrates will provide protection from the hazards arising from the flammability of the vapors, liquids, or gasses involved and that will be recognized as such by employees.

Equivalence of systems and permitted protection techniques. Table 2 shows the general equivalence between the two classification systems. It should be noted, however, that a given area classified under one system is not permitted to overlap an area classified under the other system. For example, although Division 2 and Zone 2 are basically equivalent classifications, under the final standard a Zone 2 location is permitted to touch a Division 2 location, but the two locations are not permitted to overlap. This ensures that equipment installed and maintenance performed in these locations are appropriate for the conditions in each location.[41]

TABLE 2.—EQUIVALENCE OF HAZARDOUS (CLASSIFIED) LOCATION SYSTEMS, CLASS I LOCATIONS ONLY [1 2]

Category	Division system	Zone system
Locations	Division 1	Zone 0, Zone 1.
	Division 2	Zone 2.
Gas Groups (see Table 3 since systems are not fully equivalent).	A, B	IIC (not fully equivalent to Groups A and B).
	C	IIB (not fully equivalent to Group C).
	D	IIA (not fully equivalent to Group D).
Temperature Codes	T1 (≤450 °C)	T1 (≤450 °C).
	T2 (≤300 °C)	T2 (≤300 °C).
	T2A, T2B, T2C, T2D (≤280, ≤260, ≤230, ≤215 °C).	T2 (effectively).[3]
	T3 (≤200 °C)	T3 (≤200 °C).
	T3A, T3B, T3C (≤180, ≤165, ≤160 °C)	T3 (effectively).[3]

[39] The definition of ''qualified person'' in final § 1910.399 reads as follows: ''One who has received training in and has demonstrated skills and knowledge in the construction and operation of the electric equipment and installations and the hazards involved.''

[40] Under the zone classification system, these locations are categorized simply as Zone 20, 21, and 22 locations, with no reference to the class of the location.

[41] Division 2 and Zone 2 are basically equivalent classifications, but there are some differences in what types of equipment are acceptable in each of those locations. See, for example, the earlier discussion on maximum allowable surface temperatures.

TABLE 2.—EQUIVALENCE OF HAZARDOUS (CLASSIFIED) LOCATION SYSTEMS, CLASS I LOCATIONS ONLY [1] [2]—Continued

Category	Division system	Zone system
	T4 (≤135 °C)	T4 (≤135 °C).
	T4A (≤120 °C)	T4 (effectively).[3]
	T5 (≤100 °C)	T5 (≤100 °C).
	T6 (≤85 °C)	T6 (≤85 °C).

Notes to Table 2:
[1] Use of the equivalence shown in the table above must be done only as permitted by § 1910.307.
[2] The zone classification system described in this preamble does not cover Class II or Class III locations.
[3] See the discussion of maximum allowable surface temperatures earlier in the preamble.

Table 3 describes which protection techniques may be used in which classified locations.

TABLE 3.—PERMITTED PROTECTION TECHNIQUES (DESIGN CRITERIA) IN CLASS I LOCATIONS

	Zone 0: —intrinsically safe "ia". —Class I, Division 1 intrinsically safe.
Division 1: —explosion-proof. —purged and pressurized (Type X or Y). —intrinsically safe.	**Zone 1:** —flameproof "d". —purged and pressurized. —intrinsically safe "ib". —oil immersion "o". —increased safety "e". —encapsulation "m". —powder filling "q". —any Class I, Division 1 method. —any Class I, Zone 0 method.
Division 2: —purged and pressurized (Type Z). —intrinsically safe. —nonincendive. —oil immersion. —hermetically sealed. —any Class I, Zone 0 or 1 method. —any Class I, Zone 0, Zone 1, or Zone 2 method.	**Zone 2:** —non-sparking "nA". —protected sparking "nC". —restricted breathing "nR". —any Class I, Division 1 or 2 method. —any Class I, Zone 0 or 1 method.

Listing and labeling by NRTLs. Paragraph (a) of final § 1910.303 continues the existing requirement that all electric equipment be approved. While OSHA believes that approval is necessary for all electric equipment, the need for third-party approval of electric equipment in hazardous locations is particularly crucial. The techniques for ensuring safety in hazardous locations require careful manufacturing and testing of products because tolerances are tight and the margin for error is slim. Thus, OSHA's general industry electrical installation standard has always called for equipment approval, which generally requires listing or labeling by a nationally recognized testing laboratory (NRTL) of equipment installed in hazardous locations.[42] Under 29 CFR 1910.7, OSHA recognizes testing organizations that are capable of performing third-party testing for safety and designates them as NRTLs. Employers may use products listed by NRTLs to meet OSHA standards that require testing and certification. NRTLs test and certify equipment to demonstrate conformance to appropriate test standards. Many of these test standards cover equipment used in hazardous locations.

OSHA's existing requirements for hazardous locations in Subpart S only address locations classified under the division system, and NRTLs perform testing based on that system. However, test standards currently used by NRTLs to test equipment in hazardous locations classified by division are not automatically appropriate for testing such equipment for use under the zone system. These current test standards are based on protective techniques used for equipment designed for use under the division system and do not contain

[42] Equipment that is of a type that no nationally recognized testing laboratory accepts as being safe can achieve approval through acceptance by a Federal, State, or local authority having jurisdiction over the safety of electrical installations. Custom-made equipment can gain approval through testing by the equipment manufacturer. However, these two modes of approval are rare for equipment installed in hazardous locations. Federal, State, and local authorities generally look to NRTLs for equipment approval, and this is even more true for equipment installed in hazardous locations. This type of equipment must be tested to ensure that it is safe, and these authorities generally do not have the capability to do electrical testing. Custom-made equipment, by its nature, is very rare.

Existing § 1910.307(b) also recognizes equipment that is "safe for the hazardous (classified) location." This provision permits equipment that is approved for installation in nonhazardous locations if the employer demonstrates that the equipment will provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers. This condition exists only in limited circumstances as demonstrated by the 2002 NEC, which permits only certain types of general-purpose equipment in hazardous locations and then only under limited conditions. For example, Section 501.8(B) of the 2002 NEC permits nonexplosionproof enclosed motors in Class I, Division 2 locations if they have no brushes, switching mechanisms, or similar arc-producing devices and if exposed motor surfaces do not exceed 80 percent of the ignition temperature of the gas or vapor involved.

criteria for protective techniques used in the zone system. Electric equipment that has been approved by an NRTL for use in division-classified hazardous locations may be capable of igniting flammable gases or vapors when used inappropriately in zone-classified locations. Such hazardous equipment can cause a catastrophic explosion and the deaths of and injuries to many employees. In recognizing laboratories under § 1910.7 to test products designed for installation in zone-classified locations, OSHA will ensure that the proper test standards are used and look closely at the capability of the laboratory to perform testing under those standards.

Effects and changes to other Part 1910 standards (§§ 1910.103, 1910.106, 1910.107, 1910.110, 1910.178, and 1910.253). A number of other OSHA standards under 29 CFR Part 1910 contain references to or requirements related to § 1910.307. Some of these standards refer only to hazardous locations classified under the division system. The standards particularly affected are as follows:

§ 1910.103(b)(3)(ii)(*e*) and (b)(3)(iii)(*e*), (c)(1)(ix)(*a*), and (c)(1)(ix)(*b*);

§ 1910.106(d)(4)(iii), (e)(7)(i)(*b*), (e)(7)(i)(*c*), (e)(7)(i)(*d*), (g)(1)(i)(*g*), (g)(4)(iii)(*a*), (h)(7)(iii)(*b*), and (h)(7)(iii)(*c*);

§ 1910.107(c)(6), (c)(8), (j)(4)(iv);

§ 1910.110(b)(17)(v);

§ 1910.178(c)(2)(iv) and (q)(2); and

§ 1910.253(f)(4)(iv)(B) and (f)(6)(v).

OSHA is not modifying any of these standards in this rulemaking. Several of these requirements call for designating particular locations as Class I, Division 1 or Division 2 locations, and OSHA believes that revising them would not be straightforward and would be too complicated to do in this rulemaking. For example, § 1910.103(c)(1)(ix)(*a*) requires electric wiring and equipment ''located within 3 feet of a point where connections are regularly made and disconnected, shall be in accordance with Subpart S of this Part, for Class I, Group B, Division 1 locations.'' Under the zone system, this location would likely be partly a Zone 0 location and partly a Zone 1 location. Thus, this requirement cannot be revised by a straightforward substitution of ''Zone'' for ''Division.'' Similar problems exist in revising the other requirements. OSHA will make a case-by-case determination of whether a particular installation under the zone classification system meets the criteria for a *de minimis* violation based on: (1) Evidence the employer provides to show that the installation is as safe as it would be if it complied with Subpart S requirements for installations made under the division system and (2) the extent to which the employer's designation of Class I, Zone 0, 1, and 2 locations is consistent with sound engineering practices, as evidenced by national consensus and industry standards.

O. Remote Control, Signaling, Power-Limited, and Fire Alarm Circuits

Proposed § 1910.308(c) addressed Class 1, 2, and 3 remote control, signaling, and power-limited circuits. The American Petroleum Institute (API) and Dow Chemical Company noted that Section 725.55 of the 2002 NEC specifically permits many types of installations that are not listed in OSHA's proposal (Exs. 3–8, 4–11). They recommended that the OSHA standard also list permitted uses for these types of circuits for consistency with the NEC.

The provision in the 2002 NEC to which API and Dow referred (Section 725.55) does not actually list permitted uses. Rather, this provision contains requirements for separating different classes of circuits, with the method of separation differing in some respect for the various types of installations.[43] For example, Section 725.55(B) states, ''Class 2 and Class 3 circuits shall be permitted to be installed together with Class 1, non-power-limited fire alarm and medium power network-powered broadband communications circuits *where they are separated by a barrier* [emphasis added].''

Proposed § 1910.308(c), which was nearly identical to Section 6.3.1.3.1.1 of NFPA 70E–2000, read as follows:

> Cables and conductors of Class 2 and Class 3 circuits may not be placed in any cable, cable tray, compartment, enclosure, manhole, outlet box, device box, raceway, or similar fitting with conductors of electric light, power, Class 1, nonpowerlimited fire alarm circuits, and medium power network-powered broadband communications cables.

This provision in the proposal and the corresponding one in NFPA 70E were taken from 1999 NEC Section 725–54(a)(1), which contains the same basic requirement, but which also contains six exceptions to this general rule. All the exceptions permit cables and conductors of Class 2 and Class 3 circuits to be placed in one of the listed enclosures with a higher powered circuit as long as an extra barrier of one form or another is installed to separate the two different classes of circuits. Consequently, OSHA agrees with the commenters that the proposal could have unnecessarily restricted the installation of Class 2 and Class 3 circuits. On the other hand, adopting the specific language in the NEC (either the 1999 edition or the 2002 edition, which converted the exception into separate rules) would make the OSHA standard too detailed and specification oriented. To address API's and Dow's concerns, OSHA has decided to incorporate the exceptions in 1999 NEC Section 725–54(a)(1) in performance terms. Final § 1910.308(c)(3) thus reads as follows:

> Cables and conductors of Class 2 and Class 3 circuits may not be placed in any cable, cable tray, compartment, enclosure, manhole, outlet box, device box, raceway, or similar fitting with conductors of electric light, power, Class 1, nonpower-limited fire alarm circuits, and medium power network-powered broadband communications cables *unless a barrier or other equivalent form of protection against contact is employed.* [Emphasis added.]

Employers can look to the NEC to help determine acceptable methods of separating Class 2 and Class 3 circuits from electric light, power, Class 1, and nonpower-limited fire alarm circuit conductors and from medium power network-powered broadband communications cables.

OSHA received a similar comment on proposed § 1910.308(d)(3) recommending that the provision mention all the permitted uses for fire alarm circuits listed in 2002 NEC Section 760.55 (Ex. 4–22). The Agency has rejected this recommendation for the same reasons it rejected the recommendation concerning remote control, signaling, and power-limited circuits.

Dow Chemical Company objected to proposed § 1910.308(d)(3)(iii) (Exs. 3–8, 4–16). They stated their objections as follows:

> The current provision, section 1910.308(d)(4), has a 2-inch requirement for separation of power-limited conductor locations with an option for alternative protections (emphasis added):
>
> Power-limited conductor location. Where open conductors are installed, power-limited fire protective signaling circuits shall be separated at least 2 inches from conductors of any light, power, Class 1, and non-power-limited fire protective signaling circuits *unless a special and equally protective method of conductor separation is employed.*

The proposed revision of that 2-inch requirement does not have that option:

> Power-limited fire alarm circuit conductors shall be separated at least 50.8 mm (2 in.) from conductors of any electric light, power, Class 1, nonpower-limited fire alarm, or medium power network-powered broadband communications circuits.

[43] The title of § 725.55 of the 2002 NEC is ''Separation from Electric Light, Power, Class 1, Non-Power-Limited Fire Alarm Circuit Conductors, and Medium Power Network-Powered Broadband Communications Cables.''

The preamble characterizes this change as a clarification of existing requirements (69 FR at 17792). This is not a clarification, however, but a limitation.

As a significant change, at a minimum this provision should be applicable only to installations after the effective date of the final rule under § 1910.302(b)(4). The proposed rule lists all of § 1910.308(d) as being triggered in installations made after April 16, 1981, per proposed § 1910.302(b)(3).

Further, this deletion of the option for using equally protective methods is not justified and should not be adopted. NEC § 800.52(A)(2) provides that option today with two exceptions. That provision reads:

> Other Applications. Communications wires and cables shall be separated at least 50 mm (2 in.) from conductors of any electric light, power, Class 1, non-power-limited fire alarm, or medium power network-powered broadband communications circuits.
>
> Exception No. 1: Where either (1) all of the conductors of the electric light, power, Class 1, non-power-limited fire alarm, and medium power network-powered broadband communications circuits are in a raceway or in metal-sheathed, metal-clad, nonmetallic-sheathed, Type AC, or Type UF cables, or (2) all of the conductors of communications circuits are encased in raceway.
>
> Exception No. 2. Where the communications wires and cables are permanently separated from the conductors of electric light, power, Class 1, non-power-limited fire alarm, and medium power network-powered broadband communications circuits by a continuous and firmly fixed nonconductor, such as porcelain tubes or flexible tubing, in addition to the insulation on the wire. [Ex. 3–8]

Dow further noted that NFPA provides similar exceptions to the corresponding provision in that standard. They concluded their comments as follows:

> The availability of such options is important because computer rooms, control rooms, and communications closets may have mixed wiring under the floor that relies on the availability of those exceptions.
>
> OSHA should not take away the options present in the existing rule, particularly since they are supported by both the NEC and NFPA 70E. [Ex. 3–8]

OSHA agrees with Dow's rationale. The 2002 NEC and the 2000 and 2004 editions of NFPA 70E recognize that it is safe to install power-limited fire protective signaling circuits within 50.8 millimeters (2 inches) of power conductors when there is an additional barrier between the two sets of conductors. Consequently, the Agency is adding the phrase ''unless a special and equally protective method of conductor separation is employed,'' from existing § 1910.308(d)(4) as highlighted in Dow's comments, to final § 1910.308(d)(3)(iii) to permit additional means of protecting fire protective signaling circuit conductors from contact with conductors of other circuits. The final rule, with the revision emphasized, reads as follows:

> Power-limited fire alarm circuit conductors shall be separated at least 50.8 mm (2 in.) from conductors of any electric light, power, Class 1, nonpower-limited fire alarm, or medium power network-powered broadband communications circuits *unless a special and equally protective method of conductor separation is employed.*

P. Definitions

The definitions for Subpart S are located in § 1910.399. The changes to these definitions from the existing standard reflect the provisions of the 2002 NEC and NFPA 70E–2000. Table 4 (located at the end of section I. P. of the preamble) summarizes the changes to the definitions.

OSHA is removing several definitions from the standard. ''Special permission,'' ''permanently installed swimming pools, wading and therapeutic pools,'' and ''storable swimming and wading pools'' are removed because these terms are not used in final Subpart S. Lastly, the definitions of ''electric sign'' and ''may'' are removed. The existing Subpart S definitions of these terms are not substantially different from the commonly accepted dictionary definitions. The definition of ''electric sign'' may appear different from the dictionary definition; however, the information in the existing definition adds nothing substantive within the context of the standard. Thus, their removal does not change the meaning of the standard.

The final rule redefines the term ''identified.'' The existing definition of ''identified'' applies to the use of this term in reference to a conductor or its terminal. The final rule discontinues the current standard's use of the word ''identified'' in this manner. The final rule does, however, define ''identified'' to refer to equipment suitable for a specific purpose, function, use, environment, or application.

OSHA is also removing the definition of ''utilization systems.[44]'' This term is only used in existing § 1910.301(a), which describes the content of §§ 1910.302 through 1910.308, and in the title and introductory text of existing § 1910.302. Existing § 1910.301(a) reads as follows:

> *Design safety standards for electrical systems.* These regulations are contained in §§ 1910.302 through 1910.330. Sections 1910.302 through 1910.308 contain design safety standards for electric utilization systems. Included in this category are all electric equipment and installations used to provide electric power and light for employee workplaces. Sections 1910.309 through 1910.330 are reserved for possible future design safety standards for other electrical systems.

The introductory text of § 1910.302 reads as follows:

> Sections 1910.302 through 1910.308 contain design safety standards for electric utilization systems.

These two provisions are intended as introductory text providing a general discussion of the contents of the standard. The precise scope of §§ 1910.302 through 1910.308 is presented in final § 1910.302(a). However, OSHA is concerned that some employers and employees could incorrectly interpret the use of the term ''utilization systems'' and its definition as narrowing the scope of §§ 1910.303 through 1910.308. The term ''utilization system'' in the introduction to Subpart S is intended as a shorthand way of referring to the systems covered by Subpart S generally and §§ 1910.303 through 1910.308 specifically. Removing the definition from the standard should clarify that the language used in the introduction to Subpart S is not intended to alter the scope of §§ 1910.302 through 1910.308, as given in § 1910.302(a).

OSHA is adding 13 definitions to § 1910.399. (See Table 4.) These definitions, all but one of which are based on NFPA 70E–2000 and the 2002 NEC, will help clarify the requirements in Subpart S. Other modifications made to the definitions are grammatical in nature, and no substantive change is being made in the meaning of the terms.

A few terms warrant additional explanation: ''Identified,'' ''labeled,'' and ''listed.'' The existing standard requires certain electric equipment to be ''approved for the purpose,'' and current § 1910.399 defines this term as follows:

> Approved for a specific purpose, environment, or application described in a particular standard requirement.
>
> Suitability of equipment or materials for a specific purpose, environment or application may be determined by a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation as part of its listing and labeling program. (See ''Labeled'' or ''Listed.'')

[44] In the proposed rule, OSHA listed the removal of this definition in the preamble in a table listing the summary of changes to the definitions. However, OSHA neglected to include the removal of this definition in the proposed regulatory text.

In the final rule, OSHA is replacing the word ''approved'' in the phrase ''approved for the purpose,'' with ''identified.'' The final rule's definition of ''identified,'' which is based on the definition of this term in NFPA 70E–2000,[45] reads as follows:

Identified (as applied to equipment). Approved as suitable for the specific purpose, function, use, environment, application, and so forth, where described in a particular requirement.

Note to the definition of ''identified:'' Some examples of ways to determine suitability of equipment for a specific purpose, environment, or application include investigations by a nationally recognized testing laboratory (through listing and labeling), inspection agency, or other organization recognized under the definition of ''acceptable.''

The definition of ''identified'' as it applies to equipment is intended to be equivalent to the existing definition of ''approved for the purpose.''[46]

In the final rule, OSHA uses the terms ''listed'' and ''labeled'' to refer to electric equipment determined to be safe by a nationally recognized testing laboratory (NRTL). When equipment has been listed and labeled, this means that the equipment has been tested and found safe for use by a nationally recognized testing laboratory. The laboratory marks the equipment with a symbol identifying its trademark. The equipment is then considered by OSHA to be safe for its intended use. If the equipment is altered or used for other purposes, then the equipment is not acceptable under Subpart S. The laboratories typically require the equipment to be marked with such information as: The standards under which the equipment has been tested; the current rating in amperes; and the frequency. OSHA evaluates and recognizes ''nationally recognized testing laboratories'' under § 1910.7 to test equipment for safety and label or list it. It should be noted that the final rule would continue the existing § 1910.399 definitions of ''labeled'' and ''listed'' without substantive change.

The Dow Chemical Company recommended that OSHA supplement the proposed definition of ''identified'' with language from Section 500.8(A)(1) of the 2002 NEC so that the definition would read as follows:

Suitability of identified equipment for the purpose shall be determined by any of the following:

(1) Equipment listing or labeling;

(2) Evidence of equipment evaluation from a qualified testing laboratory or inspection agency concerned with product evaluation; or

(3) Evidence acceptable to the authority having jurisdiction, such as a manufacturer's self-evaluation or an owner's engineering judgment. [Ex. 3–8]

Dow Chemical believes that this language would provide flexibility to the employer when the equipment is not approved by a nationally recognized testing laboratory.

As noted earlier, § 1910.303(a) requires electric equipment to be approved, and the definitions of ''approved'' and ''acceptable'' set out what types of equipment OSHA will accept in enforcing Subpart S.[47] Dow's suggestion does not clarify these definitions. Instead, it seems to imply equivalence between the three listed options. In comparison, OSHA's existing definition of ''acceptable'' clearly indicates a preference for listing, labeling, or other approval by a nationally recognized testing laboratory. At the same time, OSHA's existing definitions provide flexibility for employers when equipment is of a type that no nationally recognized testing laboratory evaluates. OSHA believes that the proposed definitions of ''identified,'' ''approved,'' and ''acceptable'' are clear and provide sufficient flexibility to employers. Therefore, the Agency is carrying them forward into the final rule without change.

The proposed definition of ''acceptable'' reads as follows:

An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart S:

(1) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory recognized pursuant to § 1910.7; or

(2) With respect to an installation or equipment of a kind that no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this subpart; or

(3) With respect to custom-made equipment or related installations that are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives.

Mr. Ron Nickson, representing the National Multi Housing Council and the National Apartment Association, recommended that OSHA add the International Code Council Electrical Code (ICCEC), which is published by the International Code Council (ICC), to the second alternative in the definition of ''acceptable'' (Ex. 4–20). They believe that OSHA should accept evaluations made by local authorities enforcing the ICCEC as being equivalent to those made by authorities enforcing the NEC. In support of their position, they stated:

The provisions in the ICCEC were developed during the ICC code development process to address and/or expand on issues not covered in the NEC. The ICC codes, including the ICCEC, are the result of more than 90 years of code enforcement by local building and fire officials. The ICCEC responds to issues that have come up during the inspection and approval process or have been brought to the attention of the ICC by participants in the ICC code development process. They have been reviewed by ICC Code development committees and voted into the code by the building and fire official members of ICC. They form an important part of the electrical installation and inspection process to insure that electrical work is installed in a safe manner to limit the possibility of injury to workers and others involved in the construction process. [Ex. 4–20]

The commenter acknowledged that there are differences between the NEC and the ICCEC. However, there is little information in Mr. Nickson's submission or elsewhere in the rulemaking record that would enable OSHA to judge whether an evaluation of an electrical installation made under the ICCEC would be equivalent to one made under the NEC. In addition, Mr. Nickson does not present any evidence of how many jurisdictions, if any at all, enforce the ICCEC. Consequently, the Agency has decided against adding the International Code Council Electrical Code to the definition of ''acceptable.''

[45] Except for the note to the definition, the exact language was taken from the 2002 NEC. This version is clearer than the definition in NFPA 70E, but the intent is the same. OSHA has clarified the note to indicate that acceptability of testing and inspection agencies is given in the definition of ''acceptable.''

[46] NFPA 70E–2000 uses the word ''recognizable'' in lieu of ''approved'' in the definition of ''identified.'' It also contains a fine print note following the definition indicating that suitability of equipment for a specific purpose, environment, or application may be determined by a qualified testing laboratory, inspection agency, or other organization concerned with product evaluation. The revised and existing OSHA standards both require all electric equipment to be approved, and this approval is the only mechanism for recognizing equipment as suitable. The Agency believes that the proposed definition of ''identified'' as applied to equipment clarifies the intent of the standard and is consistent with the existing standard's provisions that require electric equipment to be ''approved for the purpose.''

[47] OSHA proposed no substantive changes to the definitions of ''approved'' or ''acceptable'' or to the requirement in existing § 1910.303(a) that electric equipment be approved.

However, if in enforcing Subpart S the Agency determines that the underlying electrical standard, such as the ICCEC, being used by a particular local authority is based on the NEC, then OSHA will consider accepting that authority's determinations of electrical installation safety under the second alternative given in the definition of ''acceptable.''

OSHA received several comments suggesting the addition of a definition of ''fountain'' to clarify the use of this word in proposed § 1910.306(j)(5) (Exs. 4–13, 4–15, 4–18, 4–21). Typifying these comments, Mr. Michael Kovacic argued that the term ''fountains'' has been the source of considerable confusion and misinterpretation for many years. He stated that, although some apply the requirements on fountains in existing § 1910.306(j)(5) to drinking fountains and water coolers, the NEC does not intend to apply the requirements on fountains to drinking fountains. To support his assertion, he pointed to 2002 NEC Section 680.2, which states that the definition of ''fountains'' does not include drinking fountains. The commenters recommend that OSHA either add the NEC definition of ''fountains'' to § 1910.399 or otherwise clarify the application of § 1910.306(j)(5).

OSHA agrees with these commenters and has included the 2002 NEC definition of ''fountains'' in final § 1910.399.

The Agency has also retained the proposed definitions of ''permanently installed swimming pools, wading and therapeutic pools'' and ''storable swimming or wading pool.'' The preamble indicated that the definitions of these terms were to be removed because the terms were not used in the proposed standard. However, the proposal did include definitions of these terms in the regulatory text. The introductory text to final § 1910.306(j) reads, in part, as follows:

> This paragraph applies to electric wiring for and equipment in or adjacent to all swimming, wading, therapeutic, and decorative pools and fountains; hydro-massage bathtubs, *whether permanently installed or storable;* and metallic auxiliary equipment, such as pumps, filters, and similar equipment. [Emphasis added.]

OSHA believes that defining the terms ''permanently installed swimming pools, wading and therapeutic pools'' and ''storable swimming or wading pool'' will clarify the intent of final § 1910.306(j). Even though the terms are not used precisely in the form used in the definitions, it is clear from the regulatory text that those two terms are what OSHA intends by the language in final § 1910.306(j).

Proposed § 1910.308(c)(1) contained requirements governing the marking and limitations on power of Class 1, 2, and 3 remote control, signaling, and power-limited circuits. Some commenters recommended clarifying the standard by moving those provisions to § 1910.399 or by including a cross-reference to § 1910.308(c)(1) within the definition section.

Paragraph (c)(1) of final § 1910.308 sets mandatory limits on the power output for remote control, signaling, and power-limited circuits and sets requirements for marking the source of power for these circuits. These provisions are requirements, not definitions. Consequently, the Agency does not believe that it is appropriate to move them to or refer to them in the definition section.

Some commenters identified definitions in the proposed rule that were inconsistent with the definitions in the NFPA 70E–2004 (Exs. 4–11, 4–19). They identified as examples: ''Armored cable'' and ''live parts.''[48] The commenters recommended that the definitions in § 1910.399 be consistent with NFPA 70E and the NEC.

In comparing the proposed definition of ''live parts'' with the one in the 2002 NEC (on which NFPA 70E–2004 is based), OSHA has found that the definition in its proposal is only slightly different from that of NFPA.[49] The intent of OSHA's definition and the NEC definition is identical. To promote consistency with the NEC and NFPA 70E, the Agency has decided to adopt the 2002 NEC language for this definition in the final OSHA rule.

The definition of ''armored (Type AC) cable'' in the proposal is identical to the one in the 2002 NEC, though OSHA's proposed definition is worded as a complete sentence. The Agency has reworded the definition in the final rule (along with similarly worded definitions[50]) so that the format matches the other definitions in the final rule and the NEC.

In addition, the Agency has identified two additional definitions that could be clarified with the use of the corresponding 2002 NEC definitions: ''Health care facilities'' and ''mineral-insulated, metal sheathed cable.''

The existing and proposed definitions of ''health care facilities'' read as follows:

> Buildings or portions of buildings and mobile homes that contain, but are not limited to, hospitals, nursing homes, extended care facilities, clinics, and medical and dental offices, whether fixed or mobile.

This is not a true definition. Rather, it provides examples of health care facilities. The 2002 NEC definition of this term, in § 517.2, reads as follows:

> Buildings or portions of buildings in which medical, dental, psychiatric, nursing, obstetrical, or surgical care are provided. Health care facilities include, but are not limited to, hospitals, nursing homes, limited care facilities, clinics, medical and dental offices, and ambulatory care centers, whether permanent or moveable.

OSHA believes that this language will clarify how that term is used and has adopted the NEC definition in the final rule.

The proposed definition of ''mineral-insulated, metal sheathed cable'' stated that this was a type of cable with a ''continuous copper sheath.'' The 2002 NEC states that the sheath may be of alloy steel in addition to copper. For consistency with the 2002 NEC, OSHA has revised the term ''continuous copper sheath'' from the definition in the proposal to ''continuous copper or alloy steel sheath'' in the final rule. This will ensure that the OSHA standard recognizes all the different types of approved mineral-insulated, metal sheathed cables currently available.

The proposed definition of ''qualified person'' read as follows:

> A person who is familiar with the construction and operation of the equipment and the hazards involved. [Notes omitted.]

OSHA received several comments on this definition (Exs. 4–11, 4–13, 4–15, 4–18, 4–19, 4–21). These commenters recommended that OSHA use the corresponding definition from the 2002 NEC, which reads:

> One who has the skills and knowledge related to the construction and operation of the electrical equipment and installations and has received safety training on the hazards involved.

Some of these commenters asserted that there is confusion in the electrical safety industry over the use of this term (Exs. 4–13, 4–15, 4–18, 4–21). They also recommended including a note

[48] These commenters also identified the definition of ''qualified person'' as being inconsistent with the NEC definition. This comment is addressed later in this section of the preamble.

[49] The NEC definition of ''live parts'' is ''energized conductive componenets.'' OSHA's proposed definition was ''[E]lectric conductors, buses, terminals, or components that are energized.'' Since the word ''components'' includes conductors, buses, and terminals, there is no substantive difference between the two definitions.

[50] The following definitions were similarly worded in the proposed rule: ''Medium voltage cable,'' ''metal-clad cable,'' ''mineral-insulated metal-sheathed cable,'' ''nonmetallic-sheathed cable,'' ''power and control tray cable,'' ''power-limited tray cable,'' ''service-entrance cable,'' ''shielded nonmetallic-sheathed cable,'' and ''wireways.''

regarding the type of training needed before an employee could meet the definition.

Paragraph (b)(3) of existing § 1910.332 set specific training requirements that an employee must have to be considered a ''qualified person.'' In fact, the first note to the proposed definition of ''qualified person'' pointed to that training requirement. Although the suggested definition is consistent with the training provisions, it does not demand that the person have the knowledge and skills related to the hazards posed by electrical installations that are to be imparted by the training. To capture the commenters' intent and retain the proposed definition's emphasis on acquired knowledge, the Agency is adopting the following definition of ''qualified person:''

> One who has received training in and has demonstrated skills and knowledge in the construction and operation of electric equipment and installations and the hazards involved.

The final rule also carries forward, unchanged, the two notes to the proposed definition.

TABLE 4.—SUMMARY OF CHANGES TO THE DEFINITIONS

Old definition	New definition	Rationale
	Barrier	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000.
	Bathroom	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000.
	Class I, Zone 0	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000 to support the new section on Zone Classification in § 1910.307.
	Class I, Zone 1	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000 to support the new section on Zone Classification in § 1910.307.
	Class I, Zone 2	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000 to support the new section on Zone Classification in § 1910.307.
	Competent person	OSHA is adding this definition to § 1910.399 from § 1926.32. See discussion earlier in the preamble.
Electric sign	[Removed]	No substantive change. See the detailed explanation earlier in this section of the preamble.
	Energized	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000.
	Fountain	OSHA is adding this definition to § 1910.399 from NEC–2002. See the detailed explanation earlier in this section of the preamble.
Health care facilities	Health care facilities	OSHA is removing the old definition and adding the new definition to § 1910.399 from NEC–2002. See the detailed explanation earlier in this section of the preamble.
Identified	Identified	This term is used in a different manner in the proposed revision. The new use and definition are taken from NFPA 70E–2000. See the detailed explanation earlier in this section of the preamble.
	Insulated	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000.
	Live parts	OSHA is adding this definition to § 1910.399 from NEC–2002.
May	[Removed]	No substantive change. The definition adds nothing to the dictionary definition of this term.
	Motor Control Center	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000.
Nonmetallic-sheathed cable	Nonmetallic-sheathed cable	OSHA is removing the old definition and adding the new definition to § 1910.399 from NEC–2002. See the detailed explanation earlier in this section of the preamble.
	Overhaul	OSHA is using this term in the standard in place of ''major replacement, modification, repair, or rehabilitation,'' which is used in the existing standard to delineate when an electrical installation must meet new requirements in the standard. See the explanation of the definition and related changes under the summary and explanation of the grandfather clause earlier in this preamble.
Qualified person	Qualified person	OSHA is revising this definition. (See the summary and explanation of the definition of ''qualified person,'' earlier in this section of the preamble.)
	Service point	OSHA is adding this definition to § 1910.399 from NFPA 70E–2000.
Special permission	[Removed]	This term is not used in Subpart S.
Utilization system	[Removed]	This definition is being removed. See the detailed explanation earlier in this section of the preamble.

Q. Appendices

Appendices B and C of the current Subpart S contain no material; they are reserved for future use. OSHA is removing these two ''empty'' appendices because the Agency has no material to include there.

The existing Appendix A contains a list of references. OSHA is revising and updating the references in this appendix to reflect the most recent editions of various national consensus standards.[51] These nonmandatory references can be used to assist employers who desire additional information that will help them to comply with the performance standard in Subpart S. In addition, OSHA is removing various reference standards from the appendix because the documents are no longer in print and because the information can be found in other listed sources. The following references are removed:

ANSI B9.1–71 Safety Code for Mechanical Refrigeration;

ANSI B30.15–73 Safety Code for Mobile Hydraulic Cranes;

[51] The references in Appendix A in the final rule are to the latest revisions of the relevant documents, except for references to the NEC and NFPA 70E. For these two NFPA standards, OSHA has listed both the current versions (NFPA 70–2005 and 70E–2004) and the versions on which the final rule is based (NFPA 70–2002 and 70E–2000). The Agency has reviewed these documents and found them to provide suitable guidance to assist employers in complying with the OSHA standards.

ANSI C33.27–74 Safety Standard for Outlet Boxes Fittings for Use in Hazardous Locations, Class I, Groups A, B, C, and D, and Class II, Groups E, F, and G;
ASTM D2155–66 Test Method for Autoignition Temperature of Liquid Petroleum Products;
IEEE 463–77 Standard for Electrical Safety Practices in Electrolytic Cell Line Working Zones;
NFPA 56A–73 Standard for the Use of Inhalation Anesthetics (Flammable, Nonflammable);
NFPA 56F–74 Standard for Nonflammable Medical Gas Systems;
NFPA 70C–74 Hazardous Locations Classification;
NFPA 71–77 Standard for the Installation, Maintenance, and Use of Central Station Signaling Systems;
NFPA 72A–75 Standard for the Installation, Maintenance, and Use of Local Protective Signaling Systems for Watchman, Fire Alarm, and Supervisory Service;
NFPA 72B–75 Standard for the Installation, Maintenance, and Use of Auxiliary Protective Signaling Systems for Fire Alarms Service;
NFPA 72C–75 Standards for Installation, Maintenance, and Use of Remote Station Protective Signaling Systems;
NFPA 72D–75 Standard for the Installation, Maintenance and Use of Proprietary Protective Signaling Systems for Watchman, Fire Alarm, and Supervisory Service;
NFPA 72E–74 Standard for Automatic Fire Detectors;
NFPA 74–75 Standard for Installation, Maintenance, and Use of Household Fire Warning Equipment;
NFPA 76A–73 Standard for Essential Electrical Systems for Health Care Facilities;
NFPA 86A–73 Standard for Ovens and Furnaces; Design, Location and Equipment;
NFPA 88B–73 Standard for Repair Garages;
NFPA 325M–69 Fire-Hazard Properties of Flammable Liquids, Gases, and Volatile Solids; and
NFPA 493–75 Standard for Intrinsically Safe Apparatus for Use in Class I Hazardous Locations and Its Associated Apparatus.

OSHA is adding five national consensus standards to the list.[52] All but one of these documents refers to hazardous (classified) locations. The other document addresses articulating boom cranes. ANSI/ASME B30.22–2005 Articulating Boom Cranes was not included in the proposal. However, the Agency has reviewed this standard and has found useful information comparable to the other ANSI/ASME standards for other types of cranes (for example, ANSI/ASME B30.5–2004 Mobile And Locomotive Cranes). Consequently, the following references are added:

ANSI/UL 913–2002 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous (Classified) Locations;
ANSI/API RP 500–1998 (2002) Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I Division 1 and Division 2;
ANSI/API RP 505–1997 (2002) Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2;
ANSI/ASME B30.22–2005 Articulating Boom Cranes; and
NFPA 820–2003 Standard for Fire Protection in Wastewater Treatment and Collection Facilities.

Comments to the appendices. OSHA received a comment to reference other national consensus standards in Appendix A, like ANSI Z490.1 and ANSI Z244.1, to help employers with new training requirements in electrical installations (Ex. 3–5). These voluntary consensus standards offer benefits in guiding employers on establishing appropriate training procedures for their employees. The national consensus standards listed in Appendix A are there to be used as a guideline to help employers with implementing the requirements for electrical installation and safe work practices and procedures in Subpart S. OSHA has reviewed both standards and has added them to the list of voluntary standards in the appendices.

R. Powered Platforms for Building Maintenance

Mandatory Appendix D to § 1910.66, powered platforms for building maintenance, applies to powered platforms installed between August 28, 1971, and July 23, 1990. Paragraphs (c)(22)(i) and (c)(22)(vii) in that appendix incorporate the 1971 NEC by reference. OSHA is referencing Subpart S instead. The final rule, which would replace the highly specification-oriented NEC with the performance-oriented Subpart S, will make the standard more flexible for employers maintaining these platforms but will retain the protection currently afforded employees.[53] In addition, employers will no longer need to refer to the NEC to determine how to comply with OSHA's standard for powered platforms. This change is deregulatory in nature and should not result in significant costs to employers.

OSHA received no comments in response to this proposed change. Consequently, it is being carried without change into the final rule.

VI. Final Economic and Regulatory Screening Analysis

A. Existing Versus Final Rule

The final rule revises and updates the provisions contained in Sections 1910.302–1910.308 and 1910.399 of the existing Subpart S electrical installation standard. The original version of Subpart S, adopted under § 6(a) of the OSH Act, incorporated the 1971 National Electrical Code (NEC) by reference. In 1981, OSHA replaced the incorporation by reference with updated provisions based on the 1979 National Fire Protection Association (NFPA) 70E committee recommendations. The 1981 version relied on the 1978 NEC. The rulemaking will revise and update the OSHA electrical installation standard to be consistent with most of the NFPA 70E recommendations developed in 2000, which are based on the 1999 NEC, and to update requirements for new electrical installations.

OSHA has conducted a detailed comparison of the existing and final rules in order to determine the extent to which the provisions of the final rule will increase compliance costs. Table 7 summarizes the changes associated with the provisions of the final rule that have cost implications. OSHA's comparative analysis indicates that the changes in the final rule fall into four categories: (1) Changes in hardware specifications that are consistent with NEC requirements; (2) changes in installation practices that are consistent with current, normal and customary installation practices routinely followed by licensed electricians; (3) clarifications of existing requirements that do not add additional obligations and/or allow greater flexibility for achieving compliance; and (4) requirements that may require

[52] OSHA had proposed to add an additional national consensus standard to the list, ANSI/UL 2279–1997, Electrical Equipment for Use in Class I, Zone 0, 1 and 2 Hazardous (Classified) Locations. This standard is no longer active, because UL has added zone-related provisions to other of its standards on equipment for hazardous locations. Therefore, OSHA has not included this standard in Appendix A in the final rule.

[53] Employers who make minor modifications to these platforms would thus be required to follow Subpart S rather than the 1971 NEC. Newer installations and major modifications of older platforms are already required to meet Subpart S with respect to the platform's electrical wiring and equipment.

significant changes in electrical system and equipment installation practices.

The first three categories of changes introduced by the final rule are not expected to result in any additional costs. Category 1 changes are not expected to increase costs because virtually all equipment manufacturers routinely follow current NEC requirements regarding hardware specifications. Category 2 changes are not expected to result in any increase in compliance costs since virtually all licensed electricians routinely follow NEC requirements for installing electrical systems and equipment. Category 3 changes do not add any new installation or work practice requirements, but simply restate or eliminate existing requirements.

Regarding Category 4, a number of changes indicated by the final rule correspond to revisions to the NEC made prior to 1999. Because these changes have been in the NEC since the previous edition (1996), they are believed to represent widespread current industry practice. Therefore, these changes are not expected to result in increased compliance costs. Moreover, construction requirements usually imposed by mortgage lenders and insurance carriers, as well as installation practices routinely followed by licensed electricians (given their formal training), are generally consistent with the NEC requirements. In sum, there is a subset of Category 4 changes that can be assumed to be equivalent to the Category 2 changes described above. Only those Category 4 changes that represent additions or revisions in the 1999 NEC (to the 1996 NEC) are expected to potentially result in any increase in compliance costs.

As noted, many Category 4 changes are not expected to increase compliance costs. In order to avoid having employers incur the costs of retrofitting the existing electrical systems and equipment in their buildings and facilities, OSHA has identified (in § 1910.302(b)(4)) the substantive new provisions in the final rule, and then excluded (grandfathered) all existing electrical systems and equipment installations from having to comply with these new requirements. These provisions will only apply to new installations (that is, electrical systems and equipment installed for the first time, as well as installations that represent a major replacement, modification, repair, or rehabilitation of an existing electrical system) made after the effective date of the standard. Of the new provisions identified in § 1910.302(b)(4), there are 14 provisions (or sets of related provisions) in Category 4 that were added or last revised in the 1999 NEC. A number of these provisions represent changes in design and/or operating practices. OSHA believes that with the appropriate lead time (that is, sufficient delay in the effective date of the final rule), these provisions should not result in any incremental costs because these requirements can be reviewed and considered, and the electrical installation practices altered as necessary, prior to any work being performed. For instance, the requirement in § 1910.303(f)(4) for disconnecting means to be capable of being locked in the open position can be met through selecting appropriate equipment in the installation design phase of a project. The feature required by this provision is already available in new equipment. OSHA sees no appreciable difference in cost between a disconnecting means that is capable of being locked in the open position and one that is not. Other provisions, such as § 1910.303(g)(1)(vii), which requires certain electric equipment to be installed in dedicated space, involve facility layout that can be met with no appreciable cost impact as long as the requirement is taken into consideration during the installation design phase of a project.[54] The final rule provides employers with a 6-month delay in effective date, in part, so that they can incorporate such considerations during the design of new electrical installations. (See section XII, Effective Date and Date of Application, later in this preamble.)

In addition to the provisions identified in § 1910.302(b)(4), there are also new provisions identified in § 1910.302(b)(2) and (b)(3) of the final rule that apply to: (1) Electrical system and equipment installations (either first time or major replacement, modification, repair, or rehabilitation) made after March 15, 1972; and (2) electrical system and equipment installations (either first time or major replacement, modification, repair, or rehabilitation) made after April 16, 1981, respectively. Reviewing the provisions identified in § 1910.302(b)(2) and (b)(3) of the final rule, there are 13 new provisions (or sets of related provisions) in Category 4 that were added or last revised in the 1999 NEC. Table 7 also lists those provisions with cost implications. Again, a number of these 13 new provisions represent changes in design or operating practice rather than new equipment requirements, and as discussed earlier, are not expected to result in any incremental costs as long as there is sufficient delay in the effective date of the final rule.

OSHA has examined other new provisions for possible cost impacts. First, § 1910.302(b)(1) of the existing and final rule identifies those provisions (that is, specific sections in the standards) that all new and existing electrical system and equipment installations must meet regardless of the installation date. For these provisions in the existing and final rule, there is no grandfathering of older, existing electrical system and equipment installations. However, OSHA has concluded that § 1910.302(b)(1) imposes no new, substantive Category 4 requirements for existing electrical systems and equipment installations. Further, while § 1910.302(b)(1) does add new coverage from § 1910.307, only documentation of hazardous locations is a totally new requirement, and the documentation for the division system only applies to installations made or overhauled after the effective date. The rest of the new provisions in § 1910.307 allow employers to continue using the division system or to implement an alternative zone system for classifying hazardous locations containing flammable gases or vapors. They should not result in any additional costs unless employers voluntarily choose to abandon their present division system in favor of the alternative zone system. Finally, there are new provisions not contained in the existing OSHA electrical installation standard that were originally in the 1971 NEC and were enforced by OSHA between March 15, 1972, and April 16, 1981. The latest version of NFPA 70E reincorporated these provisions. (For a full explanation, see the discussion of final § 1910.302(b)(2), in section V, Summary and Explanation of the Final Standard, earlier in the preamble.) OSHA believes that these provisions represent widespread current industry practices, because they have been part of every version of the NEC since 1971, including the 1999 and 2002 editions, and will not impose any additional cost.

B. Potentially Affected Establishments

The electrical safety standard is based primarily upon the 2000 NFPA 70E recommendations, which, in turn, are based on the 1999 NEC. Consequently, companies that are installing electrical systems and equipment in their facilities in locations where the 1999 (or 2002) NEC is currently being followed

[54] For example, a lighting fixture installed over a panelboard must be more than 1.83 m above the floor. It should not cost significantly more to install the fixture at such a height than it would to install it at a lower one.

will not be further impacted by OSHA's rulemaking with respect to new installations. Further, given that there are no new, substantive Category 4 provisions in the rule that are mandatory for all existing electrical system and equipment installations (see above discussion), these provisions will not result in any economic impact for existing installations, until they are replaced, repaired, and/or renovated.

In order to estimate the number of employers potentially impacted by the rulemaking, OSHA has identified the States and municipalities that currently mandate the 1999 (or 2002) National Electrical Code (NEC), that currently mandate using an earlier NEC, or that have no mandated statewide electrical code pertaining to new installations.[55] These states were identified using information contained in the Directory of Building Codes and Regulations, by City and State (National Conference of States on Building Codes and Standards, NCSBCS, 2002). In sum, 38 of the 50 States have already passed mandatory minimum building or fire codes specifying that new construction (including new electrical installations) must meet or exceed the requirements of the 1999 (or 2002) National Electrical Code (NEC).[56] Thus, OSHA assumes that employers in the covered industries in all locations in these 38 States (except for Baltimore, MD) will be unaffected by OSHA's rulemaking with respect to new installations. These States (with the particular NEC indicated) are listed in Table 5:

TABLE 5.—STATES WITH BUILDING OR FIRE CODES THAT MEET OR EXCEED THE 1999 NATIONAL ELECTRICAL CODE

Alaska
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Idaho

TABLE 5.—STATES WITH BUILDING OR FIRE CODES THAT MEET OR EXCEED THE 1999 NATIONAL ELECTRICAL CODE—Continued

Indiana
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Montana
Nebraska
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Utah
Vermont
Washington
West Virginia
Wisconsin
Wyoming

Moreover, 16 large cities in other States have also adopted the 1999 NEC. Therefore, employers in the covered industries in these municipalities are also expected to be unaffected by OSHA's rulemaking with respect to new installations. These cities are listed in Table 6:

TABLE 6.—CITIES THAT HAVE ADOPTED THE 1999 NATIONAL ELECTRICAL CODE

Austin, Texas
Chicago, Illinois
Dallas, Texas
Des Moines, Iowa
El Paso, Texas
Forth Worth, Texas
Honolulu, Hawaii
Houston, Texas
Jackson, Mississippi
Kansas City, Missouri
Las Vegas, Nevada
Phoenix, Arizona
San Antonio, Texas
St. Louis, Missouri
Tucson, Arizona
Wichita, Kansas

Further, the State of Alabama has adopted a limited mandatory minimum code, which, in effect, requires that hotels, schools, and movie theaters follow the 2002 NEC. Therefore, in this analysis, hotels, schools, and movie theaters in Alabama have been included with the group of 38 States and 16 large cities (described above) that currently follow the 1999 (or 2002) NEC.

The remaining 12 States (or portions of these States) that would likely be affected by OSHA's rulemaking can be separated into two subgroups: (1) States or municipal jurisdictions that have adopted the 1996 version of the NEC; and (2) States that have not adopted any statewide electrical code covering all non-government-owned buildings or facilities (that is, private sector installations). For group 1, to the extent that any of these jurisdictions adopt a later version of the NEC before this final rule goes into effect, annual compliance costs will likely be lower than estimated below.

Five States and three cities fall into the first of the two subgroups described above. These include all locations in Louisiana and Virginia, as well as portions of Arizona, Iowa, and Nevada (that is, all locations in these three States excluding the four large cities in these States that have adopted the 1999 NEC, as indicated in the list above). The three large cities in the first subgroup include Baltimore, MD, Birmingham, AL (excluding hotels, schools, and movie theaters), and Washington, DC. Employers in these locations may be affected to the extent that the 1999 NEC, which is the basis for the rulemaking, differs from the 1996 NEC.

Many of the new provisions in the final rule, including those in Category 4 that have potential cost implications for new electrical systems and equipment installations, date back to the 1996 NEC or to an NEC prior to 1996. Thus, for these provisions, employers in locations now requiring that the 1996 NEC be followed will not be affected by OSHA's rulemaking with respect to new installations.

Seven States have not yet adopted any statewide electrical code that applies to all private sector employers. These States include: Alabama (excluding hotels, schools, and movie theaters), Hawaii, Illinois, Kansas, Mississippi, Missouri, and Texas. Employers in these States are expected to be the most affected (of the three subgroups) by OSHA's rulemaking, since no Statewide electrical code is currently required. For these seven States, OSHA's existing electrical installation standard, which is primarily based on the 1971 and 1978 NECs, governs.[57] Below the Statewide level, it is not clear to what extent local jurisdictions have passed local electrical ordinances that exceed the 1971 and 1978 NECs and are consistent with the

[55] In States with no mandated electrical code pertaining to new installations, OSHA's existing standards, which are primarily based on the 1971 and 1978 NECs, are the governing rules. (In State Plan States, each State has adopted a standard that Federal OSHA has found to be at least as effective as the Federal standard. For all practical purposes, this means that OSHA's existing standard is the governing standard unless the State has adopted a more stringent standard.)

[56] Maryland has adopted the 1999 NEC as a Mandatory Minimum Code, exempting Baltimore from compliance. Generally when a state updates these mandatory minimum requirements, the new requirements apply only to new facilities or installations.

[57] Note that of these seven States, Hawaii is the only State Plan State. Hawaii has adopted the Federal standard.

1999 NEC. While it is likely that some local jurisdictions within these states enforce the 1999 (or 2002) NEC, OSHA's analysis treats these States as though they are not in compliance with either the 1999 or 2002 NEC for purposes of analysis. As a consequence, the estimated compliance costs are likely to be overstated.

Using data from the U.S. Department of Commerce's 1997 County Business Patterns database, OSHA has estimated the total number of affected establishments and employment in those establishments for the 58 two-digit SICs covered by the general industry electrical safety installation standard.[58] In addition, the number of establishments and employment that are already subject to the 1999 NEC, the 1996 NEC, the 1990 NEC, and no statewide electrical code, are also estimated. For those cities (identified above) that are currently following a particular electrical code, OSHA has estimated the number of establishments and employment in these cities using, as a surrogate, the data for the county in which the cities are located.

The data indicate that there are an estimated 5.6 million establishments with 89.8 million employees in the industries covered by the general industry electrical safety installation standard. About 84.7 percent of the establishments, employing about 85.3 percent of the employees, are in States or cities that have adopted the 1999 (or 2002) NEC. Approximately 6.3 percent of both the establishments and employees are in States or cities that have adopted the 1996 NEC. The remaining approximately 9.0 percent of the establishments, employing about 8.4 percent of the employees, are in States (excluding certain cities in these States) that have not adopted a statewide electrical code applicable to private sector employers. Table 8 summarizes these findings.

C. Benefits

Occupational fatalities associated with electrical accidents remain a significant and ongoing problem. The final rule would benefit employees by reducing their exposure to electrical hazards thereby reducing both fatal and nonfatal injuries.

Table 9 presents data from the Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational Injuries on the number of work-related injuries and deaths in private industry attributed to contact with electrical current for 1992–2004. While the numbers of injuries and deaths appear to have declined, this decline has not been consistent throughout the time for which data are available. Electrical-related injuries increased between 1992 and 1994, then declined for 1995 to 1997. For 1998 and 1999, injuries again increased. Note that the percentage of occupational injuries associated with electrical hazards has remained essentially constant throughout 1992 to 2004. The number of deaths associated with contact with electrical current declined in 1993, but rose during 1994 and 1995. Deaths dropped in 1996, but rose again in 1997 and 1998. As a percentage of total occupational fatalities, death due to electrocution appears to have remained constant or declined slightly. However, contact with electrical current remains a significant source of occupational fatality, accounting for 4.4 percent of total occupational fatalities in 2004.

For more than 30 years, electrical hazards have been a target of OSHA rules. This rule will help to further reduce the number of deaths and injuries associated with electrical accidents, and ensure that a downward trend in these incidents is sustained.

To determine the extent to which the standard may reduce the number of deaths attributable to electrical accidents, OSHA examined its accident investigation reports for the States without any statewide electrical code.[59] The most recent and complete reports cover 1990–1996, and provide detailed information on the cause of fatal electrical accidents. The accident cause can be used to ascertain whether the death would have been prevented by compliance with the final rule. As an initial screen, OSHA reviewed the reports for accidents that could have been prevented through the use of a GFCI. While OSHA expects that other provisions of the revised standard potentially will reduce deaths due to electrical accidents, this initial screen focused on GFCI-related accidents since they are relatively easy to isolate using a key word search through all reports. Thus, the accident report analysis is conservative in the sense that it likely understates the number of deaths preventable under the revision to Subpart S.

OSHA found that there were at least nine deaths in the seven States that lacked a statewide electrical code during 1990–1996, or an average of 1.3 deaths per year that could have been prevented with the use of a GFCI. Based on EPA's estimate of a value of $6.1 million for a statistical life, the estimated 1.3 lives saved per year (that is, between 1 and 2 lives saved per year) under the final rule would translate to an annual benefit of $7.9 million (ranging from $6.1 million to $12.2 million).[60] As noted above, the monetized benefits understate total benefits since they do not cover all potentially preventable deaths. Moreover, they do not account for any preventable nonfatal injuries.

In addition to quantifiable potential benefits, this update to OSHA's electrical standards yields important unquantified benefits. The revised standard potentially reduces industry confusion and inefficiency associated with the current standard, which is out of date with today's technology. While OSHA has a long-standing policy of permitting employers to comply with more current versions of national consensus standards to the extent the more current version is as protective as the older version, this does not address all the concerns with the outdated standard. The older electrical standards may not address the hazards associated with newer equipment and machinery, leaving employers unsure which requirements presently apply. For example, the final standard contains requirements for electric equipment installed in hazardous locations classified under the zone classification system, which is not addressed in the existing standard. (See the summary and explanation of zone classification in section N. earlier in the preamble.) The update to Subpart S will reduce or eliminate these problems.

D. Estimation of Compliance Costs

OSHA adopted a conservative approach to estimating compliance costs, and consequently, the estimates reported below are likely to overstate actual compliance costs. In summary, OSHA did not estimate any cost savings associated with the final rule, even

[58] These 58 SICs include employers in shipyard employment, longshoring, and marine terminals. Consistent with the preliminary analysis, OSHA in this final analysis has grouped affected industries according to the 1987 Standard Industrial Classification System. For industry coding under the North American Industry Classification System (NAICS), see NAICS, Executive Office of the President, Office of Management and Budget, 1997 and 2002, or *http://www.census.gov/epcd/www/naics.html.*

[59] Some cities within these States have adopted the 1999 (or later) NEC, and these cities were excluded when examining the accident report data.

[60] *See* EPA's Guidelines for Preparing Economic Analyses, EPA 240–R–00–003, September 2000. Note that the $6.1 million is in 1999 dollars. If this figure is updated for inflation using the CPI as EPA indicates is appropriate, the estimated 1.3 lives saved per year (between 1 and 2 lives saved per year) would translate to an annual benefit of $9.4 million (between $7.2 million and $14.4 million) in 2005 dollars.

though many new, potentially less costly alternative compliance methods are incorporated in the final rule. For example, as noted above, the rule will permit electric equipment in Class I hazardous locations to be installed under the zone classification system, which is not addressed in the existing standard. Because the hazardous locations provision potentially reduces industry confusion and inefficiency associated with the current standard, costs savings are likely.

For all provisions with the exception of § 1910.304(b)(3)(ii) (GFCI protection for temporary wiring installations), cost estimates were developed on a project-level basis. This involved obtaining data on the number of construction and other major renovation, addition, and alteration projects performed annually in States and local jurisdictions that do not now mandate the 1999 NEC (or equivalent).[61] Table 10 summarizes the data on the number of projects potentially impacted by the final rule. In States and local jurisdictions that do not now mandate the 1999 NEC (or equivalent), the data indicate that there were a total of 29,306 project starts in 2001, consisting primarily (91 percent) of small projects under $3 million. Less than 0.5 percent of the projects were large projects over $25 million.

For § 1910.304(b)(3)(ii), compliance costs were estimated on an establishment-level rather than project-level basis. OSHA estimates that approximately 861,400 establishments are in locations that either are currently following the 1996 NEC or have not adopted a statewide electrical code applicable to private sector employers. These employers potentially are impacted by the final rule. Costs per provision were computed according to establishment size: establishments with fewer than 100 employees, establishments with 100–499 employees, and establishments with 500 or more employees.

All potentially impacted projects/establishments would not necessarily be affected by each and every provision, and some would not be affected at all in any given year. Thus, it was necessary to estimate the percentage of projects/establishments affected by each provision annually. This percentage, when multiplied by the number of potentially impacted projects/establishments yields the number of projects/establishments subject to each provision annually without considering baseline levels of compliance. Table 11 presents the estimated percentage of projects/establishments that actually would be affected by each provision annually. These estimates were based on experience and technical knowledge of electrical practices.

Baseline levels of compliance associated with each of the new provisions also were considered. Baseline levels of compliance were estimated for each provision by considering construction requirements imposed by mortgage lenders and insurance carriers and installation practices routinely followed by licensed electricians (given their formal training). (See the earlier discussion of categories of changes in the final rule.) These requirements and installation practices are generally consistent with the current NEC requirements. Moreover, it is expected that these requirements and practices generally become more prevalent as the size of the establishment or project increases. Table 12 presents the estimated percentages for baseline compliance rates. These estimates were based on experience and technical knowledge of electrical practices.

For each provision, estimates of labor and material costs were developed on a project level basis. Labor costs are based on an hourly wage rate of $20.44 for an electrician in the construction sector (SICs 15–17 (NAICS 236–238)) to perform the work (plus fringe benefits at 37 percent).[62] Costs for materials, which consist of labels, GFCIs, conduits, connectors, and outlets, are based on data in the Maintenance Direct Catalog of Lab Supply, Inc. (2001). Equipment costs were annualized assuming the useful life of the equipment is two years and an interest rate of 7 percent. Table 13 summarizes the key data and bases for the cost estimates.

OSHA received very few comments on the preliminary economic and regulatory flexibility screening analysis.

The National Petrochemical and Refiners Association (NPRA) stated in Ex. 3–2 that ''the cost merely to read and comprehend the ruling, and to train personnel, will be at least in the tens of thousands of dollars per facility.'' However, NPRA provided no material to substantiate this claim. OSHA believes that the final rule imposes no cost to comprehend or to train personnel, particularly given the widespread use of the 1999 and 2000 NEC.

CHS, Inc. stated, ''the proposed rule could result in several unit start-ups/shutdowns at farmer-owned petroleum refineries'' (Ex. 4–25). However, CHS did not explain how the new provisions in this standard would require additional outages to deenergize beyond those which could develop from compliance with the existing standard.

Although OSHA received no new data in response to the preliminary analysis, OSHA has slightly revised its economic model in order to make it more realistic and to reflect changes between the proposed and final regulatory text. For example, in assigning compliance costs to § 1910.304(b)(3), Ground-fault circuit interrupter protection for personnel, OSHA's final model predicts that a small percentage of projects will establish and implement an assured grounding conductor program where ground-fault circuit interrupter protection is not available. An example of a revision to the preliminary analysis that reflects real-world considerations is the addition in the final analysis of an explicit cost for legible marking of equipment to indicate that the equipment has been applied with a series combination rating, as required by § 1910.303(f)(5), Marking for series combination ratings.

In addition, the final rule contains some new provisions that were not in the proposed rule or that were revised from what was in the proposal. Three of those provisions potentially require modification of existing installations: (1) Final § 1910.304(a)(3), which prohibits a grounding terminal or grounding-type device on a receptacle, cord connector, or attachment plug from being used for purposes other than grounding, (2) final § 1910.304(g)(4)(iii), which no longer permits extensions of branch circuits to be grounded by connection to a grounded cold water pipe, and (3) final § 1910.304(g)(8)(iii), which no longer permits electric equipment to be grounded only by connection to the grounded structural metal frame of a building when any element of the equipment's branch circuit is replaced.

A prohibition against using grounding terminals and grounding-type devices for purposes other than grounding is already contained in existing § 1910.304(a)(3). Under the current standard, this provision applies to all electrical installations including major replacements, modifications, repairs, or rehabilitations made after March 15, 1972. In the final rule, OSHA is extending the application of this prohibition to installations made before that date. Wiring a receptacle, cord

[61] Data on new and other (major renovation, addition, and alteration) construction projects started annually between 1998 and 2001 are compiled by F.W. Dodge (Schriver, 2002). While construction projects serve as the basis for estimating costs, construction is not covered by the final standard. Rather, it is the particular product or output of the construction project that is covered.

[62] The wage rate data are for 2000, taken from the BLS (2001) 2000 National Occupational Employment Statistics (OES) Survey. Fringe benefit rate data are from BLS (2000) Employer Costs for Employee Compensation, March. USDL: 00–186.

connector, or attachment plug so that the grounding terminal or other grounding-type device is used for purposes other than grounding (for example, by connecting a circuit conductor to the grounding terminal) makes the electric equipment extremely unsafe, posing an immediate threat of electrocution. In addition, such an incorrect wiring connection renders the equipment unusable, and it would likely have already been changed. Consequently, it is extremely unlikely that violations of this rule exist in significant numbers, and OSHA has concluded that applying this provision to all existing installations will have little if any economic impact.

Existing § 1910.304(f)(3)(iii) permits connecting the equipment grounding terminal of grounding-type receptacles to a nearby grounded cold water pipe for extensions of existing branch circuits that do not have an equipment grounding conductor. In the final rule, OSHA is requiring that, when any element of this branch circuit is replaced, the entire circuit include an equipment grounding conductor that complies with all other provisions of paragraph (g) of § 1910.304.[63] This change only affects a small percentage of branch circuits extended after March 15, 1972, the date the provision went into effect. The existing requirement makes the equipment grounding path dependent upon the metallic continuity of the cold water piping and upon the earth for the electric current's return path back to the electric source. If a ground fault occurs at electric utilization equipment (for example, a portable cord-connected electric drill with a grounding-type attachment plug) plugged into a grounding-type receptacle and if the continuity of the water pipe is interrupted by a section plastic pipe or by another means, the electric equipment becomes extremely lethal, posing an immediate threat of electrocution. Additionally, the practice of using metallic water pipes as an equipment grounding conductor poses an electrocution hazard to plumbers, pipe fitters, and other employees working on the system who might unknowingly interrupt a path of fault current flowing through the piping. The return current path in both instances is through the employee instead of through a reliable equipment grounding conductor. Employers have become aware that using cold water plumbing for grounding is a poor practice and most have already corrected this condition, which is a violation of recent editions of the NEC[64]. According to Karl M. Cunningham of Alcoa (Ex. 4–4), the permission to use a cold water pipe near the equipment was clearly removed from the NEC for many Code cycles, including the 2002, 1999, 1996, and 1993 editions.

Because the NEC has not allowed this practice for over 10 years, few employers use this provision in the existing rule due to the known hazards. Therefore, it is unlikely that violations of this rule exist in significant numbers. Even then, employers who are still using cold water piping to ground branch-circuit extensions are only required to upgrade them when they are replacing one of the branch circuit extension's elements. The installation of the equipment grounding conductors would be coincidental with the modification work; and, thus the cost of compliance would be incidental. Hence, OSHA has concluded that requiring this provision for all modifications made to existing installations will impose no appreciable costs on employers.

A prohibition against maintaining the grounded structural metal framing of a building for purposes of grounding electric equipment is contained in existing § 1910.304(f)(6)(ii). This provision currently applies only to installations made after April 16, 1981. In the final rule, § 1910.304(g)(8)(iii), OSHA is also applying this prohibition to installations made or designed before April 16, 1981, when any element of the equipment's branch circuit is replaced.

Metal frames of buildings provide a poor substitute for an equipment grounding conductor. Installations that might have initially provided a permanent, continuous, and effective equipment grounding path fail to function adequately as time passes. If a fault occurs in the electric equipment an extremely lethal condition exists, posing an immediate threat of electrocution, since the return current path is through the employee instead of the intended equipment grounding path. As brought forth by one commenter (Ex. 4–18) and stated in the preamble discussion for proposed § 1910.304(g)(7)(ii) (final § 1910.304(g)(8)(ii) and (g)(8)(iii)), this practice has been prohibited for ac circuits since the 1978 edition of the NEC. Thus, this change only affects a small percentage of branch circuits extended after March 15, 1972, the date the provision went into effect and until 1979 when the NEC prohibition applied.

Many employers recognized the safety hazards and the operating anomalies of grounding utilization equipment to the structural metal framing of buildings. Consequently, they have already abandoned the practice. Therefore, it is extremely unlikely that violations of this rule exist in significant numbers. After all, this practice has been banned for over a quarter of a century by the NEC. OSHA has concluded that requiring the installation of an equipment grounding conductor instead of allowing the structural metal frame of a building to serve as the equipment grounding conductor for all modifications to existing installations will have no appreciable cost impacts.

The final rule also includes a new provision, final § 1910.304(b)(3)(ii)(C), that allows implementation of an assured equipment grounding conductor program during maintenance, remodeling, or repair of buildings, structures, or equipment or during similar construction-like activities when GFCIs are not available. OSHA has added costs for this provision in the analysis, as explained below.

Final § 1910.304(b)(3)(ii)(B) requires receptacles other than 125-volt, single-phase, 15-, 20-, and 30-ampere receptacles that are not part of the permanent wiring of the building or structure and that are in use by personnel to have ground-fault circuit-interrupter protection for personnel. OSHA recognizes that it may be impossible for employers to comply with this requirement for GFCI protection for circuits operating at voltages above 125 volts to ground. For instance, portable electric welding units for the repair of major pieces of equipment such as industrial boilers and other massive units of industrial equipment generally require a 480-volt power connection rated 30 amperes or more. At these ratings, GFCI protection for personnel may not be feasible since it is not presently available for all branch-circuit voltage and current ratings. Therefore, the final rule permits an assured equipment grounding conductor (AEGC) program as an alternative.[65]

Although OSHA believes that the AEGC program costs more to implement than GFCI protection for personnel (equivalent to a unit cost of $110 instead of $55) it could reduce compliance costs for employers when compared to hard-

[63] For example, 1910.304(g)(4)(iii) requires that when any element of a branch circuit extension is replaced, the entire branch circuit shall include an equipment grounding conductor.

[64] For example, a metallic cold water pipe is not listed in Section 250.118 of the 2002 NEC as a type of equipment grounding conductor.

[65] Final § 1910.304(b)(3)(ii)(C) requires the employer to establish and implement an assured equipment grounding conductor program covering cord sets, receptacles that are not a part of the building or structure, and equipment connected by cord and plug that are available for use or used by employees on those receptacles.

wired methods.[66] OSHA believes that about five percent (one in twenty) of all temporary electric circuits may not be serviceable with GFCI protection for personnel at the higher current and voltage ratings and would require the AEGC program. The need to connect electric equipment with ratings other than 125 volts, single phase, 15, 20, and 30 amperes, or 250 volts, single phase, 15 and 20 amperes[67] increases as the size of the project increases. Nearly all temporary power requirements for smaller-sized projects, those with contract values under $3 million, would be serviceable with GFCI-protected receptacles or from nearby receptacles that are a part of the existing building structure. Smaller projects tend to take up minimal plant real estate. The work area is sandwiched among other facility equipment and is contained within the confines of the existing plant. Few, if any, of these projects would have need for the higher-power or higher-voltage equipment. Even if a project does need such equipment, these facilities typically have existing, permanently wired electric power receptacles that are capable of supporting loads at higher voltage and current ratings. Such receptacles are typically located throughout the plant on 30-meter, maximum, intervals allowing for easy connection of portable electric equipment with 15-meter flexible cords. Consequently, OSHA estimates that the number of smaller-sized projects that require the AEGC program is negligible.

As many as half of all medium-sized projects, those ranging from $3 million to $25 million, would potentially require the AEGC program. These projects can include a sizable block of real estate such that the cords on portable equipment will not reach existing, permanently wired receptacles.

Nearly all major projects, those larger than $25 million and encompassing significant plant real estate, are likely to use an AEGC program to comply with the standard.

OSHA estimates that, at projects that would be required to use the AEGC program, they would be needed for only about five percent of temporary electric circuits. The remaining 95 percent of all temporary electric circuits can be protected by GFCIs. Over the entire universe of employers affected by the final rule, the estimated total cost of using an AEGC program instead of GFCIs is approximately $5,300.

Table 14 presents the cost estimates for the final rule. The total annual incremental compliance costs associated with the new provisions in the final rule, for new electrical system and equipment installations, are estimated to be $9.6 million. The overwhelming majority of costs, 84.4 percent, are associated with § 1910.304(b)(3)(ii), Ground-fault circuit interrupter protection for personnel during temporary wiring installations. The total cost for this requirement is based upon the following unit estimates and assumptions:

(1) GFCI power station or cord, initial cost = $55 (annualized cost = $30.42);

(2) the number of required units ranges from two for establishments with less than 100 employees, to 10 for establishments with 100 to 499 employees, to 50 for establishments with more than 500 employees;

(3) the percentage of affected establishments ranges from 30 percent for the smallest establishments to 100 percent for the largest establishments (Table 11); and

(4) baseline industry compliance of 50 percent for the smallest establishments to 95 percent for the largest establishments (Table 12).

Some of the costs and exposures to temporary wiring could potentially be incurred by employers performing construction work rather than general industry work. Temporary wiring for construction work is already covered under Subpart K of Part 1926; and, consequently, this analysis likely overestimates the incremental costs associated with the revisions to Subpart S.

E. Technological and Economic Feasibility

As noted previously, the final rule incorporates the NFPA 70E recommendations developed in 2000, which are based on the 1999 NEC. The NFPA 70E Committee has updated the document in accordance with revisions to the NEC, which periodically recodifies acceptable electrical practices as a national consensus standard. More than 80 percent of establishments covered by the final rule are located in areas that currently mandate adherence to these recommendations or the 1999 or more stringent version of the NEC. Moreover, the vast majority of employers comply with the NEC in the absence of any legal obligation.[68] Thus, most potentially affected parties already are in compliance with the final rule, which clearly demonstrates that it is technologically feasible. The costs of the rule are also extremely low, as discussed earlier in this section of the preamble. These costs do not threaten the long-term profitability or competitive structure of affected industries. Therefore, the final rule is also economically feasible.

F. Regulatory Flexibility Screening Analysis and Regulatory Flexibility Certification

In order to determine whether a regulatory flexibility analysis is required under the Regulatory Flexibility Act, OSHA has evaluated the potential economic impacts of this action on small entities. Table 15 presents the data used in this analysis to determine whether this rule would have a significant impact on a substantial number of small entities.

First, compliance costs were computed on a per establishment basis, which required consideration of the number of establishments potentially impacted. The analysis of County Business Patterns data discussed above indicated that approximately 861,400 establishments are in local jurisdictions in the 12 States that are either currently requiring compliance with the 1996 NEC or have not adopted a statewide electrical code applicable to private sector employers. Regarding the documentation provisions for new installations in hazardous locations (§ 1910.307(b) in Table 14), only industries that handle flammable and/or combustible liquids, vapors, gases, dusts, and/or fibers will be impacted. OSHA identified these industries by reviewing data on § 1910.307 citations issued between October 2000 and September 2001 (available on the OSHA website at *http://www.osha.gov/oshstats/*) and IMIS accident data from 1994 to 2001 indicating § 1910.307 citations (OSHA, 2001). OSHA estimated that approximately 441,400 establishments with hazardous locations are in local jurisdictions in the 12 States that either are currently following the 1996 NEC or have not adopted a statewide electrical code applicable to private sector employers. These are the establishments potentially impacted by the hazardous locations provision. The remaining provisions potentially affect

[66] Employers have two alternatives when GFCI protection for personnel is required for receptacles that are not part of the permanent wiring of a building or structure: (1) Implement an assured equipment grounding conductor program or (2) provide a hard-wired installation, in which the equipment is wired directly to the circuit conductors, obviating the need for a receptacle outlet.

[67] GFCI protective devices for personnel protection may not readily available above 30 amperes at 125 volts, above 20 amperes at 250 volts, or at higher voltages.

[68] As noted previously, construction requirements imposed by mortgage lenders and insurance carriers and installation practices followed by licensed electricians (given their formal training) are reasons to expect that some employers comply with the NEC in the absence of any legal obligation.

all 861,400 establishments in the 12 States as noted above.[69]

OSHA assumed for purposes of conducting the regulatory flexibility screening analysis, that small firms, on average, will conduct the same type and size of projects as larger establishments. This is a conservative assumption, since it is more likely that smaller establishments will tend to perform small sized, less costly projects. Consequently, OSHA applied an average cost per establishment in analyzing the effect on small entities. The average cost per establishment was computed by dividing the total costs reported in Table 14 by the number of affected establishments reported in Table 8. For Provisions 1 to 5 and 7, the cost per establishment is $10.10 and for Provision 6, the cost per establishment is $1.92. Thus, for industries that handle flammable and/or combustible liquids, vapors, gases, dusts, and/or fibers, the total cost per establishment is estimated to be $12.02.

OSHA guidelines for determining the need for regulatory flexibility analysis require determining the regulatory costs as a percentage of the revenues and profits of small entities. OSHA derived estimates of the profits and revenues using data from U.S. Census and Dun and Bradstreet. In defining a small business, OSHA followed Small Business Administration (SBA) criteria for each sector. For many of the affected industries, the SBA small business criteria are determined directly by the number of employees. But for those industries where the SBA small business criteria are not determined by the number of employees (but rather by annual sales), the sales-based criteria were converted to employment-based criteria. Specifically, an employment-based firm size standard was determined by first calculating an employment level, based on the industry average annual receipts per employee, which would be sufficient to produce a total sales amount per firm consistent with the SBA sales-based firm size standard.

As shown in Table 15, at worst, compliance costs represent 0.005 percent of the revenues (for SIC 72, Personal Services) and 0.15 percent of profits (for SIC 56, Apparel and Accessory Stores). On average (computed by weighting by number of establishments), compliance costs constitute 0.002 percent of revenues and 0.048 percent of profits. Based on this evaluation, OSHA certifies that this rule will not have a significant economic impact on a substantial number of small entities.[70]

TABLE 7.—CHANGES TO THE EXISTING STANDARD WITH COST IMPLICATIONS

Final rule [1]	Comments on cost impact	Types of establishments/ projects affected	Basis for estimating costs	Provisions identified in the final rule § 1910.302(b)(4) [2]
1910.303(f)(5)	Requires the purchase and installation of labels.	All Establishments All Projects.	Projects	X
1910.303(h)(5)(iii)(B)	Requires the purchase and installation of signs.	All Establishments All Projects.	Projects	
1910.304(b)(1)	Requires the purchase and installation of labels and identification of branch circuits.	All Establishments All Projects.	Projects	X
1910.304(b)(3)(i)	Requires the purchase and installation of GFCI for bathrooms and rooftops.	All Establishments All Projects.	Projects	
1910.304(b)(3)(ii)(A) and (b)(3)(ii)(B).	Requires that each affected facility purchase GFCI equipment (power stations or extension.	All Establishments All Projects.	Establishments	
1910.304(b)(3)(ii)(C)	Requires that the facility establish and implement an assured equipment grounding conductor program.	All Establishments All Projects.	Establishments	
1910.306(c)(6)	Requires the purchase and installation of signs.	All Establishments All Projects.	Projects	X
1910.306(j)(1)(iii)	Change in design impacts construction cost (near universal compliance assumed).	Real Estate Development and Dwelling Projects.	Projects	X
1910.306(k)(4)(iv)	Requires the purchase and installation of labels.	Carnivals, Circuses, Fairs, and Similar Events.	Projects	X
1910.307(b)	Facility owner must develop documentation.	Industrial Establishments All Projects.	Projects	X
1910.308(b)(3)	Requires the purchase and installation of signs.	All Establishments All Projects.	Projects	X
1910.308(e)(1)	Change in facility design and additional materials and installation cost.	All Establishments Large Projects.	Projects	

[1] Note: In the proposal, §§ 1910.303(e)(2)(ii) and 1910.308(a)(5)(vi)(B) and (d)(2)(ii) were mistakenly identified as paperwork requirements imposing a cost burden on employers. The costs for the labeling required by these provisions is borne by the manufacturers as usual and customary. In addition, proposed § 1910.304(b)(3) has not been carried forward into the final rule. Consequently, this Final Economic Analysis does not include costs for these four requirements. However, OSHA has determined that final §§ 1910.303(f)(5), 1910.306(c)(6) and (k)(4)(iv), and 1910.308(b)(3) do impose paperwork-associated costs on employers, but they were not included in the Preliminary Economic Analysis. Therefore, this Final Economic Analysis does include costs for these four provisions.

[2] Note: Provisions listed in § 1910.302(b)(4) only apply to new installations.

[69] For § 1910.307(b), OSHA's calculation of per-establishment costs and impacts is based on an estimated 441,400 affected establishments. For all other provisions of the final standard, OSHA's calculation of per-establishment costs and impacts is based on an estimated 861,400 affected establishments.

[70] OSHA also examined the situation where all compliance costs accrue to the construction sector (in SIC 1731, Electrical Services). In this case, costs constitute 0.04 percent of revenues 1.3 percent of profits. Thus, even if all costs are assigned to construction, the proposed regulation will not have a significant impact on small entities.

TABLE 8.—ESTABLISHMENTS AND EMPLOYMENT AFFECTED BY THE FINAL STANDARD, BY VERSION OF NEC ADOPTED

Applicable version of NEC	Establishments		Employment	
	Number	Percent of total	Number	Percent of total
1996	[1] 0.4	6.3	[1] 5.6	6.3
1999 or 2002	[1] 4.8	84.7	[1] 76.6	85.3
None	[1] 0.5	9.0	[1] 7.6	8.4
Total	[1] 5.6	100	[1] 89.8	100

Source: U.S. Dept. of Labor, OSHA, Office of Regulatory Analysis, based on 1997 County Business Patterns (U.S. Census Bureau) database.
[1] In millions.

TABLE 9.—FATAL AND NONFATAL OCCUPATIONAL INJURIES ATTRIBUTABLE TO CONTACT WITH ELECTRIC CURRENT (PRIVATE INDUSTRY)

Year	Number of injuries involving days away from work	Percent of Total nonfatal occupational injuries	Number of deaths	Percent of total fatal occupational injuries
1992	4,806	0.2	317	5.8
1993	4,995	0.2	303	5.4
1994	6,018	0.3	332	5.6
1995	4,744	0.2	327	6.0
1996	4,126	0.2	268	4.8
1997	3,170	0.2	282	5.0
1998	3,910	0.2	324	5.9
1999	4,224	0.2	259	4.7
2000	3,704	0.2	256	4.8
2001	3,394	0.2	285	4.8
2002	2,967	0.2	289	5.2
2003	2,390	0.2	246	4.4
2004	2,650	0.2	254	4.4

Source: U.S. Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational Injuries (*http://www.bls.gov/iif/home.htm*).

TABLE 10.—CONSTRUCTION PROJECT STARTS IN 2001 FOR STATES THAT HAVE ADOPTED THE 1996 NEC OR DO NOT HAVE A STATEWIDE ELECTRICAL CODE

Building type	Size of project (contract value)			Total
	Less than $3 million (small)	$3–25 million (medium)	More than $25 million (large)	
Commercial and Public Buildings	15,219	1,490	45	16,754
Warehouses	1,659	204	8	1,871
Health Facilities and Laboratories	1,691	245	33	1,969
Funeral and Interment Facilities	45	.....	.....	45
Athletic and Entertainment Facilities	54	9	2	65
Auto, Bus, and Truck Service	797	47	.....	844
Residential Housing	1,491	169	6	1,666
Apartments, Hotels and Dormitories	2,505	269	24	2,798
Tanks	309	8	.....	317
Hydroelectric Power Plants	3	.....	.....	3
Natural Gas Plants	2	2	1	5
Gas, Water, and Sewer Lines	2,340	91	1	2,432
Manufacturing Facilities	447	84	6	537
Total	26,562	2,618	126	29,306

Source: William R. Schriver (2002), The University of Tennessee, Knoxville, Construction Industry Research and Policy Center, based on F.W. Dodge data on construction project starts for 2001.

TABLE 11.—ESTIMATED PERCENTAGES OF PROJECTS/ESTABLISHMENTS AFFECTED BY THE FINAL STANDARD

[By provision and project/establishment size]

Provision No.	Final rule	Description of requirement	Project/establishment size		
			Small (percent)	Medium (percent)	Large (percent)
1	1910.303(f)(5)	Marking for series combination ratings	50	50	50
2	1910.303(h)(5)(iii)(B)	Working Space and Guarding—Posting of Warning Signs	50	100	100
1a	1910.304(b)(1)	Branch Circuits—Identification of Multiwire Branch Circuits	50	50	50
3	1910.304(b)(3)(i)	Ground-fault circuit interrupter protection for bathrooms and rooftops.	100	100	100
4	1910.304(b)(3)(ii)(A) and (b)(3)(ii)(B).	Ground-fault circuit interrupter protection for temporary wiring installations.	30	80	100
4a	1910.304(b)(3)(ii)(C)	Assured equipment grounding conductor program for temporary wiring installations.	0	50	100
1b	1910.306(c)(6)	Identification and signs for elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts.	50	50	50
5	1910.306(j)(1)(iii)	Swimming Pools, Fountains, and Similar Installations—Receptacles.	20	80	100
1c	1910.306(k)(4)(iv)	Marking for single-pole portable cable connectors for parallel sets of conductors used in installations for carnivals, circuses, fairs, and similar events.	50	50	50
6	1910.307(b)	Hazardous (Classified) Locations—Documentation	60	80	100
1d	1910.308(b)(3)	Signs for emergency power systems	50	50	50
7	1910.308(e)(1)	Communication Systems—Protective Devices	5	60	100

Source: OSHA estimates, based on experience and knowledge of electrical practices.

TABLE 12.—ESTIMATED PERCENTAGES FOR BASELINE COMPLIANCE, BY PROVISION AND PROJECT/ESTABLISHMENT SIZE

Provision No.	Final rule	Description of requirement	Project/establishment size		
			Small (percent)	Medium (percent)	Large (percent)
1	1910.303(f)(5)	Marking for series combination ratings	25	25	50
2	1910.303(h)(5)(iii)(B)	Working Space and Guarding—Posting of Warning Signs	25	25	50
1a	1910.304(b)(1)	Branch Circuits—Identification of Multiwire Branch Circuits	25	25	50
3	1910.304(b)(3)(i)	Ground-fault circuit interrupter protection for bathrooms and rooftops.	50	95	95
4	1910.304(b)(3)(ii)(A) and (b)(3)(ii)(B).	Ground-fault circuit interrupter protection for temporary wiring installations.	50	95	95
4a	1910.304(b)(3)(ii)(C)	Assured equipment grounding conductor program for temporary wiring installations.	0	5	5
1b	1910.306(c)(6)	Identification and signs for elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts.	25	25	50
5	1910.306(j)(1)(iii)	Swimming Pools, Fountains, and Similar Installations—Receptacles.	60	90	90
1c	1910.306(k)(4)(iv)	Marking for single-pole portable cable connectors for parallel sets of conductors used in installations for carnivals, circuses, fairs, and similar events.	25	25	50
6	1910.307(b)	Hazardous (Classified) Locations—Documentation	50	80	80
1d	1910.308(b)(3)	Signs for emergency power systems	25	25	50
7	1910.308(e)(1)	Communication Systems—Protective Devices	10	30	40

Source: OSHA estimates, based on experience and knowledge of electrical practices.

TABLE 13.—DATA AND BASES FOR UNIT COSTS APPLIED IN OSHA'S FINAL COST ANALYSIS

Provision No.	Final rule	Labor costs [1]	Material costs
1	1910.303(f)(5), 1910.304(b)(1), 1910.306(c)(6), 1910.306(k)(4)(iv) and 1910.308(b)(3).	Average of 2 minutes of labor for each provision to install label at $28/hour ($20.44 × 1.37).	Average cost of label or sign: $2.
2	1910.303(h)(5)(iii)(B)	1 minute of labor to install label at $28/hour ($20.44 × 1.37).	Cost of label: $1.
3	1910.304(b)(3)(i)	None	GFCI: $5.
4	1910.304(b)(3)(ii)(A) and (b)(3)(ii)(B)	None	GFCI power station or cord: $55 each, annualized over 2-year useful life.
4a	(b)(3)(ii)(C) [2]	None	AEGC $110 (equivalent cost).
5	1910.306(j)(1)(iii)	3 hours at $28/hour ($20.44 × 1.37)	Various conduit, connectors, outlets: $75.

TABLE 13.—DATA AND BASES FOR UNIT COSTS APPLIED IN OSHA'S FINAL COST ANALYSIS—Continued

Provision No.	Final rule	Labor costs [1]	Material costs
6	1910.307(b)	4 hours at $28/hour ($20.44 × 1.37)	None.
7	1910.308(e)(1)	1 minute of labor to install label at $28/hour ($20.44 × 1.37).	Cost of label: $1.

[1] Note: The wage rate data are for 2000, taken from the BLS (2001) 2000 National Occupational Employment Statistics (OES) Survey. Fringe benefit rate data are from BLS (2000) Employer Costs for Employee Compensation, March. USDL: 00–186.
[2] Note: See the discussion of the methodology for estimating costs associated with the assured equipment grounding conductor program earlier in this section of the preamble.
Source: U.S. Dept. of Labor, OSHA, Office of Regulatory Analysis, 2006.

TABLE 14.—ANNUAL INCREMENTAL COMPLIANCE COSTS FOR CHANGES TO SUBPART S ELECTRICAL STANDARD

Provision No.	Final rule	Description of requirement	Annual costs for projects/establishments [1]			
			Total	Small	Medium	Large
1	1910.303(f)(5)	Marking for series combination ratings	$346,208	$221,365	$109,091	$15,751
2	1910.303(h)(5)(ii)(B)	Working Space and Guarding—Posting of Warning Signs.	66,839	49,141	16,145	1,554
1a	1910.304(b)(1)	Branch Circuits—Identification of Multiwire Branch Circuits.	Included in Provision 1.			
3	1910.304(b)(3)(i)	Ground-fault circuit interrupter protection for bathrooms and rooftops.	141,336	132,810	6,872	1,654
4	1910.304(b)(3)(ii)(A) and (b)(3)(ii)(B).	Ground-fault circuit interrupter protection for temporary wiring installations.	8,057,529	7,686,276	206,832	164,420
4a	1910.304(b)(3)(ii)(C)	Assured equipment grounding conductor program for temporary wiring installations.	5,332	0	3,600	1,733
1b	1910.306(c)(6)	Identification and signs for elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts.	Included in Provision 1.			
5	1910.306(j)(1)(iii)	Swimming Pools, Fountains, and Similar Installations—Receptacles.	36,050	31,865	3,422	763
1c	1910.306(k)(4)(iv)	Marking for single-pole portable cable connectors for parallel sets of conductors used in installations for carnivals, circuses, fairs, and similar events.	Included in Provision 1.			
6	1910.307(b)	Hazardous (Classified) Locations—Documentation.	846,930	756,479	77,816	12,635
1d	1910.308(b)(3)	Signs for emergency power systems	Included in Provision 1.			
7	1910.308(e)(1)	Communication Systems—Protective Devices	51,044	8,172	37,593	5,280
Total			9,550,457	8,886,108	460,716	203,633

[1] The total cost per establishment is estimated to be $12.36 for industries that handle flammable and/or combustible liquids, vapors, gases, dusts, and/or fibers and $10.44 for all other industries.
Source: U.S. Dept. of Labor, OSHA, Office of Regulatory Analysis, 2006.
Note: Compliance costs for all provisions except 4 are based on projects. Compliance costs for provision 4 are based on establishments (small establishments have 1–99 employees medium establishments have 100–499 employees, and large establishments have 500+ employees).

TABLE 15.—IMPACTS ON SMALL BUSINESSES

SIC [1]	Industry description	Number of small business establishments	Small business revenues ($1000)	Revenue per establishment	Profit rate (%)	Profit per establishment	Cost as a percent of revenue	Cost as a percent of profit
700	Agricultural services	109,663	$38,501,047	$351,085	6.02	$21,130	0.0029	0.0478
800	Forestry	2,400	1,496,747	623,645	10.30	64,235	0.0016	0.0157
900	Fishing, hunting, and trapping	NA	NA	NA	5.80	NA	NA	NA
1300	Oil And Gas Extraction	14,787	29,931,841	2,024,200	8.65	175,093	0.0006	0.0069
1500	General building contractors	195,315	234,203,450	1,199,106	4.00	47,964	0.0008	0.0211
1600	Heavy construction, except building	35,618	68,664,092	1,927,792	4.00	77,112	0.0005	0.0131
1700	Special trade contractors	426,477	270,401,924	634,036	4.00	25,361	0.0016	0.0398
2000	Food And Kindred Products	15,992	104,629,113	6,542,591	3.46	226,600	0.0002	0.0053

TABLE 15.—IMPACTS ON SMALL BUSINESSES—Continued

SIC [1]	Industry description	Number of small business establishments	Small business revenues ($1000)	Revenue per establishment	Profit rate (%)	Profit per establishment	Cost as a percent of revenue	Cost as a percent of profit
2100	Tobacco Products	91	1,255,255	13,794,011	4.02	554,130	0.0001	0.0022
2200	Textile Mill Products	4,845	20,377,246	4,205,830	2.77	116,423	0.0003	0.0103
2300	Apparel And Other Textile Products	22,383	38,507,048	1,720,370	2.56	44,010	0.0007	0.0273
2400	Lumber And Wood Products	35,076	58,343,756	1,663,353	3.90	64,854	0.0007	0.0185
2500	Furniture And Fixtures	11,217	26,295,821	2,344,283	3.51	82,285	0.0005	0.0146
2600	Paper And Allied Products	4,057	31,334,277	7,723,509	4.50	347,629	0.0002	0.0035
2700	Printing And Publishing	57,018	85,620,541	1,501,641	3.80	57,055	0.0008	0.0211
2800	Chemicals And Allied Products	8,227	59,010,014	7,172,726	4.49	321,776	0.0002	0.0037
2900	Petroleum And Coal Products	1,047	13,950,653	13,324,406	2.99	398,317	0.0001	0.0030
3000	Rubber And Misc. Plastics Products	13,043	58,709,872	4,501,255	4.02	181,167	0.0003	0.0066
3100	Leather And Leather Products	1,675	4,003,751	2,390,299	2.20	52,509	0.0005	0.0229
3200	Stone, Clay, And Glass Products	11,791	34,254,470	2,905,137	4.93	143,127	0.0004	0.0084
3300	Primary Metal Industries	4,806	36,511,582	7,597,083	4.52	343,213	0.0002	0.0035
3400	Fabricated Metal Products	34,250	113,752,781	3,321,249	4.55	150,988	0.0004	0.0080
3500	Industrial Machinery And Equipment	52,548	127,178,710	2,420,239	4.05	97,917	0.0005	0.0123
3600	Electronic & Other Electric Equipment.	14,355	69,499,940	4,841,514	5.59	270,705	0.0002	0.0044
3700	Transportation Equipment	10,653	41,544,504	3,899,794	3.74	145,974	0.0003	0.0082
3800	Instruments And Related Products	10,190	33,908,725	3,327,647	5.06	168,410	0.0004	0.0071
3900	Miscellaneous Manufacturing Industries.	17,837	30,627,905	1,717,100	3.80	65,322	0.0007	0.0184
4000	Railroad transportation	NA	NA	NA	11.08	NA	NA	NA
4100	Local and interurban passenger transit.	16,537	7,690,615	465,055	4.51	20,964	0.0022	0.0482
4200	Trucking And Warehousing	114,623	79,888,400	696,967	3.91	27,278	0.0017	0.0441
4400	Water Transportation	8,051	14,075,608	1,748,306	7.48	130,855	0.0007	0.0092
4500	Transportation by air	6,386	15,156,218	2,373,351	3.62	85,925	0.0004	0.0118
4600	Pipelines, Except Natural Gas	39	986,979	25,307,154	6.55	1,657,050	0.0000	0.0007
4700	Transportation Services	40,529	19,513,397	481,468	3.39	16,327	0.0025	0.0736
4800	Communications	17,482	41,125,079	2,352,424	5.58	131,244	0.0004	0.0077
4900	Electric, Gas, And Sanitary Services	8,938	10,824,146	1,211,026	10.37	125,641	0.0010	0.0096
5000	Wholesale Trade—Durable Goods	258,492	837,107,306	3,238,426	2.54	82,401	0.0004	0.0146
5100	Wholesale Trade—Nondurable Goods.	143,751	637,454,650	4,434,436	4.46	197,917	0.0003	0.0061
5200	Building Materials & Garden Supplies.	46,450	37,776,200	813,266	2.37	19,289	0.0015	0.0623
5300	General Merchandise Stores	8,796	3,346,901	380,503	2.70	10,283	0.0027	0.0982
5400	Food Stores	123,572	101,566,550	821,922	1.41	11,595	0.0012	0.0871
5500	Automotive Dealers & Service Stations.	116,015	149,337,410	1,287,225	1.45	18,609	0.0009	0.0646
5600	Apparel And Accessory Stores	50,308	18,706,435	371,838	1.85	6,867	0.0027	0.1471
5700	Home Furniture And Furnishings Stores.	78,842	45,392,798	575,744	2.28	13,142	0.0018	0.0768
5800	Eating And Drinking Places	355,297	128,561,814	361,843	3.00	10,850	0.0033	0.1108
5900	Miscellaneous Retail	258,538	119,265,615	461,308	2.49	11,479	0.0026	0.1047
6000	Depository Institutions	14,378	15,538,559	1,080,718	10.80	116,718	0.0009	0.0087
6100	Nondepository Institutions	21,262	13,454,697	632,805	15.05	95,230	0.0016	0.0106
6200	Security And Commodity Brokers	27,262	19,644,662	720,588	13.32	95,949	0.0014	0.0105
6300	Insurance Carriers	4,967	5,850,805	1,177,935	6.82	80,375	0.0009	0.0126
6400	Insurance Agents, Brokers, & Service.	119,907	47,083,678	392,668	6.83	26,800	0.0026	0.0377
6500	Real Estate	230,304	142,479,284	618,657	13.31	82,340	0.0016	0.0123
6700	Holding And Other Investment Offices.	21,022	35,174,755	1,673,235	24.01	401,733	0.0006	0.0025
7000	Hotels And Other Lodging Places	47,698	24,876,889	521,550	6.96	36,302	0.0019	0.0278
7200	Personal Services	176,477	36,957,629	209,419	5.86	12,262	0.0048	0.0824
7300	Business Services	337,126	188,061,601	557,838	4.79	26,703	0.0022	0.0450
7500	Auto Repair, Services, And Parking	167,057	66,003,052	395,093	4.39	17,356	0.0030	0.0692
7600	Miscellaneous Repair Services	63,328	25,861,556	408,375	5.44	22,198	0.0029	0.0541
7800	Motion Pictures	29,959	13,026,870	434,823	5.14	22,341	0.0023	0.0452
7900	Amusement & Recreation Services	90,742	47,922,810	528,122	4.28	22,604	0.0023	0.0532
8000	Health Services	413,561	243,370,668	588,476	6.17	36,312	0.0020	0.0331
8100	Legal Services	156,877	54,265,197	345,909	17.50	60,534	0.0029	0.0167
8200	Educational Services	40,592	25,677,552	632,577	8.14	51,502	0.0016	0.0196
8300	Social Services	117,544	50,553,841	430,084	4.44	19,088	0.0023	0.0529
8400	Museums, Botanical, Zoological Gardens.	4,912	2,928,264	596,145	21.45	127,873	0.0017	0.0079
8600	Membership Organizations	242,081	78,452,141	324,074	7.21	23,371	0.0031	0.0432

TABLE 15.—IMPACTS ON SMALL BUSINESSES—Continued

SIC [1]	Industry description	Number of small business establishments	Small business revenues ($1000)	Revenue per establishment	Profit rate (%)	Profit per establishment	Cost as a percent of revenue	Cost as a percent of profit
8700	Engineering and management services.	271,169	151,671,072	559,323	6.39	35,745	0.0018	0.0283
8900	Services, n.e.c	16,395	8,169,059	498,265	6.80	33,882	0.0020	0.0298

[1] Consistent with the preliminary analysis, OSHA in this final analysis has grouped affected industries according to the 1987 Standard Industrial Classification System. For industry coding under the North American Industry Classification System (NAICS), see NAICS, Executive Office of the President, Office of Management and Budget, 1997 and 2002.

Source: U.S. Dept. of Labor, OSHA, Office of Regulatory Analysis, 2006, based on U.S. Census Bureau, 2001, and Dun & Bradstreet, 2001.

VII. State Plan Standards

The 26 States or territories with OSHA-approved occupational safety and health plans must adopt an equivalent amendment or one that is at least as protective to employees within 6 months of the publication date of the final standard. These are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (for State and local government employees only), New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

VIII. Environmental Impact Analysis

The final rule's provisions have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Part 1502), and the Department of Labor's NEPA procedures (29 CFR Part 11). As a result of this review, OSHA has determined that these provisions will have no significant effect on air, water or soil quality, plant or animal life, on the use of land, or other aspects of the environment.

IX. Unfunded Mandates

This final rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*). For the purposes of the UMRA, the Agency certifies that this final rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

X. Federalism

OSHA has reviewed this rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act expresses Congress's intent to preempt State laws where OSHA has promulgated occupational safety and health standards. A State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. 29 U.S.C. 667, *Gade* v. *National Solid Wastes Management Association,* 505 U.S. 88 (1992). Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to the statutory limitations of the OSH Act, State-Plan States are free to develop and enforce their own requirements for occupational safety and health protections.

Although OSHA has a clear statutory mandate to preempt State occupational safety and health laws, States may enforce standards, such as State and local fire and building codes, which are designed to protect a wider class of persons than employees. As discussed earlier, the final rule introduces few new requirements that are not already mandated by applicable State and local law. In fact, most States and municipalities require compliance with the NEC, which is consistent with the final rule.

XI. OMB Review Under the Paperwork Reduction Act of 1995

The final rule Electrical Standard contains several collection-of-information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.,* and OMB's regulations at 5 CFR part 1320. PRA–95 defines ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format * * *'' (44 U.S.C. 3502(3)(A)). The collection-of-information requirements contained in the proposed Design Safety Standards for Electrical Systems was submitted to OMB on April 2, 2004. On December 7, 2004, OMB provided the following comment regarding its review of the paperwork requirements contained in the proposed rule:

> The information collection provisions associated with the Design Safety Standards for Electrical Systems proposed rule are not approved at this time. OSHA will examine public comment in response to the [Notice of Proposed Rulemaking] and will describe in the preamble of the final rule how the [A]gency has maximized the practical utility of the collection and minimized its burden.

In the preamble to the proposed rule, OSHA asked for comments on each of the paperwork requirements in the Electrical Standard for general industry, Subpart S. OSHA received no comments on the paperwork burdens or OSHA's estimation of those burdens. However, OSHA added a provision to the standard based on comments received on the proposed GFCI requirements. In response to those comments, the Agency added a requirement for the assured equipment grounding conductor program under limited conditions. This new provision will add 203 hours to the paperwork burden.

The collection-of-information requirements contained in the final rule also include requirements in § 1910.303 for marking series combination ratings, § 1910.304—Wiring design and protection, § 1910.306—Specific purpose equipment and installations, § 1910.307—Hazardous (classified) locations, and § 1910.308—Special systems. The final Information-Collection Request estimates the total burden hours associated with the collection-of-information requirements to be approximately 9,353 hours and estimates the cost for maintenance and operation to be approximately $3,750. OMB is currently reviewing OSHA's request for approval of the collection-of-information requirements in the final rule.

These collection-of-information requirements are needed to provide electrical safety to employees against the electric shock hazards that might be present in the workplace. The marking of electric equipment with proper ratings, identifying the phase and system of each ungrounded conductor, labeling certain disconnecting means with indentification signs, using the assured equipment grounding conductor program whenever approved GFCIs are not available, and documenting hazardous classified areas are all ways of reducing the electrical hazards posed on employees. OSHA will use the records developed in response to this standard to determine compliance. The employer's failure to generate and disclose the information required in this standard will affect significantly OSHA's effort to control and reduce injuries and fatalities related to electrical hazards in the workplace.

OSHA minimized the burden hours imposed by collections of information contained in the standard by relying heavily on the National Electrical Code and NFPA 70E, Standard for Electrical Safety Requirements for Employee Workplaces. The collections of information in the standard mirror current industry practice and, therefore, impose minimal burden on employers and eliminate any confusion between current industry practice and the standard. The Agency believes that the information-collection frequencies required by the standard are the minimum frequencies necessary to effectively regulate the electrical hazards posed by the workforce.

Potential respondents are not required to respond to the information collection requirements until they have been approved and a currently valid OMB control number is displayed. OMB is currently reviewing OSHA's request for approval of the 29 CFR Part 1910 Subpart S information collections. OSHA will publish a subsequent **Federal Register** document when OMB takes further action on the information collection requirements in the Electrical Standards rule.

XII. Effective Date and Date of Application

The scope and application of Subpart S is set forth in § 1910.302 in paragraphs (b)(1) through (b)(4). The paragraphs are as follows: (b)(1) all installations regardless of when the installation was built; (b)(2) all installations built after March 15, 1972; (b)(3) all installations built after April 16, 1981; and (b)(4) all installations built after the final rule is published.

In the preamble to the Proposal, OSHA proposed to make some new requirements effective 90 days after the final rule is published. We invited comments on whether this time is sufficient to implement the changes required by the revised standard.

International Paper stated that companies will need at least 90 days to effectively communicate and implement the provisions in the standard, even within a large organization (Ex. 3–6). They further stated that this period would allow companies to develop and update site specific electrical safety programs and would allow large companies to develop policies supplemental to the OSHA standards as well as adequately address site issues and concerns. In addition, they noted that the current electrical design and installation would need to be reviewed for compliance. They stated that the proposed changes to the depth of working space in front of electrical equipment, and proposed changes to elevation requirements to unguarded live parts of electrical equipment, for example, may necessitate design or construction changes.

Two commenters did not believe that 90 days after the final rule is published would be enough time for employers to effectively implement the new requirements proposed in the electrical standard, especially in states not mandating the latest codes (Exs. 3–3, 3–10). These commenters recommended that the effective date be 180 days after the final rule is published. One of these commenters, Duke Energy Corporation, argued that additional time would be needed for employers to determine compliance and then retrofit installations if necessary. The other commenter, ORC World Wide, said that employers need to determine how the new requirements apply to their installations and plan accordingly. They argued that the standard is complex and may take companies time to understand and assimilate the standard into their operations.

OSHA agrees with the public comments on the effective date and recognizes that companies may need additional time to implement the standard. For the reasons given by these commenters, the Agency will grant the request to extend the effective date to 180 days after the final rule is published.

Accordingly, the effective date of this final rule is 180 days after publication. The 180-day period between the issuance of the standard and their effective date is intended to provide sufficient time for employers and employees to become informed of and comply with the requirements of the standard.

The standards currently found in the existing Subpart S (§§ 1910.302 through 1910.308) remain in effect until the standards contained in this rule actually go into effect. Should the new standards be stayed, judicially or administratively, or should the standards not sustain legal challenge under section 6(f) of the OSH Act, the existing standards in Subpart S will remain in effect.

Any petitions for administrative reconsiderations of these standards or for an administrative stay pending judicial review must be filed with the Assistant Secretary of Labor for Occupational Safety and Health on or before April 16, 2007. Any petitions filed after this day will be considered to be filed untimely.

As discussed fully in the summary and explanation of final § 1910.302(b), in section V. earlier in this preamble, OSHA is making the new requirements in revised Subpart S effective 180 days after the final rule is published in the **Federal Register.** It should be noted that applying new provisions only to new installations is the same approach that OSHA took in promulgating the current version of Subpart S in 1981. The Agency found that this approach was successful and has no indication that it was unduly burdensome or insufficiently protective.

List of Subjects in 29 CFR Part 1910

Electric power, Fire prevention, Hazardous substances, Occupational safety and health, Safety.

Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2002 (67 F.R. 65008), and 29 CFR Part 1911.

Signed at Washington, DC, this 24th day of January, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

■ Part 1910 of Title 29 of the Code of Federal Regulations is amended as follows:

Subpart A—General

■ 1. The authority citation for Subpart A is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable.

Sections 1910.6, 1910.7, and 1910.8 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9 a, 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. Section 1910.6 is amended by revising the introductory text to paragraph (e), removing and reserving paragraph (e)(33), revising the introductory text to paragraph (q), and removing and reserving paragraph (q)(16). The revised text reads as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(e) The following material is available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, Fourth Floor, New York, NY 10036:

* * * * *

(q) The following material is available for purchase from the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269:

* * * * *

Subpart F—Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms

■ 3. The authority citation for Subpart F is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

■ 4. Appendix D to § 1910.66 is amended as follows:

■ a. Paragraph (c)(22)(i) is revised as set forth below.

■ b. In the second sentence of paragraph (c)(22)(vii), the words ''Article 610 of the National Electrical Code, NFPA 70–1971; ANSI C1–1971 (Rev. of C1–1968)'' are revised to read ''Subpart S of this Part.''

§ 1910.66 Powered platforms for building maintenance.

* * * * *

Appendix D to § 1910.66—Existing Installations (Mandatory)

* * * * *

(c) * * *

(22) * * * (i) All electrical equipment and wiring shall conform to the requirements of Subpart S of this Part, except as modified by ANSI A120.1—1970 ''American National Standard Safety Requirements for Powered Platforms for Exterior Building Maintenance'' (see § 1910.6). For detail design specifications for electrical equipment, see Part 2, ANSI A120.1–1970.

* * * * *

Subpart S—Electrical

■ 5. The authority citation for Subpart S is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 8–76 (41 FR 25059), 1–90 (55 FR 9033), or 5–2002 (67 F.R. 65008), as applicable; 29 CFR Part 1911.

■ 6. Sections 1910.302 through 1910.308 are revised to read as follows:

Design Safety Standards for Electrical Systems

§ 1910.302 Electric utilization systems.

Sections 1910.302 through 1910.308 contain design safety standards for electric utilization systems.

(a) *Scope*—(1) *Covered.* The provisions of §§ 1910.302 through 1910.308 cover electrical installations and utilization equipment installed or used within or on buildings, structures, and other premises, including:

(i) Yards;

(ii) Carnivals;

(iii) Parking and other lots;

(iv) Mobile homes;

(v) Recreational vehicles;

(vi) Industrial substations;

(vii) Conductors that connect the installations to a supply of electricity; and

(viii) Other outside conductors on the premises.

(2) *Not covered.* The provisions of §§ 1910.302 through 1910.308 do not cover:

(i) Installations in ships, watercraft, railway rolling stock, aircraft, or automotive vehicles other than mobile homes and recreational vehicles;

(ii) Installations underground in mines;

(iii) Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communication purposes;

(iv) Installations of communication equipment under the exclusive control of communication utilities, located outdoors or in building spaces used exclusively for such installations; or

(v) Installations under the exclusive control of electric utilities for the purpose of communication or metering; or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, etc., or outdoors by established rights on private property.

(b) *Extent of application*—(1) *Requirements applicable to all installations.* The following requirements apply to all electrical installations and utilization equipment, regardless of when they were designed or installed:

§ 1910.303(b)—Examination, installation, and use of equipment

§ 1910.303(c)(3)—Electrical connections—Splices

§ 1910.303(d)—Arcing parts

§ 1910.303(e)—Marking

§ 1910.303(f), except (f)(4) and (f)(5)—Disconnecting means and circuits

§ 1910.303(g)(2)—600 volts or less—Guarding of live parts

§ 1910.304(a)(3)—Use of grounding terminals and devices

§ 1910.304(f)(1)(i), (f)(1)(iv), and (f)(1)(v)—Overcurrent protection—600 volts, nominal, or less

§ 1910.304(g)(1)(ii), (g)(1)(iii), (g)(1)(iv), and (g)(1)(v)—Grounding—Systems to be grounded

§ 1910.304(g)(4)—Grounding—Grounding connections

§ 1910.304(g)(5)—Grounding—Grounding path

§ 1910.304(g)(6)(iv)(A) through (g)(6)(iv)(D), and (g)(6)(vi)—Grounding—Supports, enclosures, and equipment to be grounded

§ 1910.304(g)(7)—Grounding—Nonelectrical equipment

§ 1910.304(g)(8)(i)—Grounding—Methods of grounding fixed equipment
§ 1910.305(g)(1)—Flexible cords and cables—Use of flexible cords and cables
§ 1910.305(g)(2)(ii) and (g)(2)(iii)—Flexible cords and cables—Identification, splices, and terminations
§ 1910.307, except as specified in § 1910.307(b)—Hazardous (classified) locations

(2) *Requirements applicable to installations made after March 15, 1972.* Every electrical installation and all utilization equipment installed or overhauled after March 15, 1972, shall comply with the provisions of §§ 1910.302 through 1910.308, except as noted in paragraphs (b)(3) and (b)(4) of this section.

(3) *Requirements applicable only to installations made after April 16, 1981.* The following requirements apply only to electrical installations and utilization equipment installed after April 16, 1981:

§ 1910.303(h)(4)—Over 600 volts, nominal—Entrance and access to work space
§ 1910.304(f)(1)(vii) and (f)(1)(viii)—Overcurrent protection—600 volts, nominal, or less
§ 1910.304(g)(9)(i)—Grounding—Grounding of systems and circuits of 1000 volts and over (high voltage)
§ 1910.305(j)(6)(ii)(D)—Equipment for general use—Capacitors
§ 1910.306(c)(9)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Interconnection between multicar controllers
§ 1910.306(i)—Electrically driven or controlled irrigation machines
§ 1910.306(j)(5)—Swimming pools, fountains, and similar installations—Fountains
§ 1910.308(a)(1)(ii)—Systems over 600 volts, nominal—Aboveground wiring methods
§ 1910.308(c)(2)—Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits—Marking
§ 1910.308(d)—Fire alarm systems

(4) *Requirements applicable only to installations made after August 13, 2007.* The following requirements apply only to electrical installations and utilization equipment installed after August 13, 2007:

§ 1910.303(f)(4)—Disconnecting means and circuits—Capable of accepting a lock
§ 1910.303(f)(5)—Disconnecting means and circuits—Marking for series combination ratings
§ 1910.303(g)(1)(iv) and (g)(1)(vii)—600 Volts, nominal, or less—Space about electric equipment
§ 1910.303(h)(5)(vi)—Over 600 volts, nominal—Working space and guarding
§ 1910.304(b)(1)—Branch circuits—Identification of multiwire branch circuits
§ 1910.304(b)(3)(i)—Branch circuits—Ground-fault circuit interrupter protection for personnel
§ 1910.304(f)(2)(i)(A), (f)(2)(i)(B) (but not the introductory text to § 1910.304(f)(2)(i)), and (f)(2)(iv)(A)—Overcurrent protection—Feeders and branch circuits over 600 volts, nominal
§ 1910.305(c)(3)(ii)—Switches—Connection of switches
§ 1910.305(c)(5)—Switches—Grounding
§ 1910.306(a)(1)(ii)—Electric signs and outline lighting—Disconnecting means
§ 1910.306(c)(4)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Operation
§ 1910.306(c)(5)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Location
§ 1910.306(c)(6)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Identification and signs
§ 1910.306(c)(7)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Single-car and multicar installations
§ 1910.306(j)(1)(iii)—Swimming pools, fountains, and similar installations—Receptacles
§ 1910.306(k)—Carnivals, circuses, fairs, and similar events
§ 1910.308(a)(5)(v) and (a)(5)(vi)(B)—Systems over 600 volts, nominal—Interrupting and isolating devices
§ 1910.308(a)(7)(vi)—Systems over 600 volts, nominal—Tunnel installations
§ 1910.308(b)(3)—Emergency power systems—Signs
§ 1910.308(c)(3)—Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits—Separation from conductors of other circuits
§ 1910.308(f)—Solar photovoltaic systems

(c) *Applicability of requirements for disconnecting means.* The requirement in § 1910.147(c)(2)(iii) that energy isolating devices be capable of accepting a lockout device whenever replacement or major repair, renovation or modification of a machine or equipment is performed, and whenever new machines or equipment are installed after January 2, 1990, applies in addition to any requirements in § 1910.303 through § 1910.308 that disconnecting means be capable of being locked in the open position under certain conditions.

§ 1910.303 General.

(a) *Approval.* The conductors and equipment required or permitted by this subpart shall be acceptable only if approved, as defined in § 1910.399.

(b) *Examination, installation, and use of equipment*—(1) *Examination.* Electric equipment shall be free from recognized hazards that are likely to cause death or serious physical harm to employees. Safety of equipment shall be determined using the following considerations:

(i) Suitability for installation and use in conformity with the provisions of this subpart;

Note to paragraph (b)(1)(i) of this section: Suitability of equipment for an identified purpose may be evidenced by listing or labeling for that identified purpose.

(ii) Mechanical strength and durability, including, for parts designed to enclose and protect other equipment, the adequacy of the protection thus provided;

(iii) Wire-bending and connection space;

(iv) Electrical insulation;

(v) Heating effects under all conditions of use;

(vi) Arcing effects;

(vii) Classification by type, size, voltage, current capacity, and specific use; and

(viii) Other factors that contribute to the practical safeguarding of persons using or likely to come in contact with the equipment.

(2) *Installation and use.* Listed or labeled equipment shall be installed and used in accordance with any instructions included in the listing or labeling.

(3) *Insulation integrity.* Completed wiring installations shall be free from short circuits and from grounds other than those required or permitted by this subpart.

(4) *Interrupting rating.* Equipment intended to interrupt current at fault levels shall have an interrupting rating sufficient for the nominal circuit voltage and the current that is available at the line terminals of the equipment. Equipment intended to interrupt current at other than fault levels shall have an interrupting rating at nominal circuit voltage sufficient for the current that must be interrupted.

(5) *Circuit impedance and other characteristics.* The overcurrent protective devices, the total impedance,

the component short-circuit current ratings, and other characteristics of the circuit to be protected shall be selected and coordinated to permit the circuit protective devices used to clear a fault to do so without the occurrence of extensive damage to the electrical components of the circuit. This fault shall be assumed to be either between two or more of the circuit conductors, or between any circuit conductor and the grounding conductor or enclosing metal raceway.

(6) *Deteriorating agents.* Unless identified for use in the operating environment, no conductors or equipment shall be located in damp or wet locations; where exposed to gases, fumes, vapors, liquids, or other agents that have a deteriorating effect on the conductors or equipment; or where exposed to excessive temperatures.

(7) *Mechanical execution of work.* Electric equipment shall be installed in a neat and workmanlike manner.

(i) Unused openings in boxes, raceways, auxiliary gutters, cabinets, equipment cases, or housings shall be effectively closed to afford protection substantially equivalent to the wall of the equipment.

(ii) Conductors shall be racked to provide ready and safe access in underground and subsurface enclosures that persons enter for installation and maintenance.

(iii) Internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces, may not be damaged or contaminated by foreign materials such as paint, plaster, cleaners, abrasives, or corrosive residues.

(iv) There shall be no damaged parts that may adversely affect safe operation or mechanical strength of the equipment, such as parts that are broken, bent, cut, or deteriorated by corrosion, chemical action, or overheating.

(8) *Mounting and cooling of equipment.* (i) Electric equipment shall be firmly secured to the surface on which it is mounted.

Note to paragraph (b)(8)(i) of this section: Wooden plugs driven into holes in masonry, concrete, plaster, or similar materials are not considered secure means of fastening electric equipment.

(ii) Electric equipment that depends on the natural circulation of air and convection principles for cooling of exposed surfaces shall be installed so that room airflow over such surfaces is not prevented by walls or by adjacent installed equipment. For equipment designed for floor mounting, clearance between top surfaces and adjacent surfaces shall be provided to dissipate rising warm air.

(iii) Electric equipment provided with ventilating openings shall be installed so that walls or other obstructions do not prevent the free circulation of air through the equipment.

(c) *Electrical connections*—(1) *General.* Because of different characteristics of dissimilar metals:

(i) Devices such as pressure terminal or pressure splicing connectors and soldering lugs shall be identified for the material of the conductor and shall be properly installed and used;

(ii) Conductors of dissimilar metals may not be intermixed in a terminal or splicing connector where physical contact occurs between dissimilar conductors (such as copper and aluminum, copper and copper-clad aluminum, or aluminum and copper-clad aluminum) unless the device is identified for the purpose and conditions of use; and

(iii) Materials such as solder, fluxes, inhibitors, and compounds, where employed, shall be suitable for the use and shall be of a type that will not adversely affect the conductors, installation, or equipment.

(2) *Terminals.* (i) Connection of conductors to terminal parts shall ensure a good connection without damaging the conductors and shall be made by means of pressure connectors (including set-screw type), solder lugs, or splices to flexible leads. However, No. 10 or smaller conductors may be connected by means of wire binding screws or studs and nuts having upturned lugs or equivalent.

(ii) Terminals for more than one conductor and terminals used to connect aluminum shall be so identified.

(3) *Splices.* (i) Conductors shall be spliced or joined with splicing devices identified for the use or by brazing, welding, or soldering with a fusible metal or alloy. Soldered splices shall first be spliced or joined to be mechanically and electrically secure without solder and then soldered. All splices and joints and the free ends of conductors shall be covered with an insulation equivalent to that of the conductors or with an insulating device identified for the purpose.

(ii) Wire connectors or splicing means installed on conductors for direct burial shall be listed for such use.

(d) *Arcing parts.* Parts of electric equipment that in ordinary operation produce arcs, sparks, flames, or molten metal shall be enclosed or separated and isolated from all combustible material.

(e) *Marking*—(1) *Identification of manufacturer and ratings.* Electric equipment may not be used unless the following markings have been placed on the equipment:

(i) The manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified; and

(ii) Other markings giving voltage, current, wattage, or other ratings as necessary.

(2) *Durability.* The marking shall be of sufficient durability to withstand the environment involved.

(f) *Disconnecting means and circuits*—(1) *Motors and appliances.* Each disconnecting means required by this subpart for motors and appliances shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident.

(2) *Services, feeders, and branch circuits.* Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident.

(3) *Durability of markings.* The markings required by paragraphs (f)(1) and (f)(2) of this section shall be of sufficient durability to withstand the environment involved.

(4) *Capable of accepting a lock.* Disconnecting means required by this subpart shall be capable of being locked in the open position.

(5) *Marking for series combination ratings.* (i) Where circuit breakers or fuses are applied in compliance with the series combination ratings marked on the equipment by the manufacturer, the equipment enclosures shall be legibly marked in the field to indicate that the equipment has been applied with a series combination rating.

(ii) The marking required by paragraph (f)(5)(i) of this section shall be readily visible and shall state ''Caution—Series Combination System Rated ____ Amperes. Identified Replacement Component Required.''

(g) *600 Volts, nominal, or less.* This paragraph applies to electric equipment operating at 600 volts, nominal, or less to ground.

(1) *Space about electric equipment.* Sufficient access and working space shall be provided and maintained about all electric equipment to permit ready and safe operation and maintenance of such equipment.

(i) Working space for equipment likely to require examination, adjustment, servicing, or maintenance while energized shall comply with the following dimensions, except as required or permitted elsewhere in this subpart:

(A) The depth of the working space in the direction of access to live parts may not be less than indicated in Table S–1. Distances shall be measured from the live parts if they are exposed or from the enclosure front or opening if they are enclosed;

(B) The width of working space in front of the electric equipment shall be the width of the equipment or 762 mm (30 in.), whichever is greater. In all cases, the working space shall permit at least a 90-degree opening of equipment doors or hinged panels; and

(C) The work space shall be clear and extend from the grade, floor, or platform to the height required by paragraph (g)(1)(vi) of this section. However, other equipment associated with the electrical installation and located above or below the electric equipment may extend not more than 153 mm (6 in.) beyond the front of the electric equipment.

(ii) Working space required by this standard may not be used for storage. When normally enclosed live parts are exposed for inspection or servicing, the working space, if in a passageway or general open space, shall be suitably guarded.

(iii) At least one entrance of sufficient area shall be provided to give access to the working space about electric equipment.

(iv) For equipment rated 1200 amperes or more and over 1.83 m (6.0 ft) wide, containing overcurrent devices, switching devices, or control devices, there shall be one entrance not less than 610 mm (24 in.) wide and 1.98 m (6.5 ft) high at each end of the working space, except that:

(A) Where the location permits a continuous and unobstructed way of exit travel, one means of exit is permitted; or

(B) Where the working space required by paragraph (g)(1)(i) of this section is doubled, only one entrance to the working space is required; however, the entrance shall be located so that the edge of the entrance nearest the equipment is the minimum clear distance given in Table S–1 away from such equipment.

(v) Illumination shall be provided for all working spaces about service equipment, switchboards, panelboards, and motor control centers installed indoors. Additional lighting fixtures are not required where the working space is illuminated by an adjacent light source. In electric equipment rooms, the illumination may not be controlled by automatic means only.

(vi) The minimum headroom of working spaces about service equipment, switchboards, panelboards, or motor control centers shall be as follows:

(A) For installations built before August 13, 2007, 1.91 m (6.25 ft); and

(B) For installations built on or after August 13, 2007, 1.98 m (6.5 ft), except that where the electrical equipment exceeds 1.98 m (6.5 ft) in height, the minimum headroom may not be less than the height of the equipment.

TABLE S–1.—MINIMUM DEPTH OF CLEAR WORKING SPACE AT ELECTRIC EQUIPMENT, 600 V OR LESS

Nominal voltage to ground	Minimum clear distance for condition [2 3]					
	Condition A		Condition B		Condition C	
	m	ft	m	ft	m	ft
0–150	[1]0.9	[1]3.0	[1]0.9	[1]3.0	0.9	3.0
151–600	[1]0.9	[1]3.0	1.0	3.5	1.2	4.0

Notes to Table S–1:

1. Minimum clear distances may be 0.7 m (2.5 ft) for installations built before April 16, 1981.
2. Conditions A, B, and C are as follows:

Condition A—Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by suitable wood or other insulating material. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts.

Condition B—Exposed live parts on one side and grounded parts on the other side.

Condition C—Exposed live parts on both sides of the work space (not guarded as provided in Condition A) with the operator between.

3. Working space is not required in back of assemblies such as dead-front switchboards or motor control centers where there are no renewable or adjustable parts (such as fuses or switches) on the back and where all connections are accessible from locations other than the back. Where rear access is required to work on deenergized parts on the back of enclosed equipment, a minimum working space of 762 mm (30 in.) horizontally shall be provided.

(vii) Switchboards, panelboards, and distribution boards installed for the control of light and power circuits, and motor control centers shall be located in dedicated spaces and protected from damage.

(A) For indoor installation, the dedicated space shall comply with the following:

(1) The space equal to the width and depth of the equipment and extending from the floor to a height of 1.83 m (6.0 ft) above the equipment or to the structural ceiling, whichever is lower, shall be dedicated to the electrical installation. Unless isolated from equipment by height or physical enclosures or covers that will afford adequate mechanical protection from vehicular traffic or accidental contact by unauthorized personnel or that complies with paragraph (g)(1)(vii)(A)(2) of this section, piping, ducts, or equipment foreign to the electrical installation may not be located in this area;

(2) The space equal to the width and depth of the equipment shall be kept clear of foreign systems unless protection is provided to avoid damage from condensation, leaks, or breaks in such foreign systems. This area shall extend from the top of the electric equipment to the structural ceiling;

(3) Sprinkler protection is permitted for the dedicated space where the piping complies with this section; and

(4) Control equipment that by its very nature or because of other requirements in this subpart must be adjacent to or within sight of its operating machinery is permitted in the dedicated space.

Note to paragraph (g)(1)(vii)(A) of this section: A dropped, suspended, or similar ceiling that does not add strength to the building structure is not considered a structural ceiling.

(B) Outdoor electric equipment shall be installed in suitable enclosures and shall be protected from accidental contact by unauthorized personnel, or by vehicular traffic, or by accidental spillage or leakage from piping systems. No architectural appurtenance or other equipment may be located in the working space required by paragraph (g)(1)(i) of this section.

(2) *Guarding of live parts.* (i) Except as elsewhere required or permitted by this standard, live parts of electric equipment operating at 50 volts or more shall be guarded against accidental

contact by use of approved cabinets or other forms of approved enclosures or by any of the following means:

(A) By location in a room, vault, or similar enclosure that is accessible only to qualified persons;

(B) By suitable permanent, substantial partitions or screens so arranged so that only qualified persons will have access to the space within reach of the live parts. Any openings in such partitions or screens shall be so sized and located that persons are not likely to come into accidental contact with the live parts or to bring conducting objects into contact with them;

(C) By placement on a suitable balcony, gallery, or platform so elevated and otherwise located as to prevent access by unqualified persons; or

(D) By elevation of 2.44 m (8.0 ft) or more above the floor or other working surface.

(ii) In locations where electric equipment is likely to be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.

(iii) Entrances to rooms and other guarded locations containing exposed live parts shall be marked with conspicuous warning signs forbidding unqualified persons to enter.

(h) *Over 600 volts, nominal*—(1) *General.* Conductors and equipment used on circuits exceeding 600 volts, nominal, shall comply with all applicable provisions of the paragraphs (a) through (g) of this section and with the following provisions, which supplement or modify the preceding requirements. However, paragraphs (h)(2), (h)(3), and (h)(4) of this section do not apply to the equipment on the supply side of the service point.

(2) *Enclosure for electrical installations.* (i) Electrical installations in a vault, room, or closet or in an area surrounded by a wall, screen, or fence, access to which is controlled by lock and key or other approved means, are considered to be accessible to qualified persons only. The type of enclosure used in a given case shall be designed and constructed according to the hazards associated with the installation.

(ii) For installations other than equipment described in paragraph (h)(2)(v) of this section, a wall, screen, or fence shall be used to enclose an outdoor electrical installation to deter access by persons who are not qualified. A fence may not be less than 2.13 m (7.0 ft) in height or a combination of 1.80 m (6.0 ft) or more of fence fabric and a 305-mm (1-ft) or more extension utilizing three or more strands of barbed wire or equivalent.

(iii) The following requirements apply to indoor installations that are accessible to other than qualified persons:

(A) The installations shall be made with metal-enclosed equipment or shall be enclosed in a vault or in an area to which access is controlled by a lock;

(B) Metal-enclosed switchgear, unit substations, transformers, pull boxes, connection boxes, and other similar associated equipment shall be marked with appropriate caution signs; and

(C) Openings in ventilated dry-type transformers and similar openings in other equipment shall be designed so that foreign objects inserted through these openings will be deflected from energized parts.

(iv) Outdoor electrical installations having exposed live parts shall be accessible to qualified persons only.

(v) The following requirements apply to outdoor enclosed equipment accessible to unqualified employees:

(A) Ventilating or similar openings in equipment shall be so designed that foreign objects inserted through these openings will be deflected from energized parts;

(B) Where exposed to physical damage from vehicular traffic, suitable guards shall be provided;

(C) Nonmetallic or metal-enclosed equipment located outdoors and accessible to the general public shall be designed so that exposed nuts or bolts cannot be readily removed, permitting access to live parts;

(D) Where nonmetallic or metal-enclosed equipment is accessible to the general public and the bottom of the enclosure is less than 2.44 m (8.0 ft) above the floor or grade level, the enclosure door or hinged cover shall be kept locked; and

(E) Except for underground box covers that weigh over 45.4 kg (100 lb), doors and covers of enclosures used solely as pull boxes, splice boxes, or junction boxes shall be locked, bolted, or screwed on.

(3) *Work space about equipment.* Sufficient space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment. Where energized parts are exposed, the minimum clear work space may not be less than 1.98 m (6.5 ft) high (measured vertically from the floor or platform) or less than 914 mm (3.0 ft) wide (measured parallel to the equipment). The depth shall be as required in paragraph (h)(5)(i) of this section. In all cases, the work space shall be adequate to permit at least a 90-degree opening of doors or hinged panels.

(4) *Entrance and access to work space.* (i) At least one entrance not less than 610 mm (24 in.) wide and 1.98 m (6.5 ft) high shall be provided to give access to the working space about electric equipment.

(A) On switchboard and control panels exceeding 1.83 m (6.0 ft) in width, there shall be one entrance at each end of such boards unless the location of the switchboards and control panels permits a continuous and unobstructed way of exit travel, or unless the work space required in paragraph (h)(5)(i) of this section is doubled.

(B) Where one entrance to the working space is permitted under the conditions described in paragraph (h)(4)(i)(A) of this section, the entrance shall be located so that the edge of the entrance nearest the switchboards and control panels is at least the minimum clear distance given in Table S–2 away from such equipment.

(C) Where bare energized parts at any voltage or insulated energized parts above 600 volts, nominal, to ground are located adjacent to such entrance, they shall be suitably guarded.

(ii) Permanent ladders or stairways shall be provided to give safe access to the working space around electric equipment installed on platforms, balconies, mezzanine floors, or in attic or roof rooms or spaces.

(5) *Working space and guarding.* (i)(vi) Except as elsewhere required or permitted in this subpart, the minimum clear working space in the direction of access to live parts of electric equipment may not be less than specified in Table S–2. Distances shall be measured from the live parts, if they are exposed, or from the enclosure front or opening, if they are enclosed.

(ii) If switches, cutouts, or other equipment operating at 600 volts, nominal, or less, are installed in a room or enclosure where there are exposed live parts or exposed wiring operating at over 600 volts, nominal, the high-voltage equipment shall be effectively separated from the space occupied by the low-voltage equipment by a suitable partition, fence, or screen. However, switches or other equipment operating at 600 volts, nominal, or less, and serving only equipment within the high-voltage vault, room, or enclosure may be installed in the high-voltage enclosure, room, or vault if accessible to qualified persons only.

(iii) The following requirements apply to the entrances to all buildings, rooms, or enclosures containing exposed live parts or exposed conductors operating at over 600 volts, nominal:

(A) The entrances shall be kept locked unless they are under the observation of a qualified person at all times; and

(B) Permanent and conspicuous warning signs shall be provided, reading substantially as follows:

''DANGER—HIGH VOLTAGE—KEEP OUT.''

(iv) Illumination shall be provided for all working spaces about electric equipment.

(A) The lighting outlets shall be arranged so that persons changing lamps or making repairs on the lighting system will not be endangered by live parts or other equipment.

(B) The points of control shall be located so that persons are prevented from contacting any live part or moving part of the equipment while turning on the lights.

(v) Unguarded live parts above working space shall be maintained at elevations not less than specified in Table S–3.

(vi) Pipes or ducts that are foreign to the electrical installation and that require periodic maintenance or whose malfunction would endanger the operation of the electrical system may not be located in the vicinity of service equipment, metal-enclosed power switchgear, or industrial control assemblies. Protection shall be provided where necessary to avoid damage from condensation leaks and breaks in such foreign systems.

Note to paragraph (h)(5)(vi) of this section: Piping and other facilities are not considered foreign if provided for fire protection of the electrical installation.

TABLE S–2.—MINIMUM DEPTH OF CLEAR WORKING SPACE AT ELECTRIC EQUIPMENT, OVER 600 V

Nominal voltage to ground	Minimum clear distance for condition [2 3]					
	Condition A		Condition B		Condition C	
	m	ft	m	ft	m	ft
601–2500 V	0.9	3.0	1.2	4.0	1.5	5.0
2501–9000 V	1.2	4.0	1.5	5.0	1.8	6.0
9001 V–25 kV	1.5	5.0	1.8	6.0	2.8	9.0
Over 25–75 kV [1]	1.8	6.0	2.5	8.0	3.0	10.0
Above 75 kV [1]	2.5	8.0	3.0	10.0	3.7	12.0

Notes to Table S–2:

[1] Minimum depth of clear working space in front of electric equipment with a nominal voltage to ground above 25,000 volts may be the same as that for 25,000 volts under Conditions A, B, and C for installations built before April 16, 1981.

[2] Conditions A, B, and C are as follows:

Condition A—Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by suitable wood or other insulating material. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts.

Condition B—Exposed live parts on one side and grounded parts on the other side. Concrete, brick, and tile walls are considered as grounded surfaces.

Condition C—Exposed live parts on both sides of the work space (not guarded as provided in Condition A) with the operator between.

[3] Working space is not required in back of equipment such as dead-front switchboards or control assemblies that has no renewable or adjustable parts (such as fuses or switches) on the back and where all connections are accessible from locations other than the back. Where rear access is required to work on the deenergized parts on the back of enclosed equipment, a minimum working space 762 mm (30 in.) horizontally shall be provided.

TABLE S–3.—ELEVATION OF UNGUARDED LIVE PARTS ABOVE WORKING SPACE

Nominal voltage between phases	Elevation	
	m	ft
601–7500 V	[1] 2.81	[1] 9.01.
7501 V–35 kV	2.8	9.0.
Over 35 kV	2.8 + 9.5 mm/kV over 35 kV	9.0 + 0.37 in./kV over 35 kV.

[1] The minimum elevation may be 2.6 m (8.5 ft) for installations built before August 13, 2007. The minimum elevation may be 2.4 m (8.0 ft) for installations built before April 16, 1981, if the nominal voltage between phases is in the range of 601–6600 volts.

§ 1910.304 Wiring design and protection.

(a) *Use and identification of grounded and grounding conductors*—(1) *Identification of conductors.* (i) A conductor used as a grounded conductor shall be identifiable and distinguishable from all other conductors.

(ii) A conductor used as an equipment grounding conductor shall be identifiable and distinguishable from all other conductors.

(2) *Polarity of connections.* No grounded conductor may be attached to any terminal or lead so as to reverse designated polarity.

(3) *Use of grounding terminals and devices.* A grounding terminal or grounding-type device on a receptacle, cord connector, or attachment plug may not be used for purposes other than grounding.

(b) *Branch circuits*—(1) *Identification of multiwire branch circuits.* Where more than one nominal voltage system exists in a building containing multiwire branch circuits, each ungrounded conductor of a multiwire branch circuit, where accessible, shall be identified by phase and system. The means of identification shall be permanently posted at each branch-circuit panelboard.

(2) *Receptacles and cord connectors.* (i) Receptacles installed on 15- and 20-ampere branch circuits shall be of the grounding type except as permitted for replacement receptacles in paragraph (b)(2)(iv) of this section. Grounding-type receptacles shall be installed only on circuits of the voltage class and current for which they are rated, except as provided in Table S–4 and Table S–5.

(ii) Receptacles and cord connectors having grounding contacts shall have those contacts effectively grounded except for receptacles mounted on portable and vehicle-mounted generators in accordance with paragraph (g)(3) of this section and replacement

receptacles installed in accordance with paragraph (b)(2)(iv) of this section.

(iii) The grounding contacts of receptacles and cord connectors shall be grounded by connection to the equipment grounding conductor of the circuit supplying the receptacle or cord connector. The branch circuit wiring method shall include or provide an equipment grounding conductor to which the grounding contacts of the receptacle or cord connector shall be connected.

(iv) Replacement of receptacles shall comply with the following requirements:

(A) Where a grounding means exists in the receptacle enclosure or a grounding conductor is installed, grounding-type receptacles shall be used and shall be connected to the grounding means or conductor;

(B) Ground-fault circuit-interrupter protected receptacles shall be provided where replacements are made at receptacle outlets that are required to be so protected elsewhere in this subpart; and

(C) Where a grounding means does not exist in the receptacle enclosure, the installation shall comply with one of the following provisions:

(1) A nongrounding-type receptacle may be replaced with another nongrounding-type receptacle; or

(2) A nongrounding-type receptacle may be replaced with a ground-fault circuit-interrupter-type of receptacle that is marked ''No Equipment Ground;'' an equipment grounding conductor may not be connected from the ground-fault circuit-interrupter-type receptacle to any outlet supplied from the ground-fault circuit-interrupter receptacle; or

(3) A nongrounding-type receptacle may be replaced with a grounding-type receptacle where supplied through a ground-fault circuit-interrupter; the replacement receptacle shall be marked ''GFCI Protected'' and ''No Equipment Ground;'' an equipment grounding conductor may not be connected to such grounding-type receptacles.

(v) Receptacles connected to circuits having different voltages, frequencies, or types of current (ac or dc) on the same premises shall be of such design that the attachment plugs used on these circuits are not interchangeable.

(3) *Ground-fault circuit interrupter protection for personnel.* (i) All 125-volt, single-phase, 15- and 20-ampere receptacles installed in bathrooms or on rooftops shall have ground-fault circuit-interrupter protection for personnel.

(ii) The following requirements apply to temporary wiring installations that are used during maintenance, remodeling, or repair of buildings, structures, or equipment or during similar construction-like activities.

(A) All 125-volt, single-phase, 15-, 20-, and 30-ampere receptacle outlets that are not part of the permanent wiring of the building or structure and that are in use by personnel shall have ground-fault circuit-interrupter protection for personnel.

Note 1 to paragraph (b)(3)(ii)(A) of this section: A cord connector on an extension cord set is considered to be a receptacle outlet if the cord set is used for temporary electric power.

Note 2 to paragraph (b)(3)(ii)(A) of this section: Cord sets and devices incorporating the required ground-fault circuit-interrupter that are connected to the receptacle closest to the source of power are acceptable forms of protection.

(B) Receptacles other than 125 volt, single-phase, 15-, 20-, and 30-ampere receptacles that are not part of the permanent wiring of the building or structure and that are in use by personnel shall have ground-fault circuit-interrupter protection for personnel.

(C) Where the ground-fault circuit-interrupter protection required by paragraph (b)(3)(ii)(B) of this section is not available for receptacles other than 125-volt, single-phase, 15-, 20-, and 30-ampere, the employer shall establish and implement an assured equipment grounding conductor program covering cord sets, receptacles that are not a part of the building or structure, and equipment connected by cord and plug that are available for use or used by employees on those receptacles. This program shall comply with the following requirements:

(1) A written description of the program, including the specific procedures adopted by the employer, shall be available at the jobsite for inspection and copying by the Assistant Secretary of Labor and any affected employee;

(2) The employer shall designate one or more competent persons to implement the program;

(3) Each cord set, attachment cap, plug, and receptacle of cord sets, and any equipment connected by cord and plug, except cord sets and receptacles which are fixed and not exposed to damage, shall be visually inspected before each day's use for external defects, such as deformed or missing pins or insulation damage, and for indications of possible internal damage. Equipment found damaged or defective shall not be used until repaired;

(4) The following tests shall be performed on all cord sets and receptacles which are not a part of the permanent wiring of the building or structure, and cord- and plug-connected equipment required to be grounded:

(*i*) All equipment grounding conductors shall be tested for continuity and shall be electrically continuous;

(ii) Each receptacle and attachment cap or plug shall be tested for correct attachment of the equipment grounding conductor. The equipment grounding conductor shall be connected to its proper terminal; and

(iii) All required tests shall be performed before first use; before equipment is returned to service following any repairs; before equipment is used after any incident which can be reasonably suspected to have caused damage (for example, when a cord set is run over); and at intervals not to exceed 3 months, except that cord sets and receptacles which are fixed and not exposed to damage shall be tested at intervals not exceeding 6 months;

(5) The employer shall not make available or permit the use by employees of any equipment which has not met the requirements of paragraph (b)(3)(ii)(C) of this section; and

(6) Tests performed as required in paragraph (b)(3)(ii)(C) of this section shall be recorded. This test record shall identify each receptacle, cord set, and cord- and plug-connected equipment that passed the test and shall indicate the last date it was tested or the interval for which it was tested. This record shall be kept by means of logs, color coding, or other effective means and shall be maintained until replaced by a more current record. The record shall be made available on the jobsite for inspection by the Assistant Secretary and any affected employee.

(4) *Outlet devices.* Outlet devices shall have an ampere rating not less than the load to be served and shall comply with the following provisions:

(i) Where connected to a branch circuit having a rating in excess of 20 amperes, lampholders shall be of the heavy-duty type. A heavy-duty lampholder shall have a rating of not less than 660 watts if of the admedium type and not less than 750 watts if of any other type; and

(ii) Receptacle outlets shall comply with the following provisions:

(A) A single receptacle installed on an individual branch circuit shall have an ampere rating of not less than that of the branch circuit;

(B) Where connected to a branch circuit supplying two or more receptacles or outlets, a receptacle may not supply a total cord- and plug-connected load in excess of the maximum specified in Table S–4; and

(C) Where connected to a branch circuit supplying two or more receptacles or outlets, receptacle ratings shall conform to the values listed in Table S–5; or, where larger than 50 amperes, the receptacle rating may not be less than the branch-circuit rating. However, receptacles of cord- and plug-connected arc welders may have ampere ratings not less than the minimum branch-circuit conductor ampacity.

(5) *Cord connections.* A receptacle outlet shall be installed wherever flexible cords with attachment plugs are used. Where flexible cords are permitted to be permanently connected, receptacles may be omitted.

TABLE S–4.—MAXIMUM CORD- AND PLUG-CONNECTED LOAD TO RECEPTACLE

Circuit rating (amperes)	Receptacle rating (amperes)	Maximum load (amperes)
15 or 20	15	12

TABLE S–4.—MAXIMUM CORD- AND PLUG-CONNECTED LOAD TO RECEPTACLE—Continued

Circuit rating (amperes)	Receptacle rating (amperes)	Maximum load (amperes)
20	20	16
30	30	24

TABLE S–5.—RECEPTACLE RATINGS FOR VARIOUS SIZE CIRCUITS

Circuit rating (amperes)	Receptacle rating (amperes)
15	Not over 15.
20	15 or 20.
30	30.
40	40 or 50.
50	50.

(c) *Outside conductors, 600 volts, nominal, or less.* The following requirements apply to branch-circuit, feeder, and service conductors rated 600 volts, nominal, or less and run outdoors as open conductors.

(1) *Conductors on poles.* Conductors on poles shall have a separation of not less than 305 mm (1.0 ft) where not placed on racks or brackets. Conductors supported on poles shall provide a horizontal climbing space not less than the following:

(i) Power conductors below communication conductors—762 mm (30 in.);

(ii) Power conductors alone or above communication conductors:

(A) 300 volts or less—610 mm (24 in.),

(B) Over 300 volts—762 mm (30 in.);

(iii) Communication conductors below power conductors—same as power conductors; and

(iv) Communications conductors alone—no requirement.

(2) *Clearance from ground.* Open conductors, open multiconductor cables, and service-drop conductors of not over 600 volts, nominal, shall conform to the minimum clearances specified in Table S–6.

TABLE S–66.—CLEARANCES FROM GROUND

Distance	Installations built before August 13, 2007		Installations built on or after August 13, 2007	
	Maximum voltage	Conditions	Voltage to ground	Conditions
3.05 m (10.0 ft)	< 600 V	Above finished grade or sidewalks, or from any platform or projection from which they might be reached. (If these areas are accessible to other than pedestrian traffic, then one of the other conditions applies).	< 150 V	Above finished grade or sidewalks, or from any platform or projection from which they might be reached. (If these areas are accessible to other than pedestrian traffic, then one of the other conditions applies.)
3.66 m (12.0 ft)	< 600 V	Over areas, other than public streets, alleys, roads, and driveways, subject to vehicular traffic other than truck traffic.	< 300 V	Over residential property and driveways. Over commercial areas subject to pedestrian traffic or to vehicular traffic other than truck traffic. (This category includes conditions covered under the 3.05-m (10.0-ft) category where the voltage exceeds 150 V.)
4.57 m (15.0 ft)	< 600 V	Over areas, other than public streets, alleys, roads, and driveways, subject to truck traffic.	301 to 600 V	Over residential property and driveways. Over commercial areas subject to pedestrian traffic or to vehicular traffic other than truck traffic. (This category includes conditions covered under the 3.05-m (10.0-ft) category where the voltage exceeds 300 V.)
5.49 m (18.0 ft)	< 600 V	Over public streets, alleys, roads, and driveways.	< 600 V	Over public streets, alleys, roads, and driveways. Over commercial areas subject to truck traffic. Other land traversed by vehicles, including land used for cultivating or grazing and forests and orchards.

(3) *Clearance from building openings.* (i) Service conductors installed as open conductors or multiconductor cable without an overall outer jacket shall have a clearance of not less than 914 mm (3.0 ft) from windows that are designed to be opened, doors, porches, balconies, ladders, stairs, fire escapes, and similar locations. However, conductors that run above the top level of a window may be less than 914 mm (3.0 ft) from the window. Vertical clearance of final spans above, or within 914 mm (3.0 ft) measured horizontally of, platforms, projections, or surfaces from which they might be reached shall be maintained in accordance with paragraph (c)(2) of this section.

(ii) Overhead service conductors may not be installed beneath openings through which materials may be moved,

such as openings in farm and commercial buildings, and may not be installed where they will obstruct entrance to these building openings.

(4) *Above roofs.* Overhead spans of open conductors and open multiconductor cables shall have a vertical clearance of not less than 2.44 m (8.0 ft) above the roof surface. The vertical clearance above the roof level shall be maintained for a distance not less than 914 mm (3.0 ft) in all directions from the edge of the roof.

(i) The area above a roof surface subject to pedestrian or vehicular traffic shall have a vertical clearance from the roof surface in accordance with the clearance requirements of paragraph (c)(2) of this section.

(ii) A reduction in clearance to 914 mm (3.0 ft) is permitted where the voltage between conductors does not exceed 300 and the roof has a slope of 102 mm (4 in.) in 305 mm (12 in.) or greater.

(iii) A reduction in clearance above only the overhanging portion of the roof to not less than 457 mm (18 in.) is permitted where the voltage between conductors does not exceed 300 if:

(A) The conductors do not pass above the roof overhang for a distance of more than 1.83 m (6.0 ft), 1.22 m (4.0 ft) horizontally, and

(B) The conductors are terminated at a through-the-roof raceway or approved support.

(iv) The requirement for maintaining a vertical clearance of 914 mm (3.0 ft) from the edge of the roof does not apply to the final conductor span, where the conductors are attached to the side of a building.

(d) *Location of outdoor lamps.* Lamps for outdoor lighting shall be located below all energized conductors, transformers, or other electric equipment, unless such equipment is controlled by a disconnecting means that can be locked in the open position, or unless adequate clearances or other safeguards are provided for relamping operations.

(e) *Services*—(1) *Disconnecting means.* (i) Means shall be provided to disconnect all conductors in a building or other structure from the service-entrance conductors. The service disconnecting means shall plainly indicate whether it is in the open or closed position and shall be installed at a readily accessible location nearest the point of entrance of the service-entrance conductors.

(ii) Each service disconnecting means shall simultaneously disconnect all ungrounded conductors.

(iii) Each service disconnecting means shall be suitable for the prevailing conditions.

(2) *Services over 600 volts, nominal.* The following additional requirements apply to services over 600 volts, nominal.

(i) Service-entrance conductors installed as open wires shall be guarded to make them accessible only to qualified persons.

(ii) Signs warning of high voltage shall be posted where unqualified employees might come in contact with live parts.

(f) *Overcurrent protection*—(1) *600 volts, nominal, or less.* The following requirements apply to overcurrent protection of circuits rated 600 volts, nominal, or less.

(i) Conductors and equipment shall be protected from overcurrent in accordance with their ability to safely conduct current.

(ii) Except for motor running overload protection, overcurrent devices may not interrupt the continuity of the grounded conductor unless all conductors of the circuit are opened simultaneously.

(iii) A disconnecting means shall be provided on the supply side of all fuses in circuits over 150 volts to ground and cartridge fuses in circuits of any voltage where accessible to other than qualified persons so that each individual circuit containing fuses can be independently disconnected from the source of power. However, a current-limiting device without a disconnecting means is permitted on the supply side of the service disconnecting means. In addition, a single disconnecting means is permitted on the supply side of more than one set of fuses as permitted by the exception in § 1910.305(j)(4)(vi) for group operation of motors, and a single disconnecting means is permitted for fixed electric space-heating equipment.

(iv) Overcurrent devices shall be readily accessible to each employee or authorized building management personnel. These overcurrent devices may not be located where they will be exposed to physical damage or in the vicinity of easily ignitable material.

(v) Fuses and circuit breakers shall be so located or shielded that employees will not be burned or otherwise injured by their operation. Handles or levers of circuit breakers, and similar parts that may move suddenly in such a way that persons in the vicinity are likely to be injured by being struck by them, shall be guarded or isolated.

(vi) Circuit breakers shall clearly indicate whether they are in the open (off) or closed (on) position.

(vii) Where circuit breaker handles on switchboards are operated vertically rather than horizontally or rotationally, the up position of the handle shall be the closed (on) position.

(viii) Circuit breakers used as switches in 120-volt and 277-volt, fluorescent lighting circuits shall be listed and marked ''SWD.''

(ix) A circuit breaker with a straight voltage rating, such as 240 V or 480 V, may only be installed in a circuit in which the nominal voltage between any two conductors does not exceed the circuit breaker's voltage rating. A two-pole circuit breaker may not be used for protecting a 3-phase, corner-grounded delta circuit unless the circuit breaker is marked 1Φ—3Φ to indicate such suitability. A circuit breaker with a slash rating, such as 120/240 V or 480Y/277 V, may only be installed in a circuit where the nominal voltage of any conductor to ground does not exceed the lower of the two values of the circuit breaker's voltage rating and the nominal voltage between any two conductors does not exceed the higher value of the circuit breaker's voltage rating.

(2) *Feeders and branch circuits over 600 volts, nominal.* The following requirements apply to feeders and branch circuits energized at more than 600 volts, nominal:

(i) Feeder and branch-circuit conductors shall have overcurrent protection in each ungrounded conductor located at the point where the conductor receives its supply or at a location in the circuit determined under engineering supervision;

(A) Circuit breakers used for overcurrent protection of three-phase circuits shall have a minimum of three overcurrent relays operated from three current transformers. On three-phase, three-wire circuits, an overcurrent relay in the residual circuit of the current transformers may replace one of the phase relays. An overcurrent relay, operated from a current transformer that links all phases of a three-phase, three-wire circuit, may replace the residual relay and one other phase-conductor current transformer. Where the neutral is not grounded on the load side of the circuit, the current transformer may link all three phase conductors and the grounded circuit conductor (neutral); and

(B) If fuses are used for overcurrent protection, a fuse shall be connected in series with each ungrounded conductor;

(ii) Each protective device shall be capable of detecting and interrupting all values of current that can occur at its location in excess of its trip setting or melting point;

(iii) The operating time of the protective device, the available short-circuit current, and the conductor used

shall be coordinated to prevent damaging or dangerous temperatures in conductors or conductor insulation under short-circuit conditions; and

(iv) The following additional requirements apply to feeders only:

(A) The continuous ampere rating of a fuse may not exceed three times the ampacity of the conductors. The long-time trip element setting of a breaker or the minimum trip setting of an electronically actuated fuse may not exceed six times the ampacity of the conductor. For fire pumps, conductors may be protected for short circuit only; and

(B) Conductors tapped to a feeder may be protected by the feeder overcurrent device where that overcurrent device also protects the tap conductor.

(g) *Grounding.* Paragraphs (g)(1) through (g)(9) of this section contain grounding requirements for systems, circuits, and equipment.

(1) *Systems to be grounded.* Systems that supply premises wiring shall be grounded as follows:

(i) All 3-wire dc systems shall have their neutral conductor grounded;

(ii) Two-wire dc systems operating at over 50 volts through 300 volts between conductors shall be grounded unless:

(A) They supply only industrial equipment in limited areas and are equipped with a ground detector;

(B) They are rectifier-derived from an ac system complying with paragraphs (g)(1)(iii), (g)(1)(iv), and (g)(1)(v) of this section; or

(C) They are fire-alarm circuits having a maximum current of 0.030 amperes;

(iii) AC circuits of less than 50 volts shall be grounded if they are installed as overhead conductors outside of buildings or if they are supplied by transformers and the transformer primary supply system is ungrounded or exceeds 150 volts to ground;

(iv) AC systems of 50 volts to 1000 volts shall be grounded under any of the following conditions, unless exempted by paragraph (g)(1)(v) of this section:

(A) If the system can be so grounded that the maximum voltage to ground on the ungrounded conductors does not exceed 150 volts;

(B) If the system is nominally rated three-phase, four-wire wye connected in which the neutral is used as a circuit conductor;

(C) If the system is nominally rated three-phase, four-wire delta connected in which the midpoint of one phase is used as a circuit conductor; or

(D) If a service conductor is uninsulated;

(v) AC systems of 50 volts to 1000 volts are not required to be grounded under any of the following conditions:

(A) If the system is used exclusively to supply industrial electric furnaces for melting, refining, tempering, and the like;

(B) If the system is separately derived and is used exclusively for rectifiers supplying only adjustable speed industrial drives;

(C) If the system is separately derived and is supplied by a transformer that has a primary voltage rating less than 1000 volts, provided all of the following conditions are met:

(1) The system is used exclusively for control circuits;

(2) The conditions of maintenance and supervision ensure that only qualified persons will service the installation;

(3) Continuity of control power is required; and

(4) Ground detectors are installed on the control system;

(D) If the system is an isolated power system that supplies circuits in health care facilities; or

(E) If the system is a high-impedance grounded neutral system in which a grounding impedance, usually a resistor, limits the ground-fault current to a low value for 3-phase ac systems of 480 volts to 1000 volts provided all of the following conditions are met:

(1) The conditions of maintenance and supervision ensure that only qualified persons will service the installation;

(2) Continuity of power is required;

(3) Ground detectors are installed on the system; and

(4) Line-to-neutral loads are not served.

(2) *Conductor to be grounded.* The conductor to be grounded for ac premises wiring systems required to be grounded by paragraph (g)(1) of this section shall be as follows:

(i) One conductor of a single-phase, two-wire system shall be grounded;

(ii) The neutral conductor of a single-phase, three-wire system shall be grounded;

(iii) The common conductor of a multiphase system having one wire common to all phases shall be grounded;

(iv) One phase conductor of a multiphase system where one phase is grounded shall be grounded; and

(v) The neutral conductor of a multiphase system in which one phase is used as a neutral conductor shall be grounded.

(3) *Portable and vehicle-mounted generators.* (i) The frame of a portable generator need not be grounded and may serve as the grounding electrode for a system supplied by the generator under the following conditions:

(A) The generator supplies only equipment mounted on the generator or cord- and plug-connected equipment through receptacles mounted on the generator, or both; and

(B) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame.

(ii) The frame of a vehicle need not be grounded and may serve as the grounding electrode for a system supplied by a generator located on the vehicle under the following conditions:

(A) The frame of the generator is bonded to the vehicle frame;

(B) The generator supplies only equipment located on the vehicle and cord- and plug-connected equipment through receptacles mounted on the vehicle;

(C) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame; and

(D) The system complies with all other provisions of paragraph (g) of this section.

(iii) A system conductor that is required to be grounded by the provisions of paragraph (g)(2) of this section shall be bonded to the generator frame where the generator is a component of a separately derived system.

(4) *Grounding connections.* (i) For a grounded system, a grounding electrode conductor shall be used to connect both the equipment grounding conductor and the grounded circuit conductor to the grounding electrode. Both the equipment grounding conductor and the grounding electrode conductor shall be connected to the grounded circuit conductor on the supply side of the service disconnecting means or on the supply side of the system disconnecting means or overcurrent devices if the system is separately derived.

(ii) For an ungrounded service-supplied system, the equipment grounding conductor shall be connected to the grounding electrode conductor at the service equipment. For an ungrounded separately derived system, the equipment grounding conductor shall be connected to the grounding electrode conductor at, or ahead of, the system disconnecting means or overcurrent devices.

(iii) On extensions of existing branch circuits that do not have an equipment grounding conductor, grounding-type receptacles may be grounded to a grounded cold water pipe near the equipment if the extension was installed before August 13, 2007. When any

element of this branch circuit is replaced, the entire branch circuit shall use an equipment grounding conductor that complies with all other provisions of paragraph (g) of this section.

(5) *Grounding path.* The path to ground from circuits, equipment, and enclosures shall be permanent, continuous, and effective.

(6) *Supports, enclosures, and equipment to be grounded.* (i) Metal cable trays, metal raceways, and metal enclosures for conductors shall be grounded, except that:

(A) Metal enclosures such as sleeves that are used to protect cable assemblies from physical damage need not be grounded; and

(B) Metal enclosures for conductors added to existing installations of open wire, knob-and-tube wiring, and nonmetallic-sheathed cable need not be grounded if all of the following conditions are met:

(1) Runs are less than 7.62 meters (25.0 ft);

(2) Enclosures are free from probable contact with ground, grounded metal, metal laths, or other conductive materials; and

(3) Enclosures are guarded against employee contact.

(ii) Metal enclosures for service equipment shall be grounded.

(iii) Frames of electric ranges, wall-mounted ovens, counter-mounted cooking units, clothes dryers, and metal outlet or junction boxes that are part of the circuit for these appliances shall be grounded.

(iv) Exposed noncurrent-carrying metal parts of fixed equipment that may become energized shall be grounded under any of the following conditions:

(A) If within 2.44 m (8 ft) vertically or 1.52 m (5 ft) horizontally of ground or grounded metal objects and subject to employee contact;

(B) If located in a wet or damp location and not isolated;

(C) If in electrical contact with metal;

(D) If in a hazardous (classified) location;

(E) If supplied by a metal-clad, metal-sheathed, or grounded metal raceway wiring method; or

(F) If equipment operates with any terminal at over 150 volts to ground.

(v) Notwithstanding the provisions of paragraph (g)(6)(iv) of this section, exposed noncurrent-carrying metal parts of the following types of fixed equipment need not be grounded:

(A) Enclosures for switches or circuit breakers used for other than service equipment and accessible to qualified persons only;

(B) Electrically heated appliances that are permanently and effectively insulated from ground;

(C) Distribution apparatus, such as transformer and capacitor cases, mounted on wooden poles, at a height exceeding 2.44 m (8.0 ft) above ground or grade level; and

(D) Listed equipment protected by a system of double insulation, or its equivalent, and distinctively marked as such.

(vi) Exposed noncurrent-carrying metal parts of cord- and plug-connected equipment that may become energized shall be grounded under any of the following conditions:

(A) If in hazardous (classified) locations (see § 1910.307);

(B) If operated at over 150 volts to ground, except for guarded motors and metal frames of electrically heated appliances if the appliance frames are permanently and effectively insulated from ground;

(C) If the equipment is of the following types:

(1) Refrigerators, freezers, and air conditioners;

(2) Clothes-washing, clothes-drying, and dishwashing machines, sump pumps, and electric aquarium equipment;

(3) Hand-held motor-operated tools, stationary and fixed motor-operated tools, and light industrial motor-operated tools;

(4) Motor-operated appliances of the following types: hedge clippers, lawn mowers, snow blowers, and wet scrubbers;

(5) Cord- and plug-connected appliances used in damp or wet locations, or by employees standing on the ground or on metal floors or working inside of metal tanks or boilers;

(6) Portable and mobile X-ray and associated equipment;

(7) Tools likely to be used in wet and conductive locations; and

(8) Portable hand lamps.

(vii) Notwithstanding the provisions of paragraph (g)(6)(vi) of this section, the following equipment need not be grounded:

(A) Tools likely to be used in wet and conductive locations if supplied through an isolating transformer with an ungrounded secondary of not over 50 volts; and

(B) Listed or labeled portable tools and appliances if protected by an approved system of double insulation, or its equivalent, and distinctively marked.

(7) *Nonelectrical equipment.* The metal parts of the following nonelectrical equipment shall be grounded: frames and tracks of electrically operated cranes and hoists; frames of nonelectrically driven elevator cars to which electric conductors are attached; hand-operated metal shifting ropes or cables of electric elevators; and metal partitions, grill work, and similar metal enclosures around equipment of over 750 volts between conductors.

(8) *Methods of grounding fixed equipment.* (i) Noncurrent-carrying metal parts of fixed equipment, if required to be grounded by this subpart, shall be grounded by an equipment grounding conductor that is contained within the same raceway, cable, or cord, or runs with or encloses the circuit conductors. For dc circuits only, the equipment grounding conductor may be run separately from the circuit conductors.

(ii) Electric equipment is considered to be effectively grounded if it is secured to, and in electrical contact with, a metal rack or structure that is provided for its support and the metal rack or structure is grounded by the method specified for the noncurrent-carrying metal parts of fixed equipment in paragraph (g)(8)(i) of this section. Metal car frames supported by metal hoisting cables attached to or running over metal sheaves or drums of grounded elevator machines are also considered to be effectively grounded.

(iii) For installations made before April 16, 1981, electric equipment is also considered to be effectively grounded if it is secured to, and in metallic contact with, the grounded structural metal frame of a building. When any element of this branch circuit is replaced, the entire branch circuit shall use an equipment grounding conductor that complies with all other provisions of paragraph (g) of this section.

(9) *Grounding of systems and circuits of 1000 volts and over (high voltage).* If high voltage systems are grounded, they shall comply with all applicable provisions of paragraphs (g)(1) through (g)(8) of this section as supplemented and modified by the following requirements:

(i) Systems supplying portable or mobile high voltage equipment, other than substations installed on a temporary basis, shall comply with the following:

(A) The system shall have its neutral grounded through an impedance. If a delta-connected high voltage system is used to supply the equipment, a system neutral shall be derived.

(B) Exposed noncurrent-carrying metal parts of portable and mobile equipment shall be connected by an equipment grounding conductor to the point at which the system neutral impedance is grounded.

(C) Ground-fault detection and relaying shall be provided to

automatically deenergize any high voltage system component that has developed a ground fault. The continuity of the equipment grounding conductor shall be continuously monitored so as to deenergize automatically the high voltage feeder to the portable equipment upon loss of continuity of the equipment grounding conductor.

(D) The grounding electrode to which the portable equipment system neutral impedance is connected shall be isolated from and separated in the ground by at least 6.1 m (20.0 ft) from any other system or equipment grounding electrode, and there shall be no direct connection between the grounding electrodes, such as buried pipe, fence, and so forth.

(ii) All noncurrent-carrying metal parts of portable equipment and fixed equipment, including their associated fences, housings, enclosures, and supporting structures, shall be grounded. However, equipment that is guarded by location and isolated from ground need not be grounded. Additionally, pole-mounted distribution apparatus at a height exceeding 2.44 m (8.0 ft) above ground or grade level need not be grounded.

§ 1910.305 Wiring methods, components, and equipment for general use.

(a) *Wiring methods.* The provisions of this section do not apply to conductors that are an integral part of factory-assembled equipment.

(1) *General requirements.* (i) Metal raceways, cable trays, cable armor, cable sheath, enclosures, frames, fittings, and other metal noncurrent-carrying parts that are to serve as grounding conductors, with or without the use of supplementary equipment grounding conductors, shall be effectively bonded where necessary to ensure electrical continuity and the capacity to conduct safely any fault current likely to be imposed on them. Any nonconductive paint, enamel, or similar coating shall be removed at threads, contact points, and contact surfaces or be connected by means of fittings designed so as to make such removal unnecessary.

(ii) Where necessary for the reduction of electrical noise (electromagnetic interference) of the grounding circuit, an equipment enclosure supplied by a branch circuit may be isolated from a raceway containing circuits supplying only that equipment by one or more listed nonmetallic raceway fittings located at the point of attachment of the raceway to the equipment enclosure. The metal raceway shall be supplemented by an internal insulated equipment grounding conductor installed to ground the equipment enclosure.

(iii) No wiring systems of any type may be installed in ducts used to transport dust, loose stock, or flammable vapors. No wiring system of any type may be installed in any duct used for vapor removal or for ventilation of commercial-type cooking equipment, or in any shaft containing only such ducts.

(2) *Temporary wiring.* Except as specifically modified in this paragraph, all other requirements of this subpart for permanent wiring shall also apply to temporary wiring installations.

(i) Temporary electrical power and lighting installations of 600 volts, nominal, or less may be used only as follows:

(A) During and for remodeling, maintenance, or repair of buildings, structures, or equipment, and similar activities;

(B) For a period not to exceed 90 days for Christmas decorative lighting, carnivals, and similar purposes; or

(C) For experimental or development work, and during emergencies.

(ii) Temporary wiring shall be removed immediately upon completion of the project or purpose for which the wiring was installed.

(iii) Temporary electrical installations of more than 600 volts may be used only during periods of tests, experiments, emergencies, or construction-like activities.

(iv) The following requirements apply to feeders:

(A) Feeders shall originate in an approved distribution center.

(B) Conductors shall be run as multiconductor cord or cable assemblies. However, if installed as permitted in paragraph (a)(2)(i)(C) of this section, and if accessible only to qualified persons, feeders may be run as single insulated conductors.

(v) The following requirements apply to branch circuits:

(A) Branch circuits shall originate in an approved power outlet or panelboard.

(B) Conductors shall be multiconductor cord or cable assemblies or open conductors. If run as open conductors, they shall be fastened at ceiling height every 3.05 m (10.0 ft).

(C) No branch-circuit conductor may be laid on the floor.

(D) Each branch circuit that supplies receptacles or fixed equipment shall contain a separate equipment grounding conductor if run as open conductors.

(vi) Receptacles shall be of the grounding type. Unless installed in a continuous grounded metallic raceway or metallic covered cable, each branch circuit shall contain a separate equipment grounding conductor and all receptacles shall be electrically connected to the grounding conductor.

(vii) No bare conductors nor earth returns may be used for the wiring of any temporary circuit.

(viii) Suitable disconnecting switches or plug connectors shall be installed to permit the disconnection of all ungrounded conductors of each temporary circuit. Multiwire branch circuits shall be provided with a means to disconnect simultaneously all ungrounded conductors at the power outlet or panelboard where the branch circuit originated.

Note to paragraph (a)(2)(viii) of this section. Circuit breakers with their handles connected by approved handle ties are considered a single disconnecting means for the purpose of this requirement.

(ix) All lamps for general illumination shall be protected from accidental contact or breakage by a suitable fixture or lampholder with a guard. Brass shell, paper-lined sockets, or other metal-cased sockets may not be used unless the shell is grounded.

(x) Flexible cords and cables shall be protected from accidental damage, as might be caused, for example, by sharp corners, projections, and doorways or other pinch points.

(xi) Cable assemblies and flexible cords and cables shall be supported in place at intervals that ensure that they will be protected from physical damage. Support shall be in the form of staples, cables ties, straps, or similar type fittings installed so as not to cause damage.

(3) *Cable trays.* (i) Only the following wiring methods may be installed in cable tray systems: armored cable; electrical metallic tubing; electrical nonmetallic tubing; fire alarm cables; flexible metal conduit; flexible metallic tubing; instrumentation tray cable; intermediate metal conduit; liquidtight flexible metal conduit; liquidtight flexible nonmetallic conduit; metal-clad cable; mineral-insulated, metal-sheathed cable; multiconductor service-entrance cable; multiconductor underground feeder and branch-circuit cable; multipurpose and communications cables; nonmetallic-sheathed cable; power and control tray cable; power-limited tray cable; optical fiber cables; and other factory-assembled, multiconductor control, signal, or power cables that are specifically approved for installation in cable trays, rigid metal conduit, and rigid nonmetallic conduit.

(ii) In industrial establishments where conditions of maintenance and supervision assure that only qualified persons will service the installed cable

tray system, the following cables may also be installed in ladder, ventilated-trough, or ventilated-channel cable trays:

(A) Single conductor cable; the cable shall be No. 1/0 or larger and shall be of a type listed and marked on the surface for use in cable trays; where Nos. 1/0 through 4/0 single conductor cables are installed in ladder cable tray, the maximum allowable rung spacing for the ladder cable tray shall be 229 mm (9 in.); where exposed to direct rays of the sun, cables shall be identified as being sunlight resistant;

(B) Welding cables installed in dedicated cable trays;

(C) Single conductors used as equipment grounding conductors; these conductors, which may be insulated, covered, or bare, shall be No. 4 or larger; and

(D) Multiconductor cable, Type MV; where exposed to direct rays of the sun, the cable shall be identified as being sunlight resistant.

(iii) Metallic cable trays may be used as equipment grounding conductors only where continuous maintenance and supervision ensure that qualified persons will service the installed cable tray system.

(iv) Cable trays in hazardous (classified) locations may contain only the cable types permitted in such locations. (See § 1910.307.)

(v) Cable tray systems may not be used in hoistways or where subjected to severe physical damage.

(4) *Open wiring on insulators.* (i) Open wiring on insulators is only permitted on systems of 600 volts, nominal, or less for industrial or agricultural establishments, indoors or outdoors, in wet or dry locations, where subject to corrosive vapors, and for services.

(ii) Conductors smaller than No. 8 shall be rigidly supported on noncombustible, nonabsorbent insulating materials and may not contact any other objects. Supports shall be installed as follows:

(A) Within 152 mm (6 in.) from a tap or splice;

(B) Within 305 mm (12 in.) of a dead-end connection to a lampholder or receptacle; and

(C) At intervals not exceeding 1.37 m (4.5 ft), and at closer intervals sufficient to provide adequate support where likely to be disturbed.

(iii) In dry locations, where not exposed to severe physical damage, conductors may be separately enclosed in flexible nonmetallic tubing. The tubing shall be in continuous lengths not exceeding 4.57 m (15.0 ft) and secured to the surface by straps at intervals not exceeding 1.37 m (4.5 ft).

(iv) Open conductors shall be separated from contact with walls, floors, wood cross members, or partitions through which they pass by tubes or bushings of noncombustible, nonabsorbent insulating material. If the bushing is shorter than the hole, a waterproof sleeve of nonconductive material shall be inserted in the hole and an insulating bushing slipped into the sleeve at each end in such a manner as to keep the conductors absolutely out of contact with the sleeve. Each conductor shall be carried through a separate tube or sleeve.

(v) Where open conductors cross ceiling joints and wall studs and are exposed to physical damage (for example, located within 2.13 m (7.0 ft) of the floor), they shall be protected.

(b) *Cabinets, boxes, and fittings*—(1) *Conductors entering boxes, cabinets, or fittings.* (i) Conductors entering cutout boxes, cabinets, or fittings shall be protected from abrasion, and openings through which conductors enter shall be effectively closed.

(ii) Unused openings in cabinets, boxes, and fittings shall be effectively closed.

(iii) Where cable is used, each cable shall be secured to the cabinet, cutout box, or meter socket enclosure. However, where cable with an entirely nonmetallic sheath enters the top of a surface-mounted enclosure through one or more nonflexible raceways not less than 457 mm (18 in.) or more than 3.05 m (10.0 ft) in length, the cable need not be secured to the cabinet, box, or enclosure provided all of the following conditions are met:

(A) Each cable is fastened within 305 mm (12 in.) of the outer end of the raceway, measured along the sheath;

(B) The raceway extends directly above the enclosure and does not penetrate a structural ceiling;

(C) A fitting is provided on each end of the raceway to protect the cable from abrasion, and the fittings remain accessible after installation;

(D) The raceway is sealed or plugged at the outer end using approved means so as to prevent access to the enclosure through the raceway;

(E) The cable sheath is continuous through the raceway and extends into the enclosure not less than 6.35 mm (0.25 in.) beyond the fitting;

(F) The raceway is fastened at its outer end and at other points as necessary; and

(G) Where installed as conduit or tubing, the allowable cable fill does not exceed that permitted for complete conduit or tubing systems.

(2) *Covers and canopies.* (i) All pull boxes, junction boxes, and fittings shall be provided with covers identified for the purpose. If metal covers are used, they shall be grounded. In completed installations, each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear.

(ii) Where a fixture canopy or pan is used, any combustible wall or ceiling finish exposed between the edge of the canopy or pan and the outlet box shall be covered with noncombustible material.

(3) *Pull and junction boxes for systems over 600 volts, nominal.* In addition to other requirements in this section, the following requirements apply to pull and junction boxes for systems over 600 volts, nominal:

(i) Boxes shall provide a complete enclosure for the contained conductors or cables.

(ii) Boxes shall be closed by suitable covers securely fastened in place.

Note to paragraph (b)(3)(ii) of this section: Underground box covers that weigh over 45.4 kg (100 lbs) meet this requirement.

(iii) Covers for boxes shall be permanently marked ''HIGH VOLTAGE.'' The marking shall be on the outside of the box cover and shall be readily visible and legible.

(c) *Switches*—(1) *Single-throw knife switches.* Single-throw knife switches shall be so placed that gravity will not tend to close them. Single-throw knife switches approved for use in the inverted position shall be provided with a locking device that will ensure that the blades remain in the open position when so set.

(2) *Double-throw knife switches.* Double-throw knife switches may be mounted so that the throw will be either vertical or horizontal. However, if the throw is vertical, a locking device shall be provided to ensure that the blades remain in the open position when so set.

(3) *Connection of switches.* (i) Single-throw knife switches and switches with butt contacts shall be connected so that the blades are deenergized when the switch is in the open position.

(ii) Single-throw knife switches, molded-case switches, switches with butt contacts, and circuit breakers used as switches shall be connected so that the terminals supplying the load are deenergized when the switch is in the open position. However, blades and terminals supplying the load of a switch

may be energized when the switch is in the open position where the switch is connected to circuits or equipment inherently capable of providing a backfeed source of power. For such installations, a permanent sign shall be installed on the switch enclosure or immediately adjacent to open switches that read, ''WARNING—LOAD SIDE TERMINALS MAY BE ENERGIZED BY BACKFEED.''

(4) *Faceplates for flush-mounted snap switches.* Snap switches mounted in boxes shall have faceplates installed so as to completely cover the opening and seat against the finished surface.

(5) *Grounding.* Snap switches, including dimmer switches, shall be effectively grounded and shall provide a means to ground metal faceplates, whether or not a metal faceplate is installed. However, if no grounding means exists within the snap-switch enclosure, or where the wiring method does not include or provide an equipment ground, a snap switch without a grounding connection is permitted for replacement purposes only. Such snap switches shall be provided with a faceplate of nonconducting, noncombustible material if they are located within reach of conducting floors or other conducting surfaces.

(d) *Switchboards and panelboards*—(1) *Switchboards with exposed live parts.* Switchboards that have any exposed live parts shall be located in permanently dry locations and shall be accessible only to qualified persons.

(2) *Panelboard enclosures.* Panelboards shall be mounted in cabinets, cutout boxes, or enclosures designed for the purpose and shall be dead front. However, panelboards other than the dead front externally-operable type are permitted where accessible only to qualified persons.

(3) *Knife switches mounted in switchboards or panelboards.* Exposed blades of knife switches mounted in switchboards or panelboards shall be dead when open.

(e) *Enclosures for damp or wet locations*—(1) *Cabinets, cutout boxes, fittings, boxes, and panelboard enclosures.* Cabinets, cutout boxes, fittings, boxes, and panelboard enclosures in damp or wet locations shall be installed so as to prevent moisture or water from entering and accumulating within the enclosures and shall be mounted so there is at least 6.35-mm (0.25-in.) airspace between the enclosure and the wall or other supporting surface. However, nonmetallic enclosures may be installed without the airspace on a concrete, masonry, tile, or similar surface. The enclosures shall be weatherproof in wet locations.

(2) *Switches, circuit breakers, and switchboards.* Switches, circuit breakers, and switchboards installed in wet locations shall be enclosed in weatherproof enclosures.

(f) *Conductors for general wiring*—(1) *Insulation.* All conductors used for general wiring shall be insulated unless otherwise permitted in this subpart.

(2) *Type.* The conductor insulation shall be of a type that is approved for the voltage, operating temperature, and location of use.

(3) *Distinguishable.* Insulated conductors shall be distinguishable by appropriate color or other suitable means as being grounded conductors, ungrounded conductors, or equipment grounding conductors.

(g) *Flexible cords and cables*—(1)*Use of flexible cords and cables.* (i) Flexible cords and cables shall be approved for conditions of use and location.

(ii) Flexible cords and cables may be used only for:

(A) Pendants;

(B) Wiring of fixtures;

(C) Connection of portable lamps or appliances;

(D) Portable and mobile signs;

(E) Elevator cables;

(F) Wiring of cranes and hoists;

(G) Connection of stationary equipment to facilitate their frequent interchange;

(H) Prevention of the transmission of noise or vibration;

(I) Appliances where the fastening means and mechanical connections are designed to permit removal for maintenance and repair;

(J) Data processing cables approved as a part of the data processing system;

(K) Connection of moving parts; and

(L) Temporary wiring as permitted in paragraph (a)(2) of this section.

(iii) If used as permitted in paragraphs (g)(1)(ii)(C), (g)(1)(ii)(G), or (g)(1)(ii)(I) of this section, the flexible cord shall be equipped with an attachment plug and shall be energized from an approved receptacle outlet.

(iv) Unless specifically permitted otherwise in paragraph (g)(1)(ii) of this section, flexible cords and cables may not be used:

(A) As a substitute for the fixed wiring of a structure;

(B) Where run through holes in walls, ceilings, or floors;

(C) Where run through doorways, windows, or similar openings;

(D) Where attached to building surfaces;

(E) Where concealed behind building walls, ceilings, or floors; or

(F) Where installed in raceways, except as otherwise permitted in this subpart.

(v) Flexible cords used in show windows and showcases shall be Type S, SE, SEO, SEOO, SJ, SJE, SJEO, SJEOO, SJO, SJOO, SJT, SJTO, SJTOO, SO, SOO, ST, STO, or STOO, except for the wiring of chain-supported lighting fixtures and supply cords for portable lamps and other merchandise being displayed or exhibited.

(2) *Identification, splices, and terminations.* (i) A conductor of a flexible cord or cable that is used as a grounded conductor or an equipment grounding conductor shall be distinguishable from other conductors. Types S, SC, SCE, SCT, SE, SEO, SEOO, SJ, SJE, SJEO, SJEOO, SJO, SJT, SJTO, SJTOO, SO, SOO, ST, STO, and STOO flexible cords and Types G, G–GC, PPE, and W flexible cables shall be durably marked on the surface at intervals not exceeding 610 mm (24 in.) with the type designation, size, and number of conductors.

(ii) Flexible cords may be used only in continuous lengths without splice or tap. Hard-service cord and junior hard-service cord No. 14 and larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

(iii) Flexible cords and cables shall be connected to devices and fittings so that strain relief is provided that will prevent pull from being directly transmitted to joints or terminal screws.

(h) *Portable cables over 600 volts, nominal.* This paragraph applies to portable cables used at more than 600 volts, nominal.

(1) *Conductor construction.* Multiconductor portable cable for use in supplying power to portable or mobile equipment at over 600 volts, nominal, shall consist of No. 8 or larger conductors employing flexible stranding. However, the minimum size of the insulated ground-check conductor of Type G–GC cables shall be No. 10.

(2) *Shielding.* Cables operated at over 2,000 volts shall be shielded for the purpose of confining the voltage stresses to the insulation.

(3) *Equipment grounding conductors.* Grounding conductors shall be provided.

(4) *Grounding shields.* All shields shall be grounded.

(5) *Minimum bending radii.* The minimum bending radii for portable cables during installation and handling in service shall be adequate to prevent damage to the cable.

(6) *Fittings.* Connectors used to connect lengths of cable in a run shall

be of a type that lock firmly together. Provisions shall be made to prevent opening or closing these connectors while energized. Strain relief shall be provided at connections and terminations.

(7) *Splices.* Portable cables may not be operated with splices unless the splices are of the permanent molded, vulcanized, or other approved type.

(8) *Terminations.* Termination enclosures shall be suitably marked with a high voltage hazard warning, and terminations shall be accessible only to authorized and qualified employees.

(i) *Fixture wires*—(1) *General.* Fixture wires shall be approved for the voltage, temperature, and location of use. A fixture wire which is used as a grounded conductor shall be identified.

(2) *Uses permitted.* Fixture wires may be used only:

(i) For installation in lighting fixtures and in similar equipment where enclosed or protected and not subject to bending or twisting in use; or

(ii) For connecting lighting fixtures to the branch-circuit conductors supplying the fixtures.

(3) *Uses not permitted.* Fixture wires may not be used as branch-circuit conductors except as permitted for Class 1 power limited circuits and for fire alarm circuits.

(j) *Equipment for general use*—(1) *Lighting fixtures, lampholders, lamps, and receptacles.* (i) Fixtures, lampholders, lamps, rosettes, and receptacles may have no live parts normally exposed to employee contact. However, rosettes and cleat-type lampholders and receptacles located at least 2.44 m (8.0 ft) above the floor may have exposed terminals.

(ii) Handlamps of the portable type supplied through flexible cords shall be equipped with a handle of molded composition or other material identified for the purpose, and a substantial guard shall be attached to the lampholder or the handle. Metal shell, paper-lined lampholders may not be used.

(iii) Lampholders of the screw-shell type shall be installed for use as lampholders only. Where supplied by a circuit having a grounded conductor, the grounded conductor shall be connected to the screw shell. Lampholders installed in wet or damp locations shall be of the weatherproof type.

(iv) Fixtures installed in wet or damp locations shall be identified for the purpose and shall be so constructed or installed that water cannot enter or accumulate in wireways, lampholders, or other electrical parts.

(2) *Receptacles, cord connectors, and attachment plugs (caps).* (i) All 15- and 20-ampere attachment plugs and connectors shall be constructed so that there are no exposed current-carrying parts except the prongs, blades, or pins. The cover for wire terminations shall be a part that is essential for the operation of an attachment plug or connector (dead-front construction). Attachment plugs shall be installed so that their prongs, blades, or pins are not energized unless inserted into an energized receptacle. No receptacles may be installed so as to require an energized attachment plug as its source of supply.

(ii) Receptacles, cord connectors, and attachment plugs shall be constructed so that no receptacle or cord connector will accept an attachment plug with a different voltage or current rating than that for which the device is intended. However, a 20-ampere T-slot receptacle or cord connector may accept a 15-ampere attachment plug of the same voltage rating.

(iii) Nongrounding-type receptacles and connectors may not be used for grounding-type attachment plugs.

(iv) A receptacle installed in a wet or damp location shall be suitable for the location.

(v) A receptacle installed outdoors in a location protected from the weather or in other damp locations shall have an enclosure for the receptacle that is weatherproof when the receptacle is covered (attachment plug cap not inserted and receptacle covers closed).

Note to paragraph (j)(2)(v) of this section. A receptacle is considered to be in a location protected from the weather when it is located under roofed open porches, canopies, marquees, or the like and where it will not be subjected to a beating rain or water runoff.

(vi) A receptacle installed in a wet location where the product intended to be plugged into it is not attended while in use (for example, sprinkler system controllers, landscape lighting, and holiday lights) shall have an enclosure that is weatherproof with the attachment plug cap inserted or removed.

(vii) A receptacle installed in a wet location where the product intended to be plugged into it will be attended while in use (for example, portable tools) shall have an enclosure that is weatherproof when the attachment plug cap is removed.

(3) *Appliances.* (i) Appliances may have no live parts normally exposed to contact other than parts functioning as open-resistance heating elements, such as the heating elements of a toaster, which are necessarily exposed.

(ii) Each appliance shall have a means to disconnect it from all ungrounded conductors. If an appliance is supplied by more than one source, the disconnecting means shall be grouped and identified.

(iii) Each electric appliance shall be provided with a nameplate giving the identifying name and the rating in volts and amperes, or in volts and watts. If the appliance is to be used on a specific frequency or frequencies, it shall be so marked. Where motor overload protection external to the appliance is required, the appliance shall be so marked.

(iv) Marking shall be located so as to be visible or easily accessible after installation.

(4) *Motors.* This paragraph applies to motors, motor circuits, and controllers.

(i) If specified in paragraph (j)(4) of this section that one piece of equipment shall be ''within sight of'' another piece of equipment, the piece of equipment shall be visible and not more than 15.24 m (50.0 ft) from the other.

(ii) An individual disconnecting means shall be provided for each controller. A disconnecting means shall be located within sight of the controller location. However, a single disconnecting means may be located adjacent to a group of coordinated controllers mounted adjacent to each other on a multi-motor continuous process machine. The controller disconnecting means for motor branch circuits over 600 volts, nominal, may be out of sight of the controller, if the controller is marked with a warning label giving the location and identification of the disconnecting means that is to be locked in the open position.

(iii) The disconnecting means shall disconnect the motor and the controller from all ungrounded supply conductors and shall be so designed that no pole can be operated independently.

(iv) The disconnecting means shall plainly indicate whether it is in the open (off) or closed (on) position.

(v) The disconnecting means shall be readily accessible. If more than one disconnect is provided for the same equipment, only one need be readily accessible.

(vi) An individual disconnecting means shall be provided for each motor, but a single disconnecting means may be used for a group of motors under any one of the following conditions:

(A) If a number of motors drive several parts of a single machine or piece of apparatus, such as a metal or woodworking machine, crane, or hoist;

(B) If a group of motors is under the protection of one set of branch-circuit protective devices; or

(C) If a group of motors is in a single room within sight of the location of the disconnecting means.

(vii) Motors, motor-control apparatus, and motor branch-circuit conductors shall be protected against overheating due to motor overloads or failure to start, and against short-circuits or ground faults. These provisions do not require overload protection that will stop a motor where a shutdown is likely to introduce additional or increased hazards, as in the case of fire pumps, or where continued operation of a motor is necessary for a safe shutdown of equipment or process and motor overload sensing devices are connected to a supervised alarm.

(viii) Where live parts of motors or controllers operating at over 150 volts to ground are guarded against accidental contact only by location, and where adjustment or other attendance may be necessary during the operation of the apparatus, suitable insulating mats or platforms shall be provided so that the attendant cannot readily touch live parts unless standing on the mats or platforms.

(5) *Transformers.* (i) Paragraph (j)(5) of this section covers the installation of all transformers except the following:

(A) Current transformers;

(B) Dry-type transformers installed as a component part of other apparatus;

(C) Transformers that are an integral part of an X-ray, high frequency, or electrostatic-coating apparatus;

(D) Transformers used with Class 2 and Class 3 circuits, sign and outline lighting, electric discharge lighting, and power-limited fire-alarm circuits; and

(E) Liquid-filled or dry-type transformers used for research, development, or testing, where effective safeguard arrangements are provided.

(ii) The operating voltage of exposed live parts of transformer installations shall be indicated by signs or visible markings on the equipment or structure.

(iii) Dry-type, high fire point liquid-insulated, and askarel-insulated transformers installed indoors and rated over 35kV shall be in a vault.

(iv) Oil-insulated transformers installed indoors shall be installed in a vault.

(v) Combustible material, combustible buildings and parts of buildings, fire escapes, and door and window openings shall be safeguarded from fires that may originate in oil-insulated transformers attached to or adjacent to a building or combustible material.

(vi) Transformer vaults shall be constructed so as to contain fire and combustible liquids within the vault and to prevent unauthorized access. Locks and latches shall be so arranged that a vault door can be readily opened from the inside.

(vii) Any pipe or duct system foreign to the electrical installation may not enter or pass through a transformer vault.

Note to paragraph (j)(5)(vii) of this section. Piping or other facilities provided for vault fire protection, or for transformer cooling, are not considered foreign to the electrical installation.

(viii) Material may not be stored in transformer vaults.

(6) *Capacitors.* (i) All capacitors, except surge capacitors or capacitors included as a component part of other apparatus, shall be provided with an automatic means of draining the stored charge after the capacitor is disconnected from its source of supply.

(ii) The following requirements apply to capacitors installed on circuits operating at more than 600 volts, nominal:

(A) Group-operated switches shall be used for capacitor switching and shall be capable of the following:

(1) Carrying continuously not less than 135 percent of the rated current of the capacitor installation;

(2) Interrupting the maximum continuous load current of each capacitor, capacitor bank, or capacitor installation that will be switched as a unit;

(3) Withstanding the maximum inrush current, including contributions from adjacent capacitor installations; and

(4) Carrying currents due to faults on the capacitor side of the switch;

(B) A means shall be installed to isolate from all sources of voltage each capacitor, capacitor bank, or capacitor installation that will be removed from service as a unit. The isolating means shall provide a visible gap in the electric circuit adequate for the operating voltage;

(C) Isolating or disconnecting switches (with no interrupting rating) shall be interlocked with the load interrupting device or shall be provided with prominently displayed caution signs to prevent switching load current; and

(D) For series capacitors, the proper switching shall be assured by use of at least one of the following:

(1) Mechanically sequenced isolating and bypass switches;

(2) Interlocks; or

(3) Switching procedure prominently displayed at the switching location.

(7) *Storage Batteries.* Provisions shall be made for sufficient diffusion and ventilation of gases from storage batteries to prevent the accumulation of explosive mixtures.

§ 1910.306 Specific purpose equipment and installations.

(a) *Electric signs and outline lighting*—(1) *Disconnecting means.* (i) Each sign and outline lighting system, or feeder circuit or branch circuit supplying a sign or outline lighting system, shall be controlled by an externally operable switch or circuit breaker that will open all ungrounded conductors. However, a disconnecting means is not required for an exit directional sign located within a building or for cord-connected signs with an attachment plug.

(ii) Signs and outline lighting systems located within fountains shall have the disconnect located at least 1.52 m (5.0 ft) from the inside walls of the fountain.

(2) *Location.* (i) The disconnecting means shall be within sight of the sign or outline lighting system that it controls. Where the disconnecting means is out of the line of sight from any section that may be energized, the disconnecting means shall be capable of being locked in the open position.

(ii) Signs or outline lighting systems operated by electronic or electromechanical controllers located external to the sign or outline lighting system may have a disconnecting means located within sight of the controller or in the same enclosure with the controller. The disconnecting means shall disconnect the sign or outline lighting system and the controller from all ungrounded supply conductors. It shall be designed so no pole can be operated independently and shall be capable of being locked in the open position.

(iii) Doors or covers giving access to uninsulated parts of indoor signs or outline lighting exceeding 600 volts and accessible to other than qualified persons shall either be provided with interlock switches to disconnect the primary circuit or shall be so fastened that the use of other than ordinary tools will be necessary to open them.

(b) *Cranes and hoists.* This paragraph applies to the installation of electric equipment and wiring used in connection with cranes, monorail hoists, hoists, and all runways.

(1) *Disconnecting means for runway conductors.* A disconnecting means shall be provided between the runway contact conductors and the power supply. Such disconnecting means shall consist of a motor-circuit switch, circuit breaker, or molded case switch. The disconnecting means shall open all ungrounded conductors simultaneously and shall be:

(i) Readily accessible and operable from the ground or floor level;

(ii) Arranged to be locked in the open position; and

(iii) Placed within view of the runway contact conductors.

(2) *Disconnecting means for cranes and monorail hoists.* (i) Except as provided in paragraph (b)(2)(iv) of this section, a motor-circuit switch, molded case switch, or circuit breaker shall be provided in the leads from the runway contact conductors or other power supply on all cranes and monorail hoists.

(ii) The disconnecting means shall be capable of being locked in the open position.

(iii) Means shall be provided at the operating station to open the power circuit to all motors of the crane or monorail hoist where the disconnecting means is not readily accessible from the crane or monorail hoist operating station.

(iv) The disconnecting means may be omitted where a monorail hoist or hand-propelled crane bridge installation meets all of the following conditions:

(A) The unit is controlled from the ground or floor level;

(B) The unit is within view of the power supply disconnecting means; and

(C) No fixed work platform has been provided for servicing the unit.

(3) *Limit switch.* A limit switch or other device shall be provided to prevent the load block from passing the safe upper limit of travel of any hoisting mechanism.

(4) *Clearance.* The dimension of the working space in the direction of access to live parts that may require examination, adjustment, servicing, or maintenance while alive shall be a minimum of 762 mm (2.5 ft). Where controls are enclosed in cabinets, the doors shall either open at least 90 degrees or be removable.

(c) *Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts.* The following requirements apply to elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts.

(1) *Disconnecting means.* Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts shall have a single means for disconnecting all ungrounded main power supply conductors for each unit.

(2) *Control panels.* Control panels not located in the same space as the drive machine shall be located in cabinets with doors or panels capable of being locked closed.

(3) *Type.* The disconnecting means shall be an enclosed externally operable fused motor circuit switch or circuit breaker capable of being locked in the open position. The disconnecting means shall be a listed device.

(4) *Operation.* No provision may be made to open or close this disconnecting means from any other part of the premises. If sprinklers are installed in hoistways, machine rooms, or machinery spaces, the disconnecting means may automatically open the power supply to the affected elevators prior to the application of water. No provision may be made to close this disconnecting means automatically (that is, power may only be restored by manual means).

(5) *Location.* The disconnecting means shall be located where it is readily accessible to qualified persons.

(i) On elevators without generator field control, the disconnecting means shall be located within sight of the motor controller. Driving machines or motion and operation controllers not within sight of the disconnecting means shall be provided with a manually operated switch installed in the control circuit adjacent to the equipment in order to prevent starting. Where the driving machine is located in a remote machinery space, a single disconnecting means for disconnecting all ungrounded main power supply conductors shall be provided and be capable of being locked in the open position.

(ii) On elevators with generator field control, the disconnecting means shall be located within sight of the motor controller for the driving motor of the motor-generator set. Driving machines, motor-generator sets, or motion and operation controllers not within sight of the disconnecting means shall be provided with a manually operated switch installed in the control circuit to prevent starting. The manually operated switch shall be installed adjacent to this equipment. Where the driving machine or the motor-generator set is located in a remote machinery space, a single means for disconnecting all ungrounded main power supply conductors shall be provided and be capable of being locked in the open position.

(iii) On escalators and moving walks, the disconnecting means shall be installed in the space where the controller is located.

(iv) On wheelchair lifts and stairway chair lifts, the disconnecting means shall be located within sight of the motor controller.

(6) *Identification and signs.* (i) Where there is more than one driving machine in a machine room, the disconnecting means shall be numbered to correspond to the identifying number of the driving machine that they control.

(ii) The disconnecting means shall be provided with a sign to identify the location of the supply-side overcurrent protective device.

(7) *Single-car and multicar installations.* On single-car and multicar installations, equipment receiving electrical power from more than one source shall be provided with a disconnecting means for each source of electrical power. The disconnecting means shall be within sight of the equipment served.

(8) *Warning sign for multiple disconnecting means.* A warning sign shall be mounted on or next to the disconnecting means where multiple disconnecting means are used and parts of the controllers remain energized from a source other than the one disconnected. The sign shall be clearly legible and shall read ''WARNING—PARTS OF THE CONTROLLER ARE NOT DEENERGIZED BY THIS SWITCH.''

(9) *Interconnection between multicar controllers.* A warning sign worded as required in paragraph (c)(8) of this section shall be mounted on or next to the disconnecting means where interconnections between controllers are necessary for the operation of the system on multicar installations that remain energized from a source other than the one disconnected.

(10) *Motor controllers.* Motor controllers may be located outside the spaces otherwise required by paragraph (c) of this section, provided they are in enclosures with doors or removable panels capable of being locked closed and the disconnecting means is located adjacent to or is an integral part of the motor controller. Motor controller enclosures for escalators or moving walks may be located in the balustrade on the side located away from the moving steps or moving treadway. If the disconnecting means is an integral part of the motor controller, it shall be operable without opening the enclosure.

(d) *Electric welders—disconnecting means*—(1) *Arc welders.* A disconnecting means shall be provided in the supply circuit for each arc welder that is not equipped with a disconnect mounted as an integral part of the welder. The disconnecting means shall be a switch or circuit breaker, and its rating may not be less than that necessary to accommodate overcurrent protection.

(2) *Resistance welders.* A switch or circuit breaker shall be provided by which each resistance welder and its control equipment can be disconnected from the supply circuit. The ampere rating of this disconnecting means may not be less than the supply conductor ampacity. The supply circuit switch may be used as the welder

disconnecting means where the circuit supplies only one welder.

(e) *Information technology equipment*—(1) *Disconnecting means.* A means shall be provided to disconnect power to all electronic equipment in an information technology equipment room. There shall also be a similar means to disconnect the power to all dedicated heating, ventilating, and air-conditioning (HVAC) systems serving the room and to cause all required fire/smoke dampers to close.

(2) *Grouping.* The control for these disconnecting means shall be grouped and identified and shall be readily accessible at the principal exit doors. A single means to control both the electronic equipment and HVAC system is permitted.

(3) *Exception.* Integrated electrical systems covered by § 1910.308(g) need not have the disconnecting means required by paragraph (e)(1) of this section.

(f) *X-Ray equipment.* This paragraph applies to X-ray equipment.

(1) *Disconnecting means.* (i) A disconnecting means shall be provided in the supply circuit. The disconnecting means shall be operable from a location readily accessible from the X-ray control. For equipment connected to a 120-volt branch circuit of 30 amperes or less, a grounding-type attachment plug cap and receptacle of proper rating may serve as a disconnecting means.

(ii) If more than one piece of equipment is operated from the same high-voltage circuit, each piece or each group of equipment as a unit shall be provided with a high-voltage switch or equivalent disconnecting means. The disconnecting means shall be constructed, enclosed, or located so as to avoid contact by employees with its live parts.

(2) *Control.* The following requirements apply to industrial and commercial laboratory equipment.

(i) Radiographic and fluoroscopic-type equipment shall be effectively enclosed or shall have interlocks that deenergize the equipment automatically to prevent ready access to live current-carrying parts.

(ii) Diffraction- and irradiation-type equipment shall have a pilot light, readable meter deflection, or equivalent means to indicate when the equipment is energized, unless the equipment or installation is effectively enclosed or is provided with interlocks to prevent access to live current-carrying parts during operation.

(g) *Induction and dielectric heating equipment.* This paragraph applies to induction and dielectric heating equipment and accessories for industrial and scientific applications, but not for medical or dental applications or for appliances.

(1) *Guarding and grounding.* (i) The converting apparatus (including the dc line) and high-frequency electric circuits (excluding the output circuits and remote-control circuits) shall be completely contained within enclosures of noncombustible material.

(ii) All panel controls shall be of dead-front construction.

(iii) Doors or detachable panels shall be employed for internal access. Where doors are used giving access to voltages from 500 to 1000 volts ac or dc, either door locks shall be provided or interlocks shall be installed. Where doors are used giving access to voltages of over 1000 volts ac or dc, either mechanical lockouts with a disconnecting means to prevent access until circuit parts within the cubicle are deenergized, or both door interlocking and mechanical door locks, shall be provided. Detachable panels not normally used for access to such parts shall be fastened in a manner that will make them difficult to remove (for example, by requiring the use of tools).

(iv) Warning labels or signs that read ''DANGER—HIGH VOLTAGE—KEEP OUT'' shall be attached to the equipment and shall be plainly visible where persons might contact energized parts when doors are opened or closed or when panels are removed from compartments containing over 250 volts ac or dc.

(v) Induction and dielectric heating equipment shall be protected as follows:

(A) Protective cages or adequate shielding shall be used to guard work applicators other than induction heating coils.

(B) Induction heating coils shall be protected by insulation or refractory materials or both.

(C) Interlock switches shall be used on all hinged access doors, sliding panels, or other such means of access to the applicator, unless the applicator is an induction heating coil at dc ground potential or operating at less than 150 volts ac.

(D) Interlock switches shall be connected in such a manner as to remove all power from the applicator when any one of the access doors or panels is open.

(vi) A readily accessible disconnecting means shall be provided by which each heating equipment can be isolated from its supply circuit. The ampere rating of this disconnecting means may not be less than the nameplate current rating of the equipment. The supply circuit disconnecting means is permitted as a heating equipment disconnecting means where the circuit supplies only one piece of equipment.

(2) *Remote control.* (i) If remote controls are used for applying power, a selector switch shall be provided and interlocked to provide power from only one control point at a time.

(ii) Switches operated by foot pressure shall be provided with a shield over the contact button to avoid accidental closing of the switch.

(h) *Electrolytic cells.* This paragraph applies to the installation of the electrical components and accessory equipment of electrolytic cells, electrolytic cell lines, and process power supply for the production of aluminum, cadmium, chlorine, copper, fluorine, hydrogen peroxide, magnesium, sodium, sodium chlorate, and zinc. Cells used as a source of electric energy and for electroplating processes and cells used for production of hydrogen are not covered by this paragraph.

(1) *Application.* Installations covered by paragraph (h) of this section shall comply with all applicable provisions of this subpart, except as follows:

(i) Overcurrent protection of electrolytic cell dc process power circuits need not comply with the requirements of § 1910.304(f);

(ii) Equipment located or used within the cell line working zone or associated with the cell line dc power circuits need not comply with the provisions of § 1910.304(g); and

(iii) Electrolytic cells, cell line conductors, cell line attachments, and the wiring of auxiliary equipment and devices within the cell line working zone need not comply with the provisions of § 1910.303 or § 1910.304(b) and (c).

(2) *Disconnecting means.* If more than one dc cell line process power supply serves the same cell line, a disconnecting means shall be provided on the cell line circuit side of each power supply to disconnect it from the cell line circuit. Removable links or removable conductors may be used as the disconnecting means.

(3) *Portable electric equipment.* (i) The frames and enclosures of portable electric equipment used within the cell line working zone may not be grounded, unless the cell line circuit voltage does not exceed 200 volts DC or the frames are guarded.

(ii) Ungrounded portable electric equipment shall be distinctively marked and shall employ plugs and receptacles of a configuration that prevents connection of this equipment to grounding receptacles and that prevents inadvertent interchange of ungrounded

and grounded portable electric equipment.

(4) *Power supply circuits and receptacles for portable electric equipment.* (i) Circuits supplying power to ungrounded receptacles for hand-held, cord- and plug-connected equipment shall meet the following requirements:

(A) The circuits shall be electrically isolated from any distribution system supplying areas other than the cell line working zone and shall be ungrounded;

(B) The circuits shall be supplied through isolating transformers with primaries operating at not more than 600 volts between conductors and protected with proper overcurrent protection;

(C) The secondary voltage of the isolating transformers may not exceed 300 volts between conductors; and

(D) All circuits supplied from the secondaries shall be ungrounded and shall have an approved overcurrent device of proper rating in each conductor.

(ii) Receptacles and their mating plugs for ungrounded equipment may not have provision for a grounding conductor and shall be of a configuration that prevents their use for equipment required to be grounded.

(iii) Receptacles on circuits supplied by an isolating transformer with an ungrounded secondary:

(A) Shall have a distinctive configuration;

(B) Shall be distinctively marked; and

(C) May not be used in any other location in the facility.

(5) *Fixed and portable electric equipment.* (i) The following need not be grounded:

(A) AC systems supplying fixed and portable electric equipment within the cell line working zone; and

(B) Exposed conductive surfaces, such as electric equipment housings, cabinets, boxes, motors, raceways and the like that are within the cell line working zone.

(ii) Auxiliary electric equipment, such as motors, transducers, sensors, control devices, and alarms, mounted on an electrolytic cell or other energized surface shall be connected to the premises wiring systems by any of the following means:

(A) Multiconductor hard usage or extra hard usage flexible cord;

(B) Wire or cable in suitable nonmetallic raceways or cable trays; or

(C) Wire or cable in suitable metal raceways or metal cable trays installed with insulating breaks such that they will not cause a potentially hazardous electrical condition.

(iii) Fixed electric equipment may be bonded to the energized conductive surfaces of the cell line, its attachments, or auxiliaries. If fixed electric equipment is mounted on an energized conductive surface, it shall be bonded to that surface.

(6) *Auxiliary nonelectrical connections.* Auxiliary nonelectrical connections such as air hoses, water hoses, and the like, to an electrolytic cell, its attachments, or auxiliary equipment may not have continuous conductive reinforcing wire, armor, braids, or the like. Hoses shall be of a nonconductive material.

(7) *Cranes and hoists.* (i) The conductive surfaces of cranes and hoists that enter the cell line working zone need not be grounded. The portion of an overhead crane or hoist that contacts an energized electrolytic cell or energized attachments shall be insulated from ground.

(ii) Remote crane or hoist controls that may introduce hazardous electrical conditions into the cell line working zone shall employ one or more of the following systems:

(A) Isolated and ungrounded control circuit;

(B) Nonconductive rope operator;

(C) Pendant pushbutton with nonconductive supporting means and with nonconductive surfaces or ungrounded exposed conductive surfaces; or

(D) Radio.

(i) *Electrically driven or controlled irrigation machines*—(1) *Lightning protection.* If an irrigation machine has a stationary point, a grounding electrode system shall be connected to the machine at the stationary point for lightning protection.

(2) *Disconnecting means.* (i) The main disconnecting means for a center pivot irrigation machine shall be located at the point of connection of electrical power to the machine or shall be visible and not more than 15.2 m (50 ft) from the machine.

(ii) The disconnecting means shall be readily accessible and capable of being locked in the open position.

(iii) A disconnecting means shall be provided for each motor and controller.

(j) *Swimming pools, fountains, and similar installations.* This paragraph applies to electric wiring for and equipment in or adjacent to all swimming, wading, therapeutic, and decorative pools and fountains; hydro-massage bathtubs, whether permanently installed or storable; and metallic auxiliary equipment, such as pumps, filters, and similar equipment. Therapeutic pools in health care facilities are exempt from these provisions.

(1) *Receptacles.* (i) A single receptacle of the locking and grounding type that provides power for a permanently installed swimming pool recirculating pump motor may be located not less than 1.52 m (5 ft) from the inside walls of a pool. All other receptacles on the property shall be located at least 3.05 m (10 ft) from the inside walls of a pool.

(ii) Receptacles that are located within 4.57 m (15 ft), or 6.08 m (20 ft) if the installation was built after August 13, 2007, of the inside walls of the pool shall be protected by ground-fault circuit interrupters.

(iii) Where a pool is installed permanently at a dwelling unit, at least one 125-volt, 15- or 20-ampere receptacle on a general-purpose branch circuit shall be located a minimum of 3.05 m (10 ft) and not more than 6.08 m (20 ft) from the inside wall of the pool. This receptacle shall be located not more than 1.98 m (6.5 ft) above the floor, platform, or grade level serving the pool.

Note to paragraph (j)(1) of this section: In determining these dimensions, the distance to be measured is the shortest path the supply cord of an appliance connected to the receptacle would follow without piercing a floor, wall, or ceiling of a building or other effective permanent barrier.

(2) *Lighting fixtures, lighting outlets, and ceiling suspended (paddle) fans.* (i) In outdoor pool areas, lighting fixtures, lighting outlets, and ceiling-suspended (paddle) fans may not be installed over the pool or over the area extending 1.52 m (5 ft) horizontally from the inside walls of a pool unless no part of the lighting fixture of a ceiling-suspended (paddle) fan is less than 3.66 m (12 ft) above the maximum water level. However, a lighting fixture or lighting outlet that was installed before April 16, 1981, may be located less than 1.52 m (5 ft) measured horizontally from the inside walls of a pool if it is at least 1.52 m (5 ft) above the surface of the maximum water level and is rigidly attached to the existing structure. It shall also be protected by a ground-fault circuit interrupter installed in the branch circuit supplying the fixture.

(ii) Lighting fixtures and lighting outlets installed in the area extending between 1.52 m (5 ft) and 3.05 m (10 ft) horizontally from the inside walls of a pool shall be protected by a ground-fault circuit interrupter unless installed 1.52 m (5 ft) above the maximum water level and rigidly attached to the structure adjacent to or enclosing the pool.

(3) *Cord- and plug-connected equipment.* Flexible cords used with the following equipment may not exceed 0.9 m (3 ft) in length and shall have a

copper equipment grounding conductor with a grounding-type attachment plug:

(i) Cord- and plug-connected lighting fixtures installed within 4.88 m (16 ft) of the water surface of permanently installed pools; and

(ii) Other cord- and plug-connected, fixed or stationary equipment used with permanently installed pools.

(4) *Underwater equipment.* (i) A ground-fault circuit interrupter shall be installed in the branch circuit supplying underwater fixtures operating at more than 15 volts. Equipment installed underwater shall be identified for the purpose.

(ii) No underwater lighting fixtures may be installed for operation at over 150 volts between conductors.

(iii) A lighting fixture facing upward shall have the lens adequately guarded to prevent contact by any person.

(5) *Fountains.* All electric equipment, including power supply cords, operating at more than 15 volts and used with fountains shall be protected by ground-fault circuit interrupters.

(k) *Carnivals, circuses, fairs, and similar events.* This paragraph covers the installation of portable wiring and equipment, including wiring in or on all structures, for carnivals, circuses, exhibitions, fairs, traveling attractions, and similar events.

(1) *Protection of electric equipment.* Electric equipment and wiring methods in or on rides, concessions, or other units shall be provided with mechanical protection where such equipment or wiring methods are subject to physical damage.

(2) *Installation.* (i) Services shall be installed in accordance with applicable requirements of this subpart, and, in addition, shall comply with the following:

(A) Service equipment may not be installed in a location that is accessible to unqualified persons, unless the equipment is lockable; and

(B) Service equipment shall be mounted on solid backing and installed so as to be protected from the weather, unless the equipment is of weatherproof construction.

(ii) Amusement rides and amusement attractions shall be maintained not less than 4.57 m (15 ft) in any direction from overhead conductors operating at 600 volts or less, except for the conductors supplying the amusement ride or attraction. Amusement rides or attractions may not be located under or within 4.57 m (15 ft) horizontally of conductors operating in excess of 600 volts.

(iii) Flexible cords and cables shall be listed for extra-hard usage. When used outdoors, flexible cords and cables shall also be listed for wet locations and shall be sunlight resistant.

(iv) Single conductor cable shall be size No. 2 or larger.

(v) Open conductors are prohibited except as part of a listed assembly or festoon lighting installed in accordance with § 1910.304(c).

(vi) Flexible cords and cables shall be continuous without splice or tap between boxes or fittings. Cord connectors may not be laid on the ground unless listed for wet locations. Connectors and cable connections may not be placed in audience traffic paths or within areas accessible to the public unless guarded.

(vii) Wiring for an amusement ride, attraction, tent, or similar structure may not be supported by another ride or structure unless specifically identified for the purpose.

(viii) Flexible cords and cables run on the ground, where accessible to the public, shall be covered with approved nonconductive mats. Cables and mats shall be arranged so as not to present a tripping hazard.

(ix) A box or fitting shall be installed at each connection point, outlet, switch point, or junction point.

(3) *Inside tents and concessions.* Electrical wiring for temporary lighting, where installed inside of tents and concessions, shall be securely installed, and, where subject to physical damage, shall be provided with mechanical protection. All temporary lamps for general illumination shall be protected from accidental breakage by a suitable fixture or lampholder with a guard.

(4) *Portable distribution and termination boxes.* Employers may only use portable distribution and termination boxes that meet the following requirements:

(i) Boxes shall be designed so that no live parts are exposed to accidental contact. Where installed outdoors, the box shall be of weatherproof construction and mounted so that the bottom of the enclosure is not less than 152 mm (6 in.) above the ground;

(ii) Busbars shall have an ampere rating not less than the overcurrent device supplying the feeder supplying the box. Busbar connectors shall be provided where conductors terminate directly on busbars;

(iii) Receptacles shall have overcurrent protection installed within the box. The overcurrent protection may not exceed the ampere rating of the receptacle, except as permitted in § 1910.305(j)(4) for motor loads;

(iv) Where single-pole connectors are used, they shall comply with the following:

(A) Where ac single-pole portable cable connectors are used, they shall be listed and of the locking type. Where paralleled sets of current-carrying single-pole separable connectors are provided as input devices, they shall be prominently labeled with a warning indicating the presence of internal parallel connections. The use of single-pole separable connectors shall comply with at least one of the following conditions:

(1) Connection and disconnection of connectors are only possible where the supply connectors are interlocked to the source and it is not possible to connect or disconnect connectors when the supply is energized; or

(2) Line connectors are of the listed sequential-interlocking type so that load connectors are connected in the following sequence:

(i) Equipment grounding conductor connection;

(ii) Grounded circuit-conductor connection, if provided; and

(iii) Ungrounded conductor connection; and so that disconnection is in the reverse order; or

(3) A caution notice is provided adjacent to the line connectors indicating that plug connection must be in the following sequence:

(i) Equipment grounding conductor connection;

(ii) Grounded circuit-conductor connection, if provided; and

(iii) Ungrounded conductor connection; and indicating that disconnection is in the reverse order; and

(B) Single-pole separable connectors used in portable professional motion picture and television equipment may be interchangeable for ac or dc use or for different current ratings on the same premises only if they are listed for ac/dc use and marked to identify the system to which they are connected;

(v) Overcurrent protection of equipment and conductors shall be provided; and

(vi) The following equipment connected to the same source shall be bonded:

(A) Metal raceways and metal sheathed cable;

(B) Metal enclosures of electrical equipment; and

(C) Metal frames and metal parts of rides, concessions, trailers, trucks, or other equipment that contain or support electrical equipment.

(5) *Disconnecting means.* (i) Each ride and concession shall be provided with a fused disconnect switch or circuit breaker located within sight and within 1.83 m (6 ft) of the operator's station.

(ii) The disconnecting means shall be readily accessible to the operator, including when the ride is in operation.

(iii) Where accessible to unqualified persons, the enclosure for the switch or circuit breaker shall be of the lockable type.

(iv) A shunt trip device that opens the fused disconnect or circuit breaker when a switch located in the ride operator's console is closed is a permissible method of opening the circuit.

§ 1910.307 Hazardous (classified) locations.

(a) *Scope*—(1) *Applicability.* This section covers the requirements for electric equipment and wiring in locations that are classified depending on the properties of the flammable vapors, liquids or gases, or combustible dusts or fibers that may be present therein and the likelihood that a flammable or combustible concentration or quantity is present. Hazardous (classified) locations may be found in occupancies such as, but not limited to, the following: aircraft hangars, gasoline dispensing and service stations, bulk storage plants for gasoline or other volatile flammable liquids, paint-finishing process plants, health care facilities, agricultural or other facilities where excessive combustible dusts may be present, marinas, boat yards, and petroleum and chemical processing plants. Each room, section or area shall be considered individually in determining its classification.

(2) *Classifications.* (i) These hazardous (classified) locations are assigned the following designations:

(A) Class I, Division 1

(B) Class I, Division 2

(C) Class I, Zone 0

(D) Class I, Zone 1

(E) Class I, Zone 2

(F) Class II, Division 1

(G) Class II, Division 2

(H) Class III, Division 1

(I) Class III, Division 2

(ii) For definitions of these locations, see § 1910.399.

(3) *Other sections of this subpart.* All applicable requirements in this subpart apply to hazardous (classified) locations unless modified by provisions of this section.

(4) *Division and zone classification.* In Class I locations, an installation must be classified as using the division classification system meeting paragraphs (c), (d), (e), and (f) of this section or using the zone classification system meeting paragraph (g) of this section. In Class II and Class III locations, an installation must be classified using the division classification system meeting paragraphs (c), (d), (e), and (f) of this section.

(b) *Documentation.* All areas designated as hazardous (classified) locations under the Class and Zone system and areas designated under the Class and Division system established after August 13, 2007 shall be properly documented. This documentation shall be available to those authorized to design, install, inspect, maintain, or operate electric equipment at the location.

(c) *Electrical installations.* Equipment, wiring methods, and installations of equipment in hazardous (classified) locations shall be intrinsically safe, approved for the hazardous (classified) location, or safe for the hazardous (classified) location. Requirements for each of these options are as follows:

(1) *Intrinsically safe.* Equipment and associated wiring approved as intrinsically safe is permitted in any hazardous (classified) location for which it is approved;

(2) *Approved for the hazardous (classified) location.* (i) Equipment shall be approved not only for the class of location, but also for the ignitable or combustible properties of the specific gas, vapor, dust, or fiber that will be present.

Note to paragraph (c)(2)(i) of this section: NFPA 70, the National Electrical Code, lists or defines hazardous gases, vapors, and dusts by ''Groups'' characterized by their ignitable or combustible properties.

(ii) Equipment shall be marked to show the class, group, and operating temperature or temperature range, based on operation in a 40-degree C ambient, for which it is approved. The temperature marking may not exceed the ignition temperature of the specific gas or vapor to be encountered. However, the following provisions modify this marking requirement for specific equipment:

(A) Equipment of the nonheat-producing type, such as junction boxes, conduit, and fittings, and equipment of the heat-producing type having a maximum temperature not more than 100° C (212° F) need not have a marked operating temperature or temperature range;

(B) Fixed lighting fixtures marked for use in Class I, Division 2 or Class II, Division 2 locations only need not be marked to indicate the group;

(C) Fixed general-purpose equipment in Class I locations, other than lighting fixtures, that is acceptable for use in Class I, Division 2 locations need not be marked with the class, group, division, or operating temperature;

(D) Fixed dust-tight equipment, other than lighting fixtures, that is acceptable for use in Class II, Division 2 and Class III locations need not be marked with the class, group, division, or operating temperature; and

(E) Electric equipment suitable for ambient temperatures exceeding 40° C (104° F) shall be marked with both the maximum ambient temperature and the operating temperature or temperature range at that ambient temperature; and

(3) *Safe for the hazardous (classified) location.* Equipment that is safe for the location shall be of a type and design that the employer demonstrates will provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers involved.

Note to paragraph (c)(3) of this section: The National Electrical Code, NFPA 70, contains guidelines for determining the type and design of equipment and installations that will meet this requirement. Those guidelines address electric wiring, equipment, and systems installed in hazardous (classified) locations and contain specific provisions for the following: wiring methods, wiring connections; conductor insulation, flexible cords, sealing and drainage, transformers, capacitors, switches, circuit breakers, fuses, motor controllers, receptacles, attachment plugs, meters, relays, instruments, resistors, generators, motors, lighting fixtures, storage battery charging equipment, electric cranes, electric hoists and similar equipment, utilization equipment, signaling systems, alarm systems, remote control systems, local loud speaker and communication systems, ventilation piping, live parts, lightning surge protection, and grounding.

(d) *Conduits.* All conduits shall be threaded and shall be made wrench-tight. Where it is impractical to make a threaded joint tight, a bonding jumper shall be utilized.

(e) *Equipment in Division 2 locations.* Equipment that has been approved for a Division 1 location may be installed in a Division 2 location of the same class and group. General-purpose equipment or equipment in general-purpose enclosures may be installed in Division 2 locations if the employer can demonstrate that the equipment does not constitute a source of ignition under normal operating conditions.

(f) *Protection techniques.* The following are acceptable protection techniques for electric and electronic equipment in hazardous (classified) locations.

(1) *Explosionproof apparatus.* This protection technique is permitted for equipment in the Class I, Division 1 and 2 locations for which it is approved.

(2) *Dust ignitionproof.* This protection technique is permitted for equipment in

the Class II, Division 1 and 2 locations for which it is approved.

(3) *Dust-tight.* This protection technique is permitted for equipment in the Class II, Division 2 and Class III locations for which it is approved.

(4) *Purged and pressurized.* This protection technique is permitted for equipment in any hazardous (classified) location for which it is approved.

(5) *Nonincendive circuit.* This protection technique is permitted for equipment in Class I, Division 2; Class II, Division 2; or Class III, Division 1or 2 locations.

(6) *Nonincendive equipment.* This protection technique is permitted for equipment in Class I, Division 2; Class II, Division 2; or Class III, Division 1 or 2 locations.

(7) *Nonincendive component.* This protection technique is permitted for equipment in Class I, Division 2; Class II, Division 2; or Class III, Division 1 or 2 locations.

(8) *Oil immersion.* This protection technique is permitted for current-interrupting contacts in Class I, Division 2 locations as described in the Subpart.

(9) *Hermetically sealed.* This protection technique is permitted for equipment in Class I, Division 2; Class II, Division 2; and Class III, Division 1 or 2 locations.

(10) *Other protection techniques.* Any other protection technique that meets paragraph (c) of this section is acceptable in any hazardous (classified) location.

(g) *Class I, Zone 0, 1, and 2 locations*—(1) *Scope.* Employers may use the zone classification system as an alternative to the division classification system for electric and electronic equipment and wiring for all voltage in Class I, Zone 0, Zone 1, and Zone 2 hazardous (classified) locations where fire or explosion hazards may exist due to flammable gases, vapors, or liquids.

(2) *Location and general requirements.* (i) Locations shall be classified depending on the properties of the flammable vapors, liquids, or gases that may be present and the likelihood that a flammable or combustible concentration or quantity is present. Where pyrophoric materials are the only materials used or handled, these locations need not be classified.

(ii) Each room, section, or area shall be considered individually in determining its classification.

(iii) All threaded conduit shall be threaded with an NPT (National (American) Standard Pipe Taper) standard conduit cutting die that provides ¾-in. taper per foot. The conduit shall be made wrench tight to prevent sparking when fault current flows through the conduit system and to ensure the explosionproof or flameproof integrity of the conduit system where applicable.

(iv) Equipment provided with threaded entries for field wiring connection shall be installed in accordance with paragraph (g)(2)(iv)(A) or (g)(2)(iv)(B) of this section.

(A) For equipment provided with threaded entries for NPT threaded conduit or fittings, listed conduit, conduit fittings, or cable fittings shall be used.

(B) For equipment with metric threaded entries, such entries shall be identified as being metric, or listed adaptors to permit connection to conduit of NPT-threaded fittings shall be provided with the equipment. Adapters shall be used for connection to conduit or NPT-threaded fittings.

(3) *Protection techniques.* One or more of the following protection techniques shall be used for electric and electronic equipment in hazardous (classified) locations classified under the zone classification system.

(i) Flameproof ''d''—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(ii) Purged and pressurized—This protection technique is permitted for equipment in the Class I, Zone 1 or Zone 2 locations for which it is approved.

(iii) Intrinsic safety—This protection technique is permitted for equipment in the Class I, Zone 0 or Zone 1 locations for which it is approved.

(iv) Type of protection ''n''—This protection technique is permitted for equipment in the Class I, Zone 2 locations for which it is approved. Type of protection ''n'' is further subdivided into nA, nC, and nR.

(v) Oil Immersion ''o''—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(vi) Increased safety ''e''—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(vii) Encapsulation ''m''—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(viii) Powder Filling ''q''—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(4) *Special precaution.* Paragraph (g) of this section requires equipment construction and installation that will ensure safe performance under conditions of proper use and maintenance.

(i) Classification of areas and selection of equipment and wiring methods shall be under the supervision of a qualified registered professional engineer.

(ii) In instances of areas within the same facility classified separately, Class I, Zone 2 locations may abut, but not overlap, Class I, Division 2 locations. Class I, Zone 0 or Zone 1 locations may not abut Class I, Division 1 or Division 2 locations.

(iii) A Class I, Division 1 or Division 2 location may be reclassified as a Class I, Zone 0, Zone 1, or Zone 2 location only if all of the space that is classified because of a single flammable gas or vapor source is reclassified.

Note to paragraph (g)(4) of this section: Low ambient conditions require special consideration. Electric equipment depending on the protection techniques described by paragraph (g)(3)(i) of this section may not be suitable for use at temperatures lower than −20 °C (−4 °F) unless they are approved for use at lower temperatures. However, at low ambient temperatures, flammable concentrations of vapors may not exist in a location classified Class I, Zone 0, 1, or 2 at normal ambient temperature.

(5) *Listing and marking.* (i) Equipment that is listed for a Zone 0 location may be installed in a Zone 1 or Zone 2 location of the same gas or vapor. Equipment that is listed for a Zone 1 location may be installed in a Zone 2 location of the same gas or vapor.

(ii) Equipment shall be marked in accordance with paragraph (g)(5)(ii)(A) and (g)(5)(ii)(B) of this section, except as provided in (g)(5)(ii)(C).

(A) Equipment approved for Class I, Division 1 or Class 1, Division 2 shall, in addition to being marked in accordance with (c)(2)(ii), be marked with the following:

(1) Class I, Zone 1 or Class I, Zone 2 (as applicable);

(2) Applicable gas classification groups; and

(3) Temperature classification; or

(B) Equipment meeting one or more of the protection techniques described in paragraph (g)(3) of this section shall be marked with the following in the order shown:

(1) Class, except for intrinsically safe apparatus;

(2) Zone, except for intrinsically safe apparatus;

(3) Symbol ''AEx;''

(4) Protection techniques;

(5) Applicable gas classification groups; and

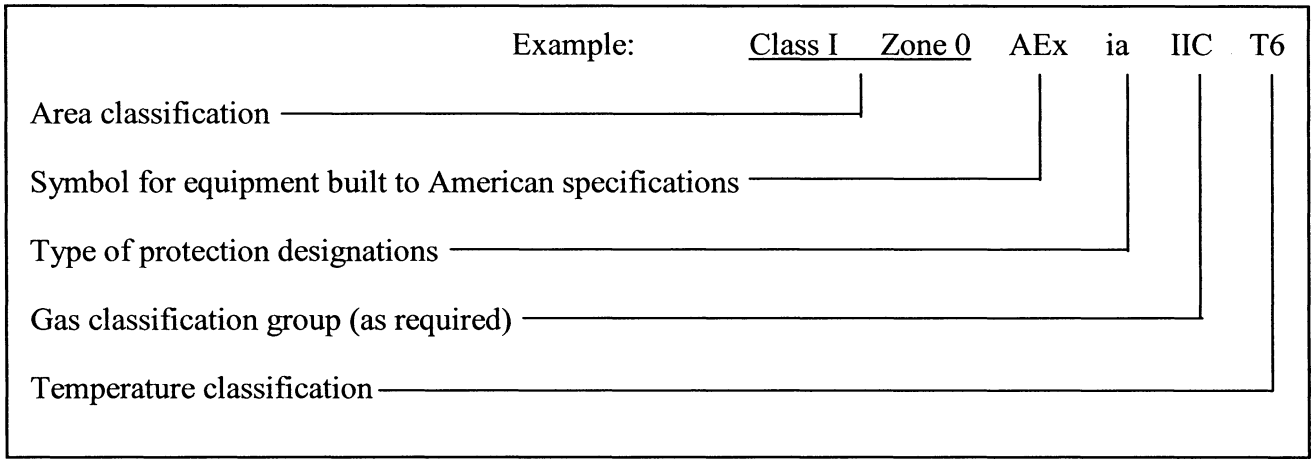
(6) Temperature classification, except for intrinsically safe apparatus.

Note to paragraph (g)(5)(ii)(B) of this section: An example of such a required marking is ''Class I, Zone 0, AEx ia IIC T6.'' See Figure S–1 for an explanation of this marking.

(C) Equipment that the employer demonstrates will provide protection from the hazards arising from the flammability of the gas or vapor and the zone of location involved and will be recognized as providing such protection by employees need not be marked.

Note to paragraph (g)(5)(ii)(C) of this section: The National Electrical Code, NFPA 70, contains guidelines for determining the type and design of equipment and installations that will meet this provision.

Figure S-1—Example Marking for Class I, Zone 0, AEx ia IIC T6



§ 1910.308 Special systems.

(a) *Systems over 600 volts, nominal.* This paragraph covers the general requirements for all circuits and equipment operated at over 600 volts.

(1) *Aboveground wiring methods.* (i) Aboveground conductors shall be installed in rigid metal conduit, in intermediate metal conduit, in electrical metallic tubing, in rigid nonmetallic conduit, in cable trays, as busways, as cablebus, in other identified raceways, or as open runs of metal-clad cable suitable for the use and purpose. In locations accessible to qualified persons only, open runs of Type MV cables, bare conductors, and bare busbars are also permitted. Busbars shall be either copper or aluminum. Open runs of insulated wires and cables having a bare lead sheath or a braided outer covering shall be supported in a manner designed to prevent physical damage to the braid or sheath.

(ii) Conductors emerging from the ground shall be enclosed in approved raceways.

(2) *Braid-covered insulated conductors—open installations.* The braid on open runs of braid-covered insulated conductors shall be flame retardant or shall have a flame-retardant saturant applied after installation. This treated braid covering shall be stripped back a safe distance at conductor terminals, according to the operating voltage.

(3) *Insulation shielding.* (i) Metallic and semiconductor insulation shielding components of shielded cables shall be removed for a distance dependent on the circuit voltage and insulation. Stress reduction means shall be provided at all terminations of factory-applied shielding.

(ii) Metallic shielding components such as tapes, wires, or braids, or combinations thereof, and their associated conducting and semiconducting components shall be grounded.

(4) *Moisture or mechanical protection for metal-sheathed cables.* Where cable conductors emerge from a metal sheath and where protection against moisture or physical damage is necessary, the insulation of the conductors shall be protected by a cable sheath terminating device.

(5) *Interrupting and isolating devices.* (i) Circuit breaker installations located indoors shall consist of metal-enclosed units or fire-resistant cell-mounted units. In locations accessible only to qualified employees, open mounting of circuit breakers is permitted. A means of indicating the open and closed position of circuit breakers shall be provided.

(ii) Where fuses are used to protect conductors and equipment, a fuse shall be placed in each ungrounded conductor. Two power fuses may be used in parallel to protect the same load, if both fuses have identical ratings, and if both fuses are installed in an identified common mounting with electrical connections that will divide the current equally. Power fuses of the vented type may not be used indoors, underground, or in metal enclosures unless identified for the use.

(iii) Fused cutouts installed in buildings or transformer vaults shall be of a type identified for the purpose. Distribution cutouts may not be used indoors, underground, or in metal enclosures. They shall be readily accessible for fuse replacement.

(iv) Where fused cutouts are not suitable to interrupt the circuit manually while carrying full load, an approved means shall be installed to interrupt the entire load. Unless the fused cutouts are interlocked with the switch to prevent opening of the cutouts under load, a conspicuous sign shall be placed at such cutouts reading: ''WARNING—DO NOT OPERATE UNDER LOAD.''

(v) Suitable barriers or enclosures shall be provided to prevent contact with nonshielded cables or energized parts of oil-filled cutouts.

(vi) Load interrupter switches may be used only if suitable fuses or circuits are used in conjunction with these devices to interrupt fault currents.

(A) Where these devices are used in combination, they shall be coordinated electrically so that they will safely withstand the effects of closing, carrying, or interrupting all possible currents up to the assigned maximum short-circuit rating.

(B) Where more than one switch is installed with interconnected load terminals to provide for alternate connection to different supply conductors, each switch shall be provided with a conspicuous sign reading: ''WARNING—SWITCH MAY BE ENERGIZED BY BACKFEED.''

(vii) A means (for example, a fuseholder and fuse designed for the purpose) shall be provided to completely isolate equipment for inspection and repairs. Isolating means that are not designed to interrupt the load current of the circuit shall be either interlocked with an approved circuit interrupter or provided with a sign warning against opening them under load.

(6) *Mobile and portable equipment.* (i) A metallic enclosure shall be provided on the mobile machine for enclosing the terminals of the power cable. The enclosure shall include provisions for a solid connection for the grounding terminal to effectively ground the machine frame. The method of cable termination used shall prevent any strain or pull on the cable from stressing the electrical connections. The enclosure shall have provision for locking so only authorized qualified persons may open it and shall be marked with a sign warning of the presence of energized parts.

(ii) All energized switching and control parts shall be enclosed in effectively grounded metal cabinets or enclosures. Circuit breakers and protective equipment shall have the operating means projecting through the metal cabinet or enclosure so these units can be reset without locked doors being opened. Enclosures and metal cabinets shall be locked so that only authorized qualified persons have access and shall be marked with a sign warning of the presence of energized parts. Collector ring assemblies on revolving-type machines (shovels, draglines, etc.) shall be guarded.

(7) *Tunnel installations.* This paragraph applies to installation and use of high-voltage power distribution and utilization equipment that is portable or mobile, such as substations, trailers, cars, mobile shovels, draglines, hoists, drills, dredges, compressors, pumps, conveyors, and underground excavators.

(i) Conductors in tunnels shall be installed in one or more of the following:

(A) Metal conduit or other metal raceway;

(B) Type MC cable; or

(C) Other approved multiconductor cable.

(ii) Multiconductor portable cable may supply mobile equipment.

(iii) Conductors and cables shall also be so located or guarded as to protect them from physical damage. An equipment grounding conductor shall be run with circuit conductors inside the metal raceway or inside the multiconductor cable jacket. The equipment grounding conductor may be insulated or bare.

(iv) Bare terminals of transformers, switches, motor controllers, and other equipment shall be enclosed to prevent accidental contact with energized parts.

(v) Enclosures for use in tunnels shall be drip-proof, weatherproof, or submersible as required by the environmental conditions.

(vi) Switch or contactor enclosures may not be used as junction boxes or raceways for conductors feeding through or tapping off to other switches, unless special designs are used to provide adequate space for this purpose.

(vii) A disconnecting means that simultaneously opens all ungrounded conductors shall be installed at each transformer or motor location.

(viii) All nonenergized metal parts of electric equipment and metal raceways and cable sheaths shall be effectively grounded and bonded to all metal pipes and rails at the portal and at intervals not exceeding 305 m (1000 ft) throughout the tunnel.

(b) *Emergency power systems.* This paragraph applies to circuits, systems, and equipment intended to supply power for illumination and special loads in the event of failure of the normal supply.

(1) *Wiring methods.* Emergency circuit wiring shall be kept entirely independent of all other wiring and equipment and may not enter the same raceway, cable, box, or cabinet or other wiring except either where common circuit elements suitable for the purpose are required, or for transferring power from the normal to the emergency source.

(2) *Emergency illumination.* Emergency illumination shall include all required means of egress lighting, illuminated exit signs, and all other lights necessary to provide illumination. Where emergency lighting is necessary, the system shall be so arranged that the failure of any individual lighting element, such as the burning out of a light bulb, cannot leave any space in total darkness.

(3) *Signs.* (i) A sign shall be placed at the service entrance equipment indicating the type and location of on-site emergency power sources. However, a sign is not required for individual unit equipment.

(ii) Where the grounded circuit conductor connected to the emergency source is connected to a grounding electrode conductor at a location remote from the emergency source, there shall be a sign at the grounding location that shall identify all emergency and normal sources connected at that location.

(c) *Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits*—(1) *Classification.* Class 1, Class 2, and Class 3 remote control, signaling, or power-limited circuits are characterized by their usage and electrical power limitation that differentiates them from light and power circuits. These circuits are classified in accordance with their respective voltage and power limitations as summarized in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(i) A Class 1 power-limited circuit shall be supplied from a source having a rated output of not more than 30 volts and 1000 volt-amperes.

(ii) A Class 1 remote control circuit or a Class 1 signaling circuit shall have a voltage not exceeding 600 volts; however, the power output of the source need not be limited.

(iii) The power source for a Class 2 or Class 3 circuit shall be listed equipment marked as a Class 2 or Class 3 power source, except as follows:

(A) Thermocouples do not require listing as a Class 2 power source; and

(B) A dry cell battery is considered an inherently limited Class 2 power source, provided the voltage is 30 volts or less and the capacity is less than or equal to that available from series-connected No. 6 carbon zinc cells.

(2) *Marking.* A Class 2 or Class 3 power supply unit shall be durably marked where plainly visible to indicate the class of supply and its electrical rating.

(3) *Separation from conductors of other circuits.* Cables and conductors of Class 2 and Class 3 circuits may not be placed in any cable, cable tray, compartment, enclosure, manhole, outlet box, device box, raceway, or similar fitting with conductors of electric light, power, Class 1, nonpower-limited fire alarm circuits, and medium power network-powered broadband communications cables unless a barrier or other equivalent form of protection against contact is employed.

(d) *Fire alarm systems*—(1) *Classifications.* Fire alarm circuits shall be classified either as nonpower limited or power limited.

(2) *Power sources.* The power sources for use with fire alarm circuits shall be either power limited or nonpower limited as follows:

(i) The power source of nonpower-limited fire alarm (NPLFA) circuits shall have an output voltage of not more than 600 volts, nominal; and

(ii) The power source for a power-limited fire alarm (PLFA) circuit shall be listed equipment marked as a PLFA power source.

(3) *Separation from conductors of other circuits.* (i) Nonpower-limited fire alarm circuits and Class 1 circuits may occupy the same enclosure, cable, or raceway provided all conductors are insulated for maximum voltage of any conductor within the enclosure, cable, or raceway. Power supply and fire alarm circuit conductors are permitted in the same enclosure, cable, or raceway only if connected to the same equipment.

(ii) Power-limited circuit cables and conductors may not be placed in any cable, cable tray, compartment, enclosure, outlet box, raceway, or similar fitting with conductors of electric light, power, Class 1, nonpower-limited fire alarm circuit conductors, or medium power network-powered broadband communications circuits.

(iii) Power-limited fire alarm circuit conductors shall be separated at least 50.8 mm (2 in.) from conductors of any electric light, power, Class 1, nonpower-limited fire alarm, or medium power network-powered broadband communications circuits unless a special and equally protective method of conductor separation is employed.

(iv) Conductors of one or more Class 2 circuits are permitted within the same cable, enclosure, or raceway with conductors of power-limited fire alarm circuits provided that the insulation of Class 2 circuit conductors in the cable, enclosure, or raceway is at least that needed for the power-limited fire alarm circuits.

(4) *Identification.* Fire alarm circuits shall be identified at terminal and junction locations in a manner that will prevent unintentional interference with the signaling circuit during testing and servicing. Power-limited fire alarm circuits shall be durably marked as such where plainly visible at terminations.

(e) *Communications systems.* This paragraph applies to central-station-connected and non-central-station-connected telephone circuits, radio and television receiving and transmitting equipment, including community antenna television and radio distribution systems, telegraph, district messenger, and outside wiring for fire and burglar alarm, and similar central station systems. These installations need not comply with the provisions of § 1910.303 through § 1910.308(d), except for § 1910.304(c)(1) and § 1910.307.

(1) *Protective devices.* (i) A listed primary protector shall be provided on each circuit run partly or entirely in aerial wire or aerial cable not confined within a block.

(ii) A listed primary protector shall be also provided on each aerial or underground circuit when the location of the circuit within the block containing the building served allows the circuit to be exposed to accidental contact with electric light or power conductors operating at over 300 volts to ground.

(iii) In addition, where there exists a lightning exposure, each interbuilding circuit on premises shall be protected by a listed primary protector at each end of the interbuilding circuit.

(2) *Conductor location.* (i) Lead-in or aerial-drop cables from a pole or other support, including the point of initial attachment to a building or structure, shall be kept away from electric light, power, Class 1, or nonpower-limited fire alarm circuit conductors so as to avoid the possibility of accidental contact.

(ii) A separation of at least 1.83 m (6 ft) shall be maintained between communications wires and cables on buildings and lightning conductors.

(iii) Where communications wires and cables and electric light or power conductors are supported by the same pole or run parallel to each other in-span, the following conditions shall be met:

(A) Where practicable, communication wires and cables on poles shall be located below the electric light or power conductors; and

(B) Communications wires and cables may not be attached to a crossarm that carries electric light or power conductors.

(iv) Indoor communications wires and cables shall be separated at least 50.8 mm (2 in.) from conductors of any electric light, power, Class 1, nonpower-limited fire alarm, or medium power network-powered broadband communications circuits, unless a special and equally protective method of conductor separation, identified for the purpose, is employed.

(3) *Equipment location.* Outdoor metal structures supporting antennas, as well as self-supporting antennas such as vertical rods or dipole structures, shall be located as far away from overhead conductors of electric light and power circuits of over 150 volts to ground as necessary to prevent the antenna or structure from falling into or making accidental contact with such circuits.

(4) *Grounding.* (i) If exposed to contact with electric light and power conductors, the metal sheath of aerial cables entering buildings shall be grounded or shall be interrupted close to the entrance to the building by an insulating joint or equivalent device. Where protective devices are used, they shall be grounded in an approved manner.

(ii) Masts and metal structures supporting antennas shall be permanently and effectively grounded without splice or connection in the grounding conductor.

(iii) Transmitters shall be enclosed in a metal frame or grill or separated from the operating space by a barrier, all metallic parts of which are effectively connected to ground. All external metal handles and controls accessible to the operating personnel shall be effectively grounded. Unpowered equipment and enclosures are considered to be grounded where connected to an attached coaxial cable with an effectively grounded metallic shield.

(f) *Solar photovoltaic systems.* This paragraph covers solar photovoltaic systems that can be interactive with other electric power production sources or can stand alone with or without electrical energy storage such as batteries. These systems may have ac or dc output for utilization.

(1) *Conductors of different systems.* Photovoltaic source circuits and photovoltaic output circuits may not be contained in the same raceway, cable tray, cable, outlet box, junction box, or similar fitting as feeders or branch circuits of other systems, unless the conductors of the different systems are separated by a partition or are connected together.

(2) *Disconnecting means.* Means shall be provided to disconnect all current-carrying conductors of a photovoltaic power source from all other conductors in a building or other structure. Where a circuit grounding connection is not designed to be automatically interrupted as part of the ground-fault protection system, a switch or circuit breaker used as disconnecting means may not have a pole in the grounded conductor.

(g) *Integrated electrical systems*—(1) *Scope.* Paragraph (g) of this section covers integrated electrical systems, other than unit equipment, in which orderly shutdown is necessary to ensure safe operation. An integrated electrical system as used in this section shall be a unitized segment of an industrial wiring system where all of the following conditions are met:

(i) An orderly shutdown process minimizes employee hazard and equipment damage;

(ii) The conditions of maintenance and supervision ensure that only qualified persons will service the system; and

(iii) Effective safeguards are established and maintained.

(2) *Location of overcurrent devices in or on premises.* Overcurrent devices that are critical to integrated electrical systems need not be readily accessible to employees as required by § 1910.304(f)(1)(iv) if they are located

with mounting heights to ensure security from operation by nonqualified persons.

■ 7. Section 1910.399 is revised to read as follows:

§ 1910.399 Definitions applicable to this subpart.

Acceptable. An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart S:

(1) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory recognized pursuant to § 1910.7; or

(2) With respect to an installation or equipment of a kind that no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this subpart; or

(3) With respect to custom-made equipment or related installations that are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives.

Accepted. An installation is ''accepted'' if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes.

Accessible. (As applied to wiring methods.) Capable of being removed or exposed without damaging the building structure or finish, or not permanently closed in by the structure or finish of the building. (See ''concealed'' and ''exposed.'')

Accessible. (As applied to equipment.) Admitting close approach; not guarded by locked doors, elevation, or other effective means. (See ''Readily accessible.'')

Ampacity. The current, in amperes, that a conductor can carry continuously under the conditions of use without exceeding its temperature rating.

Appliances. Utilization equipment, generally other than industrial, normally built in standardized sizes or types, that is installed or connected as a unit to perform one or more functions.

Approved. Acceptable to the authority enforcing this subpart. The authority enforcing this subpart is the Assistant Secretary of Labor for Occupational Safety and Health. The definition of ''acceptable'' indicates what is acceptable to the Assistant Secretary of Labor, and therefore approved within the meaning of this subpart.

Armored cable (Type AC). A fabricated assembly of insulated conductors in a flexible metallic enclosure.

Askarel. A generic term for a group of nonflammable synthetic chlorinated hydrocarbons used as electrical insulating media. Askarels of various compositional types are used. Under arcing conditions, the gases produced, while consisting predominantly of noncombustible hydrogen chloride, can include varying amounts of combustible gases depending upon the askarel type.

Attachment plug (Plug cap)(Cap). A device that, by insertion in a receptacle, establishes a connection between the conductors of the attached flexible cord and the conductors connected permanently to the receptacle.

Automatic. Self-acting, operating by its own mechanism when actuated by some impersonal influence, as, for example, a change in current strength, pressure, temperature, or mechanical configuration.

Bare conductor. See Conductor.

Barrier. A physical obstruction that is intended to prevent contact with equipment or live parts or to prevent unauthorized access to a work area.

Bathroom. An area including a basin with one or more of the following: a toilet, a tub, or a shower.

Bonding (Bonded). The permanent joining of metallic parts to form an electrically conductive path that ensures electrical continuity and the capacity to conduct safely any current likely to be imposed.

Bonding jumper. A conductor that assures the necessary electrical conductivity between metal parts required to be electrically connected.

Branch circuit. The circuit conductors between the final overcurrent device protecting the circuit and the outlets.

Building. A structure that stands alone or is cut off from adjoining structures by fire walls with all openings therein protected by approved fire doors.

Cabinet. An enclosure designed either for surface or flush mounting, and provided with a frame, mat, or trim in which a swinging door or doors are or can be hung.

Cable tray system. A unit or assembly of units or sections and associated fittings forming a rigid structural system used to securely fasten or support cables and raceways. Cable tray systems include ladders, troughs, channels, solid bottom trays, and other similar structures.

Cablebus. An assembly of insulated conductors with fittings and conductor terminations in a completely enclosed, ventilated, protective metal housing.

Cell line. An assembly of electrically interconnected electrolytic cells supplied by a source of direct current power.

Cell line attachments and auxiliary equipment. Cell line attachments and auxiliary equipment include, but are not limited to, auxiliary tanks, process piping, ductwork, structural supports, exposed cell line conductors, conduits and other raceways, pumps, positioning equipment, and cell cutout or bypass electrical devices. Auxiliary equipment also includes tools, welding machines, crucibles, and other portable equipment used for operation and maintenance within the electrolytic cell line working zone. In the cell line working zone, auxiliary equipment includes the exposed conductive surfaces of ungrounded cranes and crane-mounted cell-servicing equipment.

Center pivot irrigation machine. A multi-motored irrigation machine that revolves around a central pivot and employs alignment switches or similar devices to control individual motors.

Certified. Equipment is ''certified'' if it bears a label, tag, or other record of certification that the equipment:

(1) Has been tested and found by a nationally recognized testing laboratory to meet nationally recognized standards or to be safe for use in a specified manner; or

(2) Is of a kind whose production is periodically inspected by a nationally recognized testing laboratory and is accepted by the laboratory as safe for its intended use.

Circuit breaker. A device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent without damage to itself when properly applied within its rating.

Class I locations. Class I locations are those in which flammable gases or vapors are or may be present in the air in quantities sufficient to produce explosive or ignitable mixtures. Class I locations include the following:

(1) *Class I, Division 1.* A Class I, Division 1 location is a location:

(i) In which ignitable concentrations of flammable gases or vapors may exist under normal operating conditions; or

(ii) In which ignitable concentrations of such gases or vapors may exist frequently because of repair or maintenance operations or because of leakage; or

(iii) In which breakdown or faulty operation of equipment or processes might release ignitable concentrations of flammable gases or vapors, and might also cause simultaneous failure of electric equipment.

Note to the definition of ''Class I, Division 1:'' This classification usually includes locations where volatile flammable liquids or liquefied flammable gases are transferred from one container to another; interiors of spray booths and areas in the vicinity of spraying and painting operations where volatile flammable solvents are used; locations containing open tanks or vats of volatile flammable liquids; drying rooms or compartments for the evaporation of flammable solvents; locations containing fat and oil extraction equipment using volatile flammable solvents; portions of cleaning and dyeing plants where flammable liquids are used; gas generator rooms and other portions of gas manufacturing plants where flammable gas may escape; inadequately ventilated pump rooms for flammable gas or for volatile flammable liquids; the interiors of refrigerators and freezers in which volatile flammable materials are stored in open, lightly stoppered, or easily ruptured containers; and all other locations where ignitable concentrations of flammable vapors or gases are likely to occur in the course of normal operations.

(2) *Class I, Division 2.* A Class I, Division 2 location is a location:

(i) In which volatile flammable liquids or flammable gases are handled, processed, or used, but in which the hazardous liquids, vapors, or gases will normally be confined within closed containers or closed systems from which they can escape only in the event of accidental rupture or breakdown of such containers or systems, or as a result of abnormal operation of equipment; or

(ii) In which ignitable concentrations of gases or vapors are normally prevented by positive mechanical ventilation, and which might become hazardous through failure or abnormal operations of the ventilating equipment; or

(iii) That is adjacent to a Class I, Division 1 location, and to which ignitable concentrations of gases or vapors might occasionally be communicated unless such communication is prevented by adequate positive-pressure ventilation from a source of clean air, and effective safeguards against ventilation failure are provided.

Note to the definition of ''Class I, Division 2:'' This classification usually includes locations where volatile flammable liquids or flammable gases or vapors are used, but which would become hazardous only in case of an accident or of some unusual operating condition. The quantity of flammable material that might escape in case of accident, the adequacy of ventilating equipment, the total area involved, and the record of the industry or business with respect to explosions or fires are all factors that merit consideration in determining the classification and extent of each location.

Piping without valves, checks, meters, and similar devices would not ordinarily introduce a hazardous condition even though used for flammable liquids or gases. Locations used for the storage of flammable liquids or liquefied or compressed gases in sealed containers would not normally be considered hazardous unless also subject to other hazardous conditions.

Electrical conduits and their associated enclosures separated from process fluids by a single seal or barrier are classed as a Division 2 location if the outside of the conduit and enclosures is a nonhazardous location.

(3) *Class I, Zone 0.* A Class I, Zone 0 location is a location in which one of the following conditions exists:

(i) Ignitable concentrations of flammable gases or vapors are present continuously; or

(ii) Ignitable concentrations of flammable gases or vapors are present for long periods of time.

Note to the definition of ''Class I, Zone 0:'' As a guide in determining when flammable gases or vapors are present continuously or for long periods of time, refer to *Recommended Practice for Classification of Locations for Electrical Installations of Petroleum Facilities Classified as Class I, Zone 0, Zone 1 or Zone 2,* API RP 505–1997; *Electrical Apparatus for Explosive Gas Atmospheres, Classifications of Hazardous Areas,* IEC 79–10–1995; *Area Classification Code for Petroleum Installations, Model Code—Part 15,* Institute for Petroleum; and *Electrical Apparatus for Explosive Gas Atmospheres, Classifications of Hazardous (Classified) Locations,* ISA S12.24.01–1997.

(4) *Class I, Zone 1.* A Class I, Zone 1 location is a location in which one of the following conditions exists:

(i) Ignitable concentrations of flammable gases or vapors are likely to exist under normal operating conditions; or

(ii) Ignitable concentrations of flammable gases or vapors may exist frequently because of repair or maintenance operations or because of leakage; or

(iii) Equipment is operated or processes are carried on of such a nature that equipment breakdown or faulty operations could result in the release of ignitable concentrations of flammable gases or vapors and also cause simultaneous failure of electric equipment in a manner that would cause the electric equipment to become a source of ignition; or

(iv) A location that is adjacent to a Class I, Zone 0 location from which ignitable concentrations of vapors could be communicated, unless communication is prevented by adequate positive pressure ventilation from a source of clean air and effective safeguards against ventilation failure are provided.

(5) *Class I, Zone 2.* A Class I, Zone 2 location is a location in which one of the following conditions exists:

(i) Ignitable concentrations of flammable gases or vapors are not likely to occur in normal operation and if they do occur will exist only for a short period; or

(ii) Volatile flammable liquids, flammable gases, or flammable vapors are handled, processed, or used, but in which the liquids, gases, or vapors are normally confined within closed containers or closed systems from which they can escape only as a result of accidental rupture or breakdown of the containers or system or as the result of the abnormal operation of the equipment with which the liquids or gases are handled, processed, or used; or

(iii) Ignitable concentrations of flammable gases or vapors normally are prevented by positive mechanical ventilation, but which may become hazardous as the result of failure or abnormal operation of the ventilation equipment; or

(iv) A location that is adjacent to a Class I, Zone 1 location, from which ignitable concentrations of flammable gases or vapors could be communicated, unless such communication is prevented by adequate positive-pressure ventilation from a source of clean air, and effective safeguards against ventilation failure are provided.

Class II locations. Class II locations are those that are hazardous because of the presence of combustible dust. Class II locations include the following:

(1) *Class II, Division 1.* A Class II, Division 1 location is a location:

(i) In which combustible dust is or may be in suspension in the air under normal operating conditions, in quantities sufficient to produce explosive or ignitable mixtures; or

(ii) Where mechanical failure or abnormal operation of machinery or equipment might cause such explosive or ignitable mixtures to be produced, and might also provide a source of ignition through simultaneous failure of electric equipment, through operation of protection devices, or from other causes; or

(iii) In which combustible dusts of an electrically conductive nature may be present.

Note to the definition of ''Class II, Division 1:'' This classification may include areas of grain handling and processing plants, starch plants, sugar-pulverizing plants, malting

plants, hay-grinding plants, coal pulverizing plants, areas where metal dusts and powders are produced or processed, and other similar locations that contain dust producing machinery and equipment (except where the equipment is dust-tight or vented to the outside). These areas would have combustible dust in the air, under normal operating conditions, in quantities sufficient to produce explosive or ignitable mixtures. Combustible dusts that are electrically nonconductive include dusts produced in the handling and processing of grain and grain products, pulverized sugar and cocoa, dried egg and milk powders, pulverized spices, starch and pastes, potato and wood flour, oil meal from beans and seed, dried hay, and other organic materials which may produce combustible dusts when processed or handled. Dusts containing magnesium or aluminum are particularly hazardous, and the use of extreme caution is necessary to avoid ignition and explosion.

(2) *Class II, Division 2.* A Class II, Division 2 location is a location where:

(i) Combustible dust will not normally be in suspension in the air in quantities sufficient to produce explosive or ignitable mixtures, and dust accumulations will normally be insufficient to interfere with the normal operation of electric equipment or other apparatus, but combustible dust may be in suspension in the air as a result of infrequent malfunctioning of handling or processing equipment; and

(ii) Resulting combustible dust accumulations on, in, or in the vicinity of the electric equipment may be sufficient to interfere with the safe dissipation of heat from electric equipment or may be ignitable by abnormal operation or failure of electric equipment.

Note to the definition of ''Class II, Division 2:'' This classification includes locations where dangerous concentrations of suspended dust would not be likely, but where dust accumulations might form on or in the vicinity of electric equipment. These areas may contain equipment from which appreciable quantities of dust would escape under abnormal operating conditions or be adjacent to a Class II Division 1 location, as described above, into which an explosive or ignitable concentration of dust may be put into suspension under abnormal operating conditions.

Class III locations. Class III locations are those that are hazardous because of the presence of easily ignitable fibers or flyings, but in which such fibers or flyings are not likely to be in suspension in the air in quantities sufficient to produce ignitable mixtures. Class III locations include the following:

(1) *Class III, Division 1.* A Class III, Division 1 location is a location in which easily ignitable fibers or materials producing combustible flyings are handled, manufactured, or used.

Note to the definition of ''Class III, Division 1:'' Such locations usually include some parts of rayon, cotton, and other textile mills; combustible fiber manufacturing and processing plants; cotton gins and cotton-seed mills; flax-processing plants; clothing manufacturing plants; woodworking plants, and establishments; and industries involving similar hazardous processes or conditions.

Easily ignitable fibers and flyings include rayon, cotton (including cotton linters and cotton waste), sisal or henequen, istle, jute, hemp, tow, cocoa fiber, oakum, baled waste kapok, Spanish moss, excelsior, and other materials of similar nature.

(2) *Class III, Division 2.* A Class III, Division 2 location is a location in which easily ignitable fibers are stored or handled, other than in the process of manufacture.

Collector ring. An assembly of slip rings for transferring electric energy from a stationary to a rotating member.

Competent Person. One who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees and who has authorization to take prompt corrective measures to eliminate them.

Concealed. Rendered inaccessible by the structure or finish of the building. Wires in concealed raceways are considered concealed, even though they may become accessible by withdrawing them. (See Accessible. (As applied to wiring methods.))

Conductor—(1) *Bare.* A conductor having no covering or electrical insulation whatsoever.

(2) *Covered.* A conductor encased within material of composition or thickness that is not recognized by this subpart as electrical insulation.

(3) *Insulated.* A conductor encased within material of composition and thickness that is recognized by this subpart as electrical insulation.

Conduit body. A separate portion of a conduit or tubing system that provides access through one or more removable covers to the interior of the system at a junction of two or more sections of the system or at a terminal point of the system. Boxes such as FS and FD or larger cast or sheet metal boxes are not classified as conduit bodies.

Controller. A device or group of devices that serves to govern, in some predetermined manner, the electric power delivered to the apparatus to which it is connected.

Covered conductor. See Conductor.

Cutout. (Over 600 volts, nominal.) An assembly of a fuse support with either a fuseholder, fuse carrier, or disconnecting blade. The fuseholder or fuse carrier may include a conducting element (fuse link), or may act as the disconnecting blade by the inclusion of a nonfusible member.

Cutout box. An enclosure designed for surface mounting and having swinging doors or covers secured directly to and telescoping with the walls of the box proper. (See Cabinet.)

Damp location. See Location.

Dead front. Without live parts exposed to a person on the operating side of the equipment

Deenergized. Free from any electrical connection to a source of potential difference and from electrical charge; not having a potential different from that of the earth.

Device. A unit of an electrical system that is intended to carry but not utilize electric energy.

Dielectric heating. The heating of a nominally insulating material due to its own dielectric losses when the material is placed in a varying electric field.

Disconnecting means. A device, or group of devices, or other means by which the conductors of a circuit can be disconnected from their source of supply.

Disconnecting (or Isolating) switch. (Over 600 volts, nominal.) A mechanical switching device used for isolating a circuit or equipment from a source of power.

Electrolytic cell line working zone. The cell line working zone is the space envelope wherein operation or maintenance is normally performed on or in the vicinity of exposed energized surfaces of electrolytic cell lines or their attachments.

Electrolytic cells. A tank or vat in which electrochemical reactions are caused by applying energy for the purpose of refining or producing usable materials.

Enclosed. Surrounded by a case, housing, fence, or walls that will prevent persons from accidentally contacting energized parts.

Enclosure. The case or housing of apparatus, or the fence or walls surrounding an installation to prevent personnel from accidentally contacting energized parts, or to protect the equipment from physical damage.

Energized. Electrically connected to a source of potential difference.

Equipment. A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like, used as a part of, or in connection with, an electrical installation.

Equipment grounding conductor. See Grounding conductor, equipment.

Explosion-proof apparatus. Apparatus enclosed in a case that is capable of withstanding an explosion of a specified gas or vapor that may occur within it and of preventing the ignition of a

specified gas or vapor surrounding the enclosure by sparks, flashes, or explosion of the gas or vapor within, and that operates at such an external temperature that it will not ignite a surrounding flammable atmosphere.

Exposed. (As applied to live parts.) Capable of being inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts not suitably guarded, isolated, or insulated. (See Accessible and Concealed.)

Exposed. (As applied to wiring methods.) On or attached to the surface, or behind panels designed to allow access. (See Accessible. (As applied to wiring methods.))

Exposed. (For the purposes of § 1910.308(e).) Where the circuit is in such a position that in case of failure of supports or insulation, contact with another circuit may result.

Externally operable. Capable of being operated without exposing the operator to contact with live parts.

Feeder. All circuit conductors between the service equipment, the source of a separate derived system, or other power supply source and the final branch-circuit overcurrent device.

Fitting. An accessory such as a locknut, bushing, or other part of a wiring system that is intended primarily to perform a mechanical rather than an electrical function.

Fountain. Fountains, ornamental pools, display pools, and reflection pools.

Note to the definition of ''fountain:'' This definition does not include drinking fountains.

Fuse. (Over 600 volts, nominal.) An overcurrent protective device with a circuit opening fusible part that is heated and severed by the passage of overcurrent through it. A fuse comprises all the parts that form a unit capable of performing the prescribed functions. It may or may not be the complete device necessary to connect it into an electrical circuit.

Ground. A conducting connection, whether intentional or accidental, between an electric circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

Grounded. Connected to the earth or to some conducting body that serves in place of the earth.

Grounded, effectively. Intentionally connected to earth through a ground connection or connections of sufficiently low impedance and having sufficient current-carrying capacity to prevent the buildup of voltages that may result in undue hazards to connected equipment or to persons.

Grounded conductor. A system or circuit conductor that is intentionally grounded.

Grounding conductor. A conductor used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

Grounding conductor, equipment. The conductor used to connect the noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor, the grounding electrode conductor, or both, at the service equipment or at the source of a separately derived system.

Grounding electrode conductor. The conductor used to connect the grounding electrode to the equipment grounding conductor, to the grounded conductor, or to both, of the circuits at the service equipment or at the source of a separately derived system.

Ground-fault circuit-interrupter. A device intended for the protection of personnel that functions to deenergize a circuit or a portion of a circuit within an established period of time when a current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

Guarded. Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of approach to a point of danger or contact by persons or objects.

Health care facilities. Buildings or portions of buildings in which medical, dental, psychiatric, nursing, obstetrical, or surgical care are provided.

Note to the definition of ''health care facilities:'' Health care facilities include, but are not limited to, hospitals, nursing homes, limited care facilities, clinics, medical and dental offices, and ambulatory care centers, whether permanent or movable.

Heating equipment. For the purposes of § 1910.306(g), the term ''heating equipment'' includes any equipment used for heating purposes if heat is generated by induction or dielectric methods.

Hoistway. Any shaftway, hatchway, well hole, or other vertical opening or space that is designed for the operation of an elevator or dumbwaiter.

Identified (as applied to equipment). Approved as suitable for the specific purpose, function, use, environment, or application, where described in a particular requirement.

Note to the definition of ''identified:'' Some examples of ways to determine suitability of equipment for a specific purpose, environment, or application include investigations by a nationally recognized testing laboratory (through listing and labeling), inspection agency, or other organization recognized under the definition of ''acceptable.''

Induction heating. The heating of a nominally conductive material due to its own I^2R losses when the material is placed in a varying electromagnetic field.

Insulated. Separated from other conducting surfaces by a dielectric (including air space) offering a high resistance to the passage of current.

Insulated conductor. See Conductor, Insulated.

Interrupter switch. (Over 600 volts, nominal.) A switch capable of making, carrying, and interrupting specified currents.

Irrigation Machine. An electrically driven or controlled machine, with one or more motors, not hand portable, and used primarily to transport and distribute water for agricultural purposes.

Isolated. (As applied to location.) Not readily accessible to persons unless special means for access are used.

Isolated power system. A system comprising an isolating transformer or its equivalent, a line isolation monitor, and its ungrounded circuit conductors.

Labeled. Equipment is ''labeled'' if there is attached to it a label, symbol, or other identifying mark of a nationally recognized testing laboratory:

(1) That makes periodic inspections of the production of such equipment, and

(2) Whose labeling indicates compliance with nationally recognized standards or tests to determine safe use in a specified manner.

Lighting outlet. An outlet intended for the direct connection of a lampholder, a lighting fixture, or a pendant cord terminating in a lampholder.

Line-clearance tree trimming. The pruning, trimming, repairing, maintaining, removing, or clearing of trees or cutting of brush that is within 305 cm (10 ft) of electric supply lines and equipment.

Listed. Equipment is ''listed'' if it is of a kind mentioned in a list that:

(1) Is published by a nationally recognized laboratory that makes periodic inspection of the production of such equipment, and

(2) States that such equipment meets nationally recognized standards or has been tested and found safe for use in a specified manner.

Live parts. Energized conductive components.

Location—(1) *Damp location.* Partially protected locations under canopies, marquees, roofed open porches, and like locations, and interior

locations subject to moderate degrees of moisture, such as some basements, some barns, and some cold-storage warehouses.

(2) *Dry location.* A location not normally subject to dampness or wetness. A location classified as dry may be temporarily subject to dampness or wetness, as in the case of a building under construction.

(3) *Wet location.* Installations underground or in concrete slabs or masonry in direct contact with the earth, and locations subject to saturation with water or other liquids, such as vehicle-washing areas, and locations unprotected and exposed to weather.

Medium voltage cable (Type MV). A single or multiconductor solid dielectric insulated cable rated 2001 volts or higher.

Metal-clad cable (Type MC). A factory assembly of one or more insulated circuit conductors with or without optical fiber members enclosed in an armor of interlocking metal tape, or a smooth or corrugated metallic sheath.

Mineral-insulated metal-sheathed cable (Type MI). Type MI, mineral-insulated metal-sheathed, cable is a factory assembly of one or more conductors insulated with a highly compressed refractory mineral insulation and enclosed in a liquidtight and gastight continuous copper or alloy steel sheath.

Mobile X-ray. X-ray equipment mounted on a permanent base with wheels or casters or both for moving while completely assembled.

Motor control center. An assembly of one or more enclosed sections having a common power bus and principally containing motor control units.

Nonmetallic-sheathed cable (Types NM, NMC, and NMS). A factory assembly of two or more insulated conductors having an outer sheath of moisture resistant, flame-retardant, nonmetallic material.

Oil (filled) cutout. (Over 600 volts, nominal.) A cutout in which all or part of the fuse support and its fuse link or disconnecting blade are mounted in oil with complete immersion of the contacts and the fusible portion of the conducting element (fuse link), so that arc interruption by severing of the fuse link or by opening of the contacts will occur under oil.

Open wiring on insulators. Open wiring on insulators is an exposed wiring method using cleats, knobs, tubes, and flexible tubing for the protection and support of single insulated conductors run in or on buildings, and not concealed by the building structure.

Outlet. A point on the wiring system at which current is taken to supply utilization equipment.

Outline lighting. An arrangement of incandescent lamps or electric discharge lighting to outline or call attention to certain features, such as the shape of a building or the decoration of a window.

Overcurrent. Any current in excess of the rated current of equipment or the ampacity of a conductor. It may result from overload, short circuit, or ground fault.

Overhaul means to perform a major replacement, modification, repair, or rehabilitation similar to that involved when a new building or facility is built, a new wing is added, or an entire floor is renovated.

Overload. Operation of equipment in excess of normal, full-load rating, or of a conductor in excess of rated ampacity that, when it persists for a sufficient length of time, would cause damage or dangerous overheating. A fault, such as a short circuit or ground fault, is not an overload. (See Overcurrent.)

Panelboard. A single panel or group of panel units designed for assembly in the form of a single panel; including buses, automatic overcurrent devices, and with or without switches for the control of light, heat, or power circuits; designed to be placed in a cabinet or cutout box placed in or against a wall or partition and accessible only from the front. (See Switchboard.)

Permanently installed decorative fountains and reflection pools. Pools that are constructed in the ground, on the ground, or in a building in such a manner that the fountain or pool cannot be readily disassembled for storage, whether or not served by electrical circuits of any nature. These units are primarily constructed for their aesthetic value and are not intended for swimming or wading.

Permanently installed swimming, wading, and therapeutic pools. Pools that are constructed in the ground or partially in the ground, and all other capable of holding water in a depth greater than 1.07 m (42 in.). The definition also applies to all pools installed inside of a building, regardless of water depth, whether or not served by electric circuits of any nature.

Portable X-ray. X-ray equipment designed to be hand-carried.

Power and control tray cable (Type TC). A factory assembly of two or more insulated conductors, with or without associated bare or covered grounding conductors under a nonmetallic sheath, approved for installation in cable trays, in raceways, or where supported by a messenger wire.

Power fuse. (Over 600 volts, nominal.) See Fuse.

Power-limited tray cable (Type PLTC). A factory assembly of two or more insulated conductors under a nonmetallic jacket.

Power outlet. An enclosed assembly, which may include receptacles, circuit breakers, fuseholders, fused switches, buses, and watt-hour meter mounting means, that is intended to supply and control power to mobile homes, recreational vehicles, or boats or to serve as a means for distributing power needed to operate mobile or temporarily installed equipment.

Premises wiring. (Premises wiring system.) The interior and exterior wiring, including power, lighting, control, and signal circuit wiring together with all of their associated hardware, fittings, and wiring devices, both permanently and temporarily installed, that extends from the service point of utility conductors or source of power (such as a battery, a solar photovoltaic system, or a generator, transformer, or converter) to the outlets. Such wiring does not include wiring internal to appliances, fixtures, motors, controllers, motor control centers, and similar equipment.

Qualified person. One who has received training in and has demonstrated skills and knowledge in the construction and operation of electric equipment and installations and the hazards involved.

Note 1 to the definition of ''qualified person:'' Whether an employee is considered to be a ''qualified person'' will depend upon various circumstances in the workplace. For example, it is possible and, in fact, likely for an individual to be considered ''qualified'' with regard to certain equipment in the workplace, but ''unqualified'' as to other equipment. (See 1910.332(b)(3) for training requirements that specifically apply to qualified persons.)

Note 2 to the definition of ''qualified person:'' An employee who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform duties safely at his or her level of training and who is under the direct supervision of a qualified person is considered to be a qualified person for the performance of those duties.

Raceway. An enclosed channel of metal or nonmetallic materials designed expressly for holding wires, cables, or busbars, with additional functions as permitted in this standard. Raceways include, but are not limited to, rigid metal conduit, rigid nonmetallic conduit, intermediate metal conduit, liquidtight flexible conduit, flexible metallic tubing, flexible metal conduit, electrical metallic tubing, electrical

nonmetallic tubing, underfloor raceways, cellular concrete floor raceways, cellular metal floor raceways, surface raceways, wireways, and busways.

Readily accessible. Capable of being reached quickly for operation, renewal, or inspections, so that those needing ready access do not have to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (See Accessible.)

Receptacle. A receptacle is a contact device installed at the outlet for the connection of an attachment plug. A single receptacle is a single contact device with no other contact device on the same yoke. A multiple receptacle is two or more contact devices on the same yoke.

Receptacle outlet. An outlet where one or more receptacles are installed.

Remote-control circuit. Any electric circuit that controls any other circuit through a relay or an equivalent device.

Sealable equipment. Equipment enclosed in a case or cabinet that is provided with a means of sealing or locking so that live parts cannot be made accessible without opening the enclosure. The equipment may or may not be operable without opening the enclosure.

Separately derived system. A premises wiring system whose power is derived from a battery, a solar photovoltaic system, or from a generator, transformer, or converter windings, and that has no direct electrical connection, including a solidly connected grounded circuit conductor, to supply conductors originating in another system.

Service. The conductors and equipment for delivering electric energy from the serving utility to the wiring system of the premises served.

Service cable. Service conductors made up in the form of a cable.

Service conductors. The conductors from the service point to the service disconnecting means.

Service drop. The overhead service conductors from the last pole or other aerial support to and including the splices, if any, connecting to the service-entrance conductors at the building or other structure.

Service-entrance cable. A single conductor or multiconductor assembly provided with or without an overall covering, primarily used for services, and is of the following types:

(1) *Type SE.* Type SE, having a flame-retardant, moisture resistant covering; and

(2) *Type USE.* Type USE, identified for underground use, having a moisture-resistant covering, but not required to have a flame-retardant covering. Cabled, single-conductor, Type USE constructions recognized for underground use may have a bare copper conductor cabled with the assembly. Type USE single, parallel, or cable conductor assemblies recognized for underground use may have a bare copper concentric conductor applied. These constructions do not require an outer overall covering.

Service-entrance conductors, overhead system. The service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop.

Service entrance conductors, underground system. The service conductors between the terminals of the service equipment and the point of connection to the service lateral.

Service equipment. The necessary equipment, usually consisting of one or more circuit breakers or switches and fuses, and their accessories, connected to the load end of service conductors to a building or other structure, or an otherwise designated area, and intended to constitute the main control and cutoff of the supply.

Service point. The point of connection between the facilities of the serving utility and the premises wiring.

Shielded nonmetallic-sheathed cable (Type SNM). A factory assembly of two or more insulated conductors in an extruded core of moisture-resistant, flame-resistant nonmetallic material, covered with an overlapping spiral metal tape and wire shield and jacketed with an extruded moisture-, flame-, oil-, corrosion-, fungus-, and sunlight-resistant nonmetallic material.

Show window. Any window used or designed to be used for the display of goods or advertising material, whether it is fully or partly enclosed or entirely open at the rear and whether or not it has a platform raised higher than the street floor level.

Signaling circuit. Any electric circuit that energizes signaling equipment.

Storable swimming or wading pool. A pool that is constructed on or above the ground and is capable of holding water to a maximum depth of 1.07 m (42 in.), or a pool with nonmetallic, molded polymeric walls or inflatable fabric walls regardless of dimension.

Switchboard. A large single panel, frame, or assembly of panels on which are mounted, on the face or back, or both, switches, overcurrent and other protective devices, buses, and (usually) instruments. Switchboards are generally accessible from the rear as well as from the front and are not intended to be installed in cabinets. (See Panelboard.)

Switch—(1) *General-use switch.* A switch intended for use in general distribution and branch circuits. It is rated in amperes, and it is capable of interrupting its rated current at its rated voltage.

(2) *General-use snap switch.* A form of general-use switch constructed so that it can be installed in device boxes or on box covers, or otherwise used in conjunction with wiring systems recognized by this subpart.

(3) *Isolating switch.* A switch intended for isolating an electric circuit from the source of power. It has no interrupting rating, and it is intended to be operated only after the circuit has been opened by some other means.

(4) *Motor-circuit switch.* A switch, rated in horsepower, capable of interrupting the maximum operating overload current of a motor of the same horsepower rating as the switch at the rated voltage.

Switching devices. (Over 600 volts, nominal.) Devices designed to close and open one or more electric circuits. Included in this category are circuit breakers, cutouts, disconnecting (or isolating) switches, disconnecting means, interrupter switches, and oil (filled) cutouts.

Transportable X-ray. X-ray equipment installed in a vehicle or that may readily be disassembled for transport in a vehicle.

Utilization equipment. Equipment that utilizes electric energy for electronic, electromechanical, chemical, heating, lighting, or similar purposes.

Ventilated. Provided with a means to permit circulation of air sufficient to remove an excess of heat, fumes, or vapors.

Volatile flammable liquid. A flammable liquid having a flash point below 38 °C (100 °F), or a flammable liquid whose temperature is above its flash point, or a Class II combustible liquid having a vapor pressure not exceeding 276 kPa (40 psia) at 38 °C (100 °F) and whose temperature is above its flash point.

Voltage (of a circuit). The greatest root-mean-square (rms) (effective) difference of potential between any two conductors of the circuit concerned.

Voltage, nominal. A nominal value assigned to a circuit or system for the purpose of conveniently designating its voltage class (as 120/240 volts, 480Y/277 volts, 600 volts). The actual voltage at which a circuit operates can vary from the nominal within a range that permits satisfactory operation of equipment.

Voltage to ground. For grounded circuits, the voltage between the given conductor and that point or conductor of the circuit that is grounded; for ungrounded circuits, the greatest voltage between the given conductor and any other conductor of the circuit.

Watertight. So constructed that moisture will not enter the enclosure.

Weatherproof. So constructed or protected that exposure to the weather will not interfere with successful operation. Rainproof, raintight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

Wireways. Sheet-metal troughs with hinged or removable covers for housing and protecting electric wires and cable and in which conductors are laid in place after the wireway has been installed as a complete system.

■ 8. Appendix A to Subpart S is revised to read as follows:

Appendix A—References for Further Information

The references contained in this appendix provide nonmandatory information that can be helpful in understanding and complying with Subpart S of this Part. However, compliance with these standards is not a substitute for compliance with Subpart S of this Part.

ANSI/API RP 500–1998 (2002) *Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I Division 1 and Division 2.*

ANSI/API RP 505–1997 (2002) *Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2.*

ANSI/ASME A17.1–2004 *Safety Code for Elevators and Escalators.*

ANSI/ASME B30.2–2005 *Overhead and Gantry Cranes (Top Running Bridge, Single or Multiple Girder, Top Running Trolley Hoist).*

ANSI/ASME B30.3–2004 *Construction Tower Cranes.*

ANSI/ASME B30.4–2003 *Portal, Tower, and Pedestal Cranes.*

ANSI/ASME B30.5–2004 *Mobile And Locomotive Cranes.*

ANSI/ASME B30.6–2003 *Derricks.*

ANSI/ASME B30.7–2001 *Base Mounted Drum Hoists.*

ANSI/ASME B30.8–2004 *Floating Cranes And Floating Derricks.*

ANSI/ASME B30.11–2004 *Monorails And Underhung Cranes.*

ANSI/ASME B30.12–2001 *Handling Loads Suspended from Rotorcraft.*

ANSI/ASME B30.13–2003 *Storage/Retrieval (S/R) Machines and Associated Equipment.*

ANSI/ASME B30.16–2003 *Overhead Hoists (Underhung).*

ANSI/ASME B30.22–2005 *Articulating Boom Cranes.*

ANSI/ASSE Z244.1–2003 *Control of Hazardous Energy Lockout/Tagout and Alternative Methods.*

ANSI/ASSE Z490.1–2001 *Criteria for Accepted Practices in Safety, Health, and Environmental Training.*

ANSI/IEEE C2–2002 *National Electrical Safety Code.*

ANSI K61.1–1999 *Safety Requirements for the Storage and Handling of Anhydrous Ammonia.*

ANSI/UL 913–2003 *Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous (Classified) Locations.*

ASTM D3176–1989 (2002) *Standard Practice for Ultimate Analysis of Coal and Coke.*

ASTM D3180–1989 (2002) *Standard Practice for Calculating Coal and Coke Analyses from As-Determined to Different Bases.*

NFPA 20–2003 *Standard for the Installation of Stationary Pumps for Fire Protection.*

NFPA 30–2003 *Flammable and Combustible Liquids Code.*

NFPA 32–2004 *Standard for Drycleaning Plants.*

NFPA 33–2003 *Standard for Spray Application Using Flammable or Combustible Materials.*

NFPA 34–2003 *Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids.*

NFPA 35–2005 *Standard for the Manufacture of Organic Coatings.*

NFPA 36–2004 *Standard for Solvent Extraction Plants.*

NFPA 40–2001 *Standard for the Storage and Handling of Cellulose Nitrate Film.*

NFPA 58–2004 *Liquefied Petroleum Gas Code.*

NFPA 59–2004 *Utility LP-Gas Plant Code.*

NFPA 70–2002 *National Electrical Code. (See also NFPA 70–2005.)*

NFPA 70E–2000 *Standard for Electrical Safety Requirements for Employee Workplaces. (See also NFPA 70E–2004.)*

NFPA 77–2000 *Recommended Practice on Static Electricity.*

NFPA 80–1999 *Standard for Fire Doors and Fire Windows.*

NFPA 88A–2002 *Standard for Parking Structures.*

NFPA 91–2004 *Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids.*

NFPA 101–2006 *Life Safety Code.*

NFPA 496–2003 *Standard for Purged and Pressurized Enclosures for Electrical Equipment.*

NFPA 497–2004 *Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.*

NFPA 505–2006 *Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation.*

NFPA 820–2003 *Standard for Fire Protection in Wastewater Treatment and Collection Facilities.*

NMAB 353–1–1979 *Matrix of Combustion-Relevant Properties and Classification of Gases, Vapors, and Selected Solids.*

NMAB 353–2–1979 *Test Equipment for Use in Determining Classifications of Combustible Dusts.*

NMAB 353–3–1980 *Classification of Combustible Dust in Accordance with the National Electrical Code.*

Appendices B and C [Removed]

■ 9. Appendices B and C to Subpart S are removed.

[FR Doc. E7–1360 Filed 2–9–07; 8:45 am]

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Federal Register

Wednesday,
February 14, 2007

Part III

Department of Transportation

Federal Highway Administration
23 CFR Parts 450 and 500

Federal Transit Administration
49 CFR Part 613

Statewide Transportation Planning; Metropolitan Transportation Planning; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 500

Federal Transit Administration

49 CFR Part 613

[Docket No. FHWA–2005–22986]

RIN 2125–AF09; FTA RIN 2132–AA82

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCIES: Federal Highway Administration (FHWA); Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing the development of metropolitan transportation plans and programs for urbanized areas, State transportation plans and programs and the regulations for Congestion Management Systems. The revision results from the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005), which also incorporates changes initiated in its predecessor legislation, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998) and generally will make the regulations consistent with current statutory requirements.

EFFECTIVE DATE: March 16, 2007.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Larry D. Anderson, Planning Oversight and Stewardship Team (HEPP–10), (202) 366–2374, Mr. Robert Ritter, Planning Capacity Building Team (HEPP–20), (202) 493–2139, or Ms. Diane Liff, Office of the Chief Counsel (HCC–10), (202) 366–6203. For the FTA: Mr. Charles Goodman, Office of Planning and Environment, (202) 366–1944, Mr. Darin Allan, Office of Planning and Environment, (202) 366–6694, or Mr. Christopher VanWyk, Office of Chief Counsel, (202) 366–1733. Both agencies are located at 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m for FHWA, and 9 a.m. to 5:30 p.m. for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

Interested parties may access all comments on the NPRM received by the U.S. Department of Transportation (USDOT) online through the Docket Management System (DMS) at *http://dms.dot.gov.* The DMS Web site is available 24 hours each day, 365 days each year. Follow the instructions online. Additional assistance is available at the help section of the Web site.

An electronic copy of this final rule may be downloaded using the Office of the Federal Register's Web page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/index.html.*

Background

The regulations found at 23 CFR 450 and 500 and 49 CFR 613 outline the requirements for State Departments of Transportation (DOTs), Metropolitan Planning Organizations (MPOs) and public transportation operators to conduct a continuing, comprehensive and coordinated transportation planning and programming process in metropolitan areas and States. These regulations have not been comprehensively updated or revised since October 28, 1993. Since that time, Congress has enacted several laws that affect the requirements outlined in these regulations (e.g. such as the TEA–21 and the SAFETEA–LU). Therefore, the agencies needed to update these regulations to be consistent with current statutory requirements.

Notice of Proposed Rulemaking:

On June 9, 2006, the agencies published, in the **Federal Register**, a notice of proposed rulemaking (NPRM) proposing to revise the regulations governing the development of statewide and metropolitan transportation plans and programs and the regulations for Congestion Management Systems (71 FR 33510). The comment period remained open until September 7, 2006. During the comment period on the proposed rule, the FTA and the FHWA held six public outreach workshops and a national telecast, also available on the World Wide Web. Those meetings provided an opportunity for FTA and FHWA to provide an overview of the NPRM and offer clarification of selected provisions. Comments were not solicited at those meetings, and attendees were encouraged to submit all comments to the official docket. A summary of the issues raised at the meetings and the general response of the FTA and the FHWA presenters, along with copies of the materials presented at the meeting, is included in the docket (item Number 27).

In addition, the FHWA and the FTA responded to requests for presentations at several regularly scheduled meetings or conferences of national and regional professional, industry or advocacy organizations during the comment period of the NPRM.

Discussion of Comments

In response to the NPRM, we received over 150 documents (representing more than 1,600 comments) submitted to the docket as reflected in the summary below (and spreadsheet on file in the docket). The following discussion summarizes our response. We received diverse and even opposing comments. General comments concerning the rule are addressed initially, followed by specific responses to individual sections of the regulatory proposals.

We categorized the comments received by the type of organization that submitted the comments. The following categories are used throughout this discussion: State DOTs; MPOs, councils of government (COGs) and regional planning agencies; national and regional professional, industry or advocacy organization (which includes organizations representing State DOTs, MPOs, COGs or other agencies whose individual comments may be included in a different category), local/regional transit agency; general public; city/county (other sub-State government); State (other agency, Governor, Legislator); Federal agency and other.

State DOTs submitted almost one-quarter of the documents, which account for almost one-third of all comments. MPOs, COGs and regional planning agencies submitted slightly more than one-third of the documents, also accounting for approximately one-third of the comments. National and regional professional, industry or advocacy organizations submitted over one-quarter of the documents and approximately one-quarter of the comments. Local/regional transit agencies submitted approximately 5 percent of the documents. Other organizations or individuals submitted the remainder. Most State DOTs and some other commenters wrote in support of the comments submitted by the American Association of State Highway and Transportation Officials (AASHTO). Many MPOs and COGs and some other commenters wrote in support of the comments submitted by the Association of Metropolitan Planning Organizations (AMPO) and/or the National Association of Regional Councils (NARC). Several public transportation operators and others wrote in support of the comments submitted by the American Public Transportation Association (APTA).

The FHWA and the FTA received comments on almost all sections of the

rule. The largest number of individual comments we received were on fiscal constraint issues. Other sections with more than five percent of the overall comments included: § 450.104 (Definitions), § 450.216 (Development and content of the statewide transportation improvement program (STIP)), § 450.322 (Development and content of the metropolitan transportation plan), and § 450.324 (Development and content of the transportation improvement program).

Several national and regional advocacy organizations, a few State DOTs and MPOs, some transit agencies and others suggested changes that go beyond what is required by statute. The FHWA and the FTA have adhered closely to the statutory language in drafting the regulation. Over time, and as necessary, the FHWA and the FTA will continue to issue additional guidance and disseminate information on noteworthy practices that may address these suggestions.

In response to several comments, specific regulatory reference to a Regional Transit Security Strategy (RTSS), including its definition, was removed due to the concern for possible disclosure of security-sensitive information in the planning process. Further, an RTSS is not required universally of all metropolitan areas and States. Regulatory language in both the metropolitan and statewide transportation planning sections was revised to make broad reference to the need for coordination with ''appropriate'' transit security-related plans, programs, and decision-making processes.

One national and regional professional, industry or advocacy organization suggested the incorporation of the Real Time System Management Information Program (required by § 1201 of the SAFETEA–LU) into the statewide transportation planning process. While the FHWA and the FTA agree that current, good quality data can improve effective transportation decisions and is key to effective operation and management strategies, we recognize each State's need to determine their appropriate statewide coordinated data collection program to support their individual planning process. We encourage the States to consider including real-time data, provided by the Real Time System Management Information Program, but have not included a requirement in this rule.

The FHWA and the FTA were asked to evaluate whether the leadership posts on MPO boards were acting in an impartial manner. A few organizations expressed concern that non-metropolitan or non-elected officials who serve as board chairs may have conflicts of interest that undermine local control of transportation funding. The FHWA and the FTA will consider conducting such a study as part of their discretionary research programs. Currently, we do not have enough information on this subject for incorporation into this rule.

Several documents providing research, data, and analysis on various issues related to transportation, planning and environment were submitted to the docket. The FHWA and the FTA have reviewed these documents and considered the information in developing this rule.

The FHWA and the FTA were asked to recognize regional planning organizations/regional transportation planning organizations (RPOs/RTPOs) throughout the rule as stakeholders and interested parties in the transportation planning process in States where they are established by law. Although the rule is silent on RPOs/RTPOs, § 450.208(a)(6) highlights that statewide transportation planning needs to coordinate with related planning activities being conducted outside of metropolitan planning areas. The FHWA and the FTA recognize that the RPO/RTPO planning process and activities should be input into the statewide transportation planning process. Further, many of the RPOs/RTPOs are recognized as forms of local government, and are addressed in § 420.210 (Interested parties, public involvement and consultation).

A few commenters observed that many small MPOs have very little funding from USDOT or non-USDOT sources, have very limited staffs, and limited consultant or technical support resources of their own. The FHWA and the FTA were urged to find ways to scale the regulatory requirements to fit the size and scope of smaller MPOs. We noted this comment and have tried to provide as much flexibility in the rule as practicable. We have provided some streamlined requirements for the non-transportation management area (TMA) MPOs, such as Simplified Statement of Work and grouping of projects within the transportation improvement program (TIP). The MPO is responsible for developing a planning process that is appropriate for its communities, given the resources and technical capability of the MPO.

Several State DOTs and a national and regional advocacy organization objected to including guidance documents with the regulations as Appendices A and B. These commenters noted that by including these documents with the regulation as appendices, the guidance documents would have the force and effect of law and, as a result, would ''open up FHWA and FTA (and thus the States and MPOs) to litigation challenges based on a selective reading of short passages in these lengthy documents.'' Therefore, these commenters requested removal of the appendices. Additionally, these commenters were concerned that including these guidance documents with the regulation would make it more difficult to change these documents in response to evolving practices, as any change would require a rulemaking action.

The Office of the Federal Register, pursuant to the Federal Register Act (44 U.S.C. Chapter 15) has established criteria for publishing material in the **Federal Register** and the Code of Federal Regulations. Under these criteria, agencies may use an appendix to improve upon the quality or use of a regulation, but not to impose requirements or restrictions. Additionally, agencies may not use an appendix as a substitute for regulatory text.[1] The information the FHWA and the FTA proposed to include in appendices A and B is intended to be non-binding guidance. Therefore, we believe that State DOTs and MPOs would not be subject to increased litigation based on inclusion of these appendices.

We believe that Appendix A, Linking the Transportation Planning and NEPA Processes, provides explanatory information that amplifies the rule and does not add any additional requirements and would not be subject to many changes. Therefore, we have decided to keep Appendix A, but are adding a disclaimer to this effect in the introduction of Appendix A highlighting its non-binding status. In addition, we have made some minor changes to the text of Appendix A to ensure that it is consistent with the environmental streamlining requirements of § 6002 of the SAFETEA–LU.

As for Appendix B, Fiscal Constraint of Transportation Plans and Programs, the FHWA and the FTA agree with these commenters that modifications to this document may be more frequently required to respond to evolving practices. Therefore, the FHWA and the FTA have decided to remove Appendix

[1] Federal Register Document Drafting Handbook, October 1998 Revision. National Archives and Records Administration, Office of the Federal Register. It is available at the following URL: *http://www.archives.gov/federal-register/write/handbook/ddh.pdf.*

B from the rule. However, there are three elements within that appendix that the agencies believe should be a part of the regulatory text for clarity and completeness. These elements are: (1) Treatment of highway and transit operations and maintenance costs and revenues; (2) use of ''year of expenditure dollars'' in developing cost and revenue estimates; and (3) use of ''cost ranges/cost bands'' in the outer years of the metropolitan transportation plan. Please see the responses to the comments on Appendix B for additional background information and explanation. Consequently, we have included language in § 450.216 (Development and content of the statewide transportation improvement program (STIP)), § 450.322 (Development and content of the metropolitan transportation plan), and § 450.324 (Development and content of the transportation improvement program (TIP)) to address these issues within the regulation. The material contained in the proposed Appendix B will be made available as a guidance document on the agencies' Web sites.

Section-by-Section Discussion

The discussion in this section compares the NPRM with the final rule and discusses comments submitted on each section along with an explanation of any changes we made from the NPRM to the final rule. All references to revisions or changes are to changes in language that we originally proposed in the NPRM.

23 CFR Part 450

Subpart A—Transportation Planning and Programming Definitions

Section 450.100 Purpose

No comments were received on this section and no changes were made.

Section 450.102 Applicability

No comments were received on this section and no changes were made.

Section 450.104 Definitions

There were more than 45 documents with over 225 comments submitted on this section, with half of the documents coming from MPOs and almost one-fourth each from State DOTs and national and regional advocacy groups. Transit agencies, city/county agencies and the general public also commented on this section. Some of those that commented on this section recommended specific changes to examples or lists included in various definitions. It is important to note that the recommended lists in these definitions are intended to be advisory and not exhaustive; therefore, we did not make changes to the lists of examples.

Several definitions were revised based on comments received. These changes are described below.

Many State DOTs and MPOs as well as several national and regional advocacy organizations were concerned about the definitions of ''administrative modification'' and ''amendment.'' Commenters requested greater distinction between the two terms.

Several of those that commented on this section requested that the words ''minor revision'' be included in the definition of ''administrative modification.'' This change has been made. The examples in this definition have also been clarified, including ''minor changes to project/project phase initiation dates.'' It is important to note that while an ''administrative modification'' can change the initiation date, it cannot affect the completion date of the project as modeled in the regional emissions analysis in nonattainment or maintenance areas. A change in the project/project phase completion date in a nonattainment or maintenance area would be considered an ''amendment.'' Finally, based on comments, the term ''not significant'' was removed.

Commenters suggested that the term ''amendment'' include the words ''major change'' and use ''major'' in the examples. These changes have been made. State DOTs and MPOs should work with the FHWA and the FTA to identify thresholds for a ''major'' change in project cost. Examples of thresholds could include, but are not limited to, project cost increase that exceeds 20 percent of the total project cost; or project cost increase that exceeds a certain dollar amount, for example, the increase in costs exceeds the programmed amount by $50,000 or $100,000.

Further, some State DOTs and advocacy organizations wrote that changes in illustrative projects should not require an amendment. We agree. A sentence has been added to the definition of ''amendment'' to clarify this point. Also, most State DOTs that commented on this section noted that ''amendment'' should apply differently to long-range statewide transportation plans, since they are not subject to fiscal constraint. A sentence was added to the definition to clarify the long-range statewide transportation plan context.

After consultation with EPA, the definition of ''attainment area'' was revised to be consistent with the definition in the glossary of the Environmental Protection Agency's (EPA) Plain English Guide to the Clean Air Act.[2] We also included in this definition a clarification that a ''maintenance area'' is not considered an attainment area for transportation planning purposes.

A few commenters expressed confusion about the definitions of ''Available funds'' and ''Committed funds'' as they relate to air quality conformity. We have simplified these definitions to remove the phrase ''for projects or project phases in the first two years of a TIP and/or STIP in air quality nonattainment and maintenance areas.'' By deleting this phrase, however, we have not removed the requirement that projects in the first two years of a STIP and/or TIP in air quality nonattainment and maintenance areas be available or committed. This is still part of the definition under fiscal constraint. The requirement that these terms only apply to the first two years is already embedded in the regulation and does not need to be repeated in the definition of the terms ''Available'' and ''Committed.''

A national and regional advocacy organization and a few transit agencies suggested that ''Full funding grant agreement'' and ''Project construction grant agreement'' be added to the examples of ''Committed funds.'' This change has been made. We also received a comment that the requirement for private funds to be in writing as part of ''Committed funds'' would limit private participation in transportation projects. The FHWA and the FTA find that a written commitment is necessary to ensure that the private funds ultimately are provided and is integral to the concept of ''committed funds.'' This change was not made.

After consultation with the EPA, the definition of ''conformity'' was revised based on language from the EPA's conformity Web page[3] and in the EPA's conformity rule (40 CFR 93.100).[4]

Many MPOs wrote regarding the definition of ''congestion management process'' that the definition should reference Transportation System Management and Operations (TSMO), rather than ''management and operation'' to reinforce the principles of this emerging practice. The FHWA and the FTA do not believe this change would enhance the definition and note

[2] This document, ''Plain English Guide to the Clean Air Act'' is available via the Internet at the following URL: *http://www.epa.gov/air/oaqps/peg_caa/pegcaain.html.*

[3] EPA's conformity web page can be found at the following URL: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[4] This document is available via the Internet at the following URL: *http://www.fhwa.dot.gov/environment/conformity/rule.htm.*

that the term ''operations and management'' is taken directly from statute. No change was made.

Many national and regional advocacy organizations and MPOs and COGs that commented on this section were concerned about the different uses of the term ''consultation'' in the definitions section and in Sections 450.214 (Development and content of the long-range statewide transportation plan) and 450.322 (Development and content of the metropolitan transportation plan). The definition of consultation used in § 450.214 (Development and content of the long-range statewide transportation plan) and § 450.322 (Development and content of the metropolitan transportation plan) is consistent with the definition in the statute found at 23 U.S.C. 134(i)(4), 23 U.S.C. 135(f)(2), 49 U.S.C. 5303(i)(4), and 49 U.S.C. 5304(f)(2) and is applicable for those sections. This section presents a broad definition of ''consultation'' for use throughout the rest of the rule. We have added a note to the definition of ''consultation'' to recognize that this definition is not the one used in §§ 450.214 and 450.322.

Many national and regional advocacy organizations and several MPOs and COGs that commented on this section also asked that ''periodically'' be removed from the definition of ''consultation'' to better reflect that consideration of the other party's view and providing them with information should occur on a regular and ongoing basis, not a periodic basis. This definition is taken from the existing rule developed in an extensive rulemaking process in January 2003 on the non-metropolitan local official consultation process and agreed to by a number of stakeholders at that time (68 FR 7419). Further, the FHWA and the FTA consider ''periodically'' to mean frequently, on regular intervals. This change was not made.

Many transit agencies and State DOTs as well as several MPOs, COGs and others requested changes to the definition of ''coordinated public transit-human services transportation plan'' to reduce the degree of procedural detail. Accordingly, the definition was changed to be consistent with that used in the proposed FTA Circulars for implementing the 49 U.S.C. 5310, 5316, and 5317 programs (New Freedom Program Guidance, The Job Access And Reverse Commute (JARC) Program, Elderly Individuals And Individuals With Disabilities Program) published in the September 2006.[5] In addition, commenters proposed the addition of guidelines for preparing the coordinated public transit-human services transportation plan, including geographic scope, approval authority, and determination of lead agency. To ensure maximum flexibility for localities to tailor the coordinated public transit-human services transportation plan preparation process to their areas, we will disseminate non-regulatory guidance on optional approaches and examples of effective practice, along with training and technical assistance.

Several MPOs and COGs expressed concern about the definition of ''coordination'' because there is no resolution mechanism if agencies cannot come to agreement. The FHWA and the FTA support the development of a dispute resolution process for ''coordination'' and ''consultation.'' However, such a process is not required by statute and is, therefore, not included in this rule. This does not preclude State DOTs and/or MPOs from developing their own dispute resolution processes as part of the transportation planning process.

After further review, the FHWA and the FTA have removed the term ''exclusive'' from the list of examples in the definition of ''design concept.'' We do not want to imply that only ''exclusive busways'' can be identified as a type of project.

A proposal was offered to define the term ''designated recipient'' to clarify this term in the rule. This definition has been added to this section

Many State DOTs and some national and regional advocacy organizations that commented on the definition of ''environmental mitigation activities'' suggested deleting ''rectify or reduce'' from the definition because these terms are redundant. The FHWA and the FTA believe that the terms ''rectify'' and ''reduce'' are related more to the discussion of specific projects, not the broad planning context. We agree with this comment and have deleted these words. In addition, MPOs and COGs and a few State DOTs and others suggested simplifying the definition by removing statements of regulatory action. We agree and have deleted the last sentence of the definition which reiterated requirements in the body of the rule. Finally, we have modified the definition to be clear that strategies may not necessarily address potential project-level impacts.

Several major concerns were expressed regarding the definition for ''Financially constrained or Fiscal constraint.'' Most commenters requested that three portions of the definition be deleted: (1) The phrase ''by source,'' (2) the phrase ''each program year,'' and (3) the phrase ''while the existing system is adequately maintained and operated.'' The requirement for demonstrating fiscal constraint by year and by source is consistent with, and carries forth language in, the planning rule adopted in October 1993 (58 FR 5804). The FHWA and the FTA consider demonstrating funding by year and by source necessary for decision-makers and the public to have confidence in the STIP and TIP as financially constrained. However, in response to concerns raised, we have changed the definition related to ''by source'' to be consistent with the October 1993 planning rule. This change clarifies that fiscal constraint documentation should include committed, available, or reasonably available revenue sources.

Additionally, as a result of the extensive comments provided on Appendix B (Fiscal constraint of transportation plans and programs) we have changed the phrase ''while the existing system is adequately maintained and operated'' to ''with reasonable assurance that the federally supported transportation system is being adequately operated and maintained.'' We believe this change provides flexibility and addresses the commenters' concerns that the FHWA and the FTA were overreaching beyond the Federally supported transportation system. Please see the responses to the comments on Appendix B for additional background information and explanation. Finally, we have also clarified the definition to explicitly refer to ''the metropolitan transportation plan, TIP and STIP.''

Many State DOTs, a few national and regional advocacy organizations, and some MPOs and COGs wrote that the definition of ''financial plans'' should be changed to note that financial plans are not required for STIPs and are not required for illustrative projects. The FHWA and the FTA agree with both comments. We have added a note to the definition that financial plans are not required for STIPs. We also agree that financial plans are not required for illustrative projects. § 450.216(m) states that ''The financial plan may include, for illustrative purposes, additional projects that would be included in the

[5] These documents, ''Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute,'' and ''New Freedom Programs: Coordinated Planning Guidance for FY 2007 and Proposed Circulars'' were published September 6, 2006, and are available via the internet at the following URLs: *http://www.fta.dot.gov/publications/publications_5607.html* or *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6–14733.pdf.*

adopted STIP if reasonable additional resources beyond those identified in the financial plan were available.'' We do not believe it is necessary to add a note to the definition regarding illustrative projects.

Several State DOTs also wrote requesting that the phrase ''as well as operating and maintaining the entire transportation system'' be removed from the definition of ''financial plans.'' This change has been made

Proposals were offered to define the terms ''full funding grant agreement'' to clarify this term in the rule. This definition has been added to this section.

In response to comments regarding financial plans and fiscal constraint requirements, we have modified the definition of ''illustrative project'' to clarify that ''illustrative projects'' refer to additional transportation projects that would be included in financially constrained transportation plans and programs if ''additional resources were to become available.'' This definition also notes that illustrative projects may (but are not required to) be included in the financial plan.

Representatives of a State DOT and a national and regional advocacy organization requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process. To ensure maximum flexibility for localities to tailor programs to the needs of private service providers in their areas, we will rely upon non-regulatory guidance, training, and technical assistance for disseminating information on optional approaches to private sector participation.

The FHWA and the FTA noted that the proposed rule used an incorrect Clean Air Act reference in the definition of ''Maintenance area.'' This reference has been corrected.

After further review, the FHWA and the FTA have made slight changes to the definition of ''management systems'' to be more permissive. The phrase ''and safety'' was changed to ''or safety'' and ''includes'' was changed to ''can include.''

Some State DOTs and national and regional advocacy groups recommended removing the phrase ''in the preceding program year'' from the definition of ''obligated projects.'' The FHWA and the FTA find that the phrase ''in the preceding program year'' is important in the context of the annual listing of obligated projects (See § 450.332 (Annual listing of obligated projects)) to clarify what projects should be included in the list, since TIPs cover multiple years. Therefore, this change was not made. However, we did change the definition to emphasize that funds need to be ''authorized by the FHWA or awarded as a grant by the FTA.''

Several State DOTs, MPOs and COGs and some national and regional advocacy organizations and transit agencies expressed confusion over the terms ''management and operations'' and ''operations and management'' as related to the term they propose be included in the rule, ''Transportation System Management and Operations (TSMO).'' The SAFETEA–LU defined ''Operational and Management Strategies'' and its relationship to metropolitan long-range transportation plans. (*Operational and management strategies* means actions and strategies aimed at improving the performance of existing and planned transportation facilities to relieve vehicular congestion and maximizing the safety and mobility of people and goods (23 U.S.C. 134(i)(2)(D) and 49 U.S.C. 5303(i)(2)(D)). This definition is included in the rule with one change. We have removed the modifier ''vehicular'' to emphasize that operational and management strategies should be considered for all modes. The FHWA and the FTA find this term, for practical purposes, to be the same as the term Transportation System Management and Operations currently commonly in use by agencies involved with transportation. We have chosen to continue using the term ''operational and management strategies'' as that is the term used in SAFETEA–LU.

Several State DOTs, MPOs and COGs and some national and regional advocacy organizations and transit agencies also asked for clarification of the term ''operations and maintenance.'' The terms ''operations'' and ''maintenance'' are used in these regulations as defined in 23 U.S.C. 101. Therefore, we have not repeated the definitions here.

A proposal was offered to define the term ''project construction grant agreement'' to clarify this term in the rule. This definition has been added to this section.

After further review, we have determined it is necessary to clarify the definition of ''project selection'' to emphasize these are procedures used by MPOs, States, and public transportation operators.

Based on comments, we have changed the term ''business'' in the definition of ''provider of freight transportation services'' to ''entity.'' Freight transportation providers may include other concerns besides businesses.

A proposal was offered to define the term ''public transportation operator'' to clarify this term in the rule. This definition has been added to this section.

Several State DOTs and MPOs and COGs as well as some transit agencies and national and regional advocacy organizations noted that the definition of ''regionally significant project'' should not include a reference to ''all capacity expanding projects.'' After consultation with the EPA, the FHWA and the FTA have changed this definition to be consistent with the EPA's transportation conformity rule (40 CFR 93.101).

Several of the State DOTs, many transit agencies, and a few of the national advocacy organizations and MPOs and COGs commented that the word ''overarching'' in the definition of ''Regional Transit Security Strategies'' was ambiguous. Other MPOs and COGs, transit agencies and national and regional advocacy organizations wrote that the definition was overly specific without defining who would be held responsible to develop the strategy and also expressed concern about possible disclosure of security-sensitive information in the planning process. Subsequent to publication of the NPRM, the FHWA and the FTA determined that the Department of Homeland Security does not require Regional Transit Security Strategies in all metropolitan areas, at all times. As a result, this term has been removed from this section and references to the term in § 450.208(h), § 450.214(e), and § 450.306(g) also have been removed from the rule. Alternatively, this language has been replaced, in these sections, with a reference to ''other transit safety and security planning and review processes, plans, and programs, as appropriate.''

The docket included several comments regarding the definitions for ''revision,'' ''amendment,'' ''administrative modification,'' and ''update.'' The definition of ''revision'' has been revised to use the terms ''major'' and ''minor'' rather than ''significant'' and ''non-significant,'' consistent with the comments received and changes to the related terms.

A State DOT commented on the definition of ''State implementation plan (SIP).'' After consultation with EPA, this definition was revised to cite applicable sections of the Clear Air Act and to be consistent with the definition in the Clean Air Act and EPA's conformity rule (40 CFR 93.101) for ''applicable implementation plan.''

The docket included a comment requesting clarification of the term ''staged'' in the definition for

''Statewide transportation improvement program (STIP).'' We have clarified this definition to describe the STIP as a ''prioritized listing/program'' and to reiterate that it must cover a period of four years. Similar changes were made to the definition of ''Transportation improvement program (TIP).''

Some State DOTs and a national and regional advocacy organization suggested that the reference to ''in order to meet the regular schedule as prescribed by Federal statute'' be removed from the definition of ''Update.'' A few MPOs and COGs questioned what would constitute an ''update'' and what was meant by ''complete change.'' We agree with these concerns, have removed these phrases and revised and simplified this definition to ''Update means making current a long-range statewide transportation plan, metropolitan transportation plan, TIP, or STIP through a comprehensive review.'' Based on comments, we note in this definition that an ''update'' requires a 20-year horizon year for metropolitan transportation plans and long-range statewide transportation plans and a four-year program period for TIPs and STIPs.

Several MPOs and other organizations asked for clarification of the term ''visualization.'' The FHWA and the FTA have changed ''employed'' to ''used'' in the ''Visualization techniques'' definition. Further, we agree that there is a need for more technical information on the use of visualization techniques and we intend to provide technical reports and guidance subsequent to the publication of this rule.

Proposals were offered to define the terms ''advanced construction,'' ''encouraged to,'' ''intercity bus,'' ''interested parties,'' ''MPO staff,'' ''public transportation provider,'' ''reasonable access,'' ''shall,'' and ''should.'' The FHWA and the FTA believe these terms are generally well understood and do not require additional detail.

Subpart B—Statewide Transportation Planning and Programming

Section 450.200 Purpose

No comments were received on this section and no changes were made.

Section 450.202 Applicability

No comments were received on this section and no changes were made.

Section 450.204 Definitions

No comments were received on this section and no changes were made.

Section 450.206 Scope of the Statewide Transportation Planning Process

There were more than 20 separate comments on this section with the most coming from State DOTs, followed by national and regional advocacy organizations. A small number of comments came from MPOs and COGs and providers of public transportation.

In comments on this section and § 450.306 (Scope of the metropolitan transportation planning process), many MPOs and COGs, some national and regional advocacy organizations and a few State DOTs noted that paragraph (a)(3) embellished the statutory language for the ''security'' planning factor. Organizations that commented on this issue were concerned that the expanded language would require State DOTs and MPOs to go far beyond their traditional responsibilities in planning and developing transportation projects, which was not intended by the SAFETEA-LU. The FHWA and the FTA agree and have revised the language in paragraph (a)(3) to match the language in statute.

Most of the State DOTs and several of the national and regional advocacy organizations that commented on this section said that the text in paragraph (b) should be revised similar to the text in the October 1993 planning rule acknowledging that the degree of consideration will reflect the scale and complexity of issues within the State. The FHWA and the FTA agree with these comments and have revised the rule accordingly. We have adopted the October 1993 planning rule language with one change. The phrase ''transportation problems'' was changed to ''transportation systems development.''

After further review, we have clarified paragraph (c) to be more specific and to mirror the language in 23 U.S.C. 135(d)(2) and 49 U.S.C. 5304(d)(2). The paragraph now specifically refers to ''any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7'' and to the ''statewide transportation'' planning process finding.

A small number of national and regional advocacy organizations and State DOTs that commented on this section said they would like the FHWA and the FTA to develop and/or encourage the use of performance measures when State DOTs consider the planning factors listed in this section. While the FHWA and the FTA encourage the use of performance measures, the flexibility afforded the State DOTs and MPOs in implementing the transportation planning process gives them wide latitude to develop a process that is appropriate for their jurisdiction. We believe this issue is best addressed in guidance and technical assistance.

Section 450.208 Coordination of Planning Process Activities

There were almost 100 separate comments on this section mostly from State DOTs, followed by national and regional advocacy organizations. A number of comments came from MPOs and COGs with a small number from public transportation providers or Federal agencies.

In some of the comments from national and regional advocacy organizations, MPOs and COGs, and others, the FHWA and the FTA were asked to expand the scope of the transportation planning process to include a variety of other issues and concerns. In response to these comments, we have added ''at a minimum'' to paragraph (a) to emphasize the flexibility for State DOTs to include more in their statewide transportation planning process than is listed in this section.

Several MPOs and COGs that had comments on this section suggested clarification of paragraph (a)(1) regarding the State's use of information and studies provided by MPOs. The text from this paragraph in part carries forward but simplifies text from 23 CFR 450.210 of the October 1993 planning rule. The FHWA and the FTA find that the language provides reasonable flexibility to respond to different circumstances while reinforcing the importance of information and technical studies as a foundation in transportation planning. No changes were made to this paragraph.

Many of the State DOTs that commented on this section indicated that coordination referenced in paragraph (a)(2) should not extend to private businesses. At the same time, many of the MPOs, COGs and national and regional advocacy organizations, as well as a public transportation provider that commented on this section wrote in support of the section and some requested that ''consult'' replace ''coordinate.''

The requirements in this paragraph come from the statutory language; therefore, no change was made. The FHWA and the FTA want to provide State DOTs flexibility to determine how to coordinate with statewide trade and economic planning activities and the level or coordination that needs to take place within the planning process. The

FHWA has made available information related to Public-Private Partnership opportunities, including analyses of contractual agreements formed between public agencies and private sector entities, on its Web site at: *http://www.fhwa.dot.gov/ppp/*. If necessary, we will provide guidance subsequent to the rule if more clarity is needed regarding this coordination.

Many of the State DOTs that commented on this section said that coordination in paragraph (a)(3) exceeds the requirement in the statute. At the same time, several of the national and regional advocacy organizations and a Federal agency commented in support of the language in the proposed rule. The FHWA and the FTA find that the proposed language does exceed the intent of the statute, and have revised the rule to more closely reflect the statutory language, by changing ''coordinate planning'' to ''consider the concerns of.''

Many of the State DOTs that commented on this section suggested placing the word ''affected'' before ''local elected officials'' in paragraph (a)(4). At the same time, some of the MPOs and COGs and national and regional advocacy organizations that provided comments on this section suggested changing ''consider'' to ''consult,'' which is used in § 450.210 (Interested parties, public involvement, and consultation). The text follows the statutory language. The FHWA and the FTA considered both groups of comments and determined that using the statutory language for this paragraph without amplification best meets the intent of the statute.

Many of the State DOTs that commented on this section said that the text in paragraph (a)(6) should follow the statutory language (23 U.S.C. 135(e)(1)(3) and 49 U.S.C. 5304(e)(1)(3)). The FHWA and the FTA agree and revised the rule accordingly.

Several of the State DOTs that commented on this section objected to the phrase ''establish a forum'' in paragraph (a)(7), while a smaller number supported the text. The FHWA and the FTA want to emphasize the importance of information and technical studies as a foundation in transportation planning. While there is no statutory basis to require ''establish[ing] a forum,'' this paragraph has been revised to more closely reflect the intent from § 450.210(a)(1) and (a)(3) of the October 1993 rule regarding coordination of data collection and analyses with MPOs and public transportation operators.

After further review, the FHWA and the FTA have modified the last sentence of paragraph (c) to be consistent with 23 U.S.C. 135(c)(2) and 49 U.S.C. 5304(c)(2) regarding multistate agreements and compacts.

Many of the State DOTs and a few of the national and regional advocacy organizations that provided comments on this section said the text in paragraphs (e) and (f) went beyond statutory requirements. The FHWA and the FTA agree with these comments and revised the rule accordingly by changing ''are encouraged to'' to ''may'' in paragraph (e) and adding ''to the maximum extent practicable'' to paragraph (f).

Most transit agencies, several State DOTs, MPOs, COGs, and others that commented on this section expressed concern or confusion about the requirement in paragraph (g) for the statewide transportation planning process to be consistent with the development of coordinated public transit-human services transportation plans. Several commenters requested the addition of procedural detail on the coordinated public transit-human services transportation plan, including geographic scope, approval authority, and determination of lead agency. Some commenters recommended removing the requirement entirely. We also received a comment questioning whether metropolitan and statewide transportation planning processes should be consistent with the coordinated public transit-human services transportation plan, or vice versa.

To ensure maximum flexibility for localities to undertake a coordinated planning process that may be uniquely tailored to their area, we have not included additional detailed requirements in the rule. The FHWA and the FTA will disseminate non-regulatory guidance, complemented by a wide array of effective practice case studies and supported by training and technical assistance, on the coordinated public transit-human services transportation plan. The definition of the coordinated public transit-human services transportation plan was changed to be consistent with that used in the proposed FTA Circulars for implementing the 49 U.S.C. 5310, 5316, and 5317 programs (New Freedom Program Guidance And Application Instructions, The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions, Elderly Individuals And Individuals With Disabilities Program Guidance And Application Instructions) respectively, published on September 6, 2006.[6] Additionally, provisions for promoting consistency between the planning processes were revised to clarify that the coordinated public transit-human services transportation plan should be prepared in full coordination and be consistent with the metropolitan transportation planning process. The revisions also are intended to add flexibility in how the coordinated transportation plans would be prepared.

Many of the State DOTs, several transit agencies, and a few of the national and regional advocacy organizations that provided comments on this section, said the text in paragraph (h) went beyond statutory requirements. Several transit agencies and a few State DOTs and others suggested deleting paragraph (h) due to the confidential nature of Regional Transit Security Strategies (RTSS). An RTSS is not required of all metropolitan areas and States across the U.S. Reference to the RTSS was removed from paragraph (h). Instead, we have added a reference to ''other transit safety and security planning and review processes, plans, and programs, as appropriate.''

Section 450.210 Interested Parties, Public Involvement, and Consultation

The docket included 33 documents that contained about 60 comments on this section, with many from State DOTs, national and regional advocacy organizations and MPOs and COGs.

Many of the State DOTs and some of the national and regional advocacy organizations said that State DOTs should not be required to document the public involvement process. The FHWA and the FTA find that an essential element of an effective public involvement process is the opportunity for the public to understand when, how, and where public comment can occur. It is important to open, effective public involvement that the process be documented and available for public review. Therefore, we have retained the requirement for a documented public involvement process.

Some of the MPOs and some of the national and regional advocacy organizations said they would like to expand the list of interested parties in paragraph (a)(1)(i). Representatives of private bus operators requested specific mention in the regulation.

[6] These documents, ''Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute,'' and ''New Freedom Programs: Coordinated Planning Guidance for FY 2007 and Proposed Circulars'' were published September 6, 2006, and are available via the internet at the following URL: *http://www.fta.dot.gov/publications/publications_5607.html.*

The list of interested parties in the regulation is consistent with 23 U.S.C. 135(f)(3)(A) and 49 U.S.C. 5304(f)(3)(A), as amended by the SAFETEA-LU, and is sufficiently broad to encompass and have relevance to all of the suggested additional parties. The list illustrates groups that typically have an interest in statewide transportation planning, but does not preclude States from providing information about transportation planning to other types of individuals or organizations. The FHWA and the FTA note that 49 U.S.C. 5307(c) requires grant recipients to make available to the public information on the proposed program of projects and associated funding.

Specifically in regard to MPOs, States shall coordinate with MPOs under § 450.208 (Coordination of planning process activities). Therefore, a reference to MPOs here would be redundant and potentially confusing since this section does not require coordination with interested parties. No change was made to add MPOs to this paragraph.

Many of the State DOTs and some of the national and regional advocacy organizations also said that State DOTs should not be required to document the non-metropolitan local official consultation process. The rule does not change the regulations published in the **Federal Register** on January 23 (68 FR 3176) and February 14, 2003 (68 FR 7418) regarding consultation with non-metropolitan local officials. Those regulations were developed based on significant review and comment by State DOTs and non-metropolitan local officials and their representatives. At that time most State DOTs and national and regional advocacy organizations supported the regulations. Therefore, the only change we have made to paragraph (b) is to change ''revisions'' to ''changes,'' since ''revision'' is now specifically defined in the rule and, by that definition, is not an appropriate term for this paragraph.

Some of the State DOTs and some national and regional advocacy organizations said that the text encouraging State DOTs to document their process for consulting with Indian Tribal Governments should be eliminated. The commenters believe that documenting this consultation process goes beyond requirements in statute. We disagree. The FHWA and the FTA support efforts to consult with Indian Tribal governments and find that documentation of consultation processes are essential to a party's ability to understand when, how, and where the party can be involved. Upon further consideration, to strengthen the involvement of Indian Tribal governments in the statewide transportation planning process, we have changed paragraph (c) from ''States are encouraged to'' to ''States shall, to the extent practicable.''

Section 450.212 Transportation Planning Studies and Project Development

Section 1308 of the TEA–21 required the Secretary to eliminate the major investment study (MIS) set forth in § 450.318 of title 23, Code of Federal Regulations, as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the analysis required to be undertaken pursuant to the planning provisions of title 23 U.S.C. and title 49 U.S.C. Chapter 53 and the National Environmental Policy Act of 1969 (NEPA) for Federal-aid highway and transit projects. The purpose of this section and § 450.318 (Transportation planning studies and project development) is to implement this requirement of Section 1308 of the TEA–21 and eliminate the MIS as a stand-alone requirement. A phrase has been added to paragraph (a) to clarify the purpose of this section.

The docket included more than 20 documents that contained more than 50 comments on this section with about two-thirds from State DOTs and the rest from MPOs or COGs, and national and regional advocacy organizations. The comments on this section were similar to, and often referenced, the comments on § 450.318 (Transportation planning studies and project development).

Most of the comments received supported the concept of linking planning and NEPA but opposed including Appendix A in the rule. The purpose of an Appendix to a regulation is to improve the quality or use of a rule, without imposing new requirements or restrictions. Appendices provide supplemental, background or explanatory information that illustrates or amplifies a rule. Because Appendix A provides amplifying information about how State DOTs, MPOs and public transportation operators can choose to conduct transportation planning-level choices and analyses so they may be adopted or incorporated into the process required by NEPA, but does not impose new requirements, the FHWA and the FTA find that Appendix A is useful information to be included in support of this and other sections of the rule. A phrase has been added to paragraph (c) to clarify this point. Additionally, we have added disclaimer language at the introduction of Appendix A.

The FHWA and the FTA recognize commenters' concerns about Appendix A, including the recommendation that this information be kept as guidance rather than be made a part of the rule. First, information in an Appendix to a regulation does not carry regulatory authority in itself, but rather serves as guidance to further explain the regulation. Secondly, as stated above, Section 1308 of TEA–21 required the Secretary to eliminate the MIS as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the transportation planning process. Appendix A fulfills that Congressional direction by providing explanatory information regarding how the MIS requirement can be integrated into the transportation planning process. Inclusion of this explanatory information as an Appendix to the regulation will make the information more readily available to users of the regulation, and will provide notice to all interested persons of the agencies' official guidance on MIS integration with the planning process. Attachment of Appendix A to this rule will provide convenient reference for State DOTs, MPOs and public transportation operator(s) who choose to incorporate planning results and decisions in the NEPA process. It will also make the information readily available to the public. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of Appendix A in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects. For the reasons stated above, after careful consideration of all comments, the FHWA and the FTA have decided to attach Appendix A to the final rule as proposed in the NPRM.

Most State DOTs and several MPOs and COGs, and national and regional advocacy organizations that commented on this section were concerned that the language in paragraph (a) is too restrictive. The FHWA and the FTA agree that planning studies need not ''meet the requirements of NEPA'' to be incorporated into NEPA documents. Instead, we have changed the language in paragraph (a) to ''consistent with'' NEPA. In addition, we have added the phrase ''multimodal, systems-level'' before ''corridor or subarea'' to emphasize the ''planning'' venue for environmental consideration.

Commenters on this section also requested that the rule clarify that the State DOT has the responsibility for conducting corridor or subarea studies in the statewide transportation planning

process. The FHWA and the FTA recognize that the State DOT is responsible for the statewide transportation planning process. However, we do not want to preclude MPOs or public transportation operators, in consultation or jointly with the State DOT, from conducting corridor or subarea studies. Therefore, we have changed paragraph (a) to add the sentence ''To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the State(s), MPO(s), and/or public transportation operator(s).''

Some State DOTs suggested incorporating planning decisions rather than documents into the NEPA process. The FHWA and the FTA find that decisions made as part of the planning studies may be used as part of the overall project development process and have changed paragraph (a) to include the word ''decisions'' as well as ''results.'' It is important to note, however, that a decision made during the transportation planning process should be presented in a documented study or other source materials to be included in the project development process. Documented studies or other source materials may be incorporated directly or by reference into NEPA documents, as noted in § 450.212(b). We have added ''or other source material'' to paragraph (b) to recognize source materials other than planning studies may be used as part of the overall project development process.

It is important to note that this section does not require NEPA-level evaluation in the transportation planning process. Planning studies need to be of sufficient disclosure and embrace the principles of NEPA so as to provide a strong foundation for the inclusion of planning decisions in the NEPA process. The FHWA and the FTA also reiterate the voluntary nature of this section and the amplifying information in Appendix A. States, transit operators and/or MPOs may choose to undertake studies which may be used in the NEPA process, but are not required to do so.

Several State DOTs and national and regional advocacy organizations were concerned about the identification and discussion of environmental mitigation. They did not believe that detail on environmental mitigation activities was appropriate in the transportation planning process. The FHWA and the FTA agree. Paragraph (a)(5) calls for ''preliminary identification of environmental impacts and environmental mitigation.'' The FHWA and the FTA believe that the term ''preliminary'' adequately indicates that State DOTs are not expected to provide the same level of detail on impacts and mitigation as would be expected during the NEPA process.

Based on comments on Appendix A, we added the phrase ''directly or'' in paragraph (b), to indicate the use of publicly available planning documents for subsequent NEPA documents.

Also based on comments on Appendix A, we added the phrase ''systems-level'' in paragraph (b)(2), to emphasize that these corridor or subarea studies are conducted during the planning process at a broader scale than project specific studies under NEPA.

Several State DOTs and many others who submitted comments on this section noted that the word ''continual'' in paragraph (b)(2)(iii) provides the public with more opportunity to comment than is necessary. We agree and have replaced ''continual'' with ''reasonable'' in this paragraph, consistent with the terminology in § 450.316(a) (Interested parties, participation and consultation). Also in paragraph (b)(2)(iii) a number of commenters noted that the paragraph references the metropolitan transportation planning process when it should reference the statewide transportation planning process. This change has been made.

Several State DOTs and a national and regional advocacy organization suggested adding a ''savings clause'' in a new paragraph. A savings clause would lessen the likelihood that the new provisions regarding corridor or subarea studies would have unintended consequences. The specific elements requested to be included in the ''savings clause'' were statements that: (a) The corridor and subarea studies are voluntary; (b) corridor and subarea studies can be incorporated into the NEPA process even if they are not specifically mentioned in the long-range statewide transportation plan; (c) corridor and subarea studies are not the sole means for linking planning and NEPA; and (d) reiterate the statutory prohibition on applying NEPA requirements to the transportation planning process. The concepts recommended in the ''savings clause'' all reiterate provisions found elsewhere in the rule or statute. The FHWA and the FTA do not agree that it is necessary to repeat those provisions in this section.

The docket included a comment that corridor or subarea studies should be required, not voluntary, to be included in NEPA studies. Given the opposition to requiring NEPA-level analysis in the transportation planning process, the FHWA and the FTA find that the permissive nature of this section and Appendix A strikes the appropriate balance.

The docket also included a question asking what needs to be included in an agreement with the NEPA lead agencies to accomplish this integration. The FHWA and the FTA have determined that identification of what information appropriately belongs in the agreement should be disseminated as non-regulatory guidance, complemented by a wide array of effective practice case studies and supported by training and technical assistance. No change was made to the rule. We have not required that corridor or subarea studies be included or incorporated into NEPA studies.

Section 450.214 Development and Content of the Long-Range Statewide Transportation Plan

The docket included approximately 50 documents that contained about 50 comments on this section with about one-third from State DOTs, one-half from national and regional advocacy organizations, and the rest from MPOs and COGs, city/county/State agencies, general public and transit agencies.

Many comments were received regarding the comparison of transportation plans with conservation plans. According to statute (23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D)), for long-range statewide transportation plans, comparison must be made to both conservation plans and inventories of natural/historic resources; whereas language relating to metropolitan transportation plans (23 U.S.C. 134(i)(4)(B) and 49 U.S.C. 5303(i)(4)(B)) requires comparison to State conservation plans/maps or comparison to inventories of natural or historic resources. The rule language is consistent with what is in statute. Therefore, no changes were made to the rule language.

A few comments were received pertaining to the lack of a required financial plan for the long-range statewide transportation plan. Most of the MPOs and COGs and several of the national and regional advocacy organizations were in favor of adding this requirement. One State DOT voiced opinion that this should remain an option, but not be mandated.

The FHWA and the FTA agree that the long-range statewide transportation plan may include a financial plan. This optional financial plan is different from the fiscal constraint requirement for the STIP. This financial plan is a broad look at the future revenue forecast and strategies needed to fund future projects over a 20-year horizon. However, the

SAFETEA-LU made it clear that the financial plan should not be required for a long-range statewide transportation plan. Therefore, no change was made to the rule.

A few comments were received stating that the 20-year horizon for the long-range statewide transportation plan should only be required as of the effective date of the plan adoption, which would be similar to language used for the effective date of the metropolitan transportation plan. The FWHA and the FTA agree with this comment and have added ''at the time of adoption'' to paragraph (a).

DOT Congestion Initiative: On May 16, 2006, the U.S. Secretary of Transportation announced a national initiative to address congestion related to highway, freight and aviation. The intent of the ''National Strategy to Reduce Congestion on America's Transportation Network'' [7] is to provide a blueprint for Federal, State and local officials to tackle congestion. The States and MPO(s) are encouraged to seek Urban Partnership Agreements with a handful of communities willing to demonstrate new congestion relief strategies and encourages States to pass legislation giving the private sector a broader opportunity to invest in transportation. It calls for more widespread deployment of new operational technologies and practices that end traffic tie ups, designates new interstate ''corridors of the future,'' targets port and border congestion, and expands aviation capacity.

U.S. DOT encourages the State DOTs and MPOs to consider and implement strategies, specifically related to highway and transit operations and expansion, freight, transportation pricing, other vehicle-based charges techniques, etc. The mechanism that the State DOTs and MPOs employ to explore these strategies is within their discretion. The U.S. DOT will focus its resources, funding, staff and technology to cut traffic jams and relieve freight bottlenecks.

To encourage States to address congestion in the long-range statewide transportation plan, the following sentence was added to paragraph (b): ''The long-range statewide transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the State's transportation system.''

[7] This document, ''An Overview of the National Strategy to Reduce Congestion on America's Transportation Network'' dated May, 2006, is available via the internet at the following URL: *http://www.fightgridlocknow.gov.*

Several comments were received stating that the security requirements of paragraph (e) go beyond what was intended in the SAFETEA-LU. Based on these comments, the concern for possible disclosure of security-sensitive information in the planning process and the determination that a Regional Transit Security Study is not required universally of all metropolitan areas and States, this reference has been removed from the rule and instead we have added a reference to ''other transit safety and security planning and review processes, plans, and programs, as appropriate.'' Several commenters also were concerned about the distinction between ''homeland'' and ''personal'' security in the planning factors found at § 450.206 (Scope of the statewide transportation planning process). This distinction has been removed from § 450.206 (Scope of the statewide transportation planning process) and § 450.306 (Scope of the metropolitan transportation planning process).

Some State DOTs and a few advocacy organizations commented that ''types of'' should be added to the discussion of potential environmental mitigation activities requirement in paragraph (j) to emphasize the policy or strategic nature of these discussions. The rule language is consistent with statute (23 U.S.C. 135(f)(4) and 49 U.S.C. 5304(f)(4)), therefore this change was not made. However, we have added a sentence to this paragraph recognizing that long-range statewide transportation plans may focus on ''policies, programs, or strategies, rather than at the project level.'' The last sentence of this paragraph was also deleted because Appendix A does not provide additional information relevant to the subject of this paragraph.

In paragraph (l), in response to comments from State DOTs, national and regional advocacy organizations and several others, we have added the phrase ''but is not required to.'' The purpose of this addition is to reinforce that the financial plan is not required to include illustrative projects. We also corrected the language in the last sentence: ''were available'' was changed to ''were to become available.''

Several State DOTs and a few national and regional advocacy organizations requested in regard to paragraph (p) that long-range statewide transportation plans be provided to the FHWA and the FTA only when ''amended'' not ''revised.'' We agree and have made this change.

Section 450.216 Development and Content of the Statewide Transportation Improvement Program (STIP)

The FHWA and the FTA received over 100 separate comments on this section with the most from State DOTs followed by national and regional advocacy organizations. MPOs and COGs, local governments and public transportation providers also provided comments on this section.

Several State DOTs and national and regional advocacy organizations and a few MPOs and COGs said in regards to paragraph (a) that State DOTs should be allowed to have a statewide transportation improvement program (STIP) of more than four years where the additional year(s) are not illustrative.

The four-year scope is consistent with the time period required by the SAFETEA-LU. While State DOTs are not prohibited from developing STIPs covering a longer time period, in accordance with statute, the FHWA and the FTA can only recognize and take subsequent action on projects included in the first four years of the STIP. State DOTs may show projects as illustrative after the first four years, as well as in the long-range statewide transportation plan. Therefore, no change was made to this section of the rule.

After consultation with EPA and in response to comments from a few national and regional advocacy organizations, the language in paragraph (b) has been changed to clarify that projects in the ''donut areas'' of a nonattainment or maintenance area must be included in the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP. The transportation conformity rule (40 CFR part 93) covers the requirements for including projects in the ''donut area'' in the regional emissions analysis.

A public transportation provider said in regard to paragraph (g) that security projects should be added to the list of projects exempted from listing in the STIP. Because security projects are often funded with title 49 U.S.C. Chapter 53 or title 23 U.S.C. funds, they must be included in the STIP. No change was made to this paragraph.

However, after further review, the FHWA and the FTA have determined it is appropriate to remove the phrase ''federally supported'' from the beginning of paragraph (g) because it is redundant. The paragraph already requires projects to be included if they are funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53. We have also changed paragraph (g) to allow the

inclusion of the exempted projects, but do not require that they be included. Further, we have added ''Safety projects funded under 23 U.S.C. 402'' to paragraph (g)(1) to be consistent with the October 1993 planning rule.

When proposing Appendix B to the rule, the FHWA and the FTA intended to raise the level of awareness and importance in developing fiscally constrained transportation plans, TIPs, and STIPs to States, MPOs, and public transportation operators. Since its introduction under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240), fiscal constraint has remained a prominent aspect of transportation plan and program development, carrying through to the TEA–21 and now to the SAFETEA–LU. The FHWA and the FTA acknowledge that Appendix B contains a combination of guidance, amplifying information and additional criteria. Given the level of controversy regarding Appendix B, it has been removed from the rule. Therefore, the sentence referencing Appendix B in paragraph (l) has been deleted.

Many State DOTs and several national and regional advocacy organizations commented in regard to paragraph (h), that they should not have to demonstrate financial constraint for projects included in the STIP funded with non-FHWA and non-FTA funds. However, this requirement is consistent with and carries forward the requirement that was implemented with the October 1993 planning rule. In addition, for informational purposes and air quality analysis in nonattainment and maintenance areas, regionally significant non-Federal projects shall be included in the STIP. Therefore, the FHWA and the FTA have retained this portion of paragraph (h). We have, however, simplified the paragraph slightly to combine the last two sentences.

Most State DOTs and national and regional advocacy organizations that commented on this section, recommended in regards to paragraph (i) that after the first year of the STIP, only the ''likely'' or ''possible'' (rather than ''proposed'') categories of funds should be identified by source and year. The FHWA and the FTA agree with this suggestion, with the exception of projects in nonattainment and maintenance areas for which funding in the first two years must be available or committed. Paragraph (i)(3) has been changed to specifically reference the amount of ''Federal funds'' proposed to be obligated and to identify separate standards for the first year and for the subsequent years of the STIP.

One of the features of Appendix B that the FHWA and the FTA find merits inclusion in the rule is ''year of expenditure dollars.'' The following has been added to paragraph (l): ''Revenue and cost estimates for the STIP must use an inflation rate(s) to reflect 'year of expenditure dollars,' based on reasonable financial principles and information, developed cooperatively by the State, MPOs, and public transportation operators.'' This language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in ''year of expenditure dollars.'' We recognize that it might take some time for State DOTs and MPOs to convert their metropolitan transportation plans, STIPs and TIPs to reflect this requirement. Therefore, we will allow a grace period until December 11, 2007, during which time State DOTs and MPOs may reflect revenue and cost estimates in ''constant dollars.'' After December 11, 2007, revenues and cost estimates must use ''year of expenditure'' dollars. This requirement is consistent with the January 27, 2006, document ''Interim FHWA Major Project Guidance.''[8] Please see the responses to the comments on Appendix B to the NPRM for additional background information and explanation. In addition, to reinforce that the financial plan is not required to include illustrative projects, we have added the phrase ''but is not required to'' to this paragraph. Finally, we have deleted the reference to Appendix B in this paragraph because Appendix B is not included as part of this rule.

Regarding paragraph (m), many State DOTs, national and regional advocacy organizations and a few MPOs and COGs questioned having to demonstrate their ability to adequately operate and maintain the entire transportation system. The FHWA and the FTA have revised paragraph (m) to delete the phrase ''while the entire transportation system is being adequately operated and maintained.'' Instead, we have added ''while federally-supported facilities are being adequately operated and maintained.'' Further, as discussed in the response to the comments on Appendix B, we have added to this paragraph: ''For purposes of transportation operations and maintenance, the STIP shall include financial information containing system-level estimates of costs and revenue sources reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).''

Many State DOTs and several national and regional advocacy organizations said regarding paragraph (m) that State DOTs should not have to demonstrate financial constraint in the STIP by year or by source of funding. Based on nearly 13 years of implementing this requirement, the FHWA and the FTA consider demonstrating funding by year necessary for decision-makers and the public to have confidence in the STIP as financially constrained. This change was not made. The specific reference to ''by source'' has been removed. However, the requirement for State DOTs to identify strategies for ensuring the availability of any proposed funding sources is retained. Please see the responses to the comments on Appendix B for additional background information and explanation as to why we have included this language in § 450.216.

After further review, the FHWA and the FTA determined that paragraph (n) is redundant. The same information is included in paragraph (b). Therefore, paragraph (n) was removed.

One State DOT and one local agency said that the regulation should include language emphasizing and expanding bicycle and pedestrian program guidance. The FHWA and the FTA find that the language in the guidance documents issued by the FHWA and the FTA on February 6, 2006,[9] is sufficient to address bicycle and pedestrian needs without being raised to the level of regulatory language.

Many State DOTs and national and regional advocacy organizations that provided comments on this section said in regards to paragraph (o) (now paragraph (n)), that all changes that affect fiscal constraint should not require an amendment. We have slightly modified the paragraph to remove ''all'' from the last sentence, but note that this change does not remove the requirement that any change that affects fiscal constraint requires an amendment. By definition, an amendment is ''a revision that requires public review and comment, redemonstration of fiscal constraint, or a conformity determination (for 'non-exempt' projects in nonattainment and maintenance areas). (See § 450.104 (Definitions)).

[8] This document, ''Interim FHWA Major Project Guidance,'' dated January 27, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/programadmin/mega/012706.cfm.*

[9] The guidance memo entitled ''Flexible Funding for Highway and Transit and Funding for Bicycle and Pedestrian Programs,'' dated February 6, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/hep/flexfund.htm.*

The FHWA and the FTA note that nearly all comments on § 450.324 (Development and content of the transportation improvement program (TIP)) regarding the question posed in the preamble of the NPRM ''whether the FHWA and the FTA should require MPOs submitting TIP amendments to demonstrate that funds are 'available or committed' for projects identified in the TIP in the year the TIP amendment is submitted and the following year'' opposed a change. Almost all commenters mentioned that such a change would require reviewing the financial assumptions for the entire program, thereby causing an undue burden. Commenters suggested showing financial constraint only for the incremental change. The same question was posed in this section of the NPRM. Although commenters did not respond to the question in comments on this section, based on the comments on § 450.324 no change was made to the rule. However, the FHWA and the FTA are concerned for the potential impact of individual amendments on the funding commitments and schedules for the other projects in the STIP. For this reason, the financial constraint determination occasioned by the STIP amendment will necessitate review of all projects and revenue sources in the STIP. The FHWA and the FTA will address any concerns on this issue through subsequent guidance.

Many State DOTs, MPOs and COGs as well as some national and regional advocacy organizations and a few public transportation providers and local government agencies asked for clarification on fiscal constraint if the financial situation in the State or metropolitan region changes. The FHWA and the FTA have added a new paragraph (o) to clarify that where a revenue source is removed or substantially reduced after the FHWA and the FTA find a STIP to be fiscally constrained, the FHWA and the FTA will not withdraw its determination of fiscal constraint but that the FHWA and the FTA will not act on an updated or amended STIP which does not reflect the changed revenue situation.

Section 450.218 Self-Certification, Federal Findings, and Federal Approvals

The docket included about 20 documents that contained approximately 30 comments on this section with about one-half from State DOTs, one-quarter from national and regional advocacy organizations, and the rest from MPOs and COGs, and city/county governments.

Several comments were made under this section that should have referenced 450.220(e) and the question posed in the preamble to the NPRM ''whether States should be required to prepare an 'agreed to' list of projects at the beginning of each of the four years in the STIP, rather than only the first year and whether a STIP amendment should be required to move projects between years in the STIP if an 'agreed to' list is required for each year.'' These comments have been reflected in the discussion of and final language for § 450.220(e).

Many commenters, including almost all State DOTs, in regards to paragraph (a), asserted their belief that the October 1993 planning rule requires joint FHWA and FTA approval of STIP amendments only ''as necessary'' so that, in most cases, either the FHWA or the FTA could approve the amendment. This is not the case. The October 1993 planning rule at 23 CFR 450.220(a) did require joint approval for all new STIPs and STIP amendments ''as necessary.'' The FHWA and the FTA have reviewed this requirement and determined that joint approval remains necessary. However, we note that through the internal Planning Collaboration Initiative, the FHWA and the FTA have developed a number of streamlined internal processes and agreements to expedite review and approval of STIP amendments. Based on these agreements and experience with the current regulation, we do not believe requiring joint approval will slow down the approval process or impose new workloads on the FHWA and the FTA. Joint approval of STIP amendments is necessary as part of our stewardship and oversight responsibility.

We have clarified paragraph (a) to specifically state that ''STIP amendments shall also be submitted to the FHWA and the FTA for joint approval'' and that ''at the time the entire STIP or STIP amendment is submitted,'' the State shall certify the planning process is being carried out in accordance with requirements.

After further review of this section, the FHWA and the FTA have updated the list of applicable requirements in paragraph (a). Reference to ''23 CFR parts 200 and 300 have been removed'' from paragraph (a)(2). Instead, a more specific reference to ''23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts'' was added as paragraph (a)(5). This is the specific portion of 23 CFR parts 200 and 300 that needs to be reviewed and is not related to Title VI of the Civil Rights Act of 1964 in paragraph (a)(2). In addition, we have added a new paragraph (a)(3) ''49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity.'' Upon further review of this section, the FHWA and the FTA determined that 49 U.S.C. 5332 should be included in this list of requirements.

Several comments to the docket expressed concern regarding the need for approval of the STIP when submitted to the FHWA and the FTA. While we still require joint approval, we have revised paragraph (b) to delete the proposed time frames of ''every four years'' or ''at the time the amended STIP is submitted.'' We will also make a joint finding on the ''STIP,'' rather than ''the projects in the STIP.''

Some commenters raised questions regarding the authority in paragraph (c) for the FHWA and the FTA approval of a STIP to continue for up to 180 days under extenuating circumstances even though a State has missed the deadline for its four-year update. Several comments suggested that the 180 calendar day limit for STIP extensions should be expanded and most supported not putting any time limit on the STIP extension period. At the same time, some national and regional advocacy organizations opposed allowing any STIP extensions. This provision has been in the planning regulations since the original rule relating to STIPs was adopted in October 1993, following the enactment of the ISTEA. Although the statute specifies that STIPs shall be updated every four years, Congress did not specify any consequences of missing this deadline by failing to complete the update within the specified period. Because Congress was silent on the consequences of the failure to update the STIP within the four-year period, the FHWA and the FTA have some latitude in interpreting Congress' intent. This discretion is further manifested in the statute by the fact that the FHWA and the FTA are given responsibility to approve the STIP (23 U.S.C. 135(g)(6) and 49 U.S.C. 5304(g)(6)). Since the October 1993 planning rule, the FHWA and the FTA have interpreted the update requirement strictly, believing that Congress intended the process to work on a regular cycle, and that regular updates were essential to the viability of the transportation planning process. Therefore, we have concluded that approval of the STIP should only continue past the update time period specified in statute when there are extenuating circumstances beyond the control of the State DOT that causes it to miss its update deadline.

Examples of extenuating circumstances include (but are not limited to): (a) late action by the Governor or State legislature on revenue that was reasonably expected to be available for transportation projects in the STIP, whereby instances have occurred when the STIP was nearing the completion of the update process (public review and comments had been received), but just before adoption the funding was severely restricted, thus a new update process (based on new fiscal constraint reality) needed to be commenced; or (b) disasters, both natural and man-made, have caused States to divert both funding and staff resources away from the STIP update process.

Further, the FHWA and the FTA believe that such an approval cannot extend indefinitely, but only be of limited duration (i.e., 180 calendar days). Therefore, we have retained the provision in paragraph (c) for an extension of the STIP update under extenuating circumstances. However, paragraph (c) has been slightly modified to clarify that, while the FHWA and the FTA approval may continue for a limited period of time based on extenuating circumstances, the statutory deadline for the update has not been changed. We have also clarified that the 180-day period refers to ''calendar days.''

Many comments were received questioning why the existing flexibility to maintain or establish operations for highway operating assistance was eliminated here and in § 450.328 (TIP actions by the FHWA and the FTA). This was an erroneous omission in the NPRM and the language has been restored to correct this error.

A small number of national and regional advocacy organizations expressed concern that the rule does not provide enough detail on the standards that the FHWA, the FTA and State DOTs should apply in making a statewide planning finding. We believe that the entire context of the rule and of the statute sufficiently identify the criteria to be used in making a finding that the transportation planning process meets or substantially meets these requirements. We do not believe additional detail is required in the rule. However, if necessary, the FHWA and the FTA will provide non-regulatory guidance, training and technical assistance.

Section 450.220 Project Selection From the STIP

The docket included 20 documents that contained about 20 comments on this section. The majority of the comments were from State DOTs. MPOs and COGs, as well as transit agencies, city/county governments, and national and regional advocacy groups, also provided comments.

All of the comments pertained to the two questions posed in the preamble to the NPRM: ''whether States should be required to prepare an 'agreed to' list of projects at the beginning of each of the four years in the STIP, rather than only the first year'' and ''whether a STIP amendment should be required to move projects between years in the STIP, if an 'agreed to' list is required for each year.'' Predominantly, comments asserted that requiring a State DOT or MPO to submit an agreed-to list at the beginning of each of the four years of the TIP/STIP or requiring an amendment to move projects between years in the STIP unnecessarily limited flexibility and thus should not be a requirement. The FHWA and the FTA agree with the majority of the comments. Therefore, no change was made to the rule language.

We have clarified paragraph (b) to indicate that project selection shall be made according to procedures provided in § 450.330 (Project Selection From the TIP).

Section 450.222 Applicability of NEPA to Statewide Transportation Plans and Programs

The docket includes very few comments on this section. One concern expressed is that this section or Appendix A would make planning reviewable under NEPA. The purpose of this section, however, is to reiterate the statutory provisions that clearly say that the statewide transportation planning process decisions are not subject to review under NEPA. We have changed this section to mirror the language in 23 U.S.C. 135(j) and 49 U.S.C. 5304(j).

Section 450.224 Phase-In of New Requirements

The docket included 30 documents that contained almost 100 comments on this section with about half from State DOTs, one-fifth from national and regional advocacy organizations, one-fifth from MPOs and COGs, and the rest from city/county/State agencies.

All comments received indicated that it will be difficult to meet the SAFETEA–LU July 1, 2007, deadline. Subsequent to the preparation of the proposed rule, but prior to its publication, the FHWA and the FTA disseminated additional guidance regarding the phase-in requirements on May 2, 2006.[10] Many of the comments to the docket addressed issues that were clarified in our May 2, 2006, guidance. The provisions of the guidance have been incorporated into the regulation. Specifically, we have clarified that long-range statewide transportation plans and STIPs adopted and approved prior to July 1, 2007, may be developed using the TEA–21 requirements or the provisions and requirements of this part.

We have also clarified, in paragraph (a), what actions may be taken prior to July 1, 2007, on long-range statewide transportation plans and STIPs.

One MPO, half of the national and regional advocacy organizations and a quarter of the State DOTs commented that the regulations should clearly state that partial STIP approvals are allowable if one MPO or region is not SAFETEA–LU compliant. Because the regulation already allows for approval of partial STIPs (see § 450.218(b)(1)(iii)), no change was made to the regulation. Approval of partial STIPs is acceptable, primarily when difficulties are encountered in cooperatively developing the STIP portion for a particular metropolitan area or for a Federal Lands agency. If an MPO is able to produce a TIP that is SAFETEA–LU compliant, the Federal action would be to amend that TIP into the STIP, making the portion of the STIP that covers that region SAFETEA–LU compliant.

Most of the national and regional advocacy organizations and most of the State DOTs commented that the deadline for transportation plan, STIP and TIP action should apply to State/MPO approval action rather than the FHWA/FTA conformity finding. The FHWA and the FTA issued guidance on ''Clarification of Plan Requirements in Nonattainment and Maintenance Areas'' on May 25, 2001.[11] Since the FHWA and the FTA do not determine conformity of STIPs, we are revising this section to eliminate conformity determinations. However, the rest of the rule language is consistent with current practice, and therefore, no other change was made.

Most of the commenters stated that 23 U.S.C. 135(b) requires only ''updates'' to reflect changes required by SAFETEA–LU after July 1, 2007, not ''amendments.'' The comments noted that requiring a STIP re-adoption for minor amendments would be a

[10] This guidance document, ''SAFETEA–LU Deadline for New Planning Requirements'', dated May 2, 2006, is available on the following URL: *http://www.fhwa.dot.gov/hep/plandeadline.htm.*

[11] This guidance document, ''Clarification of Plan Requirements in Nonattainment and Maintenance Areas,'' dated May 25, 2001, can be found via the internet at the following URL: *http://www.fhwa.dot.gov/environment/conformity/planup_m.htm.*

substantial burden and is a stricter interpretation of the statute than Congress intended. Prior to the adoption of this rule, there has not been an accepted definition of or distinction between the terms ''update'' or ''amendment.'' As established in Section 450.104 (Definitions) of this rule, the FHWA and the FTA consider an amendment to the STIP to be a major change to the transportation plan or program. The FHWA and the FTA believe that any major change to the transportation plan or program, whether called an ''amendment'' or an ''update'' under this regulation, is considered for this purpose an ''update'' as referenced in 23 U.S.C. 135(b). However, an ''administrative modification'' would not be covered by this requirement. This rule clarifies the definition of these terms for the future.

One national and regional advocacy organization stated that Congress specified that the SAFETEA–LU phase-in period should begin on July 1, 2007, not be completed by that date. The FHWA and the FTA believe that this is an incorrect interpretation of the statute. The FHWA and the FTA agree that administrative modifications can be made to STIPs after July 1, 2007, but amendments or revisions that would add or delete a major new project to a TIP, STIP, or transportation plan would not be acceptable after July 1, 2007, in the absence of meeting the provisions and requirements of this part. This information has been included in paragraph (c).

Subpart C—Metropolitan Transportation Planning and Programming

Section 450.300 Purpose

No comments were received on this section and no changes were made.

Section 450.302 Applicability

No comments were received on this section and no changes were made.

Section 450.304 Definitions

No comments were received on this section and no changes were made.

Section 450.306 Scope of the Metropolitan Transportation Planning Process

The docket included about 80 separate comments on this section with almost half from MPOs and COGs. Several national and regional advocacy organizations also commented on this section. Most of the remaining comments came from State DOTs and transit agencies. City/county governments and others also commented on this section.

In comments on this section and § 450.206 (Scope of the statewide transportation planning process), many MPOs and COGs, some national and regional advocacy organizations and a few State DOTs noted that paragraph (a)(3) embellished the statutory language for the ''security'' planning factor. Organizations that commented on this issue were concerned that the expanded language would require State DOTs and MPOs to go far beyond their traditional responsibilities in planning and developing transportation projects, which was not intended by the SAFETEA–LU. The FHWA and the FTA agree and have revised the language in paragraph (a)(3) to match the language in the statute.

After further review, the FHWA and the FTA have changed the word ''should'' to ''shall'' in paragraph (b) to be consistent with statutory language in 23 U.S.C. 134(h)(1) and 49 U.S.C. 5303(h)(1).

Most of the State DOTs and several of the national and regional advocacy organizations that commented on similar text in § 450.206 (Scope of the statewide transportation planning process) said that the text in paragraph (b) of that section should be revised to be similar to the text in the October 1993 planning rule acknowledging that the degree of consideration will reflect the scales and complexity of issues within the State. The FHWA and the FTA agree with those comments and revised this section, as well, to be consistent. We have included the language from the October 1993 planning rule with one change. The phrase ''transportation problems'' was changed to ''transportation system development.''

After further review, we have clarified paragraph (c) to mirror the language in 23 U.S.C. 134(h)(2) and 49 U.S.C. 5303(h)(2). The paragraph now specifically refers to ''any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7.''

Some MPOs and COGs and a few national and regional advocacy organizations asked for clarification on the meaning of asset management principles and information on how to link them to performance measures. The FHWA and the FTA have changed ''are encouraged to'' to ''may'' in paragraph (e) to provide additional flexibility for MPOs, State DOTs, and public transportation operators to apply asset management principles appropriate to their individual context. If necessary, the FHWA and the FTA will provide additional non-regulatory guidance, training and technical assistance.

Many of the State DOTs and a few of the national and regional advocacy organizations that provided comments on this topic said the text in paragraph (f) went beyond statutory requirements. The FHWA and the FTA agree with these comments and revised the rule accordingly by adding ''to the maximum extent practicable'' in paragraph (f).

Most transit agencies, several State DOTs, MPOs and COGs, and others provided comments on the requirement in paragraph (g) for the metropolitan transportation planning process to be consistent with the development of coordinated public transit-human services transportation plans. In general, commenters requested additional information on the plans, who was responsible for developing the plans and how they were to be consistent. Some commenters recommended removing the requirement entirely.

Communities have broad flexibility in determining the roles and responsibilities in this area, including selecting the organization charged with developing the coordinated public transit-human services transportation plan. The FHWA and the FTA encourage review of the proposed FTA Circulars for implementing the 49 U.S.C. 5310, 5316, and 5317 programs (New Freedom Program Guidance, The Job Access And Reverse Commute (JARC) Program, Elderly Individuals and Individuals With Disabilities Program), published on September 6, 2006.[12] Consistency between public transit-human services planning and the metropolitan transportation planning process is required. The provisions for promoting consistency between the planning processes were revised to clarify and add flexibility. In order to receive funding in title 49 U.S.C. Chapter 53, projects from the coordinated public transit-human services transportation plans must be incorporated into the metropolitan transportation plan, TIP and STIP. And, in areas with a population greater than 200,000, solicitation of projects for implementation from the public transit-human services transportation plan must be done in cooperation with the MPO.

Several transit agencies and a few State DOTs and others suggested deleting the portion of paragraph (h)

[12] These documents, ''Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute, and New Freedom Programs: Coordinated Planning Guidance for FY 2007 and Proposed Circulars'' was published September 6, 2006, and are available via the internet at the following URLs: *http://www.fta.dot.gov/publications/publications_5607.html* or *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6–14733.pdf.*

related to Regional Transit Security Strategies (RTSS) due to the confidential nature of these plans. Reference to the RTSS was removed from paragraph (h). Instead, we have added a reference to ''other transit safety and security planning and review processes, plans, and programs, as appropriate.''

Section 450.308 Funding for Transportation Planning and Unified Planning Work Programs

There were a few comments on this section from MPOs and COGs. Those that commented on this section supported the flexibility provided in paragraph (d) and several requested clarification on issues such as the definition of ''MPO staff,'' and different processes expected of non-TMA and TMA MPOs. If necessary, the FHWA and the FTA will provide additional clarification through development of technical reports or guidance; however we did not make any changes to this section.

Section 450.310 Metropolitan Planning Organization Designation and Redesignation

The docket included about 30 separate comments on this section with the most coming from national and regional advocacy organizations. Most of the remaining comments came from State DOTs, MPOs and COGs. Local agencies also commented on this section.

Several of the MPOs and COGs and national and regional advocacy organizations that provided comments on this section worried that the Census' continuous sample American Community Survey (ACS) would change the official populations in urbanized areas more often than once a decade, and recommended that paragraph (a) should specifically state that urbanized area populations be based only on each decennial Census. The Census Bureau historically has identified and defined the boundaries and official population of urbanized areas only in conjunction with each decennial Census. This practice will not change as a result of the ACS. The ACS is collected in a nationwide sample of households, and does not constitute a full enumeration of the U. S. population. Consequently, it does not provide the necessary basis for adjusting the boundaries of an urbanized area or revising its total population. Moreover, changing this paragraph would preclude the option for a fast growing urban area to request (and pay for conducting) a special mid-decade Census for the purpose of determining whether its population increased beyond the threshold for designation as an MPO or TMA. While this has been done infrequently in the past, the FHWA and the FTA do not want to prohibit this option. Therefore, no change was made to this paragraph.

A few national and regional advocacy organizations and State DOTs had comments on paragraph (c), ranging from deleting language that they said went beyond statute to clarifying the phrase ''to the extent possible'' to including the public in designation. The language in this paragraph was carried forward from the October 1993 planning rule. However, the FHWA and the FTA agree that the implied regulatory standing was unclear. This paragraph has been changed to mirror the language in 23 U.S.C. 134(f)(2) and 49 U.S.C. 5303(f)(2). The intent of this paragraph is to encourage States to enact legislation that gives MPOs specific authority to carry out transportation planning for the entire metropolitan planning area they serve. Without such enabling legislation, MPOs may lack the necessary leverage to effectively coordinate transportation projects across local jurisdictions.

A national and regional advocacy organization suggested language be added to paragraph (d) to encourage broad representation, especially from public transportation operators, on MPO policy boards. The statute (23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B)) explicitly provides for public transportation agencies to be included on policy boards. To clarify this issue, paragraph (d) has been changed to better reflect the language in the statute. Further, we have added language to the rule to encourage MPOs to increase the representation of local elected officials and public transportation agencies on their policy boards, subject to the requirements of paragraph (k) of this section.

After further review, we have changed the language in paragraph (e) from ''should'' to ''shall'' to be consistent with statute (23 U.S.C. 134(d)(1) and 49 U.S.C. 5303(d)(1)).

A question was asked about the purpose of paragraph (f). This is not a new paragraph. In fact, it first appears in Federal statute (23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3)) as a means of ''grandfathering'' in those multimodal transportation agencies that were in existence at the time of enactment of ISTEA, which were serving many of the functions of an MPO. This paragraph continues to appear in the SAFETEA–LU (23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3), but was not explicitly included in past versions of the metropolitan transportation planning regulations. The FHWA and the FTA agree that it is no longer necessary and have removed it from the rule. Most agencies covered by the provisions of 23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3) have already been officially designated as an MPO, and this option still will have the force of law in the statute.

Some commenters suggested that paragraph (g) (now paragraph (f)) should allow MPOs to use non-profit organizations for staff work. This paragraph brings forward the language from the October 1993 planning rule. Nothing in this paragraph prohibits an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan planning process. However, to clarify this issue, we have added ''non-profit organizations, or contractors'' to this paragraph.

A few MPOs recommended deleting ''current MPO board members'' as one definition for units of general purpose local government from paragraph (k) (now paragraph (j)). The FHWA and the FTA agree that allowing the option of ''local elected officials currently serving on the MPO'' to represent all units of general purpose local government for the purposes of redesignation could result in unintended problems. The FHWA and the FTA have deleted ''local elected officials currently serving on the MPO'' from this paragraph and moved the remaining text into the body of paragraph (j).

Many of the State DOTs and a few of the national and regional advocacy organizations and MPOs and COGs that commented on this section had specific comments on paragraph (l) (now paragraph (k)) saying that the paragraph goes beyond statutory requirements and should be deleted and requesting clarification and minor word changes. The intent of this paragraph is that while an MPO may identify the need for redesignation, actual redesignation must be carried out in accordance with statutory redesignation procedures. The FHWA and the FTA have added language to this paragraph to clarify that redesignation is in accordance with the provisions of this section (§ 450.310). We have also modified paragraph (m) (now paragraph (l)) to reference the substantial change discussion in paragraph (k).

The docket contained a comment in regards to paragraph (l) (now paragraph (k)) that § 4404 of the SAFETEA–LU provides specific designation and redesignation authority for the States of Alaska and Hawaii. Because § 4404 of the SAFETEA–LU does not apply

universally to all MPOs, it is not included in the rule.

Section 450.312 Metropolitan Planning Area Boundaries

The docket included a few comments on this section with the most coming from MPOs and COGs and the remaining comments from State DOTs and national and regional advocacy organizations. Several of the comments provided general support for this section of the planning rule as written.

A few of the comments related to paragraph (b) and asked for minor text changes or clarification on how the section may limit flexibility. The FHWA and the FTA revised the paragraph to make it more consistent with statutory text and, thus, it should not limit flexibility beyond statutory requirements. We also added a reference to the requirements in § 450.310(b) to reiterate that the MPA boundary may be established to coincide only if there is agreement of the Governor and the affected MPO in the same manner as is required for designating an MPO in the first place.

One of the comments regarding paragraph (d) asked for clarification for requiring that the metropolitan planning area (MPA) boundary coincide with regional economic development or growth forecasting areas, in particular, for complex areas having multiple, non-coincident boundaries. This paragraph says that metropolitan planning boundaries ''may'' be established to coincide with regional economic and growth forecasting areas. This paragraph is permissive, not mandatory. Instead, this paragraph provides MPOs with the flexibility to allow their planning boundaries to coincide with other, established boundaries, but does not require them to do so. For clarification and simplicity, the word ''the'' was deleted from the beginning of this paragraph.

In response to comments on this section, we have also clarified paragraph (h) to indicate that all boundary adjustments that change the composition of the MPO may require redesignation of one or more such MPOs, rather than only boundary changes that ''significantly'' change the composition of the MPO.

Section 450.314 Metropolitan Planning Agreements

The docket included more than 70 comments on this section, with the most coming from State DOTs, followed by MPOs and COGs. The remaining comments were from national and regional advocacy organizations, local agencies and public transportation providers.

Most of the State DOTs and MPOs, many of the national and regional advocacy organizations, and a few of the public transportation providers and local agencies that commented on paragraph (a) expressed concern about an unintended burden resulting from the requirements outlined in this paragraph and requested clarification. Some suggested text changes such as using the term ''memorandum of understanding'' in place of ''agreement.'' The MPO agreements are intended to document the cooperative arrangements among the various agency participants that participate in the metropolitan transportation planning process. The FHWA and the FTA encourage a single agreement. However, the rule language has been changed to reflect the option for multiple agreements. Removing the implied requirement for a single written agreement should allow many current planning agreements to satisfy the provisions of this paragraph provided they are written documents.

Many of the State DOTs that commented on this section said they find paragraph (a)(1) too prescriptive and redundant with requirements in other sections of the planning rule. On the other hand, several MPOs and COGs and national and regional advocacy organizations that provided comments on this section wrote to support the proposed rule language in this paragraph. The FHWA and the FTA believe the information in this paragraph is helpful to identify what shall be included in the written agreement(s). No change was made to this language, but it has been moved into the body of paragraph (a).

Many of the State DOTs that commented on this section said they found paragraph (a)(2) too prescriptive and redundant with requirements in other sections of the planning rule. Several MPOs and COGs and national and regional advocacy organizations said they would like clarification or minor text changes in this paragraph. A small number of MPOs and COGs and national and regional advocacy organizations that provided comments on this section wrote to support the proposed rule language in this paragraph. The FHWA and the FTA removed this paragraph from the final rule since the issues are adequately addressed in § 450.316 (Interested parties, participation, and consultation).

The docket includes a comment on this section objecting to the requirement in paragraph (f) that a planning agreement between two or more MPOs serving part of a TMA shall address specific TMA requirements, such as the suballocation of Surface Transportation Program (STP) funds. The FHWA and the FTA revised the final rule to clarify that the entire adjacent urbanized area does not need to be treated as a TMA. However, a written agreement shall be established between the MPOs with MPA boundaries including a portion of the TMA, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g. congestion management process, STP funds suballocated to the urbanized area over 200,000 population, and project selection).

Representatives of State DOTs and private bus operators requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process. To ensure maximum flexibility for localities to tailor programs to the needs of private service providers in their areas, the FHWA and the FTA will use non-regulatory guidance, training, and technical assistance, as necessary, for disseminating information on optional approaches to private sector participation.

Section 450.316 Interested Parties, Participation, and Consultation

The FHWA and the FTA received more than 80 comments on this section with the most coming from MPOs and COGs, followed by national and regional advocacy organizations. Public transportation providers, State DOTs and local agencies also provided comments on this section. In general, many of the MPOs and some of the others who provided comments on this section said that they supported the rule as written or with minor changes.

A few MPOs in regards to paragraph (a) asked about the difference between the participation plan identified in this rule and the public involvement plan under the prior two authorizations, the ISTEA and the TEA–21. The participation plan in this section has several elements not required of the public involvement plan: the participation plan shall be developed in consultation with all interested parties; and the participation plan shall include procedures for employing visualization techniques and making public information available in electronically accessible formats and means.

There were a variety of comments regarding the list of interested parties in paragraph (a) from several MPOs and COGs, national and regional advocacy

organizations and public transportation providers. The comments ranged from specifically including additional groups by reference to adding ''non-citizens'' or ''the public'' and ''limited English proficiency'' to adding definitions for the groups that are in the list to making the list optional. The FHWA and the FTA find that, with a general reference to ''other interested parties,'' MPOs have adequate flexibility to develop and implement a participation plan that provides an appropriate list of interested parties for their individual metropolitan area. MPOs are encouraged to broaden the list of interested parties beyond those listed in statute, as appropriate. The list in the rule has been modified to match the language in the statute (23 U.S.C. 134(i)(5) and 49 U.S.C. 5303(i)(5)). No additional groups were added. The FHWA and the FTA note that 49 U.S.C. 5307(c) requires grant recipients to make available to the public information on the proposed program of projects and associated funding.

Representatives of a State DOT and private bus operators requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process. These commenters also requested that the private bus operators be specifically included in the list of interested parties. To ensure maximum flexibility for localities to tailor programs to the needs of private service providers in their areas, we will rely upon non-regulatory guidance, training, and technical assistance for disseminating information on optional approaches to private sector participation.

A Federal agency commented that the public or an agency should be able to identify itself to the MPO as an appropriate contact without having to be identified to participate by the MPO. The FHWA and the FTA agree. If an MPO is approached, the MPO should consider the request and determine whether the consultation is appropriate. We believe that this flexibility is allowed within the existing rule language. No change has been made to this section of the rule.

A few MPOs and COGs that commented on this section asked for a definition of ''reasonable access'' under paragraph (a)(1)(ii). This requirement carries forward what was in the October 1993 planning rule. The FHWA and the FTA find that MPOs have had adequate flexibility to define ''reasonable access'' when they developed and revised their public involvement plan and will continue to have that flexibility with the requirements for a participation plan. This definition was not added to the rule.

Many MPOs and COGs and some of the other organizations that commented on this section wrote to support the requirement for employing visualization in paragraph (a)(1)(iii). Several MPOs and COGs asked for clarification or subsequent guidance on effective and appropriate use of visualization techniques. The FHWA and the FTA agree that there is a need for more technical information on the use of visualization techniques and will provide technical reports and non-regulatory guidance, as necessary, subsequent to the publication of this rule.

A few MPOs and COGs said in reference to paragraph (a)(1)(iv) that making technical information available could be overly burdensome. This requirement conforms to the requirement in statute (23 U.S.C. 134 (i)(5) and 49 U.S.C. 5303(i)(5)). MPOs have flexibility to define specific techniques for making information available when they develop and revise their public participation plan.

Several MPOs and COGs and a public transportation provider wrote in reference to paragraph (a)(1)(vi) that the term ''explicit consideration'' could be burdensome and needs clarification. This language was similar to a requirement under the public involvement plan and based on that experience, the FHWA and the FTA believe that MPOs have adequate flexibility to define specific techniques when they develop and revise their public participation plan. If needed, the FHWA and the FTA will provide subsequent information on accepted practices in technical reports or guidance.

Several MPOs and COGs wrote in regards to paragraph (a)(1)(viii) that the section could result in unintended burdens on MPOs. In reviewing the statutory requirement (23 U.S.C. 134 (j)(4) and 49 U.S.C. 5303(j)(4)) and the October 1993 planning rules, the FHWA and the FTA agree that the current wording, which was intended to simplify requirements, could lead to unintended burdens. The language in this paragraph has been revised to follow more closely the language in the October 1993 planning rule and now reads: ''Providing an additional opportunity for public comment, if the final transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts.''

A few of the MPOs and COGs and a few of the national and regional advocacy organizations were concerned in paragraph (b) about their ability to consult with resource agencies. Upon further review of this paragraph, the FHWA and the FTA have revised paragraph (b). The originally proposed paragraph (b) ''mixed and matched'' consultation requirements from the SAFETEA–LU. We have removed the consultation discussion related to land management, resource, and environmental agencies from this paragraph. That information is included in § 450.322 (Development and content of the metropolitan transportation plan). The sentences that read ''To coordinate the planning functions to the maximum extent practicable, such consultation shall compare metropolitan transportation plans and TIPs, as they are developed, with the plans, maps, inventories, and planning documents developed by other agencies. This consultation shall include, as appropriate, contacts with State, local, Indian Tribal, and private agencies responsible for planned growth, economic development, environmental protection, airport operations, freight movements, land use management, natural resources, conservation, and historic preservation.'' were deleted. Instead, the phrase ''(including State and local planned growth, economic development, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities'' was added. This phrase is consistent with the requirements in the SAFETEA–LU that apply to consultation in metropolitan transportation plan and TIP coordination (23 U.S.C. 134(i)(4)(A) and 49 U.S.C. 5303(i)(4)(A)). Also to be consistent with statute, the term ''shall'' was changed to ''should.''

A few of the MPOs and COGs, a few of the national and regional advocacy organizations, a State DOT and a local agency that provided comments on this section said regarding paragraph (b), that natural resource agencies are not required to respond when consulted and that this places an unreasonable burden on MPOs. However, several MPOs wrote in support of this specific paragraph. The language regarding consultation has been modified to reflect the statutory requirement (23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4)). The FHWA and the FTA believe that clarification of what constitutes a reasonable attempt at consultation is better placed in guidance

and illustrations of practice where there is greater flexibility to address regional differences and the evolution of practice.

Also regarding paragraph (b), a local agency said that MPOs should not be required to consult with private agencies responsible for planned growth. The FHWA and the FTA believe there may be a need to consult with such organizations given the increase in public-private partnerships. However, the specific phrase ''private agencies responsible for growth'' is not in the statute or the October 1993 planning regulations and has the potential to cause confusion in the implementation of this rule. Accordingly, the FHWA and the FTA removed the phrase ''private agencies responsible for planned growth.''

A few MPOs and COGs that commented on this section said in regards to paragraph (b) that MPO requirements to consult should be limited to the metropolitan transportation plan, and not the TIP. No change was made to the rule because the requirement reflects language in the statute (23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4)).

A small number of national and regional advocacy organizations expressed concern that the rule does not explicitly require that all information used in making a conformity determination be made available for public comment. The transportation conformity rule (40 CFR 93.105(e)) requires that agencies establish a proactive public involvement process and that requirements of § 450.316(a) be followed and met before conformity may be determined. The FHWA and the FTA find that the public involvement requirements of this section and the conformity rule are sufficient to provide the public with appropriate access to the information developed during a conformity determination.

Representatives of a State DOT and private bus operators requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process. To ensure maximum flexibility for localities to tailor programs to the needs of private service providers in their areas, we will rely upon non-regulatory guidance, training, and technical assistance for disseminating information on optional approaches to private sector participation.

Some MPOs and COGs and a few national and regional advocacy organizations wrote that the consultation process with other governments and agencies referenced in paragraph (e) does not need to be documented. The FHWA and the FTA find that documentation of consultation processes is essential to a party's ability to understand when, how, and where the party can be involved. This paragraph has been changed to require that MPOs, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies.

Section 450.318 Transportation Planning Studies and Project Development

Section 1308 of the TEA–21 required the Secretary to eliminate the MIS set forth in § 450.318 of title 23, Code of Federal Regulations, as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the analysis required to be undertaken pursuant to the planning provisions of title 23 U.S.C. and title 49 U.S.C. Chapter 53 and the National Environmental Policy Act of 1969 (NEPA) for Federal-Aid highway and transit projects. The purpose of this section is to implement this requirement of Section 1308 of the TEA–21 and eliminate the MIS requirement as a stand-alone requirement. A phrase has been added to paragraph (a) to clarify the intent of this section.

The docket included almost 20 documents that contained more than 50 comments on this section with about two-thirds from State DOTs and the rest from MPOs or COGs, as well as national and regional advocacy organizations. The comments on this section were similar to, and often referenced, the comments on § 450.212 (Transportation planning studies and project development).

Most of the comments received supported the concept of linking planning and NEPA but opposed including Appendix A in the rule. The purpose of an Appendix to a regulation is to improve the quality or use of a rule, without imposing new requirements or restrictions. Appendices provide supplemental, background or explanatory information that illustrates or amplifies a rule. Because Appendix A provides amplifying information about how State DOTs, MPOs and public transportation operators can choose to conduct transportation planning-level choices and analyses so they may be adopted or incorporated into the process required by NEPA, but does not impose new requirements, the FHWA and the FTA find that Appendix A is useful information to be included in support of this and other sections of the rule. A phrase has been added and this information has been included as paragraph (e). Additionally, we have added disclaimer language at the introduction of Appendix A.

The FHWA and the FTA recognize commenters' concerns about Appendix A, including the recommendation that this information be kept as guidance rather than be made a part of the rule. First, information in an Appendix to a regulation does not carry regulatory authority in itself, but rather serves as guidance to further explain the regulation. Secondly, as stated above, Section 1308 of TEA–21 required the Secretary to eliminate the MIS as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the transportation planning process. Appendix A fulfills that Congressional direction by providing explanatory information regarding how the MIS requirement can be integrated into the transportation planning process. Inclusion of this explanatory information as an Appendix to the regulation will make the information more readily available to users of the regulation, and will provide notice to all interested persons of the agencies' official guidance on MIS integration with the planning process. Attachment of Appendix A to this rule will provide convenient reference for State DOTs, MPOs and public transportation operator(s) who choose to incorporate planning results and decisions in the NEPA process. It will also make the information readily available to the public. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of Appendix A in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects. For the reasons stated above, after careful consideration of all comments, the FHWA and the FTA have decided to attach Appendix A to the final rule as proposed in the NPRM.

Most State DOTs and several MPOs and COGs, and national and regional advocacy organizations that commented on this section were concerned that the language in paragraph (a) is too restrictive. The FHWA and the FTA agree that planning studies need not ''meet the requirements of NEPA'' to be incorporated into NEPA documents. Instead, we have changed the language in paragraph (a) to ''consistent with'' NEPA. In addition, we have added the phrase ''multimodal, systems-level'' before ''corridor or subarea'' to

emphasize the ''planning'' venue for environmental consideration.

Commenters on this section also requested that the rule clarify that the MPO has the responsibility for conducting corridor or subarea studies in the metropolitan transportation planning process. The FHWA and the FTA recognize that the MPO is responsible for the metropolitan transportation planning process. However, we do not want to preclude State DOTs or public transportation operators, in consultation or jointly with the MPO, from conducting corridor or subarea studies. Therefore, we have changed paragraph (a) to add the sentence ''To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public transportation operator(s).''

It is important to note that this section does not require NEPA-level evaluation in the transportation planning process. Planning studies need to be of sufficient disclosure and embrace the principles of NEPA so as to provide a strong foundation for the inclusion of planning decisions in the NEPA process. The FHWA and the FTA also reiterate the voluntary nature of this section and the amplifying information in Appendix A. States, public transportation operators and/or MPOs may choose to undertake studies which may be used in the NEPA process, but are not required to do so.

Several State DOTs and national and regional advocacy organizations were concerned about the identification and discussion of environmental mitigation. They did not believe that detail on environmental mitigation activities was appropriate in the transportation planning process. The FHWA and the FTA agree. Paragraph (a)(5) calls for ''preliminary identification of environmental impacts and environmental mitigation.'' The FHWA and the FTA believe that the term ''preliminary'' adequately indicates that State DOTs are not expected to provide the same level of detail on impacts and mitigation as would be expected during the NEPA process. Furthermore, SAFETEA–LU requires a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities. § 450.322 (Development and content of the metropolitan transportation plan) specifically provides that ''The discussion may focus on policies, programs, or strategies, rather than at the project level.''

Some State DOTs suggested incorporating planning decisions rather than documents into the NEPA process. The FHWA and the FTA find that decisions made as part of the planning studies may be used as part of the overall project development process and have changed paragraph (a) to include the word ''decisions'' as well as ''results.'' It is important to note, however, that a decision made during the transportation planning process should be presented in a documented study or other source materials to be included in the project development process. Documented studies or other source materials may be incorporated directly or by reference into NEPA documents, as noted in § 450.318(b). We have added ''or other source material'' to paragraph (b) to recognize source materials other than planning studies may be used as part of the overall project development process.

Based on comments on Appendix A, we added the phrase ''directly or'' in paragraph (b), to indicate the use of publicly available planning documents from subsequent NEPA documents.

Also based on comments on Appendix A, we added the phrase ''systems-level'' in paragraph (b)(2), to emphasize that these corridor or subarea studies are conducted during the planning process at a broader scale than project specific studies under NEPA.

Several State DOTs and many others who submitted comments on this section noted that the word ''continual'' in paragraph (b)(2)(iii) provides more opportunity to comment than is necessary. We agree and have replaced ''continual'' with ''reasonable'' in this paragraph.

Several State DOTs and a national and regional advocacy organization suggested adding a ''savings clause'' in a new paragraph. A savings clause would ensure that the new provisions regarding corridor or subarea studies do not have unintended consequences. The specific elements requested to be included in the ''savings clause'' were statements that: (a) The corridor and subarea studies are voluntary; (b) corridor and subarea studies can be incorporated into the NEPA process even if they are not specifically mentioned in the metropolitan transportation plan; (c) corridor and subarea studies are not the sole means for linking planning and NEPA; and (d) reiterate the statutory prohibition on applying NEPA requirements to the transportation planning process. The concepts recommended in the ''savings clause'' all reiterate provisions found elsewhere in the rule or statute. The FHWA and the FTA do not agree that it is necessary to repeat those provisions in this section.

The docket included a comment that corridor or subarea studies should be required, not voluntary, to be included in NEPA studies. Given the opposition to requiring NEPA-level analysis in the transportation planning process, the FHWA and the FTA find that the permissive nature of this section and the guidance provided in Appendix A strike the appropriate balance.

The docket also included a question asking what needs to be included in an agreement with the NEPA lead agencies to accomplish the integration of the planning and NEPA processes. The FHWA and the FTA have determined that identification of what information appropriately belongs in the agreement should be disseminated as non-regulatory guidance, complemented by a wide array of effective practice case studies and supported by training and technical assistance. Consequently, no change was made to the rule. We have not required that corridor or subarea studies be included or incorporated into NEPA studies.

A national and regional advocacy organization raised a number of issues and asked a number of questions regarding this section. Many of these concerns were also expressed by some transit agencies and a small number of MPOs and COGs. Most of these questions related to more detailed information on this section with regard to the Alternative Analysis requirements for major transit projects. The general concern related to the integration of the planning provisions in Sections 3005, 3006 and 6001 of the SAFETEA–LU and the environmental provisions in Section 6002 of the SAFETEA–LU, coupled with the historical Alternative Analysis process conducted as part of the eligibility requirements for transit proposals. These environment and planning provisions of the SAFETEA–LU are designed to add efficiencies to the project development process by facilitating a smooth transition from planning into the NEPA/project development process. To address these concerns and the specific questions related to the Alternatives Analysis process, the FHWA and the FTA have added paragraph (d) to the rule.

A specific concern was that this section eliminated the option of conducting a NEPA study as part of the Alternative Analysis/corridor study process. The FHWA and the FTA believe this is a misinterpretation of this section. We have been and continue to be staunch advocates of addressing NEPA issues and initiating the formal project level environmental analyses as early as practicable in the overall project development framework, including the

transportation planning process. This section continues to allow NEPA studies to be initiated, even during the Alternative Analysis/corridor study process.

Another concern was that this section permits the elimination of alternatives but does not provide for the selection of a preferred alternative. Additionally, a subsequent comment indicated that this section does not require the consideration of all reasonable alternatives. As is permitted by the Council on Environmental Quality's regulations, a project sponsor can select a preferred alternative at any time in the project development process but the overall environmental analysis cannot be slanted to support the preferred alternative nor does the identification of a preferred alternative eliminate the requirement to study all reasonable alternatives as part of the environmental analysis. The FHWA and the FTA believe that the rule allows for State DOTs, MPOs and public transportation operators who choose to use planning studies as part of the overall project development process to eliminate alternatives as well as select preferred alternatives, as appropriate. Therefore, no change was made to the rule.

These comments also pointed out that the FTA requires alternatives analysis for New Starts project, but no comparable requirement is specified for highway projects. Unlike FTA's formula funded programs, New Starts has a competition based eligibility requirement and, as such, the FTA requires a level of evaluation and analysis to screen the potential myriad requests they receive for limited funds. Traditionally, applicants select proposed highway projects as part of FHWA's formula funded programs. When Congress authorizes a competition-based highway program similar to New Starts, the FHWA has established criteria to evaluate and select projects that are eligible for those funds.

It was also noted that § 450.322 (Development and content of the metropolitan transportation plan) requires (in nonattainment and maintenance areas) design concept and scope be identified for projects. This comment raises several issues relative to actual application of the transportation planning process more than the regulation itself. For transportation demand modeling purposes and to meet the requirements of this part, the MPO and/or State DOT uses basic tools (e.g. engineering, capacity, past history, etc.) to identify the design concept and scope of a project, without conducting a formal corridor study. These early decisions are generally made on a broad corridor basis and will be refined as the project advances towards implementation. The commenter appears to favor this section of the rule being mandatory rather than permissive in an attempt to further the state of the practice of planning. Encouragement and incentives for good transportation planning were proffered by the commenter as tools to be used to increase the desirability of conducting corridor studies. The FHWA and the FTA believe Appendix A provides this encouragement and incentives for good transportation planning in identifying ways to utilize planning corridor studies and thereby reduce the amount of repetitive work in the NEPA process. We appreciate the support for the concepts in this section, but, based on all the comments received, find that it is most appropriate for this section to remain voluntary and permissive.

Section 450.320 Congestion Management Process in Transportation Management Areas

The docket included more than 25 documents that contained almost 30 comments on this section with about one-third from State DOTs, one-fifth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from transit operators.

On May 16, 2006, the U.S. Secretary of Transportation announced a national initiative to address congestion related to highway, freight and aviation.[13] The intent of the ''National Strategy to Reduce Congestion on America's Transportation Network'' is to provide a blueprint for Federal, State and local officials to tackle congestion. USDOT encourages the States and MPO(s) to seek Urban Partnership Agreements with a handful of communities willing to demonstrate new congestion relief strategies and encourages states to pass legislation giving the private sector a broader opportunity to invest in transportation. It calls for more widespread deployment of new operational technologies and practices that end traffic tie-ups, designates new interstate ''corridors of the future,'' targets port and border congestion, and expands aviation capacity.

U.S. DOT encourages State DOTs and MPOs to consider and implement strategies, specifically related to highway and transit operations and expansion, freight, transportation pricing, other vehicle-based charges techniques, congestion pricing, electronic toll collection, quick crash removal, etc. The mechanism that the State DOTs and MPOs employ to explore these strategies is within their discretion. The USDOT will focus its resources, funding, staff and technology to cut traffic jams and relieve freight bottlenecks.

A few commenters reiterated that the congestion management process (CMP) should result in multimodal system performance measures and strategies. The FHWA and the FTA note that existing language reflects the multimodal nature of the CMP. Existing language (§ 450.320(a)(2)) specifically allows for the appropriate performance measures for the CMP to be determined cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area.

Most of the comments pointed out that the provisions of § 450.320(e) pertaining to projects that add significant new carrying capacity for Single Occupant Vehicles (SOVs) applies in ''Carbon Monoxide (CO) and Ozone Nonattainment TMAs,'' but does not apply to TMAs in air quality maintenance areas. The FHWA and the FTA agree and have clarified the language in paragraph (e). We also clarified that this provision applies to projects ''to be advanced with Federal funds.''

Several commenters asked for a clarification regarding what CMP requirements apply in air quality maintenance and attainment areas, as opposed to the requirements in air quality nonattainment areas. The CMP requirements for all TMA areas (attainment, maintenance and nonattainment) are identified in § 450.320(a), § 450.320(b), § 450.320(c), and § 450.320(f). Additional CMP requirements that apply only to non-attainment TMA areas (for ozone and carbon monoxide) are identified in § 450.320(d) and § 450.320(e).

Another commenter asked for clarification regarding the exact requirements for a CMP and how the CMP is integrated with the metropolitan transportation plan. As noted above, the specific CMP requirements for all TMAs, regardless of air quality status, are identified in this section. The CMP

[13] Speaking before the National Retail Federation's annual conference on May 16, 2006, in Washington, DC, former U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rails and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion. The transcript of these remarks is available at the following URL: *http://www.dot.gov/affairs/minetasp051606.htm.*

in this section is not described as, nor intended to be, a stand-alone process, but an integral element of the transportation planning process. To reinforce the integration of the CMP and the metropolitan transportation plan, § 450.322(f)(4) requires that the metropolitan transportation plan shall include ''consideration of the results of the congestion management process in TMAs that meet the requirements of this subpart, including the identification of SOV projects that result from a congestion management process in TMAs that are nonattainment for carbon monoxide or ozone.''

One commenter asked for examples of the reasonable travel demand reduction and operational management strategies as required in § 450.320(e). Examples of such strategies include, but are not limited to: Transportation demand management measures such as car and vanpooling, flexible work hours compressed work weeks and telecommuting; Roadway system operational improvements, such as improved traffic signal coordination, pavement markings and intersection improvements, and incident management programs; Public transit system capital and operational improvements; Access management program; New or improved sidewalks and designated bicycle lanes; and Land use policies/regulations to encourage more efficient patterns of commercial or residential development in defined growth areas.

Section 450.322 Development and Content of the Metropolitan Transportation Plan

There were over 160 separate comments on this section, mostly from MPOs and COGs, followed by national and regional advocacy organizations and State DOTs. A number of comments also came from public transportation providers with the remainder coming from local government agencies, the general public or other sources.

Several MPOs and COGs and national and regional advocacy organizations that commented on this section asked for clarification regarding the 20-year planning horizon in paragraph (a). The FHWA and the FTA want to provide MPOs flexibility on how to treat the metropolitan transportation plan at the time of a revision. The actual effective date of a metropolitan transportation plan update may be dependent upon several factors, including the intent of the MPO, the magnitude of the metropolitan transportation plan revision and whether conformity needs to be determined. To specifically indicate in the final rule when a ''revision'' may be considered a full ''update'' could result in limiting flexibility. For more information on this topic, refer to the ''Definitions'' section of this rule.

A small number of MPOs and COGs and national and regional advocacy organizations that commented on this section asked for clarification in paragraph (b) between long-range and short-range strategies. The FHWA and the FTA carried forward the language regarding short and long-range strategies from the October 1993 planning rule. Generally, long-range are those strategies and actions expected to be implemented beyond 10 years.

A small number of national and regional advocacy organizations also commented that the transportation demand referenced in paragraph (b) should be balanced with the environment and other factors. The FHWA and the FTA find that the balance with environmental concerns is adequately raised in other parts of the rule both in this section and in § 450.306 (Scope of the metropolitan transportation planning process).

A small number of MPOs that commented on this section wrote in support of paragraph (c) relating to the cycles for reviews and updates. The FHWA and the FTA note that this paragraph revises and supercedes the April 12, 2005, guidance on ''Plan Horizons'' allowing MPOs to ''revise the metropolitan transportation plan at any time using the procedures in this section without a requirement to extend the horizon year.''

A small number of State DOTs and national and regional advocacy organizations that commented on this section said in regard to paragraph (d) that the proposed language limits consultation between State air quality agencies and MPOs in ozone and carbon monoxide (CO) nonattainment and maintenance areas. Transportation control measures (TCMs) can apply to all pollutants so this section should refer to all types of nonattainment and maintenance areas.

Paragraph (d) addresses the MPO's coordination in the development of the TCMs in a SIP in ozone and CO nonattainment areas, pursuant to 49 U.S.C 5303(i)(3). The FHWA and the FTA are clarifying in the final rule the role of the MPO in the development of SIP TCMs, to be more consistent with the statute. Similar coordination is encouraged in the development of SIP TCMs in ozone and CO maintenance areas, as well as particulate matter and nitrogen dioxide nonattainment and maintenance areas. The FHWA and the FTA had proposed additional language in paragraph (d) that specified that the MPO, State air quality agency and the EPA must concur on the equivalency of any substitute TCM before an existing SIP TCM is replaced under section 176(c)(8) of the Clean Air Act (42 U.S.C. 7506(c)(8)). After consultation with the EPA, this language was deemed unnecessary for the final planning regulations. The EPA has determined that revising the transportation conformity regulations is not necessary to implement the TCM substitution provision in Section 6011(d) of the SAFETEA–LU. The EPA believes that the new Clean Air Act provision contains sufficient detail to allow the provision to be implemented without further regulation. The EPA, the FHWA, and the FTA issued joint guidance on February 14, 2006, that describes how TCM substitutions can occur under the statute.[14]

A small number of State DOTs and a few MPOs and COGs that commented on this section said in regards to paragraph (e) that the requirement for ''agreement'' is too stringent. The FHWA and the FTA find that a ''cooperative'' planning process requires agreement among the major planning partners on what assumptions to adopt and what data and analyses to employ to forecast future travel demand. If a State or transit operator conducts a major planning study within the MPO planning boundaries, it is critical that the assumptions and data used in that planning study be considered valid by other planning partners and be consistent with data the MPO will employ to develop its travel models or otherwise develop growth projections in population, employment, land use, and other key factors that affect future travel demand. Both consultation and agreement on those assumptions/data are crucial to this process. However, the FHWA and the FTA also understand that the proposed text may be considered overly restrictive. We eliminated the phrase ''the transportation plan update process shall include a mechanism for ensuring that * * * agree * * *'' and replaced it with ''the MPO, the State(s), and the public transportation operator(s) shall validate * * *'' The FHWA and the FTA believe that the requirement ''validate data'' provides more flexibility than ''including a mechanism.''

[14] This joint guidance entitled, ''Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' dated February 14, 2006, is available via the Internet at the following URL: *http://www.fhwa.dot.gov/environment/conformity/sec6011guidmemo.htm.*

A number of MPOs and COGs that commented on this section asked for clarification in paragraph (f)(3) of the operational and management strategies. A small number of State DOTs support the proposed rule. Effective regional transportation systems management and operations requires deliberate and sustained collaboration and coordination between planners and managers of day-to-day operations across jurisdictions and between transportation and public safety agencies in order to improve the security, safety, and reliability of the transportation system. Coordination between transportation planning and operations helps ensure that regional transportation investment decisions reflect full consideration of all available strategies and approaches to meet regional transportation goals and objectives. Strengthening the coordination between these two processes and activities—planning and operations—can enhance both activities.

Because transportation systems management and operations is emerging as an important aspect of regional transportation planning, it is strongly encouraged that a set (or sets) of objectives be set forth in the metropolitan transportation plan for operational and management strategies that will lead to regional approaches, collaborative relationships, and funding arrangements for projects. Examples of operational and management strategies may include traffic signal coordination, traveler information services, traffic incident management, emergency response and homeland security, work zone management, freeway/arterial management, electronic payment services, road weather management, and congestion management. More specific examples on strategies related to congested locations can be found on the following Web site: *http://ops.fhwa.dot.gov/congestionmitigation/congestionmitigation.htm*, and additional information on freight bottlenecks is available at the following Web site: *http://www.fhwa.dot.gov/policy/otps/bottlenecks/index.htm*. The FHWA and the FTA intend to prepare guidance on operational and management strategies in the long-range statewide transportation plan and metropolitan transportation plan, including the development and use of objectives. The FHWA and the FTA have provided, and will continue to provide, technical information and guidance regarding operational and management strategies, if needed. However, we did not make any changes to this paragraph.

To encourage MPOs to address congestion in the metropolitan transportation plan, the following sentence was added to paragraph (f)(5): ''The metropolitan transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area's transportation system.''

Some MPOs and COGs and a small number of State DOTs and the public that commented on this section had a variety of comments on paragraph (f)(6), ranging from requesting that it be eliminated to questioning the need for including existing facilities to the ability to provide sufficient detail to develop cost estimates in out years. This text is identical to the October 1993 planning rule. The FHWA and the FTA have found that providing the information required by this paragraph in the metropolitan transportation plan provides valuable information to system operators, decision-makers and the general public, while not causing undue burden on the MPOs.

There were a large number and variety of comments on paragraph (f)(7). Some MPOs and COGs questioned the value of this paragraph or the ability to implement this provision, while a small number of national and regional advocacy organizations wrote in support of the paragraph. Some MPOs and COGs, national and regional advocacy organizations, and State DOTs, as well as a small number of public comments had questions or asked for clarification. Some MPOs and COGs, along with some State DOTs, suggested a text change to clarify the intent of the paragraph. Finally, a small number of comments came from national and regional advocacy organizations and Federal agencies recommending including an evaluation mechanism.

The FHWA and the FTA concur with the recommendation to change the text, to more closely mirror the intent of the statute (23 U.S.C. 134(i)(2)(B) and 49 U.S.C. 5303(i)(2)(B)). We also concur that discussions of types of potential environment mitigation strategies need not be project specific, but should be at the policy or strategic level. We have made these changes to be consistent with the intent of the statute. A similar change has been made in § 450.214(j). The FHWA and the FTA have provided guidance, training, and technical assistance in this area and, if necessary, will provide additional efforts as needed so MPOs understand both how to address and the value of discussing types of potential mitigation activities as part of the metropolitan transportation plan. MPOs have the flexibility to develop and implement evaluation mechanisms that reflect the needs and complexity of the metropolitan area. While statute (23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3)) identifies evaluation in specific areas such as congestion, the FHWA and the FTA do not believe there is justification to develop a regulatory process that requires a systematic evaluation in other areas.

Also in regards to paragraph (f)(7), a Federal agency recommended requiring the consideration of avoidance measures to protect nationally significant resources. The FHWA and the FTA agree that consultation with appropriate Federal land and resource management agencies is essential during the development of metropolitan transportation plans to make the most efficient use of resources, since these agencies would need to be involved in the discussions of mitigation throughout the project development process. We believe that the regulatory language is sufficient to encourage such consultation and to foster discussions between the MPO and the Federal agencies to identify nationally significant resources and to consider actions and strategies to avoid and protect them. Therefore, no additional changes have been made to this paragraph.

There were a large number and variety of comments on paragraph (f)(10). Most of the State DOTs and many of the MPOs and COGs and national and regional advocacy organizations that commented on this section were against including operations and maintenance in the financial plan. Most of the State DOTs, many of the national and regional advocacy organizations, and some of the MPOs and COGs commented that the financial plan should not be extended to include ''the entire transportation system'' but should be limited to projects funded by the FHWA and the FTA. On the other hand, a small number of national and regional advocacy organizations supported requiring all projects be included. Finally, most of the State DOTs, MPOs and COGs, and many of the national and regional advocacy organizations suggested removing the reference to Appendix B.

When proposing Appendix B to the rule, the FHWA and the FTA intended to raise the level of awareness and importance in developing fiscally constrained transportation plans, TIPs, and STIPs to States, MPOs, and public transportation operators. Since its introduction under the ISTEA, fiscal constraint has remained a prominent

aspect of transportation plan and program development, carrying through to the TEA–21 and now to the SAFETEA–LU. The FHWA and the FTA acknowledge that Appendix B contains a combination of guidance, amplifying information and additional criteria. Given the level of controversy regarding Appendix B, it has been removed from the rule. Therefore, the sentence referencing Appendix B in paragraph (f)(10) has been deleted.

The FHWA and the FTA have divided paragraph (f)(10) into subparagraphs (i) through (viii) to make each provision easier to identify.

Many commenters questioned the requirement in new paragraph (f)(10)(i) that the financial plan must demonstrate the ability to adequately operate and maintain the entire transportation system. The FHWA and the FTA have revised § 450.322(f)(10) to delete the phrase ''while operating and maintaining existing facilities and services.'' Instead, a new sentence was added to paragraph (f)(10) (now paragraph (f)(10)(i)) that reads: ''For purposes of transportation system operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).'' Please see the responses to the comments on Appendix B for additional background information and explanation.

A new paragraph (f)(10)(ii) discusses cooperative development of estimates of funds. No change was made to this discussion.

A new paragraph (f)(10)(iii) discusses additional financing strategies in the metropolitan transportation plan. No change was made to this discussion.

A new paragraph (f)(10)(iv) discusses the projects and strategies to be included in the financial plan. The FHWA and the FTA find that certain features of Appendix B merit inclusion in the rule. One of these features is the requirement for revenue and cost estimates to use an inflation rate(s) to reflect year of expenditure dollars (to the extent practicable). We have added a sentence to paragraph (f)(10)(iv) that reads: ''Starting December 11, 2007, revenue and cost estimates that support the metropolitan transportation plan must use an inflation rate(s) to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).'' This language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in ''year of expenditure dollars.'' We recognize that it might take some time for State DOTs and MPOs to convert their metropolitan transportation plans, STIPs and TIPs to reflect this requirement. Therefore, we will allow a grace period until December 11, 2007, during which time State DOTs and MPOs may reflect revenue and cost estimates in ''constant dollars.'' After December 11, 2007, revenues and cost estimates must use ''year of expenditure'' dollars. This requirement is consistent with the January 27, 2006, document ''Interim FHWA Major Project Guidance.'' [15] Please see the responses to the comments on Appendix B for additional background information and explanation.

A new paragraph (f)(10)(v) presents additional information from Appendix B. The FHWA and the FTA believe that this optional provision will give MPOs maximum flexibility to broadly define a large-scale transportation issue or problem to be addressed in the future that does not predispose a NEPA decision, while, at the same time, calling for the definition of a future funding source(s) that encompasses the planning-level ''cost range/cost band.'' Please see the responses to the comments on Appendix B for additional background information and explanation.

A new paragraph (f)(10)(vi) addresses nonattainment and maintenance areas.

A new paragraph (f)(10)(vii) reinforces that the financial plan is not required to include illustrative projects.

Many State DOTs, MPOs and COGs as well as some national and regional advocacy organizations and a few public transportation providers and local government agencies asked for clarification on fiscal constraint if the financial situation in the State or metropolitan region changes. The FHWA and the FTA have added paragraph (f)(10)(viii) to clarify situations where a revenue source is removed or substantially reduced after the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained.

All references to Appendix B have been removed from this section because Appendix B is not a part of this rule.

Some national and regional advocacy organizations and a small number of MPOs and COGs and Federal agencies provided comments on paragraph (g) regarding changing the ''or'' between paragraphs (g)(1) and (g)(2) to ''and''. A small number of the comments, including some by a Federal agency, also related to adding specific agencies or processes to the text. The FHWA and the FTA acknowledge that the text is different from similar text for statewide planning in § 450.214(i). However, both sections are consistent with statute. (See (23 U.S.C. 134(i)(4)(B) and 49 U.S.C. 5303(i)(4)(B)) and (23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D)). The FHWA and the FTA also note that there is flexibility in the rule language. The ''or'' does not prevent an MPO from carrying out (g)(1) and (g)(2). At the same time, the term ''as appropriate'' allows an MPO to carry out only (g)(1) or (g)(2) in certain circumstances. No changes were made to this paragraph to remain consistent with statutory language.

Most of the MPOs and COGs provided comments on paragraph (h) ranging from removing any reference to security to clarifying the MPO role in security to text changes. A few State DOTs and public transportation providers provided a range of comments as well. The FHWA and the FTA acknowledge the potential for concern and confusion in an emerging area such as transportation security. We have added the phrase ''(as appropriate)'' to this paragraph to provide additional flexibility in this emerging area and to respect the sensitive nature of homeland security issues. We also want to reiterate that placing the inclusion of policies that support homeland and personal security in the same sentence with safety should in no way detract from the recognition that safety and security are separate considerations in the planning process. If necessary, the FHWA and the FTA will provide subsequent guidance and technical resources on incorporating policies supporting homeland and personal security.

Several commenters noted that the reference in paragraph (k) was incorrect. This reference has been changed to accurately refer to paragraph (f)(10).

The FHWA and the FTA note, based on coordination with the EPA, that the interim metropolitan transportation plan and TIP referenced in paragraph (1) and in § 450.324(m) respectively allows the use of interim metropolitan transportation plans and TIPs during a conformity lapse so that exempt projects, transportation control measures in approved State implementation plans, and previously approved projects and/or project phases can be funded when a conformity determination lapses. In addition, we have clarified that the ''interagency

[15] This document, ''Interim FHWA Major Project Guidance,'' dated January 27, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/programadmin/mega/012706.cfm.*

consultation'' referenced in paragraph (1) is ''defined in 40 CFR part 93.''

After further review, the FHWA and the FTA have determined it is necessary to clarify paragraph (l) regarding eligible projects that may proceed without revisiting the requirements of this section. We have added ''or consistent with'' to this paragraph to clarify that eligible projects (e.g., exempt projects under 40 CFR 93.126) do not need to be explicitly listed in the conforming transportation plan and TIP to proceed.

Section 450.324 Development and Content of the Transportation Improvement Program (TIP)

The docket included more than 50 documents that contained more than 125 comments on this section with about one-quarter from State DOTs, one-quarter from national and regional advocacy organizations, one-half from MPOs and COGs, and the rest from city/county/State agencies and transit agencies. A few MPOs and COGs, many State DOTs and a few national and regional advocacy organizations said in regards to paragraph (a) that MPOs should be allowed to have a TIP of more than four years where the additional year(s) are not illustrative.

The four-year scope is consistent with the time period required by the SAFETEA–LU. MPOs may show projects as illustrative after the first four years as well as in the metropolitan transportation plan. While MPOs are not prohibited from developing TIPs covering a longer time period, the FHWA and the FTA can only recognize and take subsequent action on projects included in the first four years of the TIP. Therefore, no change was made to this paragraph of the rule in response to these comments. However, paragraph (a) was modified to be consistent with clarifications to the definitions of ''revision'' and ''amendment.''

When proposing Appendix B to the rule, the FHWA and the FTA intended to raise the level of awareness and importance in developing fiscally constrained transportation plans, TIPs, and STIPs to States, MPOs, and public transportation operators. Since its introduction under the ISTEA, fiscal constraint has remained a prominent aspect of transportation plan and program development, carrying through to the TEA–21 and now to the SAFETEA–LU. The FHWA and the FTA acknowledge that Appendix B contains a combination of guidance, amplifying information and additional criteria. Given the level of controversy regarding Appendix B, it has been removed from the rule. Therefore, the sentence referencing Appendix B in paragraph (i) has been deleted.

We have changed paragraph (c) to allow the inclusion of the exempted projects, but not requiring that they be included. We removed the phrase ''federally supported'' from the beginning of this paragraph because it is redundant. The paragraph already requires projects to be included if they are funded under title 23 U.S.C., and title 49 U.S.C. Chapter 53. Further, we have added ''Safety projects funded under 23 U.S.C. 402'' to paragraph (c)(1). This change is consistent with the October 1993 planning rule.

Many State DOTs and several national and regional advocacy organizations commented in regard to paragraph (d) (now paragraph (e)), that they should not have to demonstrate financial constraint for projects included in the TIP funded with non-FHWA and non-FTA funds. However, the proposed requirement is consistent with and carries forward the requirement that was implemented with the October 1993 planning rule. In addition, for informational purposes and air quality analysis in nonattainment and maintenance areas, regionally significant non-Federal projects shall be included in the TIP. Therefore, the FHWA and the FTA have retained this portion of paragraph (d). We have, however, simplified the paragraph slightly to combine the last two sentences.

A few comments were received from national and regional advocacy organizations and MPOs stating that paragraph (e)(1) would be enhanced by adding language that the information included in the TIP for each project needs to be understandable by the general public. This requirement remains unchanged from the October 1993 planning rule. Since that time, we have noted little public confusion over the information included in TIPs identifying projects or phases. We believe the MPO participation plan process offers opportunities for the public to clarify confusion in specific cases. No change was made to the rule.

Most State DOTs, MPOs and COGs and national and regional advocacy organizations that commented on this section, recommended in regards to paragraph (e), that after the first year of the TIP, only ''likely'' or ''possible'' (rather than ''proposed'') categories of funds should be identified by source and year. The FHWA and the FTA agree with this suggestion, with the exception of projects in nonattainment and maintenance areas for which funding in the first two years must be available or committed. Paragraph (e)(3) has been changed to specifically reference the amount of ''Federal funds'' proposed to be obligated and to identify separate standards for the first year and for the subsequent years of the TIP.

Most of the comments on paragraph (h) pertained to the question posed in the preamble of the NPRM regarding whether the FHWA and the FTA should require MPOs submitting TIP amendments to demonstrate that funds are ''available or committed'' for projects identified in the TIP in the year the TIP amendment is submitted and the following year. Almost all opposed this suggestion believing that it would require reviewing the financial assumptions for the entire program, thereby causing an undue burden. Commenters suggested showing financial constraint only for the incremental change. The FHWA and the FTA are concerned for the potential impact of individual amendments on the funding commitments and schedules for the other projects in the TIP. For this reason, the financial constraint determination occasioned by the TIP amendment will necessitate review of all projects and revenue sources in the TIP. The FHWA and the FTA will address any concerns on this issue through subsequent guidance. Further, the FHWA and the FTA are concerned that amendments that do not include available and committed funds for the year of the amendment and the following year will reduce the credibility with decision-makers and the public that projects will be able to move forward in a timely manner. Given the comments on this issue, we have not made a change to the rule. The FHWA and the FTA will address any concerns on this issue through subsequent guidance.

As discussed in the response to the comments on Appendix B, we have added to paragraph (h), ''for purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).'' In addition, to reinforce that the financial plan is not required to include illustrative projects, we have added the phrase ''but is not required to'' to this discussion. We have added one additional feature from Appendix B: ''year of expenditure dollars.'' We have added the following sentence to paragraph (h): Starting December 11, 2007, revenue and cost estimates for the TIP must use an inflation rate(s) to

reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s). This language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in ''year of expenditure dollars.'' We recognize that it might take some time for State DOTs and MPOs to convert their metropolitan transportation plans, STIPs and TIPs to reflect this requirement. Therefore, we will allow a grace period until December 11, 2007, during which time State DOTs and MPOs may reflect revenue and cost estimates in ''constant dollars.'' After December 11, 2007, revenues and cost estimates must use ''year of expenditure'' dollars. This requirement is consistent with the January 27, 2006, document ''Interim FHWA Major Project Guidance.''[16] The reference to Appendix B has been deleted since Appendix B is not included with this rule. Please see the responses to the comments on Appendix B for additional background information and explanation.

Many State DOTs, national and regional advocacy organizations and a few MPOs and COGs questioned having to demonstrate their ability to adequately operate and maintain the entire transportation system. They were concerned that State DOTs, MPOs, and public transportation operators should not be responsible for demonstrating available funds for projects outside of federally supported facilities. The FHWA and the FTA have revised paragraph (i) to change the phrase ''while the entire transportation system is being adequately operated and maintained'' to ''while federally supported facilities are being adequately operated and maintained.'' We have also removed the reference to ''by source'' and the reference to additional information in Appendix B, since Appendix B has been removed from this rule. Please see the responses to the comments on Appendix B to the NPRM for additional background information and explanation.

A few comments were received opposing the requirement in paragraph (j)(1) (now paragraph (l)(1)) for the TIP to identify the criteria and process for prioritizing implementation of transportation plan elements for inclusion in the TIP. The FHWA and the FTA find that if it is difficult for the MPO to identify or capture the criteria it used to select projects, it will be even more difficult for the general public to understand the rationale behind selecting one element from the transportation plan over another. Therefore, we retained the language in paragraph (l)(1). However, in reviewing this comment, we identified two paragraphs from the October 1993 planning rule (23 CFR 450.324(l) and (m)) that were not included in the NPRM, related to this issue. To clarify and emphasize that MPOs should identify criteria and a process for prioritizing transportation plan elements for inclusion in the TIP, we have added these two paragraphs to the rule as new paragraphs (j) and (k), respectively. These paragraphs identify the need for allocation of funds based on prioritization and explicitly prohibit suballocation based on pre-determined percentages of formulas.

The FHWA and the FTA note, based on coordination with the EPA, that the interim metropolitan transportation plan and TIP referenced in § 450.322(1) and in paragraph (k) (now paragraph (m)) of this section respectively allows the use of interim plans and TIPs during a conformity lapse so that exempt projects, transportation control measures in approved State implementation plans, and previously approved projects and/or project phases can be funded when a conformity determination lapses. We have added ''conformity'' to the first sentence to specify the ''lapse'' referenced and removed the phrase ''(as defined in 40 CFR part 93)'' because it is no longer necessary.

After further review, the FHWA and the FTA have determined it is necessary to clarify paragraph (k) (now paragraph (m)) regarding eligible projects that may proceed without revisiting the requirements of this section. We have added the phrase ''or consistent with'' to this paragraph to clarify that eligible projects (e.g., exempt projects under 40 CFR 93.126) do not need to be explicitly listed in the conforming transportation plan and TIP to proceed.

Many State DOTs, MPOs and COGs as well as some national and regional advocacy organizations and a few public transportation providers and local government agencies asked for clarification on fiscal constraint if the financial situation in the State or metropolitan region changes. The FHWA and the FTA have added a new paragraph (o) to clarify situations where a revenue source is removed or substantially reduced after the FHWA and the FTA find a STIP to be fiscally constrained.

Several comments asked for clarification between the phrases ''operation and maintenance'' and ''operation and management.'' See the discussion of § 450.104 (Definitions) for an explanation of these terms.

The FHWA and the FTA received a proposal identifying additional procedures for engaging private transportation operators in planning and program delivery. We recognize the importance of private operator participation and, if necessary, will provide technical assistance to MPOs to promote effective practice, but do not believe any changes to the rule are necessary.

Section 450.326 TIP Revisions and Relationship to the STIP

The docket included 21 documents that contained more than 25 comments on this section with about one-third from State DOTs, half from MPOs and COGs, and the rest from city/county/State agencies, as well as national and regional advocacy organizations.

One county, many of the MPOs and COGs and State DOTs, and most of the national and regional advocacy organizations submitted opposition to the statement in paragraph (a) that public participation procedures consistent with § 450.316(a) shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications that only involve projects of the type covered in § 450.324(f). Because the rule does not require an MPO to undertake any particular public involvement process for an administrative modification, an MPO may delineate its own public involvement process for administrative modifications within the public participation plan. In order to clarify these issues, the FHWA and the FTA have removed the phrase ''projects of the type covered in § 450.324(f)'' from paragraph (a).

Many of the MPOs and COGs and most of the State DOTs opposed the statement in paragraph (a) that ''in all areas, changes that affect fiscal constraint must take place by amendment of the TIP.'' The FHWA and the FTA realize that there are minor funding changes to projects that a region could determine would fall under the definition of ''administrative modifications,'' and these would not need to go through the full TIP amendment process. However, the FHWA and the FTA include this requirement because any change which requires an amendment has ripple effects throughout the program and thus should be subjected to the full disclosure of a TIP amendment.

[16] This document, ''Interim FHWA Major Project Guidance,'' date January 27, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/programadmin/mega/012706.cfm.*

Therefore, no change has been made to the paragraph in response to this comment.

Half of the MPOs and COGs and half of the national and regional advocacy organizations oppose the language in paragraph (a) that states: ''In nonattainment or maintenance areas for transportation-related pollutants, if the TIP is amended by adding or deleting non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO, and the FHWA and the FTA must make a new conformity determination.'' The sentence has been revised to clarify that the transportation conformity rule (40 CFR 93.104(c)(2)) requires a transportation conformity determination be made if a TIP amendment involves non-exempt projects. If a non-exempt project has already been incorporated into a regional emissions analysis and is merely moving from the currently conforming metropolitan transportation plan to the TIP (and is not crossing an analysis year) we agree that the conformity determination on the TIP can be based on a previous regional emissions analysis if the requirements of 40 CFR 93.122(g) are met. No additional changes were made to this paragraph.

Section 450.328 TIP Action by the FHWA and the FTA

The docket included approximately 20 documents that contained more than 20 comments on this section with about three-fifths from State DOTs, one-fourth from national and regional advocacy organizations, and the rest from city/county/State agencies and MPOs and COGs.

An MPO expressed concern that paragraph (a) was too vague and open-ended. In addition, several commenters expressed concern regarding the need for approval of the TIP when submitted to the FHWA and the FTA. The FHWA and the FTA do not approve the TIP. The language in this paragraph is consistent with the language in the October 1993 planning rule. Over nearly 13 years, we have not found significant confusion regarding this language. However, we did remove ''including amendments thereto'' from this paragraph since we the FHWA and the FTA do not make findings on amendments.

After consultation with the EPA, we have revised paragraph (c) to be consistent with Clean Air Act requirements and clarify that projects may only be advanced once the plan expires if the TIP was approved and found to conform prior to the expiration of the metropolitan transportation plan and if the TIP meets the TIP update requirements of § 450.324(a).

Many comments were received questioning why the existing flexibility to allow highway operating funds to be approved even if not in the TIP was eliminated from paragraph (f) and in § 450.218 (Self certification, Federal findings and Federal approvals). This was an erroneous omission in the NPRM and the language has been changed to correct this error.

Section 450.330 Project Selection From the TIP

The docket included 33 documents that contained more than 35 comments on this section with about one-third from State DOTs, one-eighth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from city/county/State agencies and transit operators.

Most of the comments pertained to the two questions posed in the preamble to the NPRM: (1) Whether MPOs should be required to prepare an ''agreed to'' list of projects at the beginning of each of the four years in the TIP, rather than only the first year; and (2) whether a TIP amendment should be required to move a project between years in the TIP, if an ''agreed to'' list is required for each year. The predominant opinion was that requiring a State DOT or MPO to submit an agreed to list at the beginning of each of the four years of the TIP/STIP or requiring an amendment to move projects between years in the TIP/STIP unnecessarily limits flexibility, and thus should not be a requirement. The FHWA and the FTA agree with the majority of the comments. Therefore, no change was made to the rule language.

A few MPOs requested guidance on why a distinction is made between projects that are selected by the State in cooperation with the MPO and those that are selected by the MPO in consultation with the State and public transportation operators. This language is consistent with the October 1993 planning rule and is based on language in the statute (23 U.S.C. 135(b) and 49 U.S.C. 5304(b) and 23 U.S.C. 134(c) and 49 U.S.C. 5303(c), respectively). Therefore, no change was made to the rule language.

A few MPOs noted that paragraph (b) uses ''consultation'' to describe the MPO/TMA's action with the State and transit agency, whereas, ''cooperation'' is used to describe the State's action with the MPO. This language is consistent with the October 1993 planning rule and is based on language in the statute ((23 U.S.C. 135(b) and 49 U.S.C. 5304(b) and 23 U.S.C. 134(c) and 49 U.S.C. 5303(c), respectively). Therefore, no change was made to the rule language.

Section 450.332 Annual Listing of Obligated Projects

The docket included more than 20 documents that contained about 40 comments on this section with about one-eighth from State DOTs, one-fifth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from city/county/State agencies and transit operators.

Half of the comments on this section pertained to the language that requires the annual listing needs to be published no later than 90 calendar days following the end of the State program year. All of the responses suggested that using the end of the Federal fiscal year would make more sense. The FHWA and the FTA appreciate the suggestion. We have changed the language to not specify ''State program year'' or ''Federal fiscal year.'' Instead, the MPO, State, public transportation operator(s) shall determine the ''program year.'' The annual listing of obligated projects shall be developed no later than 90 calendar days following the end of the program year.

Critical information needed for this report is available in FHWA's Fiscal Management Information System (FMIS) [17] and FTA's Transportation Electronic Award and Management (TEAM) [18] System databases. Many of the MPOs and many of the national and regional advocacy organizations requested that they be provided access to these databases, or provided timely reports of the data from the FHWA and the FTA. The FHWA and the FTA will work closely with the States, public transportation operators and the MPOs

[17] The FHWA administers a nationwide highway project reporting system, the Fiscal Management Information System (FMIS), that is used to provide oversight of over $30 billion in disbursements to States for Federal-aid highway projects. FMIS prescribes project reporting policy and procedures and maintains the official project obligation records and statistical data for the various highway programs, including the planning and administration of a nationwide highway project reporting system on the progressive stages of individual highway projects. The system provides information to the FHWA and U.S. DOT management, State transportation officials, other Federal agencies, and the Congress.

[18] In an effort to help manage funds that support some of the FTA collaborative activities, the FTA has developed the Transportation Electronic Award and Management (TEAM) system. TEAM is a system designed to manage and track the grant process. FTA staff use TEAM to assess grant availability, assess and approve projects, assign project numbers, allocate and approve funding, and view approved grantee projects and associate reports. FTA staff members also use TEAM to track the processes associated with these activities. In addition, grantees and potential grantees use TEAM to request grants and track grant progress.

to ensure all of the critical data is available to successfully meet this reporting requirement. However, the FHWA and the FTA do not believe that the rule needs to be changed to address this comment.

Some MPOs and several State DOTs expressed support for including bicycle and pedestrian projects in the annual listing. However, many commenters did not want to include a listing of all bicycle and pedestrian ''investments'' in the report because many bicycle and pedestrian investments are included within larger transit or highway projects. No changes were made to the rule because the language reflects what is included in the statute (23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B)) The FHWA and the FTA expect the projects included in the Annual Listing of Obligated Projects to be consistent with the projects that are listed in the TIP. It was suggested that the annual listing of obligated projects contain only fund obligations and not provide information duplicative of that published in the TIP. Because the annual listing of obligated projects is intended to improve the transparency of transportation spending decisions to the public, and because providing TIP information enhances the user-friendliness of the document, the FHWA and FTA have decided not to change the content requirements. On February 24, 2006, the FHWA and the FTA jointly issued preliminary guidance on the annual list of obligated projects.[19]

Section 450.334 Self-Certifications and Federal Certifications

The docket included about 10 documents that contained about 10 comments on this section with about one-half from national and regional advocacy organizations, one-half from MPOs and COGs, and the rest from city/county governments.

Several comments pertained to the four-year cycle for Federal certification reviews of TMAs compared to the annual self-certification required by all MPOs and State DOTs. There was some concern that the annual self-certifications should not be required if the FHWA and the FTA have just performed their Federal certification review. The regulations require the State and all MPOs to certify annually that they are carrying out the transportation planning process to ensure that the State and MPOs understand their transportation responsibilities and to ensure that their responsibilities are actually being met. This self-certification must affirm that the transportation planning process is conducted in accordance with all applicable requirements.

The MPO self-certifications and the FHWA/FTA Federal certification reviews of TMAs are related, yet distinct requirements. The Federal certification of TMAs is a statutory requirement, while MPO self-certifications are a regulatory requirement that apply to all MPOs and State DOTs. Both the FHWA/FTA (for the Federal certification) and the MPO (for the self-certification) must meet their individual requirements. While both may occur in the same year, the FHWA and the FTA note that some of the information pulled together by the MPO(s), State(s), and public transportation operator(s) in advance of the TMA certification review could be ''re-used'' in making the self-certification. Therefore, no change has been made to the rule.

One commenter requested that the FHWA and the FTA include a specific standard for compliance with private enterprise provisions, which now are excluded from consideration in TMA certification, and improve a private provider's ability to operate in metropolitan areas. Several commenters requested the inclusion of detailed methodologies for engaging private service providers in the transportation planning process, as well as standards for ascertaining compliance with private enterprise provisions and a complaint process.

To ensure maximum flexibility for localities to tailor private sector involvement procedures to the service providers and needs of their areas, we have determined that this information should be disseminated as non-regulatory guidance, complemented by a wide array of effective practice case studies and supported by training and technical assistance.

The FHWA and the FTA have updated the list of applicable requirements in paragraph (a). Reference to ''23 CFR parts 200 and 300'' has been removed from paragraph (a)(3). Instead, a more specific reference to ''23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts'' was added as paragraph (a)(6). This is the specific portion of 23 CFR parts 200 and 300 that needs to be reviewed and is not related to Title VI of the Civil Rights Act of 1964 in paragraph (a)(3). In addition, we have added a new paragraph (a)(4): ''49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity.'' Upon further review of this section, the FHWA and the FTA determined that 49 U.S.C. 5332 should be included in this list of requirements.

A small number of national and regional advocacy organizations expressed concern that the rule does not provide enough detail on the standards that the FHWA, the FTA, State DOTs and MPOs should apply in certification reviews. We believe that the entire context of the rule and of the statute sufficiently identify the criteria to be used in certifying that the transportation planning process meets or substantially meets these requirements. We do not believe additional detail is required in the rule. However, the FHWA and the FTA will provide non-regulatory guidance, training and technical assistance, if necessary.

Section 450.336 Applicability of NEPA to Metropolitan Transportation Plans and Programs

The docket included very few comments on this section. One concern expressed that this section or Appendix A would make planning reviewable under NEPA. The purpose of this section, however, is to reiterate the statutory authority that the metropolitan transportation planning process decisions are not subject to review under NEPA. We have changed this section to mirror the language in 23 U.S.C. 134(p) and 49 U.S.C. 5303(p).

Section 450.338 Phase-In of New Requirements

The docket included about 40 documents that contained about 110 comments on this section with about one-third from State DOTs, one-fifth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from city/county/State agencies.

All comments received indicated that it will be difficult to meet the SAFETEA–LU July 1, 2007, deadline. Subsequent to the preparation of the proposed rule, but prior to its publication, the FHWA and the FTA disseminated additional guidance regarding the phase-in requirements on May 2, 2006.[20] Many of the comments to the docket addressed issues that were clarified in our May 2, 2006, guidance. The provisions of the guidance have been incorporated in the regulation. Specifically, we have clarified that

[19] This document, ''Preliminary SAFETEA–LU Guidance—Annual List of Obligated Projects, dated February 24, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/hep/annuallistemail.htm.*

[20] This guidance, ''SAFETEA–LU Deadline for New Planning Requirements (July 1, 2007),'' dated May 2, 2006, is available via the internet at the following URL: *http://www.fhwa.dot.gov/hep/plandeadline.htm.*

transportation plans and TIPs adopted and approved prior to July 1, 2007, may be developed under TEA–21 requirements of the provisions and requirements of this part.

We have also clarified, in paragraph (a), what actions may be taken prior to July 1, 2007, on long-range statewide transportation plans and STIPs.

One MPO, half of the national and regional advocacy organizations, and a quarter of the State DOTs commented that the regulations should clearly state that partial STIP approvals are allowable if one MPO or region is not SAFETEA–LU compliant, the other regions could produce a partial STIP that is compliant. Because the regulation allows for approval of partial STIPs (see § 450.218(b)(1)(iii)), no change was made to the regulation. Approval of partial STIPs are acceptable, primarily when difficulties are encountered in cooperatively developing the STIP portion for a particular metropolitan area or for a Federal Lands agency. If an MPO is able to produce a TIP that is SAFETEA–LU compliant, the Federal action would be to amend that TIP into the STIP, making the portion of the STIP that covers that region SAFETEA–LU compliant.

Most of the national and regional advocacy organizations and several State DOTs commented that the deadline for transportation plan, STIP and TIP action should apply to State/MPO approval action rather than the FHWA/FTA conformity finding. The FHWA and the FTA issued guidance ''Clarification of Plan Requirements in Nonattainment and Maintenance Areas'' on this issue on May 25, 2001.[21] The language in the rule is consistent with the conformity rule and current practice. Therefore, no change was made.

Most of the commenters stated that 23 U.S.C. 135(b) requires only ''updates'' to reflect changes required by the SAFETEA–LU, not ''amendments.'' The comments noted that requiring a STIP re-adoption for minor amendments would be a substantial burden and is a stricter interpretation of the statute than Congress intended. Prior to the adoption of this rule, there has not been an accepted definition of or distinction between the terms ''update'' or ''amendment.'' As established in this rule, the FHWA and the FTA consider an amendment to the STIP to be a major change to the transportation plan or program. The FHWA and the FTA believe that any major change to the transportation plan or program, whether called an ''amendment'' or an ''update'' under this regulation, is considered for this purpose an ''update'' as referenced in 23 U.S.C. 135(b). However, an ''administrative modification'' would not be covered by this requirement. This rule will clarify the definition of these terms for the future.

One national and regional advocacy organization stated that Congress specified that the SAFETEA–LU phase-in period should begin on July 1, 2007, not be completed by that date. The FHWA and the FTA believe that this is an incorrect interpretation of the statute. The FHWA and the FTA agree that administrative modifications can be made to TIPs after July 1, 2007, but amendments or revisions that would add or delete a major new project to a TIP, STIP, or transportation plan would not be acceptable after July 1, 2007 in the absence of meeting the provisions and requirements of this part. This information has been included in paragraph (d). In addition, we have clarified in paragraph (d) that, on or after July 1, 2007, both amendments and updates must be based on the provisions and requirements of this part.

Appendix A—Linking the Transportation Planning and NEPA Processes

As mentioned, the FHWA and the FTA received more than 60 comments on this section with about one-third from MPOs and COGs and one-third from State DOTs. National and regional advocacy organizations, transit agencies and others provided the remaining third of the comments on this section. In general, most of the comments received supported the concept of linking planning and NEPA but opposed including Appendix A in the rule.

The purpose of an Appendix to a regulation is to improve the quality or use of a rule, without imposing new requirements or restrictions. Appendices provide supplemental, background or explanatory information that illustrates or amplifies a rule. Because Appendix A provides amplifying information about how State DOTs, MPOs, and public transportation operators can choose to conduct planning level choices and analyses so they may be adopted or incorporated into the process required by NEPA, but does not impose new requirements, the FHWA and the FTA find that Appendix A is useful information to be included in support of §§ 450.212 (Transportation planning studies and project development), 450.222 (Applicability of NEPA to statewide transportation plans and programs), 450.318 (Transportation planning studies and project development) and 450.336 (Applicability of NEPA to metropolitan transportation plans and programs).

The FHWA and the FTA recognize commenters' concerns about Appendix A, including the recommendation that this information be kept as guidance rather than be made a part of the rule. First, information in an Appendix to a regulation does not carry regulatory authority in itself, but rather serves as guidance to further explain the regulation. Secondly, as stated above, Section 1308 of TEA–21 required the Secretary to eliminate the MIS as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the transportation planning process. Appendix A fulfills that Congressional direction by providing explanatory information regarding how the MIS requirement can be integrated into the transportation planning process. Inclusion of this explanatory information as an Appendix to the regulation will make the information more readily available to users of the regulation, and will provide notice to all interested persons of the agencies' official guidance on MIS integration with the planning process. Attachment of Appendix A to this rule will provide convenient reference for State DOTs, MPOs and public transportation operator(s) who choose to incorporate planning results and decisions in the NEPA process. It will also make the information readily available to the public. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of Appendix A in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects. For the reasons stated above, after careful consideration of all comments, the FHWA and the FTA have decided to attach Appendix A to the final rule as proposed in the NPRM.

Based on the comments, the FHWA and the FTA thoroughly reviewed Appendix A and have made several changes discussed below.

A note was added to the beginning of the discussion to emphasize that the Appendix provides additional information, is non-binding and should not be construed as a rule of general applicability.

For clarification, we made small changes to some of the subheadings. Section I ''Procedural'' was changed to ''Procedural Issues'' and Section II

[21] This document, ''Clarification of Plan Requirements in Nonattainment and Maintenance Areas,'' dated May 25, 2004, is available via the internet at the following URL: *http://www.fhwa.dot.gov/environment/conformity/planup_m.htm.*

''Substantive'' was changed to ''Substantive Issues.''

We expanded the agencies listed in the response to Question 1. The response now references ''MPO, State DOT, or public transportation operator.''

No changes were made to Question 2.

In the second paragraph of the response to Question 3, we clarified the term ''lead agency.'' The sentence now reads ''For example, the term 'lead agency' collectively means the U.S. Department of Transportation and a State or local governmental entity serving as a joint lead agency for the NEPA process.''

In the response to Question 4, we clarified that the lead agencies, rather than the FHWA and the FTA, are responsible for making decisions. Also, in the first sentence, we emphasize that the lead agencies ''jointly decide, and must agree * * *''

No changes were made to Question 5.

In the response to Question 6, a small change to add the phrase ''those of'' was made to the examples listed in the first paragraph.

We changed the order of the phrases in the second bullet of the response to Question 7 to emphasize that the transportation planning process (and the future policy year assumptions used) would occur before the NEPA process. We also added ''and the public'' to the eighth bullet. The public and other agencies should have access to the planning products during NEPA scoping.

In Question 8, we added ''during NEPA scoping and'' to the sentence ''The use of these planning-level goals and choices must be appropriately explained during NEPA scoping and in the NEPA document'' to clarify that agencies must identify during the NEPA scoping process their intent to use planning-level decisions.

We clarified in Question 9 what happens during the first-tier EIS process. The second-tier NEPA review(s) would be performed in the usual way. We also added ''planning'' to ''subarea planning study'' to emphasize that information in this Appendix refers to planning level studies. Finally, we clarified that we are referencing the ''mandatory'' Alternatives Analysis process for transit projects.

We have deleted the second paragraph in the response to Question 10. This paragraph suggested even more detailed decisions could be developed and considered during the planning process. Based on the comments we received, we want the Appendix to focus on planning-level decisions.

In the response to Question 11, we simplified the language in the first paragraph.

In the response to Question 12, the reference to ''affected agencies'' was changed to ''participating agencies'' to be specific regarding which agencies should have access to the analyses or studies.

In the response to Question 13, ''special area management plans'' was added to paragraph (f). In addition, ''or current'' was added to the phrase ''the assessment of affected environment and environmental consequences conducted during the transportation planning process will not be detailed or current enough to meet NEPA standards'' to emphasize that these assessments may need to be revisited during NEPA if time has passed between the time when the planning study was completed and the NEPA study.

No change was made to Question 14.

In Question 15, we added ''mitigation'' before ''banking'' to be more specific.

No change was made to Question 16.

No change was made to Question 17.

In the response to Question 18, we added ''and its successor in SAFETEA-LU Section 6002'' to update the discussion in the first paragraph.

No change was made to Question 19.

We updated the Website addresses in the ''Additional Information on this Topic'' section.

A small number of national and regional advocacy organizations objected to Appendix A because it does not require consideration of mitigation to the level, extent and detail required for NEPA. This comment seems to reflect a misunderstanding of the intent of Appendix A. Although Appendix A is designed to provide clarifying information on how the transportation planning process could produce products that can be more readily used in the NEPA process, transportation planning process studies do not require the specificity or analysis required by NEPA. In all likelihood, the studies produced as part of the transportation planning process will only be foundational to subsequent NEPA studies and will need to be supplemented with additional analysis and detail before fully meeting the rigorous requirements of NEPA.

Appendix B—Fiscal Constraint of Transportation Plans and Programs

The purpose of an Appendix to a regulation is to improve the quality or use of a rule, without imposing new requirements or restrictions. As was stated, appendices provide supplemental, background or explanatory information that illustrates or amplifies a rule. The FHWA and the FTA received a significant number of comments on Appendix B. State DOTs, MPOs and COGs, national and regional advocacy organizations, transit agencies and others expressed concern about imposing new requirements in the Appendix.

The docket included about 80 documents that contained about 170 comments on Appendix B. Most of the comments came from State DOTs and from MPOs and COGs in about equal numbers. Many national and regional advocacy organizations also provided comments on this section. A few public transportation providers and local government agencies provided the remainder of the comments.

Many of the State DOTs, almost all of the MPOs and COGs, many of the national and regional advocacy organizations, and a few of the public transportation providers that commented on this section objected to the Appendix being included in regulation, were generally supportive of the guidance information but many had comments on individual elements of the text as described below. Many of the State DOTs and a few of the national and regional advocacy organizations objected strongly to the text on fiscal constraint being included in regulation or as guidance though some would accept guidance with significant revisions.

When proposing Appendix B to the rule, the FHWA and the FTA intended to raise the level of awareness and importance in developing fiscally constrained transportation plans, TIPs, and STIPs to States, MPOs, and public transportation operators. Since its introduction under the ISTEA, fiscal constraint has remained a prominent aspect of transportation plan and program development, carrying through to the TEA–21 and now to the SAFETEA–LU. The FHWA and the FTA acknowledge that Appendix B contains a combination of guidance, amplifying information, and additional criteria. Given the level of controversy regarding this Appendix, it has been removed from the rule.

Instead, the FHWA and the FTA will be developing and issuing revised guidance on fiscal constraint and financial planning for transportation plans and programs soon after this rule is published.

The FHWA and the FTA find that three key features of Appendix B merit inclusion in the rule, as noted in the section-by-section discussions for § 450.216 (Development and content of the statewide transportation

improvement program (STIP), § 450.322 (Development and content of the metropolitan transportation plan), and § 450.324 (Development and content of the transportation improvement program). These key features are: (1) Treatment of highway and transit operations and maintenance costs and revenues; (2) use of ''year of expenditure dollars'' in developing cost and revenue estimates; and (3) use of ''cost ranges/cost bands'' in the outer years of the metropolitan transportation plan.

Regarding the treatment of highway and transit operations and maintenance costs and revenues, the FHWA and the FTA realize that the 1993 planning rule and the NPRM interchangeably referred to the transportation system as either ''existing,'' ''total,'' or ''entire.''

Several State DOTs, MPOs and COGs, national and regional advocacy organizations, and others expressed concern and confusion over these terms. Many commenters called into question the statutory authority for the FHWA and the FTA to focus on State and local government investments to operate and maintain the ''system'' as part of fiscal constraint and financial plans supporting transportation plans and programs. However, the statute, as amended by the SAFETEA–LU (23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C)), requires that the financial element of a metropolitan transportation plan ''demonstrates how the adopted transportation plan can be implemented'' and ''indicates resources from public and private sources'' that can be ''reasonably anticipated to implement the plan.'' A metropolitan transportation plan, as it is developed, must include consideration and recognition of how all the pieces of the regional transportation system will integrate, function and operate, not just those facilities which are or could be funded with Federal resources. To focus solely on the Federally-funded portion of the transportation system could create greater demands on limited Federal resources or jeopardize the value of the Federal investments made within that metropolitan area. Furthermore, outside the transportation planning process, there is a longstanding Federal requirement that States properly maintain, or cause to be maintained, any projects constructed under the Federal-aid Highway Program (23 U.S.C. 116).

Additionally, the FHWA and the FTA believe that the fundamental premise behind the wording in the October 28, 1993 planning rule regarding highway and transit operations and maintenance (58 FR 58040) remains sound.

However, for purposes of clarity and consistency, § 450.216(n), § 450.322(f)(10), and § 450.324(i) have been revised to better describe ''the system'' as Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53). As background, 23 U.S.C. 101(a)(5) defines ''Federal-aid highways'' as ''a highway eligible for assistance other than a highway classified as a local road or rural minor collector.'' Additionally, these sections clarify that the financial plans supporting the metropolitan transportation plan and TIP and the financial information supporting the STIP are to be based on systems-level estimates of costs and revenue sources reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

Regarding the use of ''year of expenditure dollars'' in developing cost and revenue estimates, the FHWA and the FTA jointly issued ''Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans'' on June 30, 2005.[22] This Interim Guidance indicated that financial forecasts (for costs and revenues) to support the metropolitan transportation plan, TIP, and STIP may: (a) Rely on a ''constant dollar'' base year or (b) utilize an inflation rate(s) to reflect ''year expenditure.'' The FHWA and the FTA will be developing and issuing revised guidance on fiscal constraint and financial planning for transportation plans and programs soon after this rule is published. In Appendix B, the FHWA and the FTA proposed to exclusively require the use of ''year of expenditure dollars'' to better reflect the time-based value of money. This is particularly crucial for large-scale projects with construction/implementation dates stretching into the future. Because the transportation planning process serves as the beginning point of the larger ''project continuum'' (i.e., moving from concept through construction, and later operations and maintenance), the FHWA and the FTA strongly believe that early disclosure of revenue and cost estimates reflecting time and inflation provides a truer set of expectations and future ''reality'' to the public. However, most of the State DOTs, a few of the national and regional advocacy organizations and some MPOs and COGs, commented that they should not be required to use ''year of expenditure dollars.''

The FHWA and the FTA considered these comments and included in § 450.216(h), § 450.322(f)(10), and § 450.324(d) that ''year of expenditure dollars'' shall be used ''to the extent practicable.'' While this language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in ''year of expenditure dollars,'' an opportunity to use ''constant dollars'' has been retained.

Regarding the use of ''cost ranges/cost bands'' in the outer years of the metropolitan transportation plan, the FHWA and the FTA jointly issued ''Interim Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans'' on June 30, 2005. The FHWA and the FTA will be developing and issuing revised guidance on fiscal constraint and financial planning for transportation plans and programs soon after this rule is published. The Interim Guidance indicated that for the outer years of the metropolitan transportation plan (i.e., beyond the first 10 years), the financial plan may reflect aggregate cost ranges/cost bands, as long as the future funding source(s) is reasonably expected to be available to support the projected cost ranges/cost bands. In the NPRM, the FHWA and the FTA proposed to provide this option to MPOs in developing fiscally-constrained metropolitan transportation plans. We have included this option in this rule because we believe it gives MPOs maximum flexibility to broadly define a large-scale transportation issue or problem to be addressed in the future that does not predispose a NEPA decision, while, at the same time, calling for the definition of a future funding source(s) that encompasses the planning-level ''cost range/cost band.''

23 CFR Part 500

Section 500.109 Congestion Management Systems

Few docket documents specifically referenced this section. However, the docket included more than 25 documents that contained almost 30 comments on § 450.320 (Congestion management process in transportation management areas) which is relevant to this section.

As was mentioned, on May 16, 2006, the U.S. Secretary of Transportation announced a national initiative to address congestion related to highway, freight and aviation. The intent of the ''National Strategy to Reduce Congestion on America's Transportation

[22] This joint guidance, ''Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs and Metropolitan Plans,'' dated June 27, 2005, is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/fcindex.htm.*

Network'' is to provide a blueprint for Federal, State and local officials to tackle congestion. The States and MPO(s) are encouraged to seek Urban Partnership Agreements with a handful of communities willing to demonstrate new congestion relief strategies and encourages States to pass legislation giving the private sector a broader opportunity to invest in transportation. It calls for more widespread deployment of new operational technologies and practices that end traffic tie ups, designates new interstate ''corridors of the future,'' targets port and border congestion, and expands aviation capacity.

U.S. DOT encourages the State DOTs and MPOs to consider and implement strategies, specifically related to highway and transit operations and expansion, freight, transportation pricing, other vehicle-based charges techniques, etc. The mechanism that the State DOTs and MPOs employ to explore these strategies is within their discretion. The U.S. DOT will focus its resources, funding, staff and technology to cut traffic jams and relieve freight bottlenecks.

A few comments were received reiterating that the CMP should result in multimodal system performance measures and strategies. The FHWA and the FTA note that existing language reflects the multimodal nature of the CMP. Specifically, § 450.320(a)(2) allows for the appropriate performance measures for the CMP to be determined cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area.

Several commenters asked for a clarification with regards to what CMP requirements apply in air quality attainment areas, as opposed to the requirements in air quality nonattainment areas. The CMP requirements for all TMA areas (attainment and nonattainment) are identified in §§ 450.320(a), 450.320(b), 450.320(c), and 450.320(f). Additional CMP requirements that apply only to nonattainment TMA areas (for CO and ozone) are identified in § 450.320(d) and § 450.320(e).

49 CFR Part 613

The NPRM proposed to simplify FTA's cross-reference in 49 CFR Part 613 to 23 CFR Part 450. Because there may be references to the three subparts in 49 CFR Part 613 in various other regulatory and guidance documents, FTA has made technical changes to what was proposed in the NPRM to retain the names of the subparts in this part the same as they were prior to this rule. This will reduce confusion by keeping the names of the subparts the same, but still allowing for the cross-reference simplification and alignment of identical regulatory requirements that FTA had proposed.

Distribution Tables

The NPRM proposed to clarify and revise the regulation's section headings to use plainer language. These changes have been made. For ease of reference, two distribution tables are provided for the current sections and the proposed sections as follows. The first distribution table indicates changes in section numbering and titles. The second provides details within each section.

SECTION TITLE AND NUMBER

Old section	New section
Subpart A	*Subpart A*
450.100 Purpose	450.100 Purpose.
450.102 Applicability	450.102 Applicability.
450.104 Definitions	450.104 Definitions.
Subpart B	*Subpart B*
450.200 Purpose	450.200 Purpose.
450.202 Applicability	450.202 Applicability.
450.204 Definitions	450.204 Definitions.
450.206 Statewide transportation planning process: General requirements.	450.206 Scope of the statewide transportation planning process.
450.208 Statewide transportation planning process: Factors	450.208 Coordination of planning process activities.
450.210 Coordination	450.210 Interested parties, public involvement, and consultation.
	450.212 Transportation planning studies and project development.
450.212 Public involvement	450.214 Development and content of the long-range statewide transportation plan.
450.214 Statewide transportation plan	450.216 Development and content of the statewide transportation improvement program (STIP).
450.216 Statewide transportation	450.218 Self-certifications, Federal improvement program (STIP). findings, and Federal approvals.
450.218 Funding	450.220 Project selection from the STIP.
450.220 Approvals	450.222 Applicability of NEPA to statewide transportation plans and programs.
450.222 Project selection for implementation	450.224 Phase-in of new requirements.
Subpart C	*Subpart C*
450.300 Purpose	450.300 Purpose.
450.302 Applicability	450.302 Applicability.
450.304 Definitions	450.304 Definitions.
450.306 Metropolitan planning organizations: Designation and redesignation.	450.306 Scope of the metropolitan transportation planning process.
450.308 Metropolitan planning organization: Metropolitan planning boundary.	450.308 Funding for transportation planning and unified planning work programs.
450.310 Metropolitan planning organization: planning agreements	450.310 Metropolitan planning organization designation and redesignation.
450.312 Metropolitan transportation planning: Responsibilities, cooperation, and coordination.	450.312 Metropolitan planning area boundaries.
450.314 Metropolitan transportation planning process: Unified planning work programs.	450.314 Metropolitan planning agreements.

SECTION TITLE AND NUMBER—Continued

Old section	New section
450.316 Metropolitan transportation planning process: Elements	450.316 Interested parties, participation and consultation.
450.318 Metropolitan transportation planning process: Major metropolitan transportation investments.	450.318 Transportation planning studies and project development.
450.320 Metropolitan transportation planning process: Relation to management systems.	450.320 Congestion management process in transportation management areas.
450.322 Metropolitan transportation planning process: Transportation plan.	450.322 Development and content of the metropolitan transportation plan.
450.324 Transportation improvement program: General	450.324 Development and content of the transportation improvement program (TIP).
450.326 Transportation improvement program: modification	450.326 TIP revisions and relationship to the STIP.
450.328 Transportation improvement program: Relationship to statewide TIP.	450.328 TIP action by the FHWA and the FTA.
450.330 Transportation improvement program: Action required by FHWA/FTA.	450.330 Project selection from the TIP.
450.332 Project selection for implementation	450.332 Annual listing of obligated projects.
450.334 Metropolitan transportation planning process: Certification	450.334 Self-certifications and Federal certifications.
450.336 Phase-in of new requirements	450.336 Applicability of NEPA to metropolitan transportation plans and programs.
None	450.338 Phase-in of new requirements.
Section 500	
500.109 CMS	500.109 CMS.

The following distribution table identifies details for each existing section and proposed section:

Old section	New section
Subpart A	*Subpart A*
450.100	450.100 [Revised].
450.102	450.102.
450.104	450.104.
Definitions	Definitions.
None	Administrative modification [New].
None	Alternatives analysis [New].
None	Amendment [New].
None	Attainment area [New].
None	Available funds [New].
None	Committed funds [New].
None	Conformity [New].
None	Conformity lapse [New].
None	Congestion management process [New].
None	Consideration [New].
Consultation	Consultation [Revised].
Cooperation	Cooperation [Revised].
None	Coordinated public transit-human services transportation plan [New].
Coordination	Coordination [Revised].
None	Design concept [New].
None	Design scope [New].
None	Designated recipient [New].
None	Environmental mitigation activities [New].
None	Federal land management agency [New].
None	Federally funded non-emergency transportation services [New].
None	Financially constrained or Fiscal constraint [New].
None	Financial plan [New].
None	Freight shippers [New].
None	Full funding grant agreement [New].
Governor	Governor.
None	Illustrative project [New].
None	Indian Tribal government [New].
None	Intelligent transportation system (ITS) [New].
None	Interim metropolitan transportation plan [New].
None	Interim transportation improvement program (TIP) [New].
Maintenance area	Maintenance area [Revised].
Major metropolitan transportation investment	Removed.
Management system	Management system [Revised].
Metropolitan planning area	Metropolitan planning area (MPA) [Revised].
Metropolitan planning organization	Metropolitan planning organization.
(MPO)	(MPO) [Revised].
Metropolitan transportation plan	Metropolitan transportation plan.

Old section	New section
None	National ambient air quality standards (NAAQS) [New].
Nonattainment area	Nonattainment area.
Non-metropolitan area	Non-metropolitan area.
Non-metropolitan local official	Non-metropolitan local official.
None	Obligated projects [New].
None	Operational and management strategies [New].
None	Project construction grant agreement [New].
None	Project selection [New].
None	Provider of freight transportation services [New].
None	Public transportation operator [New].
None	Regional ITS architecture [New].
Regionally significant project	Regionally significant project [Revised].
None	Revision [New].
State	State.
State implementation plan (SIP)	State implementation plan (SIP) [Revised].
Statewide transportation improvement program (STIP)	Statewide transportation improvement program (STIP) [Revised].
Statewide transportation plan	Long-range statewide transportation plan [Revised].
None	Strategic highway safety plan [New].
None	Transportation control measures (TCMs) [New].
Transportation improvement program (TIP)	Transportation improvement program (TIP) [Revised].
Transportation management area (TMA)	Transportation management area (TMA) [Revised].
None	Unified planning work program (UPWP) [New].
None	Update [New].
None	Urbanized area [New].
None	Users of public transportation [New].
None	Visualization techniques [New].
Subpart B	*Subpart B*
450.200	450.200 [Revised].
450.202	450.202 [Revised].
450.204	450.204 [Revised].
450.206(a)(1) through (a)(5)	Removed.
450.206(b)	450.208(a)(1) [Revised].
450.206(c)	450.208(a)(4).
450.208(a)(1)	450.208(d) [Revised].
450.208(a)(2) through (a)(23)	450.206(a)(1) through (a)(8) [Revised].
450.208(b)	450.206(b) [Revised].
None	450.206(c) [New].
450.210(a)(1) through (a)(13)	450.208(a)(1) through (a)(7) [Revised].
450.210(b)	Removed.
None	450.208(b) [New].
None	450.208(c) [New].
None	450.208(e) [New].
None	450.208(f) [New].
None	450.208(g) [New].
None	450.208(h) [New].
450.212(a) through (g)	450.210(a) [Revised].
450.212(h) through (i)	450.210(b)(1) through (b)(2) [Revised].
None	450.210(c) [New].
None	450.212(a) through (c) [New].
450.214(a) through (b)(3)	450.214(a) [Revised].
None	450.214(b) [New].
450.214(b)(4)	450.214(f) [Revised].
450.214(b)(5)	450.214(c) [Revised].
450.214(b)(6)	450.214(l) [Revised].
None	450.214(d) [New].
None	450.214(e) [New].
450.214(c)(1) through (c)(5)	450.214(g) and (h) [Revised].
450.214(d)	Removed.
None	450.214(i) [New].
None	450.214(j) [New].
None	450.214(m) [New].
None	450.214(n) [New].
450.214(e)	450.214(o).
None	450.214(p) [New].
450.214(f)	450.214(g) [Revised].
450.216(a) last sentence	450.216(f) [Revised].
450.216(a)(1) through (a)(2)	450.216(a) through (b) [Revised].
450.216(a)(3)	450.216(k).
None	450.216(l) [New].
450.216(a)(4)	450.216(b) [Revised].
None	450.216(d) [New].
None	450.216(e) [New].
450.216(a)(5)	450.216(m) [Revised].
450.216(a)(6)	450.216(g) [Revised].

Old section	New section
450.216(a)(7)	450.216(h) [Revised].
450.216(a)(8)	450.216(i) [Revised].
450.216(a)(9)	Removed.
450.216(b)	450.216(j) [Revised.]
450.216(b) last sentence	450.216(f).
450.216(c) through (d)	450.216(n) [Revised].
None	450.216(o) [New].
450.216(e)	450.216(c) [Revised].
450.218	450.206(d) [Revised].
450.220(a) through (g)	450.218(a) through (d) [Revised].
450.222(a) through (d)	450.220(a) through (e) [Revised].
None	450.222 [New].
450.224(a) through (b)	450.224(a) through (c) [Revised].
Subpart C	*Subpart C*
450.300	450.300 [Revised].
450.302	450.302 [Revised].
450.304	450.304 [Revised].
450.306(a) through (d)	450.310(a) through (h) [Revised].
450.306(e)	450.310(f) [Revised].
None	450.310(g) [New].
450.306(f)	Removed.
450.306(g)	450.310(i) [Revised].
450.306(h)	450.310(j) [Revised].
450.306(i) through (j)	Removed.
450.306(k)	450.310(k) through (l) [Revised].
None	450.310(k) [New].
450.308(a) through (c)	450.312(a), (b), and (i) [Revised].
None	450.312(c) [New].
None	450.312(d) [New].
None	450.312(e) [New].
None	450.312(f) [New].
None	450.312(g) [New].
None	450.312(h) [New].
450.308(d)	450.312(j) [Revised].
450.310(a), (b), and (d)	450.314(a) [Revised].
450.310(c)	450.314(c).
450.310(e)	Removed.
450.310(f)	450.314(b) [Revised].
450.310(g)	450.314(d) [Revised].
450.310(h)	Removed.
None	450.314(f) [New].
450.312(a)	450.314(a) [Revised].
450.312(b)	450.322(c) [Revised].
450.312(c)	450.322(d) [Revised].
450.312(d)	Removed.
450.312(e)	450.314(b), (d), and (e) [Revised].
450.312(f)	450.306(i).
450.312(g)	Removed.
450.312(h)	Removed.
450.312(i)	450.316(c) through (d) [Revised].
None	450.316(e) [New].
None	450.308(a) [New].
450.314(a) through (d)	450.308(b) through (e) [Revised].
None	450.308(f) [New].
450.316(a)(1) through (a)(16)	450.306(a)(1) through (a)(8) [Revised].
None	450.306(b) [New].
None	450.306(c) [New].
None	450.306(d) [New].
None	450.306(e) [New].
None	450.306(f) [New].
None	450.306(g) [New].
None	450.306(h) [New].
None	450.316(a) [New].
450.316(b)(1)(i)	450.316(a)(3) [Revised].
450.316(b)(1)(ii) through (b)(1)(vi)	450.316(a)(1)(i) through (a)(1)(vi) [Revised].
450.316(b)(1)(vii)	450.316(a)(2) [Revised].
450.316(b)(1)(viii) through (b)(1)(xi)	450.316(a)(1)(vii) through (a)(1)(x) [Revised].
450.316(b)(2)	Removed.
450.316(b)(3)	Removed.
450.316(b)(4)	Removed.
None	450.316(b) [New].
450.312(i)	450.316(c).
None	450.316(d) [New].
450.316(c)	450.306(j) [Revised].

Old section	New section
450.316(d)	Removed.
450.318(a) through (f)	450.318(a) through (e) [Revised].
450.320(a)	450.320(a) [Revised].
450.320(b)	450.320(d) and (e) [Revised].
450.320(c)	450.320(b) [Revised].
450.320(d)	450.320(b) [Revised].
500.109(a) second, fourth, and fifth sentences	450.320(b) [Revised].
500.109(b)	450.320(c) [Revised].
500.109(b)(1) through (b)(6)	450.320(c)(1) through (c)(6) [Revised].
None	450.320(f) [New].
450.322(a) and (e)	450.322(a) through (c) [Revised].
None	450.322(e) [New].
450.322(b)(1) through (b)(2)	450.322(f)(1) through (f)(2) [Revised].
450.322(b)(3)	450.322(f)(8) [Revised].
450.322(b)(4) through (b)(7)	450.322(f)(3) through (f)(6) [Revised].
450.322(b)(8)	Removed.
450.322(b)(9)	450.322(f)(7) and (g)(1) through (g)(2) [Revised].
450.322(b)(10)	450.324(f)(9) [Revised].
450.322(b)(11)	450.322(f)(10) [Revised].
None	450.322(h) [New].
450.322(c)	450.322(i) [Revised].
None	450.322(j) [New].
None	450.322(k) [New].
450.322(d)	450.322(l) [Revised].
450.324(a) through (i)	450.324(a) through (i) [Revised].
450.324(j) through (k)	Removed.
450.324(l) through (m)	450.324(j) through (k) [Revised].
450.324(n)	450.324(l).
None	450.324(m) [New].
None	450.324(n) [New].
None	450.324(o) [New].
450.326	450.326(a) [Revised].
450.328(a) through (b)	450.326(b) through (c) [Revised].
450.330(a) through (b)	450.328(a) through (b) [Revised].
None	450.328(c) through (e) [New].
450.324(o)	450.328(f) [Revised].
450.332(a) through (e)	450.330(a) through (e) [Revised].
None	450.332(a) through (c) [New].
450.334(a) through (h)	450.334(a) through (b) [Revised].
None	450.336 [New].
450.336	450.338(a) through (e) [Revised].
500.109 first and third sentences	500.109(a) [Revised].
500.109(a) second, fourth, and fifth sentences	500.109(b) [Revised].

Rulemaking Analyses and Notices

The FHWA and the FTA received and considered more than 1,600 comments by the comment closing date of September 7, 2006. In addition, we considered all comments received after the closing date to the extent practicable.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and the FTA have determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866, and is significant under Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. This rule will add new coordination and documentation requirements (e.g., greater public outreach and consultation with State and local planning and resource agencies, annual listing of obligated projects, etc.), but will reduce the frequency of some existing regulatory reporting requirements (e.g., metropolitan transportation plan, STIP/TIP, and certification reviews). The FHWA and the FTA have sought to maintain previous flexibility of operation wherever possible for State DOTs, MPOs, and other affected organizations, and to utilize existing processes to accomplish any new tasks or activities. We did not receive any comments on this analysis.

The FHWA and the FTA conducted a cost analysis identifying each of the proposed regulatory changes that would have a significant cost impact for MPOs or State DOTs, and have estimated those costs on an annual basis. This cost analysis was posted on the docket as a separate document, entitled ''Regulatory Cost Analysis of Proposed Rulemaking.'' We did not receive any comments on the cost analysis. We have not made changes that substantively affect the cost or benefits calculations used in the analysis. Therefore, no changes are made to the cost analysis and we believe that the economic impact of this rulemaking will be minimal.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), the FHWA and the FTA have determined that States and MPOs are not included in the definition of small entity set forth in 5 U.S.C. 601. Small governmental jurisdictions are limited to representations of populations of less than 50,000. MPOs, by definition, represent urbanized areas having a minimum population of 50,000. Therefore the Regulatory Flexibility Act

does not apply. We did not receive any comments on the Regulatory Flexibility Act determination.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure of non-Federal funds by State, local, and Indian Tribal governments, in the aggregate, or by the private sector, of $128.1 million in any one year (2 U.S.C. 1532).

Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Indian Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal-aid highway program and Federal Transit Act permit this type of flexibility to the States. We did not receive any comments on the Unfunded Mandates Reform Act.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA and the FTA have determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA and the FTA have also determined that this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

By letter dated November 29, 2005, the FHWA and the FTA solicited comments from the National Governors' Association (NGA) as representatives for the elected State officials on the Federalism implications of this proposed rule.[23] An identical letter was sent on the same date to several other organizations representing elected officials and Indian Tribal governments. These organizations were: The National Conference of State Legislators (NCSL), the American Public Works Association (APWA), the Association of Metropolitan Planning Organizations (AMPO), the National Association of Regional Councils (NARC), the National Association of Counties (NACO), the Conference of Mayors (COM), the National Association of City Transportation Officials (NACTO), and the National Congress of American Indians (NCAI).

In response to this letter, AMPO and NARC requested a meeting to discuss their Federalism concerns. On December 21, 2005, we met with representatives from AMPO and NARC. A summary of this meeting is available in the docket. Briefly, both AMPO and NARC expressed concern with the potential burdens that new requirements might have on MPOs, especially the smaller MPOs. In particular, AMPO and NARC were concerned with our implementation of the SAFETEA–LU provisions relating to public participation, congestion management process, and implementation of planning update cycles. We did consider these concerns when drafting the final rule. We did not receive additional comments on Federalism issues.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction (or 20.217); 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs. The FHWA and the FTA did not receive any comments on these programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA and the FTA have determined that this regulation contains collection of information requirements for the purposes of the Paperwork Reduction Act. However, the FHWA and the FTA believe that any increases in burden hours per submission are more than offset by decreases in the frequency of collection for these information requirements.

The reporting requirements for metropolitan planning unified planning work programs (UPWPs), transportation plans, and transportation improvement programs (TIPs) are approved under OMB control number 2132–0529. Under the previous planning regulations, the burden hours were estimated to be 314,900; however, due to the reduction in the frequency of collection, the burden hours for this final rule are estimated to be only 250,295 hours. That is a reduction of 64,605 burden hours. This collection has been approved by OMB with an expiration date of August 31, 2009. The information reporting requirements for State planning work programs were approved by the OMB under control number 2125–0039 (expiration date: November 30, 2007). However, we have combined these collections into one OMB control number (2132–0529). The FTA conducted the analysis supporting this approval on behalf of both the FTA and the FHWA, since the regulations are jointly issued by both agencies. The reporting requirements for statewide transportation plans and programs are also approved under this same OMB control number. The information collection requirements addressed under the current OMB approval number (2132–0529) impose a total burden of 250,295 hours on the planning agencies that must comply with the requirements in the new regulation. The FHWA and the FTA conducted an analysis of the change in burden hours attributed to the rulemaking, based on estimates used in the submission for OMB approval. This analysis is included on the docket as a separate document entitled ''Estimated Change in Reporting Burden Hours Attributable to the final rule.''

The docket contained a comment on the estimated change in reporting burden hours. The commenter stated that the analysis was unrealistically low because it failed to account for the costs of implementing the proposed fiscal constraint and STIP amendment provisions. The FHWA and the FTA disagree with this comment. The fiscal constraint requirements are not new with this rulemaking; they were introduced under the ISTEA, and subsequently reaffirmed under the SAFETEA–LU (23 U.S.C. 134 (i)(2)(C), 23 U.S.C. 134 (j)(1)(C), 49 U.S.C. 5301 (a)(1), and 49 U.S.C. 5303 (j)(2)(C)). Appendix B (Fiscal Constraint of Transportation Plans and Programs) has been removed from the rule, although three key features were included in appropriate sections. Please see the responses to the comments on Appendix B for additional background information and explanation.

Consequently, the FHWA and the FTA find that the fiscal constraint provision does not add new burden on State DOTs and MPOs, and therefore is not subject to a cost analysis. Furthermore the FHWA and the FTA believe that the changes in definitions regarding TIP/STIP amendments

[23] A copy of this letter is included in the docket.

actually reduce the administrative burden by introducing the concept of an ''administrative modification,'' which allows minor changes to be made without requiring public review and comment, redemonstration of fiscal constraint, or a conformity determination. Finally, the cost analysis does specifically recognize that some additional costs may be incurred to address new coordination provisions, and estimates an average cost increase for State DOTs of approximately $54,000 per year. Some States may incur higher costs, while others may incur lower costs. However, these additional costs for transportation plan development are partially offset by estimated cost savings due to other provisions (e.g., reduction in the required frequency of STIP updates). No substantial change was made to the ''Estimated Change in Reporting Burden Hours Attributable to the final rule'' as a result of these comments. Additionally, there has been no change since the approval of the most recent information collection request (ICR) and no change between the NPRM and final rule.

The analysis results are summarized below.

The creation and submission of required reports and documents have been limited to those specifically required by 23 U.S.C. 134 and 135 and in 49 U.S.C. 5303 and 5304 or essential to the performance of our findings, certifications and/or approvals. The final rule will have no significant change in the submission requirements for UPWPs or State planning work programs; therefore there is no change in the annual reporting burden for this element. The final rule will require that additional sections be added to the metropolitan and statewide transportation plans, which we estimate would increase the required level of effort by 20 percent over current plan development. However, the final rule also reduces the required frequency of plan submission from 3 to 4 years for MPOs located in nonattainment or maintenance areas. One half of all MPOs are located in nonattainment or maintenance areas and would realize a reduction in their annual reporting burden. Based on the burden hours used in the FTA analysis submitted for OMB approval, the decrease in burden hours for MPOs located in nonattainment and maintenance areas more than offsets the increase in burden hours associated with the new sections required in the plans.

The final rule requires that State and metropolitan transportation improvement program (STIP and TIP) documents include 4 years of projects; an increase from 3 years of projects required under the previous regulations. The inclusion of an additional year of projects will increase the reporting burden associated with TIP development by 10 percent over current levels. However, the final rule also reduces the required frequency of TIP submission from 2 years to 4 years for all States and MPOs. Based on the burden hours used in the FTA analysis submitted for OMB approval, the decrease in burden hours associated with the reduced frequency of submission more than offsets the increase in burden hours associated with including an additional year of projects in the TIP. The FHWA and the FTA have not made changes to the rule that would substantively affect this analysis. None of the changes made to the regulatory language between the NPRM and the final rule alter information collection requirements.

National Environmental Policy Act

The FHWA and the FTA have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and have determined that this action would not have any effect on the quality of the environment. A small number of national and regional advocacy organizations wrote that this rulemaking process should be subject to NEPA because certain regulatory provisions (e.g., Appendix A (Linking the transportation planning and NEPA processes), § 450.212 (Transportation planning studies and project development), and § 450.318 (Transportation planning studies and project development)) will impact how environmental considerations are addressed by State DOTs and MPOs. The FHWA and the FTA disagree. The proposed rule defines a process for carrying out the transportation planning provisions as specified in the SAFETEA–LU. It does not rescind or alter any of the requirements specified under NEPA with respect to overall long range transportation planning or project evaluation. Individual plans and projects submitted by State DOTs and MPOs would continue to be subject to NEPA requirements.

Furthermore, the SAFETEA–LU clearly states in 23 U.S.C. 135(j) and 49 U.S.C. 5304(j) that ''any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program shall not be considered to be a Federal action subject to review under [NEPA].''

Executive Order 12988 (Civil Justice Reform)

This action 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. The FHWA and the FTA did not receive any comment on this determination.

Executive Order 13045 (Protection of Children)

We have analyzed this action 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 concern an environmental risk to health or safety that may disproportionately affect children. The FHWA and the FTA did not receive any comment on this determination.

Executive Order 12630 (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. The FHWA and the FTA did not receive any comment on this determination.

Executive Order 13175 (Tribal Consultation)

The FHWA and the FTA have analyzed this action under Executive Order 13175, dated November 6, 2000, and believe that the action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian Tribal governments; and will not preempt Tribal laws. The planning regulations contain requirements for States to consult with Indian Tribal governments in the planning process. Tribes are required under 25 CFR part 170 to develop long range plans and develop an Indian Reservation Roads (IRR) TIP for programming IRR projects. However, the requirements in 25 CFR part 170 and would not be changed by this rulemaking. Therefore, a Tribal summary impact statement is not required. The FHWA and the FTA did not receive any comment on this analysis or determination.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that

order because although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required. The FHWA and the FTA did not receive any comment on this determination.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Parts 450 and 500

Grant Programs—transportation, Highway and roads, Mass transportation, Reporting and record keeping requirements.

49 CFR Part 613

Grant Programs—transportation, Highway and roads, Mass transportation, Reporting and record keeping requirements.

Issued on: January 29, 2007.

J. Richard Capka,

Federal Highway Administrator.

Issued on: January 31, 2007.

James S. Simpson,

Federal Transit Administrator.

■ For the reasons discussed in the preamble, the FHWA and the FTA amend title 23, parts 450 and 500, and title 49, part 613, Code of Federal Regulations as follows:

Title 23—Highways

■ 1. Revise Part 450 to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Transportation Planning and Programming Definitions

Sec.
450.100 Purpose.
450.102 Applicability.
450.104 Definitions.

Subpart B—Statewide Transportation Planning and Programming

450.200 Purpose.
450.202 Applicability.
450.204 Definitions.
450.206 Scope of the statewide transportation planning process.
450.208 Coordination of planning process activities.
450.210 Interested parties, public involvement, and consultation.
450.212 Transportation planning studies and project development.
450.214 Development and content of the long-range statewide transportation plan.
450.216 Development and content of the statewide transportation improvement program (STIP).
450.218 Self-certifications, Federal findings, and Federal approvals.
450.220 Project selection from the STIP.
450.222 Applicability of NEPA to statewide transportation plans and programs.
450.224 Phase-in of new requirements.

Subpart C—Metropolitan Transportation Planning and Programming

Sec.
450.300 Purpose.
450.302 Applicability.
450.304 Definitions.
450.306 Scope of the metropolitan transportation planning process.
450.308 Funding for transportation planning and unified planning work programs.
450.310 Metropolitan planning organization designation and redesignation.
450.312 Metropolitan planning area boundaries.
450.314 Metropolitan planning agreements.
450.316 Interested parties, participation, and consultation.
450.318 Transportation planning studies and project development.
450.320 Congestion management process in transportation management areas.
450.322 Development and content of the metropolitan transportation plan.
450.324 Development and content of the transportation improvement program (TIP).
450.326 TIP revisions and relationship to the STIP.
450.328 TIP action by the FHWA and the FTA.
450.330 Project selection from the TIP.
450.332 Annual listing of obligated projects.
450.334 Self-certifications and Federal certifications.
450.336 Applicability of NEPA to metropolitan transportation plans and programs.
450.338 Phase-in of new requirements.
Appendix A to part 450—Linking the transportation planning and NEPA processes.

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303 and 5304; 49 CFR 1.48 and 1.51.

Subpart A—Transportation Planning and Programming Definitions

§ 450.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 450.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 450.104 Definitions.

Unless otherwise specified, the definitions in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are applicable to this part.

Administrative modification means a minor revision to a long-range statewide or metropolitan transportation plan, Transportation Improvement Program (TIP), or Statewide Transportation Improvement Program (STIP) that includes minor changes to project/project phase costs, minor changes to funding sources of previously-included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that does not require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas).

Alternatives analysis (AA) means a study required for eligibility of funding under the Federal Transit Administration's (FTA's) Capital Investment Grant program (49 U.S.C. 5309), which includes an assessment of a range of alternatives designed to address a transportation problem in a corridor or subarea, resulting in sufficient information to support selection by State and local officials of a locally preferred alternative for adoption into a metropolitan transportation plan, and for the Secretary to make decisions to advance the locally preferred alternative through the project development process, as set forth in 49 CFR part 611 (Major Capital Investment Projects).

Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes). Changes to projects that are included only for illustrative purposes do not require an amendment. An amendment is a revision that requires public review and comment, redemonstration of fiscal constraint, or a conformity determination (for metropolitan transportation plans and TIPs involving ''non-exempt'' projects in nonattainment and maintenance areas). In the context of a long-range statewide transportation plan, an amendment is a revision approved by the State in accordance with its public involvement process.

Attainment area means any geographic area in which levels of a

given criteria air pollutant (e.g., ozone, carbon monoxide, PM10, PM2.5, and nitrogen dioxide) meet the health-based National Ambient Air Quality Standards (NAAQS) for that pollutant. An area may be an attainment area for one pollutant and a nonattainment area for others. A ''maintenance area'' (see definition below) is not considered an attainment area for transportation planning purposes.

Available funds means funds derived from an existing source dedicated to or historically used for transportation purposes. For Federal funds, authorized and/or appropriated funds and the extrapolation of formula and discretionary funds at historic rates of increase are considered ''available.'' A similar approach may be used for State and local funds that are dedicated to or historically used for transportation purposes.

Committed funds means funds that have been dedicated or obligated for transportation purposes. For State funds that are not dedicated to transportation purposes, only those funds over which the Governor has control may be considered ''committed.'' Approval of a TIP by the Governor is considered a commitment of those funds over which the Governor has control. For local or private sources of funds not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing (e.g., letter of intent) by the responsible official or body having control of the funds may be considered a commitment. For projects involving 49 U.S.C. 5309 funding, execution of a Full Funding Grant Agreement (or equivalent) or a Project Construction Grant Agreement with the USDOT shall be considered a multi-year commitment of Federal funds.

Conformity means a Clean Air Act (42 U.S.C. 7506(c)) requirement that ensures that Federal funding and approval are given to transportation plans, programs and projects that are consistent with the air quality goals established by a State Implementation Plan (SIP). Conformity, to 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 NAAQS. The transportation conformity rule (40 CFR part 93) sets forth policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities.

Conformity lapse means, pursuant to section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), as amended, that the conformity determination for a metropolitan transportation plan or TIP has expired and thus there is no currently conforming metropolitan transportation plan or TIP.

Congestion management process means a systematic approach required in transportation management areas (TMAs) that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C., and title 49 U.S.C., through the use of operational management strategies.

Consideration means that one or more parties takes into account the opinions, action, and relevant information from other parties in making a decision or determining a course of action.

Consultation means that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken. This definition does not apply to the ''consultation'' performed by the States and the MPOs in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and Tribal conservation plans or maps or inventories of natural or historic resources (see § 450.214(i) and § 450.322(g)(1) and (g)(2)).

Cooperation means that the parties involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective.

Coordinated public transit-human services transportation plan means a locally developed, coordinated transportation plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation.

Coordination means the cooperative development of plans, programs, and schedules among agencies and entities with legal standing and adjustment of such plans, programs, and schedules to achieve general consistency, as appropriate.

Design concept means the type of facility identified for a transportation improvement project (e.g., freeway, expressway, arterial highway, grade-separated highway, toll road, reserved right-of-way rail transit, mixed-traffic rail transit, or busway).

Design scope means the aspects that will affect the proposed facility's impact on the region, usually as they relate to vehicle or person carrying capacity and control (e.g., number of lanes or tracks to be constructed or added, length of project, signalization, safety features, access control including approximate number and location of interchanges, or preferential treatment for high-occupancy vehicles).

Designated recipient means an entity designated, in accordance with the planning process under 49 U.S.C. 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly-owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. 5336 that are attributable to transportation management areas (TMAs) identified under 49 U.S.C. 5303, or a State regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.

Environmental mitigation activities means strategies, policies, programs, actions, and activities that, over time, will serve to avoid, minimize, or compensate for (by replacing or providing substitute resources) the impacts to or disruption of elements of the human and natural environment associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan. The human and natural environment includes, for example, neighborhoods and communities, homes and businesses, cultural resources, parks and recreation areas, wetlands and water sources, forested and other natural areas, agricultural areas, endangered and threatened species, and the ambient air. The environmental mitigation strategies and activities are intended to be regional in scope, and may not necessarily address potential project-level impacts.

Federal land management agency means units of the Federal Government currently responsible for the administration of public lands (e.g., U.S. Forest Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the National Park Service).

Federally funded non-emergency transportation services means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

Financial plan means documentation required to be included with a metropolitan transportation plan and TIP (and optional for the long-range statewide transportation plan and STIP) that demonstrates the consistency

between reasonably available and projected sources of Federal, State, local, and private revenues and the costs of implementing proposed transportation system improvements.

Financially constrained or Fiscal constraint means that the metropolitan transportation plan, TIP, and STIP includes sufficient financial information for demonstrating that projects in the metropolitan transportation plan, TIP, and STIP can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained. For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are ''available'' or ''committed.''

Freight shippers means any business that routinely transports its products from one location to another by providers of freight transportation services or by its own vehicle fleet.

Full funding grant agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding New Starts projects as required by 49 U.S.C. 5309(d)(1).

Governor means the Governor of any of the 50 States or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia.

Illustrative project means an additional transportation project that may (but is not required to) be included in a financial plan for a metropolitan transportation plan, TIP, or STIP if reasonable additional resources were to become available.

Indian Tribal government means a duly formed governing body for an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103–454.

Intelligent transportation system (ITS) means electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

Interim metropolitan transportation plan means a transportation plan composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO.

Interim transportation improvement program (TIP) means a TIP composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO and the Governor.

Long-range statewide transportation plan means the official, statewide, multimodal, transportation plan covering a period of no less than 20 years developed through the statewide transportation planning process.

Maintenance area means any geographic region of the United States that the EPA previously designated as a nonattainment area for one or more pollutants pursuant to the Clean Air Act Amendments of 1990, and subsequently redesignated as an attainment area subject to the requirement to develop a maintenance plan under section 175A of the Clean Air Act, as amended.

Management system means a systematic process, designed to assist decisionmakers in selecting cost effective strategies/actions to improve the efficiency or safety of, and protect the investment in the nation's infrastructure. A management system can include: Identification of performance measures; data collection and analysis; determination of needs; evaluation and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning area (MPA) means the geographic area determined by agreement between the metropolitan planning organization (MPO) for the area and the Governor, in which the metropolitan transportation planning process is carried out.

Metropolitan planning organization (MPO) means the policy board of an organization created and designated to carry out the metropolitan transportation planning process.

Metropolitan transportation plan means the official multimodal transportation plan addressing no less than a 20-year planning horizon that is developed, adopted, and updated by the MPO through the metropolitan transportation planning process.

National ambient air quality standard (NAAQS) means those standards established pursuant to section 109 of the Clean Air Act.

Nonattainment area means any geographic region of the United States that has been designated by the EPA as a nonattainment area under section 107 of the Clean Air Act for any pollutants for which an NAAQS exists.

Non-metropolitan area means a geographic area outside a designated metropolitan planning area.

Non-metropolitan local officials means elected and appointed officials of general purpose local government in a non-metropolitan area with responsibility for transportation.

Obligated projects means strategies and projects funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53 for which the supporting Federal funds were authorized and committed by the State or designated recipient in the preceding program year, and authorized by the FHWA or awarded as a grant by the FTA.

Operational and management strategies means actions and strategies aimed at improving the performance of existing and planned transportation facilities to relieve congestion and maximizing the safety and mobility of people and goods.

Project construction grant agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding Small Starts projects as required by 49 U.S.C. 5309(e)(7).

Project selection means the procedures followed by MPOs, States, and public transportation operators to advance projects from the first four years of an approved TIP and/or STIP to implementation, in accordance with agreed upon procedures.

Provider of freight transportation services means any entity that transports or otherwise facilitates the movement of goods from one location to another for others or for itself.

Public transportation operator means the public entity which participates in the continuing, cooperative, and comprehensive transportation planning process in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304, and is the designated recipient of Federal funds under title 49 U.S.C. Chapter 53 for transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by Amtrak.

Regional ITS architecture means a regional framework for ensuring institutional agreement and technical integration for the implementation of ITS projects or groups of projects.

Regionally significant project means a transportation project (other than projects that may be grouped in the TIP and/or STIP or exempt projects as defined in EPA's transportation

conformity regulation (40 CFR part 93)) that is on a facility which serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network. At a minimum, this includes all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

Revision means a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A major revision is an ''amendment,'' while a minor revision is an ''administrative modification.''

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

State implementation plan (SIP) means, as defined in section 302(q) of the Clean Air Act (CAA), the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA, or promulgated under section 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA and which implements the relevant requirements of the CAA.

Statewide transportation improvement program (STIP) means a statewide prioritized listing/program of transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Strategic highway safety plan means a plan developed by the State DOT in accordance with the requirements of 23 U.S.C. 148(a)(6).

Transportation control measure (TCM) means any measure that is specifically identified and committed to in the applicable SIP that is either one of the types listed in section 108 of the Clean Air Act or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs.

Transportation improvement program (TIP) means a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Transportation management area (TMA) means an urbanized area with a population over 200,000, as defined by the Bureau of the Census and designated by the Secretary of Transportation, or any additional area where TMA designation is requested by the Governor and the MPO and designated by the Secretary of Transportation.

Unified planning work program (UPWP) means a statement of work identifying the planning priorities and activities to be carried out within a metropolitan planning area. At a minimum, a UPWP includes a description of the planning work and resulting products, who will perform the work, time frames for completing the work, the cost of the work, and the source(s) of funds.

Update means making current a long-range statewide transportation plan, metropolitan transportation plan, TIP, or STIP through a comprehensive review. Updates require public review and comment, a 20-year horizon year for metropolitan transportation plans and long-range statewide transportation plans, a four-year program period for TIPs and STIPs, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (for metropolitan transportation plans and TIPs in nonattainment and maintenance areas).

Urbanized area means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

Users of public transportation means any person, or groups representing such persons, who use transportation open to the general public, other than taxis and other privately funded and operated vehicles.

Visualization techniques means methods used by States and MPOs in the development of transportation plans and programs with the public, elected and appointed officials, and other stakeholders in a clear and easily accessible format such as maps, pictures, and/or displays, to promote improved understanding of existing or proposed transportation plans and programs.

Subpart B—Statewide Transportation Planning and Programming

§ 450.200 Purpose.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 135 and 49 U.S.C. 5304, as amended, which require each State to carry out a continuing, cooperative, and comprehensive statewide multimodal transportation planning process, including the development of a long-range statewide transportation plan and statewide transportation improvement program (STIP), that facilitates the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and that fosters economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution in all areas of the State, including those areas subject to the metropolitan transportation planning requirements of 23 U.S.C. 134 and 49 U.S.C. 5303.

§ 450.202 Applicability.

The provisions of this subpart are applicable to States and any other organizations or entities (e.g., metropolitan planning organizations (MPOs) and public transportation operators) that are responsible for satisfying the requirements for transportation plans and programs throughout the State pursuant to 23 U.S.C. 135 and 49 U.S.C. 5304.

§ 450.204 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

§ 450.206 Scope of the statewide transportation planning process.

(a) Each State shall carry out a continuing, cooperative, and comprehensive statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will address the following factors:

(1) Support the economic vitality of the United States, the States, metropolitan areas, and non-metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety of the transportation system for motorized and non-motorized users;

(3) Increase the security of the transportation system for motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(6) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(7) Promote efficient system management and operation; and

(8) Emphasize the preservation of the existing transportation system.

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in the statewide transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation systems development, land use, employment, economic development, human and natural environment, and housing and community development.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C Chapter 7 in any matter affecting a long-range statewide transportation plan, STIP, project or strategy, or the statewide transportation planning process findings.

(d) Funds provided under 23 U.S.C. 505 and 49 U.S.C. 5305(e) are available to the State to accomplish activities in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(1) and (3) and 105 and 49 U.S.C. 5307 may also be used. Statewide transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 shall be documented in a statewide planning work program in accordance with the provisions of 23 CFR part 420. The work program should include a discussion of the transportation planning priorities facing the State.

§ 450.208 Coordination of planning process activities.

(a) In carrying out the statewide transportation planning process, each State shall, at a minimum:

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. The State is encouraged to rely on information, studies, or analyses provided by MPOs for portions of the transportation system located in metropolitan planning areas;

(2) Coordinate planning carried out under this subpart with statewide trade and economic development planning activities and related multistate planning efforts;

(3) Consider the concerns of Federal land management agencies that have jurisdiction over land within the boundaries of the State;

(4) Consider the concerns of local elected and appointed officials with responsibilities for transportation in non-metropolitan areas;

(5) Consider the concerns of Indian Tribal governments that have jurisdiction over land within the boundaries of the State;

(6) Consider related planning activities being conducted outside of metropolitan planning areas and between States; and

(7) Coordinate data collection and analyses with MPOs and public transportation operators to support statewide transportation planning and programming priorities and decisions.

(b) The State air quality agency shall coordinate with the State department of transportation (State DOT) to develop the transportation portion of the State Implementation Plan (SIP) consistent with the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(c) Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities under this subpart related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective. The right to alter, amend, or repeal interstate compacts entered into under this part is expressly reserved.

(d) States may use any one or more of the management systems (in whole or in part) described in 23 CFR part 500.

(e) States may apply asset management principles and techniques in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance.

(f) The statewide transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, 5316, and 5317, should be coordinated and consistent with the statewide transportation planning process.

(h) The statewide transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and other transit safety and security planning and review processes, plans, and programs, as appropriate.

§ 450.210 Interested parties, public involvement, and consultation.

(a) In carrying out the statewide transportation planning process, including development of the long-range statewide transportation plan and the STIP, the State shall develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points.

(1) The State's public involvement process at a minimum shall:

(i) Establish early and continuous public involvement opportunities that provide timely information about transportation issues and decisionmaking processes to citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties;

(ii) Provide reasonable public access to technical and policy information used in the development of the long-range statewide transportation plan and the STIP;

(iii) Provide adequate public notice of public involvement activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed long-range statewide transportation plan and STIP;

(iv) To the maximum extent practicable, ensure that public meetings are held at convenient and accessible locations and times;

(v) To the maximum extent practicable, use visualization techniques to describe the proposed long-range statewide transportation plan and supporting studies;

(vi) To the maximum extent practicable, make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford

reasonable opportunity for consideration of public information;

(vii) Demonstrate explicit consideration and response to public input during the development of the long-range statewide transportation plan and STIP;

(viii) Include a process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services; and

(ix) Provide for the periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all interested parties and revise the process, as appropriate.

(2) The State shall provide for public comment on existing and proposed processes for public involvement in the development of the long-range statewide transportation plan and the STIP. At a minimum, the State shall allow 45 calendar days for public review and written comment before the procedures and any major revisions to existing procedures are adopted. The State shall provide copies of the approved public involvement process document(s) to the FHWA and the FTA for informational purposes.

(b) The State shall provide for non-metropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State shall have a documented process(es) for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP. Although the FHWA and the FTA shall not review or approve this consultation process(es), copies of the process document(s) shall be provided to the FHWA and the FTA for informational purposes.

(1) At least once every five years (as of February 24, 2006), the State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 calendar days regarding the effectiveness of the consultation process and any proposed changes. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials.

(2) The State, at its discretion, shall be responsible for determining whether to adopt any proposed changes. If a proposed change is not adopted, the State shall make publicly available its reasons for not accepting the proposed change, including notification to non-metropolitan local officials or their associations.

(c) For each area of the State under the jurisdiction of an Indian Tribal government, the State shall develop the long-range statewide transportation plan and STIP in consultation with the Tribal government and the Secretary of Interior. States shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and Federal land management agencies in the development of the long-range statewide transportation plan and the STIP.

§ 450.212 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA–21 (Pub. L. 105–178), a State(s), MPO(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the statewide transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the State(s), MPO(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Basic description of the environmental setting; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The systems-level, corridor, or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Reasonable opportunity to comment during the statewide transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate. Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that is non-binding guidance material.

§ 450.214 Development and content of the long-range statewide transportation plan.

(a) The State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State. The long-range statewide transportation plan shall consider and include, as applicable, elements and connections between public transportation, non-motorized modes, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel.

(b) The long-range statewide transportation plan should include

capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system. The long-range statewide transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the State's transportation system.

(c) The long-range statewide transportation plan shall reference, summarize, or contain any applicable short-range planning studies; strategic planning and/or policy studies; transportation needs studies; management systems reports; emergency relief and disaster preparedness plans; and any statements of policies, goals, and objectives on issues (e.g., transportation, safety, economic development, social and environmental effects, or energy) that were relevant to the development of the long-range statewide transportation plan.

(d) The long-range statewide transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects contained in the Strategic Highway Safety Plan required by 23 U.S.C. 148.

(e) The long-range statewide transportation plan should include a security element that incorporates or summarizes the priorities, goals, or projects set forth in other transit safety and security planning and review processes, plans, and programs, as appropriate.

(f) Within each metropolitan area of the State, the long-range statewide transportation plan shall be developed in cooperation with the affected MPOs.

(g) For non-metropolitan areas, the long-range statewide transportation plan shall be developed in consultation with affected non-metropolitan officials with responsibility for transportation using the State's consultation process(es) established under § 450.210(b).

(h) For each area of the State under the jurisdiction of an Indian Tribal government, the long-range statewide transportation plan shall be developed in consultation with the Tribal government and the Secretary of the Interior consistent with § 450.210(c).

(i) The long-range statewide transportation plan shall be developed, as appropriate, in consultation with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation. This consultation shall involve comparison of transportation plans to State and Tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(j) A long-range statewide transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the long-range statewide transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The State may establish reasonable timeframes for performing this consultation.

(k) In developing and updating the long-range statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed long-range statewide transportation plan. In carrying out these requirements, the State shall, to the maximum extent practicable, utilize the public involvement process described under § 450.210(a).

(l) The long-range statewide transportation plan may (but is not required to) include a financial plan that demonstrates how the adopted long-range statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted long-range statewide transportation plan if additional resources beyond those identified in the financial plan were to become available.

(m) The State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (l) of this section.

(n) The long-range statewide transportation plan shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.210(a).

(o) The State shall continually evaluate, revise, and periodically update the long-range statewide transportation plan, as appropriate, using the procedures in this section for development and establishment of the long-range statewide transportation plan.

(p) Copies of any new or amended long-range statewide transportation plan documents shall be provided to the FHWA and the FTA for informational purposes.

§ 450.216 Development and content of the statewide transportation improvement program (STIP).

(a) The State shall develop a statewide transportation improvement program (STIP) for all areas of the State. The STIP shall cover a period of no less than four years and be updated at least every four years, or more frequently if the Governor elects a more frequent update cycle. However, if the STIP covers more than four years, the FHWA and the FTA will consider the projects in the additional years as informational. In case of difficulties developing a portion of the STIP for a particular area (e.g., metropolitan planning area, nonattainment or maintenance area, or Indian Tribal lands), a partial STIP covering the rest of the State may be developed.

(b) For each metropolitan area in the State, the STIP shall be developed in cooperation with the MPO designated for the metropolitan area. Each metropolitan transportation improvement program (TIP) shall be included without change in the STIP, directly or by reference, after approval of the TIP by the MPO and the Governor. A metropolitan TIP in a nonattainment or maintenance area is subject to a FHWA/FTA conformity finding before inclusion in the STIP. In areas outside a metropolitan planning area but within an air quality nonattainment or maintenance area containing any part of a metropolitan area, projects must be included in the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP.

(c) For each non-metropolitan area in the State, the STIP shall be developed in consultation with affected non-metropolitan local officials with responsibility for transportation using

the State's consultation process(es) established under § 450.210.

(d) For each area of the State under the jurisdiction of an Indian Tribal government, the STIP shall be developed in consultation with the Tribal government and the Secretary of the Interior.

(e) Federal Lands Highway program TIPs shall be included without change in the STIP, directly or by reference, once approved by the FHWA pursuant to 23 U.S.C. 204(a) or (j).

(f) The Governor shall provide all interested parties with a reasonable opportunity to comment on the proposed STIP as required by § 450.210(a).

(g) The STIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the State proposed for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 (including transportation enhancements; Federal Lands Highway program projects; safety projects included in the State's Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities), except the following that may (but are not required to) be included:

(1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), and 49 U.S.C. 5339;

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the State's discretion, State planning and research projects funded with National Highway System, Surface Transportation Program, and/or Equity Bonus funds;

(5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(h) The STIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 funds (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, and congressionally designated projects not funded under title 23 U.S.C. or title 49 U.S.C. Chapter 53). For informational and conformity purposes, the STIP shall include (if appropriate and included in any TIPs) all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(i) The STIP shall include for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction) the following:

(1) Sufficient descriptive material (i.e., type of work, termini, and length) to identify the project or phase;

(2) Estimated total project cost, or a project cost range, which may extend beyond the four years of the STIP;

(3) The amount of Federal funds proposed to be obligated during each program year (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds); and

(4) Identification of the agencies responsible for carrying out the project or phase.

(j) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be consistent with the ''exempt project'' classifications contained in the EPA's transportation conformity regulation (40 CFR part 93). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the STIP.

(k) Each project or project phase included in the STIP shall be consistent with the long-range statewide transportation plan developed under § 450.214 and, in metropolitan planning areas, consistent with an approved metropolitan transportation plan developed under § 450.322.

(l) The STIP may include a financial plan that demonstrates how the approved STIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the STIP, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted STIP if reasonable additional resources beyond those identified in the financial plan were to become available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the FHWA and the FTA on the STIP. Starting December 11, 2007, revenue and cost estimates for the STIP must use an inflation rate(s) to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the State, MPOs, and public transportation operators.

(m) The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first two years of the STIP shall be limited to those for which funds are available or committed. Financial constraint of the STIP shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally-supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (l) of this section. For purposes of transportation operations and maintenance, the STIP shall include financial information containing system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(n) Projects in any of the first four years of the STIP may be advanced in place of another project in the first four years of the STIP, subject to the project selection requirements of § 450.220. In addition, the STIP may be revised at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the STIP development procedures established in this section, as well as the procedures for participation by interested parties (see § 450.210(a)), subject to FHWA/FTA approval (see § 450.218). Changes that affect fiscal constraint must take place by amendment of the STIP.

(o) In cases that the FHWA and the FTA find a STIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or

administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended STIP that does not reflect the changed revenue situation.

§ 450.218 Self-certifications, Federal findings, and Federal approvals.

(a) At least every four years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. STIP amendments shall also be submitted to the FHWA and the FTA for joint approval. At the time the entire proposed STIP or STIP amendments are submitted to the FHWA and the FTA for joint approval, the State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and 49 CFR part 21;

(3) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(4) Section 1101(b) of the SAFETEA–LU (Pub. L. 109–59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;

(5) 23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(6) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(7) In States containing nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;

(8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(9) Section 324 of title 23 U.S.C., regarding the prohibition of discrimination based on gender; and

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) The FHWA and the FTA shall review the STIP or the amended STIP, and make a joint finding on the extent to which the STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and subparts A, B, and C of this part. Approval of the STIP by the FHWA and the FTA, in its entirety or in part, will be based upon the results of this joint finding.

(1) If the FHWA and the FTA determine that the STIP or amended STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part, the FHWA and the FTA may jointly:

(i) Approve the entire STIP;

(ii) Approve the STIP subject to certain corrective actions being taken; or

(iii) Under special circumstances, approve a partial STIP covering only a portion of the State.

(2) If the FHWA and the FTA jointly determine and document in the planning finding that a submitted STIP or amended STIP does not substantially meet the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part for any identified categories of projects, the FHWA and the FTA will not approve the STIP.

(c) The approval period for a new or amended STIP shall not exceed four years. If a State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new or amended STIP past its update deadline, the FHWA and the FTA will consider and take appropriate action on a request to extend the approval beyond four years for all or part of the STIP for a period not to exceed 180 calendar days. In these cases, priority consideration will be given to projects and strategies involving the operation and management of the multimodal transportation system. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request. If the delay was due to the development and approval of a metropolitan TIP(s), the affected MPO(s) must provide supporting information, in writing, for the request.

(d) Where necessary in order to maintain or establish highway and transit operations, the FHWA and the FTA may approve operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved STIP.

§ 450.220 Project selection from the STIP.

(a) Except as provided in § 450.216(g) and § 450.218(d), only projects in a FHWA/FTA approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects proposed for funds administered by the FHWA or the FTA shall be selected from the approved STIP in accordance with project selection procedures provided in § 450.330.

(c) In non-metropolitan areas, transportation projects undertaken on the National Highway System, under the Bridge and Interstate Maintenance programs in title 23 U.S.C. and under sections 5310, 5311, 5316, and 5317 of title 49 U.S.C. Chapter 53 shall be selected from the approved STIP by the State in consultation with the affected non-metropolitan local officials with responsibility for transportation.

(d) Federal Lands Highway program projects shall be selected from the approved STIP in accordance with the procedures developed pursuant to 23 U.S.C. 204.

(e) The projects in the first year of an approved STIP shall constitute an ''agreed to'' list of projects for subsequent scheduling and implementation. No further action under paragraphs (b) through (d) of this section is required for the implementing agency to proceed with these projects. If Federal funds available are significantly less than the authorized amounts, or where there is significant shifting of projects among years, § 450.330(a) provides for a revised list of ''agreed to'' projects to be developed upon the request of the State, MPO, or public transportation operator(s). If an implementing agency wishes to proceed with a project in the second, third, or fourth year of the STIP, the procedures in paragraphs (b) through (d) of this section or expedited procedures that provide for the advancement of projects from the second, third, or fourth years of the STIP may be used, if agreed to by all parties involved in the selection process.

§ 450.222 Applicability of NEPA to statewide transportation plans and programs.

Any decision by the Secretary concerning a long-range statewide transportation plan or STIP developed through the processes provided for in 23 U.S.C. 135, 49 U.S.C. 5304, and this subpart shall not be considered to be a Federal action subject to review under NEPA.

§ 450.224 Phase-in of new requirements.

(a) Long-range statewide transportation plans and STIPs adopted or approved prior to July 1, 2007 may be developed using the TEA–21 requirements or the provisions and requirements of this part.

(b) For STIPs that are developed under TEA–21 requirements prior to July 1, 2007, the FHWA/FTA action (*i.e.*, STIP approval) must be completed no later than June 30, 2007. For long-range statewide transportation plans that are completed under TEA–21 requirements prior to July 1, 2007, the State adoption action must be completed no later than June 30, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the long-range statewide transportation plan or the STIP were developed.

(c) The applicable action (see paragraph (b) of this section) on any amendments or updates to STIPs or long-range statewide transportation plans on or after July 1, 2007, shall be based on the provisions and requirements of this part. However, administrative modifications may be made to the STIP on or after July 1, 2007 in the absence of meeting the provisions and requirements of this part.

Subpart C—Metropolitan Transportation Planning and Programming

§ 450.300 Purpose.

The purposes of this subpart are to implement the provisions of 23 U.S.C. 134 and 49 U.S.C. 5303, as amended, which:

(a) Sets forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive multimodal transportation planning process, including the development of a metropolitan transportation plan and a transportation improvement program (TIP), that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution; and

(b) Encourages continued development and improvement of metropolitan transportation planning processes guided by the planning factors set forth in 23 U.S.C. 134(h) and 49 U.S.C. 5303(h).

§ 450.302 Applicability.

The provisions of this subpart are applicable to organizations and entities responsible for the transportation planning and programming processes in metropolitan planning areas.

§ 450.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

§ 450.306 Scope of the metropolitan transportation planning process.

(a) The metropolitan transportation planning process shall be continuous, cooperative, and comprehensive, and provide for consideration and implementation of projects, strategies, and services that will address the following factors:

(1) Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety of the transportation system for motorized and non-motorized users;

(3) Increase the security of the transportation system for motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(6) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(7) Promote efficient system management and operation; and

(8) Emphasize the preservation of the existing transportation system.

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in the metropolitan transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation system development, land use, employment, economic development, human and natural environment, and housing and community development.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5, U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 in any matter affecting a metropolitan transportation plan, TIP, a project or strategy, or the certification of a metropolitan transportation planning process.

(d) The metropolitan transportation planning process shall be carried out in coordination with the statewide transportation planning process required by 23 U.S.C. 135 and 49 U.S.C. 5304.

(e) In carrying out the metropolitan transportation planning process, MPOs, States, and public transportation operators may apply asset management principles and techniques in establishing planning goals, defining TIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance, as well as strategies and policies to support homeland security and to safeguard the personal security of all motorized and non-motorized users.

(f) The metropolitan transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, 5316, and 5317, should be coordinated and consistent with the metropolitan transportation planning process.

(h) The metropolitan transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and other transit safety and security planning and review processes, plans, and programs, as appropriate.

(i) The FHWA and the FTA shall designate as a transportation management area (TMA) each urbanized area with a population of over 200,000 individuals, as defined by the Bureau of the Census. The FHWA and the FTA shall also designate any additional urbanized area as a TMA on the request of the Governor and the MPO designated for that area.

(j) In an urbanized area not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and these regulations, taking into account the complexity of the transportation problems in the area. The simplified procedures shall be developed by the MPO in cooperation with the State(s) and public transportation operator(s).

§ 450.308 Funding for transportation planning and unified planning work programs.

(a) Funds provided under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), 49 U.S.C. 5307, and 49 U.S.C. 5339 are available to MPOs to accomplish activities in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(1) and (b)(3) and 23 U.S.C. 105 may also be provided to MPOs for metropolitan transportation planning. In addition, an MPO serving an urbanized area with a population over 200,000, as designated by the Bureau of the Census, may at its discretion use funds sub-allocated under 23 U.S.C. 133(d)(3)(E) for metropolitan transportation planning activities.

(b) Metropolitan transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 shall be documented in a unified planning work program (UPWP) or simplified statement of work in accordance with the provisions of this section and 23 CFR part 420.

(c) Except as provided in paragraph (d) of this section, each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPA. The UPWP shall identify work proposed for the next one- or two-year period by major activity and task (including activities that address the planning factors in § 450.306(a)), in sufficient detail to indicate who (e.g., MPO, State, public transportation operator, local government, or consultant) will perform the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds.

(d) With the prior approval of the State and the FHWA and the FTA, an MPO in an area not designated as a TMA may prepare a simplified statement of work, in cooperation with the State(s) and the public transportation operator(s), in lieu of a UPWP. A simplified statement of work would include a description of the major activities to be performed during the next one- or two-year period, who (e.g., State, MPO, public transportation operator, local government, or consultant) will perform the work, the resulting products, and a summary of the total amounts and sources of Federal and matching funds. If a simplified statement of work is used, it may be submitted as part of the State's planning work program, in accordance with 23 CFR part 420.

(e) Arrangements may be made with the FHWA and the FTA to combine the UPWP or simplified statement of work with the work program(s) for other Federal planning funds.

(f) Administrative requirements for UPWPs and simplified statements of work are contained in 23 CFR part 420 and FTA Circular C8100.1B (Program Guidance and Application Instructions for Metropolitan Planning Grants).

§ 450.310 Metropolitan planning organization designation and redesignation.

(a) To carry out the metropolitan transportation planning process under this subpart, a metropolitan planning organization (MPO) shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census).

(b) MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(c) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated transportation planning for the entire MPA. The consent of Congress is granted to any two or more States to:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under 23 U.S.C. 134 and 49 U.S.C. 5303 as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(d) Each MPO that serves a TMA, when designated or redesignated under this section, shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan planning area, and appropriate State transportation officials. Where appropriate, MPOs may increase the representation of local elected officials, public transportation agencies, or appropriate State officials on their policy boards and other committees as a means for encouraging greater involvement in the metropolitan transportation planning process, subject to the requirements of paragraph (k) of this section.

(e) To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas. More than one MPO may be designated to serve an urbanized area only if the Governor(s) and the existing MPO, if applicable, determine that the size and complexity of the urbanized area make designation of more than one MPO appropriate. In those cases where two or more MPOs serve the same urbanized area, the MPOs shall establish official, written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among the MPOs.

(f) Nothing in this subpart shall be deemed to prohibit an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan transportation planning process.

(g) An MPO designation shall remain in effect until an official redesignation has been made in accordance with this section.

(h) An existing MPO may be redesignated only by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(i) Redesignation of an MPO serving a multistate metropolitan planning area requires agreement between the Governors of each State served by the existing MPO and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(j) For the purposes of redesignation, units of general purpose local government may be defined as elected officials from each unit of general purpose local government located within the metropolitan planning area served by the existing MPO.

(k) Redesignation of an MPO (in accordance with the provisions of this section) is required whenever the existing MPO proposes to make:

(1) A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State(s); or

(2) A substantial change in the decisionmaking authority or

responsibility of the MPO, or in decisionmaking procedures established under MPO by-laws.

(l) The following changes to an MPO do not require a redesignation (as long as they do not trigger a substantial change as described in paragraph (k) of the section):

(1) The identification of a new urbanized area (as determined by the Bureau of the Census) within an existing metropolitan planning area;

(2) Adding members to the MPO that represent new units of general purpose local government resulting from expansion of the metropolitan planning area;

(3) Adding members to satisfy the specific membership requirements for an MPO that serves a TMA; or

(4) Periodic rotation of members representing units of general-purpose local government, as established under MPO by-laws.

§ 450.312 Metropolitan planning area boundaries.

(a) The boundaries of a metropolitan planning area (MPA) shall be determined by agreement between the MPO and the Governor. At a minimum, the MPA boundaries shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) An MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) as of August 10, 2005, shall retain the MPA boundary that existed on August 10, 2005. The MPA boundaries for such MPOs may only be adjusted by agreement of the Governor and the affected MPO in accordance with the redesignation procedures described in § 450.310(h). The MPA boundary for an MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) after August 10, 2005 may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with the requirements in § 450.310(b).

(c) An MPA boundary may encompass more than one urbanized area.

(d) MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new urbanized areas within an existing metropolitan planning area by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, MPO(s), and the public transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate area.

(g) The MPA boundaries shall not overlap with each other.

(h) Where part of an urbanized area served by one MPO extends into an adjacent MPA, the MPOs shall, at a minimum, establish written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among and between the MPOs. Alternatively, the MPOs may adjust their existing boundaries so that the entire urbanized area lies within only one MPA. Boundary adjustments that change the composition of the MPO may require redesignation of one or more such MPOs.

(i) The MPA boundaries shall be reviewed after each Census by the MPO (in cooperation with the State and public transportation operator(s)) to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall be adjusted as necessary. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, reduces access disadvantages experienced by modal systems, and promotes efficient overall transportation investment strategies.

(j) Following MPA boundary approval by the MPO and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

§ 450.314 Metropolitan planning agreements.

(a) The MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s), and the public transportation operator(s) serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) shall include specific provisions for cooperatively developing and sharing information related to the development of financial plans that support the metropolitan transportation plan (see § 450.322) and the metropolitan TIP (see § 450.324) and development of the annual listing of obligated projects (see § 450.332).

(b) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity rule (40 CFR part 93). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

(c) In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be a written agreement between the MPO and the designated air quality planning agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) If more than one MPO has been designated to serve an urbanized area, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a proposed transportation investment extends across the boundaries of more than one MPA. If any part of the urbanized area is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. The

metropolitan transportation planning processes for affected MPOs should, to the maximum extent possible, reflect coordinated data collection, analysis, and planning assumptions across the MPAs. Alternatively, a single metropolitan transportation plan and/or TIP for the entire urbanized area may be developed jointly by the MPOs in cooperation with their respective planning partners. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(e) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(f) If part of an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not designated as a TMA, the adjacent urbanized area shall not be treated as a TMA. However, a written agreement shall be established between the MPOs with MPA boundaries including a portion of the TMA, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection).

§ 450.316 Interested parties, participation, and consultation.

(a) The MPO shall develop and use a documented participation plan that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The participation plan shall be developed by the MPO in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:

(i) Providing adequate public notice of public participation activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;

(ii) Providing timely notice and reasonable access to information about transportation issues and processes;

(iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;

(iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

(v) Holding any public meetings at convenient and accessible locations and times;

(vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;

(vii) Seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services;

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

(2) When significant written and oral comments are received on the draft metropolitan transportation plan and TIP (including the financial plans) as a result of the participation process in this section or the interagency consultation process required under the EPA transportation conformity regulations (40 CFR part 93), a summary, analysis, and report on the disposition of comments shall be made as part of the final metropolitan transportation plan and TIP.

(3) A minimum public comment period of 45 calendar days shall be provided before the initial or revised participation plan is adopted by the MPO. Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable.

(b) In developing metropolitan transportation plans and TIPs, the MPO should consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation (including State and local planned growth, economic development, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities. In addition, metropolitan transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the area that are provided by:

(1) Recipients of assistance under title 49 U.S.C. Chapter 53;

(2) Governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the U.S. Department of Transportation to provide non-emergency transportation services; and

(3) Recipients of assistance under 23 U.S.C. 204.

(c) When the MPA includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(d) When the MPA includes Federal public lands, the MPO shall appropriately involve the Federal land management agencies in the development of the metropolitan transportation plan and the TIP.

(e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in paragraphs (b), (c), and (d) of this section, which

may be included in the agreement(s) developed under § 450.314.

§ 450.318 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA–21 (Pub. L. 105–178), an MPO(s), State(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the metropolitan transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Basic description of the environmental setting; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The systems-level, corridor, or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Reasonable opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement (EIS) or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate.

(d) For transit fixed guideway projects requiring an Alternatives Analysis (49 U.S.C. 5309(d) and (e)), the Alternatives Analysis described in 49 CFR part 611 constitutes the planning required by section 1308 of the TEA–21. The Alternatives Analysis may or may not be combined with the preparation of a NEPA document (e.g., a draft EIS). When an Alternatives Analysis is separate from the preparation of a NEPA document, the results of the Alternatives Analysis may be used during a subsequent environmental review process as described in paragraph (a).

(e) Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that it is non-binding guidance material.

§ 450.320 Congestion management process in transportation management areas.

(a) The transportation planning process in a TMA shall address congestion management through a process that provides for safe and effective integrated management and operation of the multimodal transportation system, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 through the use of travel demand reduction and operational management strategies.

(b) The development of a congestion management process should result in multimodal system performance measures and strategies that can be reflected in the metropolitan transportation plan and the TIP. The level of system performance deemed acceptable by State and local transportation officials may vary by type of transportation facility, geographic location (metropolitan area or subarea), and/or time of day. In addition, consideration should be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, and improve transportation system management and operations. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity and safety of those lanes.

(c) The congestion management process shall be developed, established, and implemented as part of the metropolitan transportation planning process that includes coordination with transportation system management and operations activities. The congestion management process shall include:

(1) Methods to monitor and evaluate the performance of the multimodal transportation system, identify the causes of recurring and non-recurring congestion, identify and evaluate alternative strategies, provide information supporting the implementation of actions, and evaluate the effectiveness of implemented actions;

(2) Definition of congestion management objectives and appropriate performance measures to assess the extent of congestion and support the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since levels of acceptable system performance may vary among local communities, performance measures should be tailored to the specific needs of the area and established cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area;

(3) Establishment of a coordinated program for data collection and system performance monitoring to define the extent and duration of congestion, to contribute in determining the causes of congestion, and evaluate the efficiency and effectiveness of implemented actions. To the extent possible, this data collection program should be coordinated with existing data sources (including archived operational/ITS data) and coordinated with operations managers in the metropolitan area;

(4) Identification and evaluation of the anticipated performance and expected benefits of appropriate congestion management strategies that will contribute to the more effective use and improved safety of existing and future transportation systems based on the established performance measures. The following categories of strategies, or combinations of strategies, are some examples of what should be appropriately considered for each area:

(i) Demand management measures, including growth management and congestion pricing;

(ii) Traffic operational improvements;

(iii) Public transportation improvements;

(iv) ITS technologies as related to the regional ITS architecture; and

(v) Where necessary, additional system capacity;

(5) Identification of an implementation schedule, implementation responsibilities, and possible funding sources for each strategy (or combination of strategies) proposed for implementation; and

(6) Implementation of a process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures. The results of this evaluation shall be provided to decisionmakers and the public to provide guidance on selection of effective strategies for future implementation.

(d) In a TMA designated as nonattainment area for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed for any project that will result in a significant increase in the carrying capacity for SOVs (i.e., a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks), unless the project is addressed through a congestion management process meeting the requirements of this section.

(e) In TMAs designated as nonattainment for ozone or carbon monoxide, the congestion management process shall provide an appropriate analysis of reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (as described in paragraph (d) of this section) is proposed to be advanced with Federal funds. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the congestion management process shall identify all reasonable strategies to manage the SOV facility safely and effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall also be identified through the congestion management process. All identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(f) State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process, if the FHWA and the FTA find that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of 23 U.S.C. 134 and 49 U.S.C. 5303.

§ 450.322 Development and content of the metropolitan transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing no less than a 20-year planning horizon as of the effective date. In nonattainment and maintenance areas, the effective date of the transportation plan shall be the date of a conformity determination issued by the FHWA and the FTA. In attainment areas, the effective date of the transportation plan shall be its date of adoption by the MPO.

(b) The transportation plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated multimodal transportation system to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand.

(c) The MPO shall review and update the transportation plan at least every four years in air quality nonattainment and maintenance areas and at least every five years in attainment areas to confirm the transportation plan's validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period to at least a 20-year planning horizon. In addition, the MPO may revise the transportation plan at any time using the procedures in this section without a requirement to extend the horizon year. The transportation plan (and any revisions) shall be approved by the MPO and submitted for information purposes to the Governor. Copies of any updated or revised transportation plans must be provided to the FHWA and the FTA.

(d) In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the MPO shall coordinate the development of the metropolitan transportation plan with the process for developing transportation control measures (TCMs) in a State Implementation Plan (SIP).

(e) The MPO, the State(s), and the public transportation operator(s) shall validate data utilized in preparing other existing modal plans for providing input to the transportation plan. In updating the transportation plan, the MPO shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. The MPO shall approve transportation plan contents and supporting analyses produced by a transportation plan update.

(f) The metropolitan transportation plan shall, at a minimum, include:

(1) The projected transportation demand of persons and goods in the metropolitan planning area over the period of the transportation plan;

(2) Existing and proposed transportation facilities (including major roadways, transit, multimodal and intermodal facilities, pedestrian walkways and bicycle facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions over the period of the transportation plan. In addition, the locally preferred alternative selected from an Alternatives Analysis under the FTA's Capital Investment Grant program (49 U.S.C. 5309 and 49 CFR part 611) needs to be adopted as part of the metropolitan transportation plan as a condition for funding under 49 U.S.C. 5309;

(3) Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

(4) Consideration of the results of the congestion management process in TMAs that meet the requirements of this subpart, including the identification of SOV projects that result from a congestion management process in TMAs that are nonattainment for ozone or carbon monoxide;

(5) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation

infrastructure and provide for multimodal capacity increases based on regional priorities and needs. The metropolitan transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area's transportation system;

(6) Design concept and design scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of funding source, in nonattainment and maintenance areas for conformity determinations under the EPA's transportation conformity rule (40 CFR part 93). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) A discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation;

(8) Pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(9) Transportation and transit enhancement activities, as appropriate; and

(10) A financial plan that demonstrates how the adopted transportation plan can be implemented.

(i) For purposes of transportation system operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(ii) For the purpose of developing the metropolitan transportation plan, the MPO, public transportation operator(s), and State shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation, as required under § 450.314(a). All necessary financial resources from public and private sources that are reasonably expected to be made available to carry out the transportation plan shall be identified.

(iii) The financial plan shall include recommendations on any additional financing strategies to fund projects and programs included in the metropolitan transportation plan. In the case of new funding sources, strategies for ensuring their availability shall be identified.

(iv) In developing the financial plan, the MPO shall take into account all projects and strategies proposed for funding under title 23 U.S.C., title 49 U.S.C. Chapter 53 or with other Federal funds; State assistance; local sources; and private participation. Starting December 11, 2007, revenue and cost estimates that support the metropolitan transportation plan must use an inflation rate(s) to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(v) For the outer years of the metropolitan transportation plan (i.e., beyond the first 10 years), the financial plan may reflect aggregate cost ranges/cost bands, as long as the future funding source(s) is reasonably expected to be available to support the projected cost ranges/cost bands.

(vi) For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of TCMs in the applicable SIP.

(vii) For illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were to become available.

(viii) In cases that the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint; however, in such cases, the FHWA and the FTA will not act on an updated or amended metropolitan transportation plan that does not reflect the changed revenue situation.

(g) The MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of the transportation plan. The consultation shall involve, as appropriate:

(1) Comparison of transportation plans with State conservation plans or maps, if available; or

(2) Comparison of transportation plans to inventories of natural or historic resources, if available.

(h) The metropolitan transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects for the MPA contained in the Strategic Highway Safety Plan required under 23 U.S.C. 148, as well as (as appropriate) emergency relief and disaster preparedness plans and strategies and policies that support homeland security (as appropriate) and safeguard the personal security of all motorized and non-motorized users.

(i) The MPO shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(j) The metropolitan transportation plan shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(k) A State or MPO shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(10) of this section.

(l) In nonattainment and maintenance areas for transportation-related pollutants, the MPO, as well as the FHWA and the FTA, must make a conformity determination on any updated or amended transportation plan in accordance with the Clean Air Act and the EPA transportation conformity regulations (40 CFR part 93). During a conformity lapse, MPOs can prepare an interim metropolitan transportation plan as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim metropolitan transportation plan consisting of eligible projects from, or consistent with, the most recent conforming transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim metropolitan transportation

plan containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

§ 450.324 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall cover a period of no less than four years, be updated at least every four years, and be approved by the MPO and the Governor. However, if the TIP covers more than four years, the FHWA and the FTA will consider the projects in the additional years as informational. The TIP may be updated more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93).

(b) The MPO shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO shall provide at least one formal public meeting during the TIP development process, which should be addressed through the participation plan described in § 450.316(a). In addition, the TIP shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.316(a).

(c) The TIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53 (including transportation enhancements; Federal Lands Highway program projects; safety projects included in the State's Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities), except the following that may (but are not required to) be included:

(1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), and 49 U.S.C. 5339;

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the discretion of the State and MPO, State planning and research projects funded with National Highway System, Surface Transportation Program, and/or Equity Bonus funds;

(5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(d) The TIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded under title 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds and congressionally designated projects not funded under 23 U.S.C. or 49 U.S.C. Chapter 53). For public information and conformity purposes, the TIP shall include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(e) The TIP shall include, for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction), the following:

(1) Sufficient descriptive material (i.e., type of work, termini, and length) to identify the project or phase;

(2) Estimated total project cost, which may extend beyond the four years of the TIP;

(3) The amount of Federal funds proposed to be obligated during each program year for the project or phase (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds);

(4) Identification of the agencies responsible for carrying out the project or phase;

(5) In nonattainment and maintenance areas, identification of those projects which are identified as TCMs in the applicable SIP;

(6) In nonattainment and maintenance areas, included projects shall be specified in sufficient detail (design concept and scope) for air quality analysis in accordance with the EPA transportation conformity regulation (40 CFR part 93); and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects that will implement these plans.

(f) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be consistent with the ''exempt project'' classifications contained in the EPA transportation conformity regulation (40 CFR part 93). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the TIP.

(g) Each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan.

(h) The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs. In developing the TIP, the MPO, State(s), and public transportation operator(s) shall cooperatively develop estimates of funds that are reasonably expected to be available to support TIP implementation, in accordance with § 450.314(a). Only projects for which construction or operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO shall take into account all projects and strategies funded under title 23 U.S.C., title 49 U.S.C. Chapter 53 and other Federal funds; and regionally significant projects that are not federally funded. For purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and

public transportation (as defined by title 49 U.S.C. Chapter 53). In addition, for illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the TIP if reasonable additional resources beyond those identified in the financial plan were to become available. Starting [Insert date 270 days after effective date], revenue and cost estimates for the TIP must use an inflation rate(s) to reflect ''year of expenditure dollars,'' based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(i) The TIP shall include a project, or a phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first two years of the TIP shall be limited to those for which funds are available or committed. For the TIP, financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (h) of this section. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the EPA transportation conformity regulation (40 CFR part 93) and shall provide for their timely implementation.

(j) Procedures or agreements that distribute suballocated Surface Transportation Program funds or funds under 49 U.S.C. 5307 to individual jurisdictions or modes within the MPA by pre-determined percentages or formulas are inconsistent with the legislative provisions that require the MPO, in cooperation with the State and the public transportation operator, to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the metropolitan transportation planning process.

(k) For the purpose of including projects funded under 49 U.S.C. 5309 in a TIP, the following approach shall be followed:

(1) The total Federal share of projects included in the first year of the TIP shall not exceed levels of funding committed to the MPA; and

(2) The total Federal share of projects included in the second, third, fourth, and/or subsequent years of the TIP may not exceed levels of funding committed, or reasonably expected to be available, to the MPA.

(l) As a management tool for monitoring progress in implementing the transportation plan, the TIP should:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including multimodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects; and

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, in accordance with 40 CFR part 93.

(m) During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim TIP consisting of eligible projects from, or consistent with, the most recent conforming metropolitan transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim TIP containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(n) Projects in any of the first four years of the TIP may be advanced in place of another project in the first four years of the TIP, subject to the project selection requirements of § 450.330. In addition, the TIP may be revised at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the TIP development procedures established in this section, as well as the procedures for the MPO participation plan (see § 450.316(a)) and FHWA/FTA actions on the TIP (see § 450.328).

(o) In cases that the FHWA and the FTA find a TIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.

§ 450.326 TIP revisions and relationship to the STIP.

(a) An MPO may revise the TIP at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation-related pollutants, if a TIP amendment involves non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. Public participation procedures consistent with § 450.316(a) shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications.

(b) After approval by the MPO and the Governor, the TIP shall be included without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, a conformity finding on the TIP must be made by the FHWA and the FTA before it is included in the STIP. A copy of the approved TIP shall be provided to the FHWA and the FTA.

(c) The State shall notify the MPO and Federal land management agencies when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

§ 450.328 TIP action by the FHWA and the FTA.

(a) The FHWA and the FTA shall jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing and comprehensive transportation process carried on cooperatively by the MPO(s), the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and MPO under § 450.334, a review of the metropolitan transportation plan by the FHWA and the FTA, and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the MPO, as well as the FHWA and the FTA, shall determine conformity of any updated or amended TIP, in accordance with 40 CFR part 93. After the FHWA and the FTA issue a conformity determination on the TIP, the TIP shall be incorporated, without change, into the STIP, directly or by reference.

(c) If the metropolitan transportation plan has not been updated in

accordance with the cycles defined in § 450.322(c), projects may only be advanced from a TIP that was approved and found to conform (in nonattainment and maintenance areas) prior to expiration of the metropolitan transportation plan and meets the TIP update requirements of § 450.324(a). Until the MPO approves (in attainment areas) or the FHWA/FTA issues a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the TIP may not be amended.

(d) In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the TIP in accordance with § 450.218(c).

(e) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the financially constrained and conforming metropolitan transportation plan and TIP.

(f) Where necessary in order to maintain or establish operations, the FHWA and the FTA may approve highway and transit operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved TIP.

§ 450.330 Project selection from the TIP.

(a) Once a TIP that meets the requirements of 23 U.S.C. 134(j), 49 U.S.C. 5303(j), and § 450.324 has been developed and approved, the first year of the TIP shall constitute an ''agreed to'' list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts or where there are significant shifting of projects between years. In this case, a revised ''agreed to'' list of projects shall be jointly developed by the MPO, the State, and the public transportation operator(s) if requested by the MPO, the State, or the public transportation operator(s). If the State or public transportation operator(s) wishes to proceed with a project in the second, third, or fourth year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the public transportation operator(s) jointly develop expedited project selection procedures to provide for the advancement of projects from the second, third, or fourth years of the TIP.

(b) In metropolitan areas not designated as TMAs, projects to be implemented using title 23 U.S.C. funds (other than Federal Lands Highway program projects) or funds under title 49 U.S.C. Chapter 53, shall be selected by the State and/or the public transportation operator(s), in cooperation with the MPO from the approved metropolitan TIP. Federal Lands Highway program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 204.

(c) In areas designated as TMAs, all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the National Highway System (NHS) and projects funded under the Bridge, Interstate Maintenance, and Federal Lands Highway programs) shall be selected by the MPO in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. Projects on the NHS and projects funded under the Bridge and Interstate Maintenance programs shall be selected by the State in cooperation with the MPO, from the approved TIP. Federal Lands Highway program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 204.

(d) Except as provided in § 450.324(c) and § 450.328(f), projects not included in the federally approved STIP shall not be eligible for funding with funds under title 23 U.S.C. or 49 U.S.C. Chapter 53.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93).

§ 450.332 Annual listing of obligated projects.

(a) In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

(b) The listing shall be prepared in accordance with § 450.314(a) and shall include all federally funded projects authorized or revised to increase obligations in the preceding program year, and shall at a minimum include the TIP information under § 450.324(e)(1) and (4) and identify, for each project, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining and available for subsequent years.

(c) The listing shall be published or otherwise made available in accordance with the MPO's public participation criteria for the TIP.

§ 450.334 Self-certifications and Federal certifications.

(a) For all MPAs, concurrent with the submittal of the entire proposed TIP to the FHWA and the FTA as part of the STIP approval, the State and the MPO shall certify at least every four years that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements including:

(1) 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;

(2) In nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;

(3) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and 49 CFR part 21;

(4) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(5) Section 1101(b) of the SAFETEA–LU (Pub. L. 109–59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;

(6) 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(9) Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) In TMAs, the FHWA and the FTA jointly shall review and evaluate the transportation planning process for each TMA no less than once every four years to determine if the process meets the requirements of applicable provisions of Federal law and this subpart.

(1) After review and evaluation of the TMA planning process, the FHWA and

FTA shall take one of the following actions:

(i) If the process meets the requirements of this part and a TIP has been approved by the MPO and the Governor, jointly certify the transportation planning process;

(ii) If the process substantially meets the requirements of this part and a TIP has been approved by the MPO and the Governor, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(iii) If the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the FHWA and the FTA jointly determine, subject to certain specified corrective actions being taken.

(2) If, upon the review and evaluation conducted under paragraph (b)(1)(iii) of this section, the FHWA and the FTA do not certify the transportation planning process in a TMA, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in addition to corrective actions and funding restrictions. The withheld funds shall be restored to the MPA when the metropolitan transportation planning process is certified by the FHWA and FTA, unless the funds have lapsed.

(3) A certification of the TMA planning process will remain in effect for four years unless a new certification determination is made sooner by the FHWA and the FTA or a shorter term is specified in the certification report.

(4) In conducting a certification review, the FHWA and the FTA shall provide opportunities for public involvement within the metropolitan planning area under review. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(5) The MPO(s), the State(s), and public transportation operator(s) shall be notified of the actions taken under paragraphs (b)(1) and (b)(2) of this section. The FHWA and the FTA will update the certification status of the TMA when evidence of satisfactory completion of a corrective action(s) is provided to the FHWA and the FTA.

§ 450.336 Applicability of NEPA to metropolitan transportation plans and programs.

Any decision by the Secretary concerning a metropolitan transportation plan or TIP developed through the processes provided for in 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart shall not be considered to be a Federal action subject to review under NEPA.

§ 450.338 Phase-in of new requirements.

(a) Metropolitan transportation plans and TIPs adopted or approved prior to July 1, 2007 may be developed using the TEA–21 requirements or the provisions and requirements of this part.

(b) For metropolitan transportation plans and TIPs that are developed under TEA–21 requirements prior to July 1, 2007, the FHWA/FTA action (i.e., conformity determinations and STIP approvals) must be completed no later than June 30, 2007. For metropolitan transportation plans in attainment areas that are developed under TEA–21 requirements prior to July 1, 2007, the MPO adoption action must be completed no later than June 30, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the metropolitan transportation plan or TIP were developed.

(c) On and after July 1, 2007, the FHWA and the FTA will take action on a new TIP developed under the provisions of this part, even if the MPO has not yet adopted a new metropolitan transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the SAFETEA–LU.

(d) The applicable action (see paragraph (b) of this section) on any amendments or updates to metropolitan transportation plans and TIPs on or after July 1, 2007, shall be based on the provisions and requirements of this part. However, administrative modifications may be made to the metropolitan transportation plan or TIP on or after July 1, 2007 in the absence of meeting the provisions and requirements of this part.

(e) For new TMAs, the congestion management process described in § 450.320 shall be implemented within 18 months of the designation of a new TMA.

Appendix A to Part 450—Linking the Transportation Planning and NEPA Processes

Background and Overview:

This Appendix provides additional information to explain the linkage between the transportation planning and project development/National Environmental Policy Act (NEPA) processes. It is intended to be non-binding and should not be construed as a rule of general applicability.

For 40 years, the Congress has directed that federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306). Over the years, the Congress has refined and strengthened the transportation planning process as the foundation for project decisions, emphasizing public involvement, consideration of environmental and other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs.

Despite this statutory emphasis on transportation planning, the environmental analyses produced to meet the requirements of the NEPA of 1969 (42 U.S.C. 4231 *et seq.*) have often been conducted *de novo,* disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), or planning-level corridor/subarea/feasibility studies. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.

The purpose of this Appendix is to change this culture, by supporting congressional intent that statewide and metropolitan transportation planning should be the foundation for highway and transit project decisions. This Appendix was crafted to recognize that transportation planning processes vary across the country. This document provides details on how information, analysis, and products from transportation planning can be incorporated into and relied upon in NEPA documents under existing laws, regardless of when the Notice of Intent has been published. This Appendix presents environmental review as a continuum of sequential study, refinement, and expansion performed in transportation planning and during project development/NEPA, with information developed and conclusions drawn in early stages utilized in subsequent (and more detailed) review stages.

The information below is intended for use by State departments of transportation (State DOTs), metropolitan planning organizations (MPOs), and public transportation operators to clarify the circumstances under which transportation planning level choices and analyses can be adopted or incorporated into the process required by NEPA. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of this Appendix in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects.

This Appendix does not extend NEPA requirements to transportation plans and programs. The Transportation Efficiency Act for the 21st Century (TEA–21) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) specifically exempted transportation plans and programs from NEPA review. Therefore, initiating the NEPA process as part of, or concurrently with, a

transportation planning study does not subject transportation plans and programs to NEPA.

Implementation of this Appendix by States, MPOs, and public transportation operators is voluntary. The degree to which studies, analyses, or conclusions from the transportation planning process can be incorporated into the project development/NEPA processes will depend upon how well they meet certain standards established by NEPA regulations and guidance. While some transportation planning processes already meet these standards, others will need some modification.

The remainder of this Appendix document utilizes a ''Question and Answer'' format, organized into three primary categories (''Procedural Issues,'' ''Substantive Issues,'' and ''Administrative Issues'').

I. Procedural Issues:

1. In what format should the transportation planning information be included?

To be included in the NEPA process, work from the transportation planning process must be documented in a form that can be appended to the NEPA document or incorporated by reference. Documents may be incorporated by reference if they are readily available so as to not impede agency or public review of the action. Any document incorporated by reference must be ''reasonably available for inspection by potentially interested persons within the time allowed for comment.'' Incorporated materials must be cited in the NEPA document and their contents briefly described, so that the reader understands why the document is cited and knows where to look for further information. To the extent possible, the documentation should be in a form such as official actions by the MPO, State DOT, or public transportation operator and/or correspondence within and among the organizations involved in the transportation planning process.

2. What is a reasonable level of detail for a planning product that is intended to be used in a NEPA document? How does this level of detail compare to what is considered a full NEPA analysis?

For purposes of transportation planning alone, a planning-level analysis does not need to rise to the level of detail required in the NEPA process. Rather, it needs to be accurate and up-to-date, and should adequately support recommended improvements in the statewide or metropolitan long-range transportation plan. The SAFETEA–LU requires transportation planning processes to focus on setting a context and following acceptable procedures. For example, the SAFETEA–LU requires a ''discussion of the types of potential environmental mitigation activities'' and potential areas for their implementation, rather than details on specific strategies. The SAFETEA–LU also emphasizes consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.

However, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) ultimately will be judged by the standards applicable under the NEPA regulations and guidance from the Council on Environmental Quality (CEQ). To the extent the information incorporated from the transportation planning process, standing alone, does not contain all of the information or analysis required by NEPA, then it will need to be supplemented by other information contained in the EIS or EA that would, in conjunction with the information from the plan, collectively meet the requirements of NEPA. The intent is not to require NEPA studies in the transportation planning process. As an option, the NEPA analyses prepared for project development can be integrated with transportation planning studies (see the response to Question 9 for additional information).

3. What type and extent of involvement from Federal, Tribal, State, and local environmental, regulatory, and resource agencies is needed in the transportation planning process in order for planning-level decisions to be more readily accepted in the NEPA process?

Sections 3005, 3006, and 6001 of the SAFETEA–LU established formal consultation requirements for MPOs and State DOTs to employ with environmental, regulatory, and resource agencies in the development of long-range transportation plans. For example, metropolitan transportation plans now ''shall include a discussion of the types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the [transportation] plan,'' and that these planning-level discussions ''shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.'' In addition, MPOs ''shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan,'' and that this consultation ''shall involve, as appropriate, comparison of transportation plans with State conservation plans or maps, if available, or comparison of transportation plans to inventories of natural or historic resources, if available.'' Similar SAFETEA–LU language addresses the development of the long-range statewide transportation plan, with the addition of Tribal conservation plans or maps to this planning-level ''comparison.''

In addition, section 6002 of the SAFETEA–LU established several mechanisms for increased efficiency in environmental reviews for project decision-making. For example, the term ''lead agency'' collectively means the U. S. Department of Transportation and a State or local governmental entity serving as a joint lead agency for the NEPA process. In addition, the lead agency is responsible for inviting and designating ''participating agencies'' (i.e., other Federal or non-Federal agencies that may have an interest in the proposed project). Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency:

(a) Has no jurisdiction or authority with respect to the project; (b) has no expertise or information relevant to the project; and (c) does not intend to submit comments on the project.

Past successful examples of using transportation planning products in NEPA analysis are based on early and continuous involvement of environmental, regulatory, and resource agencies. Without this early coordination, environmental, regulatory, and resource agencies are more likely to expect decisions made or analyses conducted in the transportation planning process to be revisited during the NEPA process. Early participation in transportation planning provides environmental, regulatory, and resource agencies better insight into the needs and objectives of the locality. Additionally, early participation provides an important opportunity for environmental, regulatory, and resource agency concerns to be identified and addressed early in the process, such as those related to permit applications. Moreover, Federal, Tribal, State, and local environmental, regulatory, and resource agencies are able to share data on particular resources, which can play a critical role in determining the feasibility of a transportation solution with respect to environmental impacts. The use of other agency planning outputs can result in a transportation project that could support multiple goals (transportation, environmental, and community). Further, planning decisions by these other agencies may have impacts on long-range transportation plans and/or the STIP/TIP, thereby providing important input to the transportation planning process and advancing integrated decision-making.

4. What is the procedure for using decisions or analyses from the transportation planning process?

The lead agencies jointly decide, and must agree, on what processes and consultation techniques are used to determine the transportation planning products that will be incorporated into the NEPA process. At a minimum, a robust scoping/early coordination process (which explains to Federal and State environmental, regulatory, and resource agencies and the public the information and/or analyses utilized to develop the planning products, how the purpose and need was developed and refined, and how the design concept and scope were determined) should play a critical role in leading to informed decisions by the lead agencies on the suitability of the transportation planning information, analyses, documents, and decisions for use in the NEPA process. As part of a rigorous scoping/early coordination process, the FHWA and the FTA should ensure that the transportation planning results are appropriately documented, shared, and used.

5. To what extent can the FHWA/FTA provide up-front assurance that decisions and additional investments made in the transportation planning process will allow planning-level decisions and analyses to be used in the NEPA process?

There are no guarantees. However, the potential is greatly improved for transportation planning processes that address the ''3–C'' planning principles (comprehensive, cooperative, and continuous); incorporate the intent of NEPA through the consideration of natural, physical, and social effects; involve environmental, regulatory, and resource agencies; thoroughly document the transportation planning process information, analysis, and decision; and vet the planning results through the applicable public involvement processes.

6. What considerations will the FHWA/FTA take into account in their review of transportation planning products for acceptance in project development/NEPA?

The FHWA and the FTA will give deference to decisions resulting from the transportation planning process if the FHWA and FTA determine that the planning process is consistent with the ''3–C'' planning principles and when the planning study process, alternatives considered, and resulting decisions have a rational basis that is thoroughly documented and vetted through the applicable public involvement processes. Moreover, any applicable program-specific requirements (e.g., those of the Congestion Mitigation and Air Quality Improvement Program or the FTA's Capital Investment Grant program) also must be met.

The NEPA requires that the FHWA and the FTA be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document. For example, if systems-level or other broad objectives or choices from the transportation plan are incorporated into the purpose and need statement for a NEPA document, the FHWA and the FTA should not revisit whether these are the best objectives or choices among other options. Rather, the FHWA and the FTA review would include making sure that objectives or choices derived from the transportation plan were: Based on transportation planning factors established by Federal law; reflect a credible and articulated planning rationale; founded on reliable data; and developed through transportation planning processes meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the goals and choices must be documented and included in the NEPA document. The FHWA/FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable, scientifically acceptable, and consistent with goals, objectives, and policies set forth in long-range transportation plans. This review would include determining whether: (a) Assumptions have a rational basis and are up-to-date and (b) data, analytical methods, and modeling techniques are reliable, defensible, reasonably current, and meet data quality requirements.

II. Substantive Issues

General Issues To Be Considered:

7. What should be considered in order to rely upon transportation planning studies in NEPA?

The following questions should be answered prior to accepting studies conducted during the transportation planning process for use in NEPA. While not a ''checklist,'' these questions are intended to guide the practitioner's analysis of the planning products:

- How much time has passed since the planning studies and corresponding decisions were made?
- Were the future year policy assumptions used in the transportation planning process related to land use, economic development, transportation costs, and network expansion consistent with those to be used in the NEPA process?
- Is the information still relevant/valid?
- What changes have occurred in the area since the study was completed?
- Is the information in a format that can be appended to an environmental document or reformatted to do so?
- Are the analyses in a planning-level report or document based on data, analytical methods, and modeling techniques that are reliable, defensible, and consistent with those used in other regional transportation studies and project development activities?
- Were the FHWA and FTA, other agencies, and the public involved in the relevant planning analysis and the corresponding planning decisions?
- Were the planning products available to other agencies and the public during NEPA scoping?
- During NEPA scoping, was a clear connection between the decisions made in planning and those to be made during the project development stage explained to the public and others? What was the response?
- Are natural resource and land use plans being informed by transportation planning products, and vice versa?

Purpose and Need:

8. How can transportation planning be used to shape a project's purpose and need in the NEPA process?

A sound transportation planning process is the primary source of the project purpose and need. Through transportation planning, State and local governments, with involvement of stakeholders and the public, establish a vision for the region's future transportation system, define transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these issues. The transportation planning process also provides a potential forum to define a project's purpose and need by framing the scope of the problem to be addressed by a proposed project. This scope may be further refined during the transportation planning process as more information about the transportation need is collected and consultation with the public and other stakeholders clarifies other issues and goals for the region.

23 U.S.C. 139(f), as amended by the SAFETEA–LU Section 6002, provides additional focus regarding the definition of the purpose and need and objectives. For example, the lead agency, as early as practicable during the environmental review process, shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project. The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include: (a) Achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan; (b) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or Tribal plans; and (c) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

The transportation planning process can be utilized to develop the purpose and need in the following ways:

(a) Goals and objectives from the transportation planning process may be part of the project's purpose and need statement;

(b) A general travel corridor or general mode or modes (e.g., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project's purpose and need statement;

(c) If the financial plan for a metropolitan transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement; or

(d) The results of analyses from management systems (e.g., congestion, pavement, bridge, and/or safety) may shape the purpose and need statement.

The use of these planning-level goals and choices must be appropriately explained during NEPA scoping and in the NEPA document.

Consistent with NEPA, the purpose and need statement should be a statement of a transportation problem, not a specific solution. However, the purpose and need statement should be specific enough to generate alternatives that may potentially yield real solutions to the problem at-hand. A purpose and need statement that yields only one alternative may indicate a purpose and need that is too narrowly defined.

Short of a fully integrated transportation decisionmaking process, many State DOTs develop information for their purpose and need statements when implementing interagency NEPA/Section 404 process merger agreements. These agreements may need to be expanded to include commitments to share and utilize transportation planning products when developing a project's purpose and need.

9. Under what conditions can the NEPA process be initiated in conjunction with transportation planning studies?

The NEPA process may be initiated in conjunction with transportation planning studies in a number of ways. A common method is the ''tiered EIS,'' in which the first-tier EIS evaluates general travel corridors, modes, and/or packages of projects at a planning level of detail, leading to the refinement of purpose and need and, ideally, selection of the design concept and scope for a project or series of projects. Subsequently, second-tier NEPA review(s) of the resulting

projects would be performed in the usual way. The first-tier EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in the planning decisions, as well as to ensure the appropriate consideration of environmental factors in these planning decisions.

Corridor or subarea analyses/studies are another option when the long-range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives. In such cases, the formal NEPA process could be initiated through publication of a NOI in conjunction with a corridor or subarea planning study. Similarly, some public transportation operators developing major capital projects perform the mandatory planning Alternatives Analysis required for funding under FTA's Capital Investment Grant program [49 U.S.C. 5309(d) and (e)] within the NEPA process and combine the planning Alternatives Analysis with the draft EIS.

Alternatives:

10. In the context of this Appendix, what is the meaning of the term ''alternatives''?

This Appendix uses the term ''alternatives'' as specified in the NEPA regulations (40 CFR 1502.14), where it is defined in its broadest sense to include everything from major modal alternatives and location alternatives to minor design changes that would mitigate adverse impacts. This Appendix does not use the term as it is used in many other contexts (e.g., ''prudent and feasible alternatives'' under Section 4(f) of the Department of Transportation Act, the ''Least Environmentally Damaging Practicable Alternative'' under the Clean Water Act, or the planning Alternatives Analysis in 49 U.S.C. 5309(d) and (e)).

11. Under what circumstances can alternatives be eliminated from detailed consideration during the NEPA process based on information and analysis from the transportation planning process?

There are two ways in which the transportation planning process can begin limiting the alternative solutions to be evaluated during the NEPA process: (a) Shaping the purpose and need for the project; or (b) evaluating alternatives during planning studies and eliminating some of the alternatives from detailed study in the NEPA process prior to its start. Each approach requires careful attention, and is summarized below.

(a) *Shaping the Purpose and Need for the Project:* The transportation planning process should shape the purpose and need and, thereby, the range of reasonable alternatives. With proper documentation and public involvement, a purpose and need derived from the planning process can legitimately narrow the alternatives analyzed in the NEPA process. See the response to Question 8 for further discussion on how the planning process can shape the purpose and need used in the NEPA process.

For example, the purpose and need may be shaped by the transportation planning process in a manner that consequently narrows the range of alternatives that must be considered in detail in the NEPA document when:

(1) The transportation planning process has selected a *general travel corridor* as best addressing identified transportation problems and the rationale for the determination in the planning document is reflected in the purpose and need statement of the subsequent NEPA document;

(2) The transportation planning process has selected a *general mode* (e.g., highway, transit, or a highway/transit combination) that accomplishes its goals and objectives, and these documented determinations are reflected in the purpose and need statement of the subsequent NEPA document; or

(3) The transportation planning process determines that the project needs to be funded by *tolls or other non-traditional funding sources* in order for the long-range transportation plan to be fiscally constrained or identifies goals and objectives that can only be met by toll roads or other non-traditional funding sources, and that determination of those goals and objectives is reflected in the purpose and need statement of the subsequent NEPA document.

(b) *Evaluating and Eliminating Alternatives During the Transportation Planning Process:* The evaluation and elimination of alternatives during the transportation planning process can be incorporated by reference into a NEPA document under certain circumstances. In these cases, the planning study becomes part of the NEPA process and provides a basis for screening out alternatives. As with any part of the NEPA process, the analysis of alternatives to be incorporated from the process must have a rational basis that has been thoroughly documented (including documentation of the necessary and appropriate vetting through the applicable public involvement processes). This record should be made available for public review during the NEPA scoping process.

See responses to Questions 4, 5, 6, and 7 for additional elements to consider with respect to acceptance of planning products for NEPA documentation and the response to Question 12 on the information or analysis from the transportation planning process necessary for supporting the elimination of an alternative(s) from detailed consideration in the NEPA process.

For instance, under FTA's Capital Investment Grant program, the alternatives considered in the NEPA process may be narrowed in those instances that the planning Alternatives Analysis required by 49 U.S.C. 5309(e) is conducted as a planning study prior to the NEPA review. In fact, the FTA may be able to narrow the alternatives considered in detail in the NEPA document to the No-Build (No Action) alternative and the Locally Preferred Alternative. Alternatives must meet the following criteria if they are deemed sufficiently considered by a planning Alternatives Analysis under FTA's Capital Investment Grant program conducted prior to NEPA without a programmatic NEPA analysis and documentation:

- During the planning Alternatives Analysis, all of the reasonable alternatives under consideration must be fully evaluated in terms of their transportation impacts; capital and operating costs; social, economic, and environmental impacts; and technical considerations;
- There must be appropriate public involvement in the planning Alternatives Analysis;
- The appropriate Federal, State, and local environmental, regulatory, and resource agencies must be engaged in the planning Alternatives Analysis;
- The results of the planning Alternatives Analysis must be documented;
- The NEPA scoping participants must agree on the alternatives that will be considered in the NEPA review; and
- The subsequent NEPA document must include the evaluation of alternatives from the planning Alternatives Analysis.

The above criteria apply specifically to FTA's Capital Investment Grant process. However, for other transportation projects, if the planning process has included the analysis and stakeholder involvement that would be undertaken in a first tier NEPA process, then the alternatives screening conducted in the transportation planning process may be incorporated by reference, described, and relied upon in the project-level NEPA document. At that point, the project-level NEPA analysis can focus on the remaining alternatives.

12. What information or analysis from the transportation planning process is needed in an EA or EIS to support the elimination of an alternative(s) from detailed consideration?

The section of the EA or EIS that discusses alternatives considered but eliminated from detailed consideration should:

(a) Identify any alternatives eliminated during the transportation planning process (this could include broad categories of alternatives, as when a long-range transportation plan selects a general travel corridor based on a corridor study, thereby eliminating all alternatives along other alignments);

(b) Briefly summarize the reasons for eliminating the alternative; and

(c) Include a summary of the analysis process that supports the elimination of alternatives (the summary should reference the relevant sections or pages of the analysis or study) and incorporate it by reference or append it to the NEPA document.

Any analyses or studies used to eliminate alternatives from detailed consideration should be made available to the public and participating agencies during the NEPA scoping process and should be reasonably available during comment periods.

Alternatives passed over during the transportation planning process because they are infeasible or do not meet the NEPA ''purpose and need'' can be omitted from the detailed analysis of alternatives in the NEPA document, as long as the rationale for elimination is explained in the NEPA document. Alternatives that remain ''reasonable'' after the planning-level analysis must be addressed in the EIS, even when they are not the preferred alternative. When the proposed action evaluated in an EA involves unresolved conflicts concerning alternative uses of available resources, NEPA requires that appropriate alternatives be studied, developed, and described.

Affected Environment and Environmental Consequences:

13. What types of planning products provide analysis of the affected environment and environmental consequences that are useful in a project-level NEPA analysis and document?

The following planning products are valuable inputs to the discussion of the affected environment and environmental consequences (both its current state and future state in the absence of the proposed action) in the project-level NEPA analysis and document:

- Regional development and growth analyses;
- Local land use, growth management, or development plans; and
- Population and employment projections.

The following are types of information, analysis, and other products from the transportation planning process that can be used in the discussion of the affected environment and environmental consequences in an EA or EIS:

(a) Geographic information system (GIS) overlays showing the past, current, or predicted future conditions of the natural and built environments;

(b) Environmental scans that identify environmental resources and environmentally sensitive areas;

(c) Descriptions of airsheds and watersheds;

(d) Demographic trends and forecasts;

(e) Projections of future land use, natural resource conservation areas, and development; and

(f) The outputs of natural resource planning efforts, such as wildlife conservation plans, watershed plans, special area management plans, and multiple species habitat conservation plans.

However, in most cases, the assessment of the affected environment and environmental consequences conducted during the transportation planning process will not be detailed or current enough to meet NEPA standards and, thus, the inventory and evaluation of affected resources and the analysis of consequences of the alternatives will need to be supplemented with more refined analysis and possibly site-specific details during the NEPA process.

14. What information from the transportation planning process is useful in describing a baseline for the NEPA analysis of indirect and cumulative impacts?

Because the nature of the transportation planning process is to look broadly at future land use, development, population increases, and other growth factors, the planning analysis can provide the basis for the assessment of indirect and cumulative impacts required under NEPA. The consideration in the transportation planning process of development, growth, and consistency with local land use, growth management, or development plans, as well as population and employment projections, provides an overview of the multitude of factors in an area that are creating pressures not only on the transportation system, but on the natural ecosystem and important environmental and community resources. An analysis of all reasonably foreseeable actions in the area also should be a part of the transportation planning process. This planning-level information should be captured and utilized in the analysis of indirect and cumulative impacts during the NEPA process.

To be used in the analysis of indirect and cumulative impacts, such information should:

(a) Be sufficiently detailed that differences in consequences of alternatives can be readily identified;

(b) Be based on current data (e.g., data from the most recent Census) or be updated by additional information;

(c) Be based on reasonable assumptions that are clearly stated; and/or

(d) Rely on analytical methods and modeling techniques that are reliable, defensible, and reasonably current.

Environmental Mitigation:

15. How can planning-level efforts best support advance mitigation, mitigation banking, and priorities for environmental mitigation investments?

A lesson learned from efforts to establish mitigation banks and advance mitigation agreements and alternative mitigation options is the importance of beginning interagency discussions during the transportation planning process. Development pressures, habitat alteration, complicated real estate transactions, and competition for potential mitigation sites by public and private project proponents can encumber the already difficult task of mitigating for ''like'' value and function and reinforce the need to examine mitigation strategies as early as possible.

Robust use of remote sensing, GIS, and decision support systems for evaluating conservation strategies are all contributing to the advancement of natural resource and environmental planning. The outputs from environmental planning can now better inform transportation planning processes, including the development of mitigation strategies, so that transportation and conservation goals can be optimally met. For example, long-range transportation plans can be screened to assess the effect of general travel corridors or density, on the viability of sensitive plant and animal species or habitats. This type of screening provides a basis for early collaboration among transportation and environmental staffs, the public, and regulatory agencies to explore areas where impacts must be avoided and identify areas for mitigation investments. This can lead to mitigation strategies that are both more economical and more effective from an environmental stewardship perspective than traditional project-specific mitigation measures.

III. Administrative Issues:

16. Are Federal funds eligible to pay for these additional, or more in depth, environmental studies in transportation planning?

Yes. For example, the following FHWA and FTA funds may be utilized for conducting environmental studies and analyses within transportation planning:

- FHWA planning and research funds, as defined under 23 CFR Part 420 (e.g., Metropolitan Planning (PL), Statewide Planning and Research (SPR), National Highway System (NHS), Surface Transportation Program (STP), and Equity Bonus); and
- FTA planning and research funds (49 U.S.C. 5303 and 49 U.S.C. 5313(b)), urban formula funds (49 U.S.C. 5307), and (in limited circumstances) transit capital investment funds (49 U.S.C. 5309).

The eligible transportation planning-related uses of these funds may include: (a) Conducting feasibility or subarea/corridor needs studies and (b) developing system-wide environmental information/inventories (e.g., wetland banking inventories or standards to identify historically significant sites). Particularly in the case of PL and SPR funds, the proposed expenditure must be closely related to the development of transportation plans and programs under 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306.

For FHWA funding programs, once a general travel corridor or specific project has progressed to a point in the preliminary engineering/NEPA phase that clearly extends beyond transportation planning, additional in-depth environmental studies must be funded through the program category for which the ultimate project qualifies (e.g., NHS, STP, Interstate Maintenance, and/or Bridge), rather than PL or SPR funds.

Another source of funding is FHWA's Transportation Enhancement program, which may be used for activities such as: conducting archeological planning and research; developing inventories such as those for historic bridges and highways, and other surface transportation-related structures; conducting studies to determine the extent of water pollution due to highway runoff; and conducting studies to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

The FHWA and the FTA encourage State DOTs, MPOs, and public transportation operators to seek partners for some of these studies from environmental, regulatory, and resource agencies, non-government organizations, and other government and private sector entities with similar data needs, or environmental interests. In some cases, these partners may contribute data and expertise to the studies, as well as funding.

17. What staffing or organizational arrangements may be helpful in allowing planning products to be accepted in the NEPA process?

Certain organizational and staffing arrangements may support a more integrated approach to the planning/NEPA decision-making continuum. In many cases, planning organizations do not have environmental expertise on staff or readily accessible. Likewise, the review and regulatory responsibilities of many environmental, regulatory, and resource agencies make involvement in the transportation planning process a challenge for staff resources. These challenges may be partially met by improved use of the outputs of each agency's planning resources and by augmenting their capabilities through greater use of GIS and remote sensing technologies (see *http://www.gis.fhwa.dot.gov/* for additional information on the use of GIS). Sharing databases and the planning products of local land use decision-makers and State and Federal environmental, regulatory, and

resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

Additional opportunities such as shared staff, training across disciplines, and (in some cases) reorganizing to eliminate structural divisions between planning and NEPA practitioners may also need to be considered in order to better integrate NEPA considerations into transportation planning studies. The answers to the following two questions also contain useful information on training and staffing opportunities.

18. How have environmental, regulatory, and resource agency liaisons (Federally- and State DOT-funded positions) and partnership agreements been used to provide the expertise and interagency participation needed to enhance the consideration of environmental factors in the planning process?

For several years, States have utilized Federal and State transportation funds to support focused and accelerated project review by a variety of local, State, Tribal, and Federal agencies. While Section 1309(e) of the TEA–21 and its successor in SAFETEA–LU section 6002 speak specifically to transportation project streamlining, there are other authorities that have been used to fund positions, such as the Intergovernmental Cooperation Act (31 U.S.C. 6505). In addition, long-term, on-call consultant contracts can provide backfill support for staff that are detailed to other parts of an agency for temporary assignments. At last count (as of 2003), 246 positions were being funded. Additional information on interagency funding agreements is available at: *http://environment.fhwa.dot.gov/strmlng/igdocs/index.htm*.

Moreover, every State has advanced a variety of stewardship and streamlining initiatives that necessitate early involvement of environmental, regulatory, and resource agencies in the project development process. Such process improvements have: addressed the exchange of data to support avoidance and impact analysis; established formal and informal consultation and review schedules; advanced mitigation strategies; and resulted in a variety of programmatic reviews. Interagency agreements and workplans have evolved to describe performance objectives, as well as specific roles and responsibilities related to new streamlining initiatives. Some States have improved collaboration and efficiency by co-locating environmental, regulatory, and resource and transportation agency staff.

19. What training opportunities are available to MPOs, State DOTs, public transportation operators and environmental, regulatory, and resource agencies to assist in their understanding of the transportation planning and NEPA processes?

Both the FHWA and the FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the Linking Planning and NEPA Workshop, which provides a forum and facilitated group discussion among and between State DOT; MPO; Federal, Tribal, and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

Moreover, the U.S. Fish and Wildlife Service offers Green Infrastructure Workshops that are focused on integrating planning for natural resources (''green infrastructure'') with the development, economic, and other infrastructure needs of society (''gray infrastructure'').

Robust planning and multi-issue environmental screening requires input from a wide variety of disciplines, including information technology; transportation planning; the NEPA process; and regulatory, permitting, and environmental specialty areas (e.g., noise, air quality, and biology). Senior managers at transportation and partner agencies can arrange a variety of individual training programs to support learning curves and skill development that contribute to a strengthened link of the transportation planning and NEPA processes. Formal and informal mentoring on an intra-agency basis can be arranged. Employee exchanges within and between agencies can be periodically scheduled, and persons involved with professional leadership programs can seek temporary assignments with partner agencies.

IV. Additional Information on this Topic

Valuable sources of information are FHWA's environment website (*http://www.fhwa.dot.gov/environment/index.htm*) and FTA's environmental streamlining website (*http://www.environment.fta.dot.gov*). Another source of information and case studies is NCHRP Report 8–38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at *http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+8–38*. In addition, AASHTO's Center for Environmental Excellence website is continuously updated with news and links to information of interest to transportation and environmental professionals (*www.transportation.environment.org*).

PART 500—MANAGEMENT AND MONITORING SYSTEMS

■ 2. Revise the authority citation for part 500 to read as follows:

Authority: 23 U.S.C. 134, 135, 303, and 315; 49 U.S.C. 5303–5305; 23 CFR 1.32; and 49 CFR 1.48 and 1.51.

■ 3. Revise § 500.109 to read as follows:

§ 500.109 CMS.

(a) For purposes of this part, congestion means the level at which transportation system performance is unacceptable due to excessive travel times and delays. Congestion management means the application of strategies to improve system performance and reliability by reducing the adverse impacts of congestion on the movement of people and goods in a region. A congestion management system or process is a systematic and regionally accepted approach for managing congestion that provides accurate, up-to-date information on transportation system operations and performance and assesses alternative strategies for congestion management that meet State and local needs.

(b) The development of a congestion management system or process should result in performance measures and strategies that can be integrated into transportation plans and programs. The level of system performance deemed acceptable by State and local officials may vary by type of transportation facility, geographic location (metropolitan area or subarea and/or non-metropolitan area), and/or time of day. In both metropolitan and non-metropolitan areas, consideration needs to be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, and improve transportation system management and operations. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity of those lanes.

Title 49—Transportation

■ 4. The authority citation for part 613 continues to read as follows:

Authority: 23 U.S.C. 134, 135, and 217(g); 42 U.S.C. 3334, 4233, 4332, 7410 et seq; 49 U.S.C. 5303–5306, 5323(k); and 49 CFR 1.48(b), 1.51(f) and 21.7(a).

■ 5. Revise Subpart A and Subpart B of 49 CFR part 613 to read as follows:

Part 613—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Metropolitan Transportation Planning and Programming

Sec.
613.100 Metropolitan transportation planning and programming.

Subpart B—Statewide Transportation Planning and Programming

Sec.
613.200 Statewide transportation planning and programming.

Subpart A—Metropolitan Transportation Planning and Programming

§ 613.100 Metropolitan transportation planning and programming.

The regulations in 23 CFR 450, subpart C, shall be followed in complying with the requirements of this subpart. The definitions in 23 CFR 450, subpart A, shall apply.

Subpart B—Statewide Transportation Planning and Programming

§ 613.200 Statewide transportation planning and programming.

The regulations in 23 CFR 450, subpart B, shall be followed in complying with the requirements of this subpart. The definitions in 23 CFR 450, subpart A, shall apply.

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Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Office of Special Education and Rehabilitative Services; Notices Inviting Applications for New Awards for Fiscal Year (FY) 2007; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs) and Rehabilitation Engineering Research Centers (RERCs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities for DRRPs and RERCs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces certain funding priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces four final priorities for DRRPs and seven priorities for RERCs. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2007 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

Effective Date: These priorities are effective March 16, 2007.

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SUPPLEMENTARY INFORMATION:

We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on September 19, 2006 (71 FR 54870). The NPP included a background statement that described our rationale for each priority proposed in that notice.

In this notice, we are announcing the following priorities for DRRPs and RERCs.

For DRRPs, the priorities are:

- Priority 1—National Data and Statistical Center for the Burn Model Systems.
- *Priority 2*—Burn Model Systems (BMS) Centers.
- *Priority 3*—Emergency Evacuation and Individuals with Disabilities.
- *Priority 4*—Traumatic Brain Injury Model Systems (TBIMS) Centers.

For RERCs, the priorities are:

- *Priority 5*—RERC for Spinal Cord Injury.
- *Priority 6*—RERC for Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities.
- *Priority 7*—RERC for Relating Physiological Data and Functional Performance.
- *Priority 8*—RERC for Accessible Medical Instrumentation.
- *Priority 9*—RERC for Workplace Accommodations.
- *Priority 10*—RERC for Rehabilitation Robotics and Telemanipulation Systems.
- *Priority 11*—RERC for Emergency Management Technologies.

There are differences between the NPP and this notice of final priorities (NFP). Specifically, we have made changes to Priority 3—Inclusive Emergency Evacuation of Individuals with Disabilities, including changing the title to ''Emergency Evacuation and Individuals with Disabilities,'' and Priority 4—Traumatic Brain Injury Model Systems (TBIMS) Centers. We also have changed the title of Priority 7 from ''RERC for Translating Physiological Data into Predictions for Functional Performance'' to ''RERC for Relating Physiological Data and Functional Performance.''

Analysis of Comments and Changes

In response to our invitation in the NPP, 22 parties submitted comments on the proposed priorities addressed in this NFP. An analysis of the comments and the changes in the priorities since the publication of the NPP follows. We discuss major issues according to general topic questions and priorities.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

General

Collaborative Research Module Projects (Priority 2—Burn Model Systems (BMS) Centers and Priority 4—Traumatic Brain Injury Systems (TBIMS) Centers)

Comment: Several commenters requested clarification on the collaborative research module requirements reflected in paragraph (b) of the Burn Model Systems (BMS) Centers priority (Priority 2) and paragraph (b) of the Traumatic Brain Injury Model Systems (TBIMS) Centers priority (Priority 4). In particular, commenters requested more information on the process by which module research projects will be selected for implementation.

Discussion: The priorities for the BMS Centers and the TBIMS Centers require applicants to propose one collaborative research module project and to participate in at least one collaborative research module project. These priorities state that, in conjunction with NIDRR, at the beginning of the funding cycle project directors will select specific modules for implementation from approved applications. The details of this selection process will be based, in part, on input from project directors of funded centers, and, therefore, will not be finalized until after grant awards have been made. As stated in both priorities, decisions regarding selection of module projects for implementation will be made by the project directors of the newly awarded centers in conjunction with NIDRR staff. NIDRR is not requiring applicants to identify collaborators or to have established relationships with such collaborators prior to submitting applications.

Under both priorities, multiple applicants may propose the same, or substantially similar, module projects. In the case of the TBIMS Centers priority, applicants may also propose to continue, refine, or extend an existing collaborative module project. Under both priorities, participation in the module projects will be limited to the funded centers. Because these are peer-reviewed projects, in accordance with NIDRR policies, any substantial changes to project scope (e.g., addition of outside collaborative sites) must be approved by the assigned NIDRR project officer.

Moreover, under both priorities, funded centers may participate in more than one module project. The number and subject of the modules selected for implementation will not be known, however, until after the first Project Directors' meeting. Each successful applicant will work with NIDRR staff to determine if allocations of staffing and budget allow participation in more than

one module project. NIDRR recommends that each center set aside up to 15 percent of its budget for participating in module projects.

NIDRR requires that applicants fully develop and present their module research project, identifying research question(s) to be addressed by their projects, along with a description of the importance of the research they intend to conduct and the specific outcomes they hope to achieve through the projects, so that reviewers may determine whether the scope and format of the projects are appropriate.

Changes: None.

Priority 2—Burn Model Systems (BMS) Centers

Comment: Two commenters suggested that NIDRR should require BMS Centers grantees to conduct research on rural areas.

Discussion: While NIDRR agrees that focus on the treatment needs of individuals in rural areas might be an excellent subject for burn research, we do not believe that all applicants should be required to focus on rural areas in their proposals. Nothing in the priority precludes an applicant from suggesting such a research focus. The peer review process will evaluate the merits of individual proposals.

Changes: None.

Comment: One commenter suggested that NIDRR should require BMS Centers grantees to conduct research focused on the measurement of burn outcome.

Discussion: While NIDRR agrees that outcome measures might be an excellent subject for burn research, we do not believe that all applicants should be required to propose projects that focus only on outcomes measurement. Nothing in the priority precludes an applicant from suggesting such a research focus, however. The peer review process will evaluate the merits of the individual proposals.

Changes: None.

Priority 3—Emergency Evacuation and Individuals with Disabilities

Comment: One commenter inquired about the expected level of funding and duration of projects to be supported under this priority.

Discussion: Because funding level and project duration are not subject to public comment, this information was not included in the NPP. We will include information about the expected level of funding and project duration in the notice inviting applications for any competition using this priority.

Changes: None.

Comment: One commenter asked whether the use of the term ''inclusive'' in this priority means that applicants must include people with all forms of disabilities in their target population. Another commenter suggested that NIDRR change the title of this priority from ''Inclusive Emergency Evacuation of Individuals with Disabilities'' to ''Including Individuals with Disabilities in Emergency Evacuation.''

Discussion: The term ''inclusive'' is not intended to require applicants to include individuals with all forms of disabilities in their target population(s). Rather, the priority is intended to direct applicants to define the parameters and units of analysis for their proposed activities, including the target population of their project. Applicants may choose to focus on individuals with one or more types of disabilities. It is up to the applicant to explain and justify their proposed target population in their applications. The peer review process will assess the merits of individual applications.

Changes: To clarify that projects funded under this priority are not required to include all forms of disabilities in their target population(s), we have changed the title of this priority from ''Inclusive Emergency Evacuation of Individuals with Disabilities'' to ''Emergency Evacuation and Individuals with Disabilities'' and removed other references to the term ''inclusive'' throughout the priority.

Comment: One commenter requested clarification on whether applicants are required to focus on buildings, transportation systems, and geographic locations, or whether they can select one or more of these areas. The commenter also requested clarification on whether applicants are required to focus on disability-related evacuation devices, plans, exercises, protocols, models, systems, networks, and standards, or whether applicants can focus on one or more of these. The commenter stated that the language in paragraph (a) of the proposed priority is unclear.

Discussion: In each case, applicants may choose one or more of the areas listed. Regardless of the area(s) selected, applicants must clearly define and justify their chosen area(s) of focus in their applications.

Changes: We have revised paragraph (a) of the priority by deleting the term ''and,'' and inserting the term ''or'' in both lists of areas of focus. We also have made other editorial, non-substantive revisions to this paragraph in order to clarify it further.

Comment: None.

Discussion: Upon internal review of this priority, NIDRR determined that the phrase ''disability-related'' in the priority could lead applicants to focus narrowly on disability issues instead of more broadly on emergency management initiatives and evacuation solutions (i.e., evacuation devices, plans, exercises, protocols, models, systems, networks, standards and interventions) that incorporate disability issues.

Changes: We have deleted the phrase ''disability-related'' from paragraphs (a) and (b) of the priority. We have added the phrase ''for individuals with disabilities'' to paragraph (b).

Comment: None.

Discussion: Upon internal review of this priority, NIDRR determined that it may not be clear that the phrase ''evacuation solutions'' as stated in paragraph (b) of the priority refers to the focus areas identified in paragraph (a) (i.e., evacuation devices, plans, exercises, protocols, models, systems, networks, standards, and interventions).

Changes: We have added the phrase ''evacuation solutions'' to paragraph (a) of the priority to clarify that evacuation devices, plans, exercises, protocols, models, systems, networks, standards, and interventions are all evacuation solutions.

Comment: Two commenters asked NIDRR to clarify the requirement that the DRRP synthesize the current evidence base in the area(s) selected by the grantee. Specifically, the commenters asked: (a) Whether the proposed priority is asking for an assessment of the current evidence base and (b) whether the required synthesis is to be a one-time or ongoing activity.

Discussion: The priority requires a synthesis and assessment of the current evidence base in the area(s) selected by the grantee (e.g., evacuation devices, plans, exercises, protocols, models, systems, networks, standards, or interventions). We expect that this synthesis will develop over the course of the project period. The synthesis should inform implementation of the proposed project and should culminate in a final document that provides a comprehensive assessment of what we know and what research needs remain.

Changes: None.

Comment: One commenter asked whether the requirement that the DRRP synthesize the current evidence base in the area(s) selected by the grantee requires that knowledge translation strategies be addressed.

Discussion: NIDRR is integrating knowledge translation requirements across its research portfolio and does want applicants to address knowledge translation strategies when responding to this priority. For this reason, we think it is important to clarify the role of

knowledge translation in the work to be performed under this priority.

Changes: For clarification, we have added an additional requirement in paragraph (b) of the priority. This new requirement directs the DRRP to share findings with the emergency management community and other stakeholders. It will be up to the applicant to propose a specific strategy or method for sharing information with stakeholders. The peer review process will determine the merits of individual proposals.

Comment: One commenter suggested that the priority include the establishment of an electronic clearinghouse of information in order to facilitate dissemination to stakeholders and assist the translation of research into practice.

Discussion: NIDRR agrees that an electronic clearinghouse could be a useful dissemination tool. Applicants may propose to establish an electronic clearinghouse to facilitate the dissemination of research and assist in the translation of research into practice. However, NIDRR does not believe that it would be appropriate to require that every applicant include such a clearinghouse in their proposed project. The peer review process will assess the merits of individual applications.

Changes: None.

Comment: One commenter asked whether the priority mostly focuses on establishing the current state of the science, or solicits ideas for new interventions or enhancement of existing interventions.

Discussion: The priority requires the DRRP to synthesize and assess the evidence base in one or more of the following areas: buildings, transportation systems, or geographic locations. It also requires the DRRP to advance the evidence base in one or more of these areas. We intend for the priority to allow for the generation of ideas for new interventions or enhancements of existing interventions. Applicants may choose their area(s) of focus.

Changes: In order to clarify our intent, we have reworded paragraph (a) of the priority to incorporate a requirement related to advancing the current evidence base. We also have added the word ''interventions'' to this paragraph to clarify that applicants may suggest new interventions or enhancements of existing interventions.

Comment: One commenter asked whether the requirement to examine barriers and facilitators to effective implementation of disability-related evacuation solutions within existing emergency management initiatives suggests a research and evaluation component to this priority.

Discussion: The intended outcome of requirement (b)(1) of this priority is that the DRRP will add to the evidence base about factors that help or hinder the inclusion of individuals with disabilities in existing emergency evacuation plans. We anticipate that, in order to add to the current evidence base about these factors, grantees will need to conduct research. Evaluation activities also may be required, depending on the area of focus chosen by the applicant. It is up to the applicant to define and justify area(s) of focus. The peer review process will determine the merits of individual proposals.

Changes: None.

Comment: One commenter stated that in order to develop inclusive evacuation plans, people with disabilities should be included in the planning process. The commenter stated that the DRRP should include research on ways in which people with disabilities can participate in the planning processes at a macro and micro level.

Discussion: NIDRR agrees that including individuals with disabilities in the planning process is a sound approach. As noted in the NPP and elsewhere in this notice, NIDRR intends to require all DRRP applicants under this priority to meet the requirements of the General Disability and Rehabilitation Research Projects (DRRP) Requirements priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472). Under the General DRRP Requirements priority, each applicant must involve individuals with disabilities in planning and implementing the DRRP's research, training, and dissemination activities, and evaluating its work. It is up to the applicant to propose how it will meet this requirement and the peer reviewers will assess the merits of each individual proposal.

Changes: None.

Comment: One commenter stated that State and local safety codes may present barriers to inclusive, effective evacuation of people with disabilities. The commenter recommended that the priority require grantees to investigate the impact of these codes and how they interact with applicable nondiscrimination requirements of legislation such as the Americans with Disabilities Act of 1990, as amended.

Discussion: NIDRR agrees that State and local safety codes may present barriers to inclusive, effective evacuation of individuals with disabilities. This may be an appropriate focus of research; nothing in the priority precludes an applicant from proposing to examine these variables. However, NIDRR does not believe that it would be appropriate to require every applicant to examine these codes and their effect on including individuals with disabilities in effective evacuation plans. The peer review process will assess the merits of each individual proposal.

Changes: None.

Comment: One commenter recommended that an important outcome of the proposed DRRP would be engagement and collaboration with the emergency management community, emergency technology providers, and end users to develop inclusive communication plans in their respective emergency management protocols.

Discussion: NIDRR agrees with this comment, and believes that the priority includes this focus. The priority states that the DRRP must be designed to contribute to the outcome of increased implementation of evacuation solutions for individuals with disabilities within existing emergency management initiatives, and requires meaningful and sustained collaboration with a variety of stakeholders, including mainstream emergency management professionals.

Changes: None.

Comment: One commenter recommended that the proposed priority be changed to use a functional definition of disability. The commenter stated that condition-specific definitions of disability may not be appropriate in the disaster management context and that it is important to think broadly about disability in terms of function, and not impairment or diagnosis.

Discussion: Consistent with the definition of ''disability'' that applies to title II of the Rehabilitation Act of 1973, as amended, NIDRR agrees that a broad view of disability is appropriate. However, we wish to retain the requirement that applicants specify the target populations (e.g., individuals with physical, sensory or mental impairments) of their proposed project in order to emphasize the breadth of populations that could be included in the target population(s) of the work to be performed under this priority. However, this does not mean that applicants may not choose to use a functional definition of disability in their application. Applicants are free to define the target population(s) of their proposed project and to justify the population(s) as they deem appropriate. The peer review process will determine the merits of individual proposals.

Changes: None.

Comment: One commenter suggested that the priority specifically include

research to support evacuation planning, preparation, and strategies that fully account for the broad population of individuals who are blind or visually impaired (including seniors with vision loss, people with multiple disabilities, and individuals who are ethnically or linguistically diverse).

Discussion: This priority is intentionally stated as broadly as possible in order to enable applicants with varying focus areas to apply. Nothing in the priority would preclude an applicant from including individuals with vision loss as their target population; the priority states that applicants must define their target population (e.g., individuals with physical, sensory, or mental impairments). NIDRR does not believe that it would be appropriate to require that all applicants include individuals with vision loss in their target populations.

Changes: None.

Comment: One commenter stated that, as currently written, the Inclusive Emergency Evacuation of Individuals with Disabilities priority could be interpreted as requiring the synthesis and assessment of technological evidence (i.e., highway width, design capacity specifications, building standards, etc.) or systemic evidence (i.e., improved communication plans, guidelines or annexes among best practices of disaster management, training modules, etc.). The commenter asked which of these two types of evidence the priority seeks to address.

Discussion: The priority is broadly stated, permitting applicants to choose their area(s) of focus, and, hence, the types of evidence they synthesize and assess. Applicants may propose to focus their research on any one or more of the following: evacuation solutions—evacuation devices, plans, exercises, protocols, models, systems, networks, standards and interventions. It is up to the applicant to define and justify their chosen area(s). The peer review process will evaluate the merits of individual proposals.

Changes: None.

Comment: One commenter stated that it would be better for the Department of Homeland Security (DHS) to fund the research described in the Inclusive Emergency Evacuation of Individuals with Disabilities priority. The commenter stated that DHS has specific responsibility in this area, has research programs and portfolios that are appropriate to this topic, and has funding capability via the Federal Emergency Management Agency. The commenter added that emergency management targeted to people with disabilities should be a mainstream activity of DHS and that funding through DHS would facilitate the rapid adoption of findings and products.

Discussion: This DRRP fits within NIDRR's research agenda, which includes a growing portfolio of research to improve outcomes for individuals with disabilities in emergency and disaster situations. In addition, NIDRR chairs the Research Subcommittee of the DHS Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities. As such, in developing this priority, NIDRR worked collaboratively with representatives of DHS as well as seven other Federal agencies. The priority requires applicants to demonstrate how they plan to implement a sustained, meaningful and integrated collaboration with a variety of stakeholders, including relevant Federal agencies and members of DHS's Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities.

Changes: None.

Priority 4—Traumatic Brain Injury Model Systems (TBIMS) Centers

Comment: Two commenters expressed concern that the proposed TBIMS Centers priority would be understood by applicants to favor local projects that conduct intervention trials over projects that conduct diagnostic and prognostic studies. These commenters expressed concern that local projects that conduct intervention trials are likely to lack the sample sizes necessary to ensure adequate statistical power and generalizability of the research findings.

Discussion: Under this priority applicants may propose to test innovative approaches to treatment and evaluation of traumatic brain injury (TBI) outcomes; however, NIDRR suggests that applicants also may consider the ways in which prognostic or diagnostic research can support the development of interventions that improve outcomes for persons with TBI. Nothing in the priority prohibits an applicant from proposing such prognostic or diagnostic research projects. The peer review process will evaluate the merits of each individual proposal.

Changes: None.

Comment: One commenter requested that the TBIMS Centers priority be modified to include an indication of how the 35-case-minimum (for enrollment in the TBIMS database) will be enforced. The commenter explained that the inclusion of this information in the priority would serve to discourage applicants from artificially inflating their estimate of TBIMS database enrollment in the application.

Discussion: NIDRR expects that all applicants will make a good faith estimate of the number of people to be enrolled in the TBIMS database based on clinical enrollment rates at their respective institutions, accounting for expected refusals and attrition. Monitoring and enforcement of funded activities, including the number of persons enrolled in the TBIMS database, is the post-award responsibility of NIDRR staff.

Changes: None.

Comment: One commenter noted that the TBIMS Centers priority does not address whether collaborative research module projects developed under the last funding cycle of this program would be eligible for funding under this priority.

Discussion: Grants under this priority will provide funds for collaborative research module projects that meet the requirements of the priority and are selected for implementation. Nothing in the TBIMS Centers priority prohibits an applicant from proposing a continuation or extension of a collaborative research module project that was funded in the last funding cycle of the TBIMS program. The peer review process will evaluate the merits of individual proposals.

Changes: None.

Comment: One commenter requested that the TBIMS Centers priority explicate the process by which module research projects will be selected for implementation.

Discussion: We discuss the process by which module research projects proposed under this priority will be selected for implementation under the heading *Collaborative Research Module Projects (Priority 2—Burn Model Systems (BMS) Centers and Priority 4—Traumatic Brain Injury Model Systems (TBIMS) Centers)* elsewhere in this notice.

Changes: None.

Comment: One commenter inquired about the components of the required multidisciplinary system of care designed to meet the needs of individuals with TBI, stating that emergency medical services or Level 1 trauma centers were not explicitly mentioned in the TBIMS Centers priority.

Discussion: As explained in the background statement for the TBIMS Centers priority in the NPP, each TBIMS center funded under this program should be designed to offer a multidisciplinary system for providing rehabilitation services specifically designed to meet the special needs of

individuals with TBI. These services span the continuum of treatment from acute care through community re-entry. Paragraph (1) of the priority also makes clear that a TBIMS Center must ''provide a multidisciplinary system of rehabilitation care specifically designed to meet the needs of individuals with TBI. The system must encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, and post-acute services.'' While NIDRR agrees that Level 1 trauma centers can play a key role in this system, NIDRR has no basis for requiring that applicants provide Level 1 trauma center care. The peer review process will evaluate the merits of individual proposals.

Changes: None.

Comment: One commenter expressed concern about the under-representation of persons from minority and lower socioeconomic backgrounds in some TBIMS research. The commenter recommended that NIDRR more strongly encourage the inclusion of underserved populations in research conducted by the TBIMS Centers.

Discussion: NIDRR agrees that members of underserved populations with TBI experience greater challenges in receiving health care services and are generally in poorer health. NIDRR does encourage the inclusion of underserved populations in the research funded through the TBIMS program. Nothing in the TBIMS Centers priority prohibits an applicant from proposing to include members of underserved populations in the proposed research. The peer review process will evaluate the merits of individual proposals.

Changes: None.

Comment: None.

Discussion: Paragraph (2) of the TBIMS Centers priority requires that all TBIMS Centers coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences. Since the publication of the NPP, the NIDRR-funded Model Systems Knowledge Translation Center has been established. Information about the newly funded Model Systems Knowledge Translation Center can be found at the following Web site: *http://uwctds.washington.edu/projects/msktc.asp.*

Changes: We have revised paragraph (2) of the priority by adding the following Web site address for the NIDRR-funded Model Systems Knowledge Translation Center: *http://uwctds.washington.edu/projects/msktc.asp.*

Comment: None.

Discussion: In the NPP, the background statement for the proposed TBIMS Centers priority stated that additional information regarding the TBIMS database, which is maintained by the NIDRR-funded National Data and Statistical Center for the TBIMS can be found at *http://tbindc.org.* Please note that, since the publication of the NPP, the NIDRR-funded TBIMS National Data and Statistical Center has been awarded to a different institution, and the associated Web site address has changed to *http://www.tbindsc.org.*

Changes: None.

Priorities 5, 6, 7, 8, 9, 10, and 11—Rehabilitation Engineering Research Centers (RERCs)

Comment: One commenter stated that the RERC for Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities priority should specifically address the needs of people with sensory disabilities.

Discussion: NIDRR agrees that the recreational and fitness needs of individuals with sensory disabilities are important. Nothing in this priority prohibits an applicant from proposing to address the needs of individuals with sensory disabilities through its proposed project; the peer review process will evaluate the merits of the proposal. However, NIDRR does not believe that it would be appropriate to require that all applicants address sensory disabilities through their proposed projects.

Changes: None.

Comment: One commenter stated that the RERC for Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities priority should specifically address exercise programs for people with disabilities.

Discussion: NIDRR agrees that the development of exercise programs for individuals with disabilities may lead to better health outcomes and increased access to and participation in physical fitness activities. An applicant could propose to address exercise programs for individuals with disabilities; the peer review process will evaluate the merits of individual proposals. However, NIDRR does not believe that it would be appropriate to require all applicants under this priority to propose to address exercise programs for individuals with disabilities.

Changes: None.

Comment: One commenter stated that the RERC for Translating Physiological Data into Predictions for Functional Performance priority should address mobility aids (e.g., canes and guide dogs) used by adults with low vision and blindness.

Discussion: NIDRR agrees that research and demonstration activities on mobility aids may help to improve ambulation and access by people with low vision and blindness. An applicant could propose to address mobility aids used by adults with low vision and blindness through its proposed project and the peer review process will evaluate the merits of the proposal. However, NIDRR does not believe that it would be appropriate to require that all applicants address mobility aids used by adults with low vision and blindness in their proposed projects.

Changes: None.

Comment: One commenter stated that the RERC for Translating Physiological Data into Predictions for Functional Performance priority is too restrictive because it limits the relationship between physiological measures and functional performance to prediction only. This commenter expressed concern that the title of the proposed priority contributes to this narrow focus.

Discussion: NIDRR agrees with the commenter. Models and methods for understanding the various relationships between physiological data and functional performance are in need of development. An applicant could propose to address other components of the relationship between physiological measures and functional performance; the peer review process will evaluate the merits of the individual proposals. For the sake of clarity, NIDRR will change the title of this priority.

Changes: The title of this priority area has been changed from ''RERC for Translating Physiological Data into Predictions for Functional Performance'' to ''RERC for Relating Physiological Data and Functional Performance.''

Comment: One commenter believes that the RERC for Accessible Medical Instrumentation priority should focus on monitoring devices used for self-care by people with disabilities and that the RERC should be responsible for standards development for monitoring devices used for self-care by people with disabilities.

Discussion: NIDRR agrees that research and development in the area of monitoring devices used for self-care by individuals with disabilities is needed. An applicant could propose to address monitoring devices used for self-care by individuals with disabilities; the peer review process will evaluate the merits of the proposal. However, NIDRR does not believe that it would be appropriate to require that all applicants address monitoring devices used for self-care by individuals with disabilities through

their proposed projects. If an applicant proposes to address monitoring devices used for self-care by individuals with disabilities, it must remember that it will be required to provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect this area of research.

Changes: None.

Comment: One commenter stated that the RERC for Workplace Accommodations priority should specifically recognize that the workplace is a dynamic, ever-changing environment where effective accommodations may change over time.

Discussion: NIDRR agrees that the workplace is a dynamic environment where accommodations at the individual level may not be sufficient for the human-work environment system. As employee job functions and responsibilities change, the employee and accommodations must be able to adapt effectively. An applicant under this priority could propose to address this aspect of workplace accommodations through its proposed project; the peer review process will evaluate the merits of individual proposals. However, NIDRR does not believe that it would be appropriate to require all applicants to address this aspect of workplace accommodations in their proposals.

Changes: None.

Comment: One commenter stated that the RERC for Workplace Accommodations priority should specifically address individuals with environmental illness and that it should require the study of the impact of personal assistance services on employment barriers.

Discussion: Nothing in the RERC for Workplace Accommodations priority prohibits an applicant from proposing to address environmental illness in the workplace or to study the impact of personal assistance services on employment barriers; the peer review process will evaluate the merits of individual proposals received under this priority. NIDRR does not believe that it would be appropriate to require that all applicants propose to address environmental illness or to study the impact of personal assistance services on employment barriers.

Changes: None.

Comment: One commenter stated that the RERC for Rehabilitation Robotics and Telemanipulation Systems priority should be expanded to include robotic aids for mobility, education, and manipulation.

Discussion: Nothing in this priority prohibits an applicant from proposing to investigate intelligent mobility aids. NIDRR does not believe, however, that it would be appropriate to require all applicants to investigate intelligent mobility aids under this priority. The peer review process will evaluate the merits of individual proposals.

Changes: None.

Comment: One commenter stated that the RERC for Emergency Management Technologies priority should address specifically the inter-operability of communications platforms, and digital emergency alert systems, and that it should involve the Federal, State, and local emergency management communities.

Discussion: NIDRR recognizes that compatible communications, digital emergency alert systems, and the involvement of the Federal, State, and local emergency management communities are critical to effective emergency management communications. That said, NIDRR does not believe that it would be appropriate to require all applicants under this priority to address inter-operability issues or digital alert systems, or to involve Federal, State, and local emergency management communities through their proposed projects. Nothing prohibits an applicant from proposing to address compatible communications, or digital emergency alert systems, or to involve the Federal, State, and local emergency management communities; the peer review process will evaluate the merits of individual proposals.

Changes: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: This NFP is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://*

www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.

National Data and Statistical Center for the Burn Model Systems

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the establishment of a National Data and Statistical Center for the Burn Model Systems (National BMS Data Center). The National BMS Data Center must advance medical rehabilitation by increasing the rigor and efficiency of scientific efforts to assess the experience of individuals with burn injury. To meet this priority, the National BMS Data Center's research and technical assistance must be designed to contribute to the following outcomes:

(a) Maintenance of a national longitudinal database (BMS Database) for data submitted by each of the Burn Model Systems centers (BMS Centers). This database must provide for confidentiality, quality control, and data-retrieval capabilities, using cost-effective and user-friendly technology.

(b) High-quality, reliable data in the BMS Database. The National BMS Data Center must contribute to this outcome by providing training and technical assistance to BMS Centers on subject retention and data collection procedures, data entry methods, and appropriate use of study instruments, and by monitoring the quality of the data submitted by the BMS Centers.

(c) Rigorous research conducted by BMS Centers. To help in the achievement of this outcome, the National BMS Data Center must make statistical and other methodological consultation available for research projects that use the BMS Database, as well as center-specific and collaborative projects of the BMS program.

(d) Improved efficiency of the BMS Database operations. The National BMS Data Center must pursue strategies to achieve this outcome, such as collaborating with the National Data and Statistical Center for Traumatic Brain Injury Model Systems, the National Data and Statistical Center for Spinal Cord Injury Model Systems, and the Model Systems Knowledge Translation Center.

Burn Model Systems (BMS) Centers

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of Burn Model Systems (BMS) centers (BMS Center) under the Disability and Rehabilitation Research Projects (DRRP) Program to conduct research that contributes to evidence-based rehabilitation interventions and clinical as well as practice guidelines that improve the lives of individuals with burn injury. Each BMS Center must—

(a) Contribute to continued assessment of long-term outcomes of burn injury by enrolling at least 30 subjects per year into the national longitudinal database for BMS data maintained by the National Data and Statistical Center for the BMS, following established protocols for the collection of enrollment and follow-up data on subjects;

(b) Contribute to improved outcomes for individuals with burn injury by proposing one collaborative research module project and participating in at least one collaborative research module project, which may range from pilot research to more extensive studies; and

(c) Contribute to improved long-term outcomes of individuals with burn injury by conducting no more than two site-specific research projects to test innovative approaches that contribute to rehabilitation interventions and evaluating burn injury outcomes in accordance with the focus areas identified in NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). Applicants who propose more than two site-specific projects will be disqualified.

In carrying out these activities, each BMS Center may select from the following research domains related to specific areas of the Plan: Health and function, employment, participation and community living, and technology for access and function.

In addition, each BMS Center must—

(1) Provide a multidisciplinary system of rehabilitation care specifically designed to meet the needs of individuals with burn injury. The system must encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, and post-acute services; and

(2) Coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences.

Emergency Evacuation and Individuals with Disabilities

Priority

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Disability Rehabilitation Research Project (DRRP) on Emergency Evacuation and Individuals with Disabilities. This DRRP must conduct research that contributes to improved outcomes for individuals with disabilities in emergencies and disasters. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Increased evidence-based knowledge about the emergency evacuation of individuals with disabilities from one or more of the following areas: buildings; transportation systems; or geographic locations (e.g., cities and States). The DRRP must contribute to this outcome by synthesizing, assessing, and advancing the current state of evidence-based knowledge within the area(s) chosen above. This must include a focus on one or more of the following evacuation solutions— evacuation devices, plans, exercises, protocols, models, systems, networks, standards, or interventions. Research activities must be designed with the goal of achieving reliable, usable, accessible, safe, effective, and emergency evacuation for individuals with disabilities.

(b) Increased implementation of evacuation solutions for individuals with disabilities within existing emergency management initiatives. The DRRP must contribute to this outcome by— (1) examining barriers and facilitators to incorporating disability-related evacuation solutions within existing emergency management initiatives; (2) sharing findings from this DRRP with the emergency management community and other key stakeholders; and (3) collaborating with the emergency management community and other key stakeholders to propose solutions to identified barriers.

In addition to the above outcomes, applicants must:

- *Define, in their applications, the parameters and units of analysis for their proposed activities. Applications must include a description of each of the following:* (1) Type(s) of evacuation (i.e., evacuation from buildings, transportation systems, geographic locations such as cities or States); (2) target population(s) (e.g., individuals with physical, sensory, mental impairments); and (3) type(s) of evacuation solutions (e.g., evacuation devices, plans, exercises, protocols, models, systems, networks, standards, interventions).
- *Demonstrate in their applications how they plan to implement a sustained, meaningful, and integrated collaboration throughout the project with key stakeholders. These may include but are not limited to:* (1) disability and aging advocates and organizations, disability subject matter

experts, and qualified individuals with disabilities; (2) fire engineers, homeland security and preparedness personnel, and other mainstream emergency management professionals and associations; (3) industry, standard-setting organizations, and other relevant stakeholders involved in standards development; (4) researchers (including researchers working on projects funded by NIDRR, other government agencies, and researchers in the private sector); and (5) relevant Federal agencies, including but not limited to those participating in the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities.

Traumatic Brain Injury Model Systems (TBIMS) Centers

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for Traumatic Brain Injury Model Systems (TBIMS) centers under the Disability and Rehabilitation Research Projects (DRRP) program to conduct research that contributes to evidence-based rehabilitation interventions which improve the lives of individuals with traumatic brain injury (TBI). Each TBIMS center must contribute to the following outcomes:

(a) Continued assessment of long-term outcomes of TBI by enrolling at least 35 subjects per year into the longitudinal portion of the TBIMS database maintained by the National Data and Statistical Center for the TBIMS, following established protocols for the collection of enrollment and follow-up data on subjects.

(b) Improved outcomes for individuals with TBI by proposing one collaborative research module project and participating in at least one collaborative research module project, which may range from pilot research to more extensive studies (at the beginning of the funding cycle, the TBIMS directors, in conjunction with NIDRR, will select specific modules for implementation from the approved applications).

(c) Improved long-term outcomes of individuals with TBI by conducting no more than two site-specific research projects to test innovative approaches that contribute to rehabilitation interventions and evaluating TBI outcomes in accordance with the focus areas identified in NIDRR's Long-Range Plan for FY 2005–2009 (Plan). Applicants who propose more than two site-specific projects will be disqualified.

In carrying out each of these research activities, each TBIMS Center may select from the following research domains related to specific areas of the Plan: Health and Function, Employment, Participation and Community Living, and Technology for Access and Function.

In addition, each TBIMS Center must—

(1) Provide a multidisciplinary system of rehabilitation care specifically designed to meet the needs of individuals with TBI. The system must encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, and post-acute services; and

(2) Coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences. (Additional information on this center can be found at *http://uwctds.washington.edu/projects/msktc.asp).* Rehabilitation Engineering Research Centers Program

General Requirements of Rehabilitation Engineering Research Centers (RERCs)

RERCs carry out research or demonstration activities in support of the Rehabilitation Act of 1973, as amended, by—

- *Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to:* (a) Solve rehabilitation problems and remove environmental barriers; and (b) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or
- *Demonstrating and disseminating:* (a) Innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas; and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; and
- *Facilitating service delivery systems change through:* (a) The development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services; and (b) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must be operated by or in collaboration with one or more institutions of higher education or one or more nonprofit organizations.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Rehabilitation Engineering Research Centers (RERCs) for Spinal Cord Injury, Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities, Relating Physiological Data and Functional Performance, Accessible Medical Instrumentation, Workplace Accommodations, Rehabilitation Robotics and Telemanipulation Systems, and Emergency Management Technologies

Priorities

The Assistant Secretary for Special Education and Rehabilitative Services establishes seven priorities for the establishment of (a) an RERC for Spinal Cord Injury, (b) an RERC for Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities, (c) an RERC for Relating Physiological Data and Functional Performance, (d) an RERC for Accessible Medical Instrumentation, (e) an RERC for Workplace Accommodations, (f) an RERC for Rehabilitation Robotics and Telemanipulation Systems, and (g) an RERC for Emergency Management Technologies. Within its designated priority research area, each RERC will focus on innovative technological solutions, new knowledge, and concepts that will improve the lives of persons with disabilities.

(a) *RERC for Spinal Cord Injury.*

Under this priority, the RERC must research, develop and evaluate innovative technologies and approaches that will improve the treatment, rehabilitation, employment, and reintegration into society of persons with spinal cord injury. This RERC must work collaboratively with the NIDRR-funded Spinal Cord Injury Model Systems Centers program;

(b) *RERC for Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities.*

Under this priority, the RERC must research, develop, and evaluate innovative technologies and strategies that will enhance recreational opportunities for individuals with disabilities and develop methods to

enhance the physical performance of individuals with disabilities.

(c) *RERC for Relating Physiological Data and Functional Performance.*

Under this priority, the RERC must determine the physiological measurement tools that are available in a specific sub-specialty of rehabilitation. A sub-specialty may be based on underlying disabling condition (e.g., spinal cord injury, and Parkinson's disease), or on specific sequelae that may be common to a wide variety of disabling conditions (e.g., pain, spasticity). The RERC must then develop and evaluate models and methods for determining the relationships between basic physiological measurements and functional performance. These models and methods must take the characteristics of individuals and their environments into consideration when attempting to delineate these relationships, so that the results of this research are relevant to clinical practice and the real-world experiences of individuals with disabilities.

(d) *RERC for Accessible Medical Instrumentation.*

Under this priority, the RERC must research, develop, and evaluate innovative methods and technologies to increase the usability and accessibility of diagnostic, therapeutic, and procedural healthcare equipment (e.g., equipment used during medical examinations, and treatment) for individuals with disabilities. This includes developing methods and technologies that are useable and accessible for patients and health care providers with disabilities.

(e) *RERC for Workplace Accommodations.*

Under this priority, the RERC must research, develop, and evaluate innovative technologies and implementation plans, devices, and systems to enhance the productivity of individuals with disabilities in the workplace. This RERC must emphasize the application of universal design concepts to improve the accessibility of the workplace and workplace tools for all workers.

(f) *RERC for Rehabilitation Robotics and Telemanipulation Systems.*

Under this priority, the RERC must research, develop, and evaluate human-scale robots and telemanipulation systems that will provide or perform rehabilitation therapies and address the unique needs of individuals with disabilities.

(g) *RERC for Emergency Management Technologies.*

Under this priority, the RERC must research, develop, and evaluate existing and innovative emergency management technologies to enhance emergency outcomes for individuals with disabilities. Areas of focus within this priority research area may include but are not limited to communications, transportation, evacuation, and other areas related to emergency preparedness, response, and recovery. In addition, this RERC must provide input and expertise into the development of standards to improve emergency management for individuals with disabilities. *This RERC must work collaboratively with the NIDRR-funded Disability and Rehabilitation Research Project:* Emergency Evacuation and Individuals with Disabilities.

Under each priority, the RERC must be designed to contribute to the following programmatic outcomes:

(1) Increased technical and scientific knowledge-base relevant to its designated priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its designated priority research area. The RERC must contribute to this outcome by developing and testing these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, and institutions of higher education.

(4) Improved focus on cutting edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with NIDRR and the field regarding trends and evolving product concepts related to its designated priority research area.

(5) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to public and private organizations, individuals with disabilities, and employers on policies, guidelines, and standards related to its designated priority research area.

In addition, under each priority, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal and then implement a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate its research results to individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;
- Develop and implement in the first year of the project period, in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by the RERC are successfully transferred to the marketplace;
- Conduct a state-of-the-science conference on its designated priority research area in the fourth year of the project period and publish a comprehensive report on the final outcomes of the conference in the fifth year of the project period; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priorities justify the costs.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge and technologies through research,

development, dissemination, utilization, and technical assistance projects.

Another benefit of these final priorities is that the establishment of new DRRPs and new RERCs will support the President's NFI and will improve the lives of persons with disabilities. The new DRRPs and RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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.*

(Catalog of Federal Domestic Assistance Numbers 84.133A Disability Rehabilitation Research Projects and 84.133E Rehabilitation Engineering Research Centers Program)

Program Authority: 29 U.S.C. 762(g), 764(a), 764(b)(2), and 764(b)(3).

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2349 Filed 2–13–07; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)—National Data and Statistical Center for the Burn Model Systems; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–1.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Date of Pre-Application Meeting: March 5, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $300,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $300,000 for the National Data and Statistical Center for the Burn Model Systems competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

PRIORITIES: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). *The National Data and Statistical Center for the Burn Model Systems* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2007, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *National Data and Statistical Center for the Burn Model Systems.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $300,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $300,000 for the National Data and Statistical Center for the Burn Model Systems competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if

Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write 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), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 5, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Disability Rehabilitation Research Projects (84.133A–1) is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at *http://www.Grants.gov*. You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

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b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–1), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.133A–1), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

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(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.

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The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRA Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may 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: *www.gpoaccess.gov/nara/index.html.*

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2350 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)—Burn Model Systems (BMS) Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–3.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 30, 2007.

Date of Pre-Application Meeting: March 5, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $1,450,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $1,450,000 for the BMS Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Average Size of Awards: $362,500.

Note: Applicants are requested to submit the following budget information: A budget table and narrative for each site-specific research project, proposed module project, longitudinal database activities, and all remaining priority activities. These tables should follow the format of ED Form 524. NIDRR recommends that each applicant allocate 15 percent of the proposed budget for participation in the collaborative research module project(s).

Maximum Award: We will reject any application that proposes a budget exceeding $362,500 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Burn Model Systems (BMS) Centers* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2007, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and Burn Model Systems (BMS) Centers.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,450,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $1,450,000 for the BMS Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Average Size of Awards: $362,500.

Note: Applicants are requested to submit the following budget information: A budget table and narrative for each site-specific research project, proposed module project, longitudinal database activities, and all remaining priority activities. These tables should follow the format of ED Form 524. NIDRR recommends that each applicant allocate 15 percent of the proposed budget for participation in the collaborative research module project(s).

Maximum Award: We will reject any application that proposes a budget exceeding $362,500 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write 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), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–3.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 30, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 5, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov*.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6, *Other Submission Requirements,* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Disability Rehabilitation Research Projects (84.133A–3) is

included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
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Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

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U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–3), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

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U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.133A–3), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

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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.

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The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

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1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site:

http://www.ed.gov/about/offices/list/opepd/sas/index.html.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2351 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)—Emergency Evacuation and Individuals with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–5.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Date of Pre-Application Meeting: March 7, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $450,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $450,000 for the Emergency Evacuation and Individuals with Disabilities competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Emergency Evacuation and Individuals with Disabilities* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2007, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and Emergency Evacuation and Individuals with Disabilities.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $450,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $450,000 for the Emergency Evacuation and Individuals with Disabilities competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write 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), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–5.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 75 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. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 7, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. *Telephone:* (202) 245–7462 or by *e-mail: Donna.Nangle@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Disability Rehabilitation Research Projects (84.133A–5) is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Government wide Grants.gov Apply site at *http://www.Grants.gov.* Through

this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the

Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133A–5), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.133A–5), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133A–5), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html*.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program

Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. *Telephone*: (202) 245–7462 or by *e-mail: donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2352 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)—Traumatic Brain Injury Model Systems (TBIMS) Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–6.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 30, 2007.

Date of Pre-Application Meeting: March 6, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $6,000,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $6,000,000 for the TBIMS Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $418,571—$438,571.

Estimated Average Size of Awards: $428,571.

Maximum Award: We will reject any application that proposes a budget exceeding $438,571 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note 1: The maximum amount includes direct and indirect costs.

Note 2: TBIMS Centers will be funded at varying amounts up to the maximum award based on the numbers of subjects eligible for follow-up in the existing database. Existing centers with significantly larger numbers of subjects will receive higher funding within the specified range, as determined by NIDRR after the applicant is selected for funding.

Applicants are requested to submit the following budget information: A budget table and narrative for each site-specific research project, proposed module project, longitudinal database activities, and all remaining priority activities. These tables should follow the format of ED Form 524. NIDRR recommends that each applicant allocate 15 percent of the proposed budget for participation in the collaborative research module project(s).

Funding will be determined individually for each successful applicant, up to the maximum allowed, based upon the documented workload associated with the follow-up data collection, the other costs of the grant, and the overall budgetary limits of the program.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

Priorities: NIDRR has established two priorities for this competition. *The General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Traumatic Brain Injury Model Systems (TBIMS) Centers* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: For FY 2007, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Traumatic Brain Injury Model Systems (TBIMS) Centers*.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,000,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $6,000,000 for the TBIMS Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $418,571–$438,571.

Estimated Average Size of Awards: $428,571.

Maximum Award: We will reject any application that proposes a budget exceeding $438,571 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note 1: The maximum amount includes direct and indirect costs.

Note 2: TBIMS Centers will be funded at varying amounts up to the maximum award based on the numbers of subjects eligible for follow-up in the existing database. Existing centers with significantly larger numbers of subjects will receive higher funding within the specified range, as determined by NIDRR after the applicant is selected for funding.

Applicants are requested to submit the following budget information: A budget table and narrative for each site-specific research project, proposed module project, longitudinal database activities, and all remaining priority activities. These tables should follow the format of ED Form 524. NIDRR recommends that each applicant allocate 15 percent of the proposed budget for participation in the collaborative research module project(s).

Funding will be determined individually for each successful applicant, up to the maximum allowed, based upon the documented workload associated with the follow-up data collection, the other costs of the grant, and the overall budgetary limits of the program.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write 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), you may call *(toll free)*: 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–6.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 30, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 6, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make

arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. *Telephone:* (202) 245–7462 or by *e-mail: Donna.Nangle@ed.gov*.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements in this notice.*

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Disability Rehabilitation Research Projects (84.133A–6) is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please

contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133A–6), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.133A–6), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133A–6), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6030, Potomac Center Plaza, Washington, DC 20202.

Telephone: (202) 245–7462 or by *e-mail: donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2353 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Spinal Cord Injury; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–3.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Date of Pre-Application Meeting: March 8, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Spinal Cord Injury. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2007, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: RERC for Spinal Cord Injury.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Spinal Cord Injury competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is not required for this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write 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), you may call (*toll free*): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–3.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 8, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202.

Telephone: (202) 245–7462 or by *e-mail*: *Donna.Nangle@ed.gov*.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review*: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Rehabilitation Engineering Research Centers (84.133E–3) is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Rehabilitation Engineering Research Centers at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133E).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

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of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133E–3), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.133E–3), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

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The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in

refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202.

Telephone: (202) 245–7462 or by *e-mail: donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2354 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Recreational Technologies and Exercise Physiology Benefiting Individuals With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–4.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Date of Pre-Application Meeting: March 8, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2007, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

RERC for Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Recreational Technologies and Exercise Physiology Benefiting Individuals with Disabilities competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if

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Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is not required for this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write 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), you may call (*toll free*): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–4.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 8, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, Room 6030, 550 12th Street, SW., Washington, DC 20202. *Telephone:* (202) 245–7462 or by *e-mail: Donna.Nangle@ed.gov*.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Rehabilitation Engineering Research Centers (84.133E–4) is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Rehabilitation Engineering Research Centers at *http://www.Grants.gov*. You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.133, not 84.133E).

Please note the following:

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• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

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• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

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The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html*.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by *e-mail: donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2355 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Relating Physiological Data and Functional Performance Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–5.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Date of Pre-Application Meeting: March 8, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Relating Physiological Data and Functional Performance competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2007, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

RERC for Relating Physiological Data and Functional Performance.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Relating Physiological Data and Functional Performance competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is not required for this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the

Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write 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), you may call *(toll free):* 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–5.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 8, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. *Telephone:* (202) 245–7462 or by *e-mail: Donna.Nangle@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Rehabilitation Engineering Research Centers (84.133E–5) is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Rehabilitation Engineering Research Centers at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133E).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133E–5), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.133E–5), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the

Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–5), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

For Further Information Contact:

Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6030, Potomac Center Plaza, Washington, DC 20202. *Telephone:* (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2356 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Accessible Medical Instrumentation; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–6

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 30, 2007.

Date of Pre-Application Meeting: March 8, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Accessible Medical Instrumentation competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2007, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

RERC for Accessible Medical Instrumentation.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Accessible Medical Instrumentation competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is not required for this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write 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), you may call *(toll free):* 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–6.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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.

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The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 30, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 8, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202.

Telephone: (202) 245–7462 or by *e-mail: Donna.Nangle@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6., Other Submission Requirements, in this notice. We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Rehabilitation Engineering Research Centers (84.133E–6) is included in this project. We request your participation in Grants.gov.

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You may access the electronic grant application for Rehabilitation Engineering Research Centers at *http://www.Grants.gov*. You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133E).

Please note the following:

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• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all

documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133E–6), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.133E–6), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133E–6), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure

outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by *e-mail: donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2357 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)— Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)— Workplace Accommodations; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–7.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 30, 2007.

Date of Pre-Application Meeting: March 8, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Workplace Accommodations competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant

process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2007, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

RERC for Workplace Accommodations.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Workplace Accommodations competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

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- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your

application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

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Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address: *By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133E–7), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or *By mail through a commercial carrier:* U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.133E–7), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

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(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.

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The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual

performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (*e.g.*, new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html*.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. *Telephone:* (202) 245–7462 or by e-mail: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2358 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Rehabilitation Robotics and Telemanipulation Systems; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–8.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Date of Pre-Application Meeting: March 8, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the Rehabilitation Robotics and Telemanipulation Systems competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2007, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: *RERC for Rehabilitation Robotics and Telemanipulation Systems.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the Rehabilitation Robotics and Telemanipulation Systems competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is not required for this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write 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), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–8.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 8, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper

format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site in FY 2007. Rehabilitation Engineering Research Centers (84.133E–8) is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Rehabilitation Engineering Research Centers at *http://www.Grants.gov* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133E).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
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If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

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or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.133E–8), 7100 Old Landover Road, Landover, MD 20785–1506.

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- The percentage of newly awarded NIDRR projects that are multi-site,

collaborative, controlled studies of interventions and programs.

- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

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VIII. Other Information

Electronic Access to This Document: You may 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.

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Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2359 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)— Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)— Emergency Management Technologies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–9.

Dates:

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Date of Pre-Application Meeting: March 8, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Emergency Management Technologies competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2007, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: *RERC for Emergency Management Technologies.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published

elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $950,000. The Administration has requested $106,705,000 for the NIDRR program, of which we intend to use an estimated $4,750,000 for the RERC program, of which we intend to use an estimated $950,000 for the RERC for Emergency Management Technologies competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

This competition is one of seven RERC competitions announced for FY 2007. NIDRR intends to make awards in only five of these competitions.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is not required for this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write 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), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–9.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII 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. We recommend that you limit Part III to the equivalent of no more than 125 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. Single spacing may be used for 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).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 14, 2007.

Deadline for Transmittal of Applications: April 16, 2007.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 8, 2007. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the new Governmentwide Grants.gov Apply site in FY 2007. Rehabilitation Engineering Research Centers (84.133E–9) is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Rehabilitation Engineering Research Centers at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133E).

Please note the following:

Your participation in Grants.gov is voluntary.

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier),

you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–9), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.133E–9), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–9), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria 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 also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

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Dated: February 5, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–2360 Filed 2–13–07; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
February 14, 2007

Part V

The President

Memorandum of February 9, 2007—Designation of Officers of the Federal Bureau of Investigation

Federal Register
Vol. 72, No. 30
Wednesday, February 14, 2007

Presidential Documents

Title 3—

The President

Memorandum of February 9, 2007

Designation of Officers of the Federal Bureau of Investigation

Memorandum for the Director of the Federal Bureau of Investigation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered that:

Section 1. *Order of Succession.* During any period when the Director of the Federal Bureau of Investigation (Director) has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Director, the following officials of the Federal Bureau of Investigation, in the order listed, shall perform the functions and duties of the office of the Director of the Federal Bureau of Investigation, until such time as the Director is able to perform the functions and duties of the office of Director of the Federal Bureau of Investigation:

(a) Deputy Director of the Federal Bureau of Investigation;

(b) Associate Deputy Director of the Federal Bureau of Investigation;

(c)Executive Assistant Director of the National Security Branch;

(d) Executive Assistant Director for Criminal, Cyber, Response and Services; and

(e) The Assistant Directors of the Federal Bureau of Investigation, in the order listed:

(1) Assistant Director, Counterterrorism Division;

(2) Assistant Director, Criminal Investigative Division;

(3) Assistant Director, Counterintelligence Division;

(4) Assistant Director, Washington Field Office;

(5) Assistant Director, New York Field Office; and

(6) Assistant Director, Los Angeles Field Office.

Sec. 2. *Exceptions.*

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Director pursuant to this memorandum.

(b) No individual shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. *Judicial Review.* This memorandum is intended to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 4. The Director of the Federal Bureau of Investigation is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, February 9, 2007.

[FR Doc. 07–714
Filed 2–13–07; 9:01 am]
Billing code 44–1002–M

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 188/P.L. 110–3

To provide a new effective date for the applicability of certain provisions of law to Public Law 105-331. (Feb. 8, 2007; 121 Stat. 6)

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