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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0032]

RIN 0579–AC38

Citrus Canker; Interstate Movement of Regulated Nursery Stock From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker quarantine regulations to explicitly prohibit, with limited exceptions, the interstate movement of regulated nursery stock from a quarantined area. The interstate movement of regulated nursery stock from an area quarantined for citrus canker poses a high risk of spreading citrus canker outside the quarantined area. We are including two exceptions to the prohibition. We are allowing calamondin and kumquat plants, two types of citrus plants that are highly resistant to citrus canker, to move interstate from a quarantined area under a protocol designed to ensure that they are free of citrus canker prior to movement. We will also continue to allow the interstate movement of regulated nursery stock for immediate export, under certain conditions. This action is necessary to clarify our regulations and to address the risk associated with the interstate movement of regulated nursery stock from areas quarantined for citrus canker.

DATES: This interim rule is effective March 16, 2007. We will consider all comments that we receive on or before May 21, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0032 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0032, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0032.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, Emergency Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–14 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit and regulated seed may be moved from quarantined areas.

On August 1, 2006, we published an interim rule in the **Federal Register** (71 FR 43345–43352, Docket No. APHIS–2006–0114) that designated the entire State of Florida as a quarantined area. The interim rule also amended the regulations governing the movement of regulated articles from a quarantined area to reflect the fact that the U.S. Department of Agriculture (USDA) had announced on January 10, 2006, that the eradication program that USDA and the State of Florida had been pursuing was no longer a scientifically feasible option to address citrus canker. Eradication had become an infeasible option in Florida due to the rapid spread of citrus canker across that State that occurred during the hurricane seasons of 2004 and 2005.

The amendments we made to our regulations in the August 2006 interim rule were consistent with the recommendations of the Citrus Health Response Program, whose goal is to improve the ability of the commercial citrus industry to produce, harvest, process, and ship healthy fruit in the presence of citrus canker. This program provides general guidance to regulatory officials and all sectors of the citrus industry on ways to safeguard against citrus canker and other citrus pests of concern.

Regulations That Have Governed the Interstate Movement of Regulated Nursery Stock

The Animal and Plant Health Inspection Service (APHIS) has historically not allowed the interstate movement of regulated nursery stock from areas quarantined for citrus canker, because that movement is considered to be the highest risk pathway for the

spread of citrus canker. In virtually every case worldwide where citrus canker has been introduced into a new area, it has been through the movement of infected citrus nursery stock. If a citrus canker outbreak were to occur in another commercial citrus-producing area in the United States, the cost of eradicating the outbreak would be extremely high for both that State and the USDA, and citrus producers in that area could experience business interruptions and consequently lose substantial revenues.

In § 301.75–2 of the regulations, paragraph (a) prohibits the interstate movement of regulated articles except in accordance with the regulations. In addition, the regulations in § 301.75–6 have set out threshold conditions that must be met for the movement of regulated articles under §§ 301.75–7 and 301.75–8 from areas quarantined for citrus canker. These include requirements for surveying every regulated plant and regulated tree in every nursery in the quarantined area containing regulated plants and regulated trees at intervals of no more than 45 days and for treating personnel, vehicles, and equipment.

The requirements in § 301.75–6 were intended to be threshold conditions for the interstate movement of regulated fruit, whose movement is subject to the additional conditions in § 301.75–7, and regulated seed, whose movement is subject to the additional conditions in § 301.75–8, from a quarantined area. The requirements of § 301.75–6, standing alone, did not serve to address the risk associated with the movement of regulated articles such as nursery stock from the quarantined area, however, since they did not include any provisions to ensure that the specific articles to be moved were free of citrus canker. In fact, these requirements were not intended to serve as necessary and sufficient conditions under which the movement of regulated articles such as nursery stock would be allowed.

We have considered the interstate movement of nursery stock to be prohibited under § 301.75–2(a) because we have not had regulations in place that specifically set forth the conditions under which the interstate movement of nursery stock from a quarantined area would be allowed. However, the regulations have also not contained any provision specifically prohibiting the interstate movement of regulated nursery stock from the quarantined area. Given that, the general requirements in § 301.75–6 could also have been read as allowing the interstate movement of any regulated article not specifically named elsewhere in the regulations, including nursery stock, subject to the conditions in that section. As stated earlier, APHIS' intent has always been to prohibit the movement of all nursery stock except calamondin and kumquat plants from the quarantined area. (Our reasons for allowing the interstate movement of those plants are discussed later in this document under the heading ''Protocol to Allow Interstate Movement of Calamondin and Kumquat Plants.'')

Prior to the decision by the USDA that the eradication program was no longer a scientifically feasible option to address citrus canker in Florida, the State of Florida had placed restrictions on the intrastate movement of regulated nursery stock from the quarantined area. Under its authority, the State of Florida placed ''stop-sale'' orders on all nursery stock in the quarantined area, thus preventing its movement, and also destroyed any plants or trees that were infected with citrus canker as well as any regulated plants or trees that were located within 1,900 feet of an infected plant or tree. These intrastate movement restrictions effectively prohibited the movement of regulated nursery stock from the quarantined area. However, after the USDA decision and the subsequent designation of the entire State of Florida as a quarantined area, the State of Florida stopped routinely destroying infected and exposed trees and plants and issuing stop-sale orders for uninfected nurseries in the quarantined area, since the goal of the citrus canker program was no longer to eradicate citrus canker in Florida but to manage it.

Therefore, we need to amend the regulations to explicitly prohibit, with limited exceptions, the interstate movement of regulated nursery stock, to codify our long-standing policy in that regard and to remove any ambiguity that may have arisen from the provisions in § 301.75–6.

Accordingly, this interim rule prohibits the interstate movement of regulated nursery stock from a quarantined area. (This interim rule adds a definition of *nursery stock* to the definitions in § 301.75–1. The definition reads: ''Living plants and plant parts intended to be planted, to remain planted, or to be replanted.'' We are also amending the definition of *regulated fruit, regulated plant, regulated seed, regulated tree* so that it includes nursery stock. Thus, nursery stock derived from any citrus plant is considered to be regulated nursery stock.) We are including two exceptions to the prohibition: Calamondin and kumquat plants are allowed to move interstate from a quarantined area under a protocol designed to ensure that they are free of citrus canker prior to movement, and regulated nursery stock that is otherwise ineligible for interstate movement may be moved for immediate export. To codify these changes, we are amending § 301.75–6 to address the interstate movement of regulated nursery stock. The changes we are making to the regulations are discussed directly below.

Amendments to § 301.75–6 To Address Regulated Nursery Stock

As discussed earlier, prior to the effective date of this interim rule, § 301.75–6 set out threshold conditions that had to be met for the movement of regulated articles from the quarantined area under §§ 301.75–7 and 301.75–8. We are revising the title of the section to read ''Interstate movement of regulated nursery stock from a quarantined area'' to reflect its new focus.

We have moved the requirements in paragraph (b) to a new paragraph (c) and amended the paragraph to refer generally to nursery stock rather than only to plants and trees. This paragraph, which was originally added to the regulations in the August 2006 interim rule, allows regulated nursery stock produced in a nursery located in a quarantined area that is not otherwise eligible for movement to be moved interstate for immediate export. To be moved under this paragraph, the regulated nursery stock must be accompanied by a limited permit issued in accordance with § 301.75–12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

We are replacing the remainder of § 301.75–6 with new regulations.

Prior to our August 2006 interim rule, paragraph (a) of § 301.75–6 required inspections at 45-day intervals of all regulated plants and regulated trees in nurseries within the quarantined area and annual inspections of all other regulated plants and regulated trees (except houseplants) within the quarantined area. In the ''Background'' section of the August 2006 interim rule, we stated that the level of inspection that had been required in § 301.75–6 ''is necessary for a regulatory program focused on eradication but it is no longer appropriate in all cases given the current circumstances. Therefore, we are moving those requirements from § 301.75–6 to § 301.75–4(d).'' That paragraph contains provisions under which an area less than an entire State may be designated as a quarantined area; our intention was to move all provisions in the regulations that were

related to eradication to that paragraph, as we would normally pursue eradication only in an area less than an entire State. However, while we did add those requirements to § 301.75–4(d), only the provision regarding annual inspections was removed from § 301.75–6 in the August 2006 interim rule. Therefore, we are removing the provision regarding inspection of nurseries within the quarantined area from § 301.75–6 in this interim rule.

Paragraph (a)(2) of § 301.75–6 has required that, in the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees be treated in accordance with § 301.75–11(d) upon leaving the grove. Paragraph (a)(2) has also required that all personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75–11(c) upon leaving the grove. These requirements are designed to protect groves from the artificial spread of citrus canker and are more properly located in § 301.75–7, i.e., in the regulations governing the interstate movement of fruit from the quarantined area, which require that regulated fruit come from a grove free of citrus canker in order to be eligible for interstate movement. Accordingly, we are moving the requirements that have been in § 301.75–6(a)(2) into paragraph (a) of § 301.75–7.

In this interim rule, we are revising paragraph (a) of § 301.75–6 to state that regulated nursery stock may not be moved interstate from a quarantined area except for immediate export in accordance with newly redesignated paragraph (c) of § 301.75–6, with the proviso that calamondin and kumquat plants may be moved interstate from a quarantined area in accordance with a new paragraph (b). The provisions of this paragraph (b), along with our reasons for including them in the regulations, are discussed in detail directly below.

Protocol to Allow Interstate Movement of Calamondin and Kumquat Plants

In a final rule published in the **Federal Register** on March 24, 1989 (54 FR 12175–12183), we made several changes to the citrus canker regulations, including adding provisions to allow the interstate movement of own-root-only calamondin and kumquat plants under limited permit to all areas of the United States except commercial citrus-producing areas. This final rule was published subsequent to a proposed rule we published in the **Federal Register** on October 21, 1988 (53 FR 41538–41549, Docket No. 88–105). We received 32 comments on that proposal, but none addressed the provisions for the interstate movement of calamondin and kumquat plants. Therefore, we adopted the proposed provisions in our final rule, without change. The provisions adopted in that final rule are similar to the provisions under which we are allowing the interstate movement of calamondin and kumquat plants in this interim rule.

At the time the March 1989 final rule was published, the entire State of Florida was quarantined for citrus canker. However, in a final rule published in the **Federal Register** on September 11, 1990 (55 FR 37441–37453, Docket No. 90–114), we substantially revised the regulations to reflect the fact that the disease that had been called the Florida nursery strain of citrus canker was in fact a less serious disease called citrus bacterial spot. Therefore, in the September 1990 final rule, the area of Florida quarantined for citrus canker was reduced to a much smaller area where the Asiatic strain of citrus canker was present. The September 1990 final rule also removed the provisions allowing the interstate movement of calamondin and kumquat plants from quarantined areas. We did not provide a reason for removing those provisions in either the final rule or the proposed rule that preceded it. Because the reduction in the quarantined area meant that most nurseries in Florida were now eligible to move regulated nursery stock of any kind interstate without restrictions, it can be presumed that the change did not have much negative effect on the nursery stock industry in Florida.

The August 2006 interim rule again quarantined the entire State of Florida for citrus canker, thus prohibiting the interstate movement of regulated nursery stock from all nurseries in the State. To provide any possible relief from these restrictions, we reexamined the movement of calamondin and kumquat plants and determined the safeguards that the protocol required for the interstate movement of these highly resistant plants would mitigate the risk of spreading citrus canker from a quarantined area through the interstate movement of these plants. We subsequently began allowing such movement through administrative action pending the development of regulations. This interim rule codifies that protocol.

The biological basis for allowing the interstate movement of calamondin and kumquat plants remains the same: These two types of citrus are highly resistant to infection by the bacterium that causes citrus canker.[1] Additionally, we are requiring that these plants be produced in conditions that will further minimize the risk that they could be infected with citrus canker. Under paragraph (b) of § 301.75–6, calamondin and kumquat plants may only be moved interstate if all of the following conditions are met:

- The plants are own-root-only and have not been grafted or budded;
- The plants are started, are grown, and have been maintained solely at the nursery from which they will be moved interstate.
- If the plants are not grown from seed, then the cuttings used for propagation of the plants are taken from plants located on the same nursery premises or from another nursery that is eligible to produce calamondin and kumquat plants for interstate movement under the requirements of § 301.75–6(b). Cuttings may not be obtained from properties where citrus canker is present.
- All citrus plants at the nursery premises have undergone State inspection and have been found to be free of citrus canker no less than three times. The inspections must be at intervals of 30 to 45 days, with the most recent inspection being within 30 days of the date on which the plants are removed and packed for shipment.
- All vehicles, equipment, and other articles used in providing inspection, maintenance, or related services in the nursery must be treated in accordance with § 301.75–11(d) before entering the nursery to prevent the introduction of citrus canker. All personnel who enter the nursery to provide these services must be treated in accordance with § 301.75–11(c) before entering the nursery to prevent the introduction of citrus canker.
- If citrus canker is found in the nursery, all regulated plants and plant material must be removed from the nursery and all areas of the nursery's facilities where plants are grown and all associated equipment and tools used at the nursery must be treated in accordance with § 301.75–11(d) in order for the nursery to be eligible to produce calamondin and kumquat plants to be moved interstate under § 301.75–6(b). Fifteen days after these actions are completed, the nursery may receive new calamondin and kumquat seed or cuttings from a nursery that is eligible

[1] See Gottwald, T.R., Graham, J.H., and Schubert, T.S. 2002. Citrus canker: The pathogen and its impact. Plant Health Progress doi:10.1094/PHP–2002–0812–01–RV. Available at *http://www.plantmanagementnetwork.org/pub/php/review/citruscanker/*.

to produce calamondin and kumquat plants for interstate movement under § 301.75–6(b). The bacterium that causes citrus canker is extremely unlikely to survive if left for 15 days without host material to infect.

• The plants, except for plants that are hermetically sealed in plastic bags before leaving the nursery, are completely enclosed in containers or vehicle compartments during movement through the quarantined area. This requirement will prevent infection during transportation through the quarantined area.

Paragraph (b) also requires that the plants be moved under limited permit to ensure that they are only moved to areas other than commercial citrus-producing areas. This requirement is contained in paragraph (b)(8), which requires that the calamondin or kumquat plants or trees be accompanied by a limited permit issued in accordance with § 301.75–12. The statement ''Limited permit: Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States'' must be displayed on a plastic or metal tag attached to each plant, or on the box or container if the plant is sealed in plastic. In addition, this statement must be displayed on the outside of any shipping containers used to transport these plants, and the limited permit must be attached to the bill of lading or other shipping document that accompanies the plants.

Section 301.75–12 contains general requirements for issuance and attachment of limited permits under the regulations. Paragraph (b) of that section requires that the limited permit accompanying a regulated article be attached to the outside of the article, the outside of the container, or the waybill. As described in the previous paragraph, the protocol for the interstate movement of calamondin and kumquat trees imposes additional, specific requirements related to the limited permit that are designed to provide as much assurance as possible that the nursery stock will not be moved into a commercial citrus-producing area. Accordingly, we are amending § 301.75–12(b) to make it clear that the specific requirements for attaching limited permits to calamondin and kumquat plants supersede the general provisions of § 301.75–12(b).

We believe these conditions will ensure the safe interstate movement of calamondin and kumquat plants from the quarantined area, as they did prior to the September 1990 final rule.

Finally, we are also revising paragraph (a) of § 301.75–2 to state that regulated articles may not be moved interstate from a quarantined area except in accordance with a protocol in §§ 301.75–6, 301.75–7, or 301.75–8; in accordance with § 301.75–4 if less than an entire State is designated as a quarantined area; or in accordance with the regulations in § 301.75–9 for scientific or experimental purposes only. We are making this change to clarify that the regulations prohibit the interstate movement from a quarantined area of all regulated articles other than those specifically addressed elsewhere in the regulations. If we determine that other regulated articles can be moved interstate from the quarantined area without spreading citrus canker, we will update the regulations to set out conditions for their movement.

Miscellaneous Change

We are also amending the definition of *nursery*. This definition has read: ''Any premises, including greenhouses but excluding any grove, at which plants are grown or maintained for propagation or replanting.'' We are amending this definition to replace the reference to plants with a reference to nursery stock, as defined in this interim rule. We are also removing the references to propagation and replanting. Any premises at which nursery stock is grown or maintained could be a source of nursery stock that is moved interstate, regardless of the intended use of that nursery stock, and should be required to fulfill all applicable provisions of the regulations.

Emergency Action

This rulemaking is necessary on an emergency basis to address the ambiguities in § 301.75–6 and the risk associated with the interstate movement of citrus nursery stock and other regulated articles from areas quarantined for citrus canker. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This interim rule codifies existing policies and clarifies the regulations to prohibit the interstate movement of regulated nursery stock from the quarantined area. Because the interstate movement of nursery stock from an area quarantined for citrus canker poses a high risk of spreading citrus canker outside the quarantined area, APHIS has prohibited this movement prior to the effective date of this interim rule. This change to the regulations will not have any effect on any entities, as it codifies existing procedures. In addition, the interim rule retains a provision of the regulations that allows the interstate movement of regulated nursery stock for immediate export, under certain conditions.

The interim rule also provides for the interstate movement of calamondin and kumquat plants, two types of citrus plants that are highly resistant to citrus canker, if they are produced and moved under a protocol designed to ensure that they are free from citrus canker prior to movement. Prior to the publication of the August 2006 interim rule, which quarantined the entire State of Florida for citrus canker, the movement of all regulated nursery stock, including calamondin and kumquat plants, from the quarantined area was prohibited by Florida's statutes and regulations. However, since the publication of the August 2006 interim rule, APHIS has recognized the lower risk associated with the interstate movement of calamondin and kumquat plants by allowing them to move under the protocol designed to ensure that they are free of citrus canker, similar to how APHIS allowed that movement before the September 1990 final rule discussed earlier in this document reduced the area quarantined for citrus canker to an area less than the entire State of Florida. We have allowed the movement of calamondin and kumquat plants, subject to the protocol, through administrative action pending the development of regulations. Adding these provisions to the regulations in this interim rule simply codifies existing procedures.

Because the changes to the regulations made by this interim rule will not have any effect on current quarantine operations, we expect that they will not have a significant economic impact on any entities, whether large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS–2007–0032, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2007–0032 and send your comments within 60 days of publication of this rule.

This interim rule amends the citrus canker regulations to prohibit the interstate movement of nursery stock, except calamondin and kumquat plants produced in accordance with a production protocol and moved interstate to areas other than commercial citrus production areas. The imposition of the movement requirement will require regulated parties to secure limited permits for the interstate movement of calamondin and kumquat plants.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.0015 hours per response.

Respondents: Citrus growers.

Estimated annual number of respondents: 8.

Estimated annual number of responses per respondent: 10,025.

Estimated annual number of responses: 80,200.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response).

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

■ 2. Section 301.75–1 is amended by removing the definition of *regulated fruit, regulated plant, regulated seed, regulated tree,* revising the definition of *nursery,* and adding, in alphabetical order, new definitions of *nursery stock* and *regulated fruit, regulated nursery stock, regulated plant, regulated seed, regulated tree* to read as follows:

§ 301.75–1 Definitions.

* * * * *

Nursery. Any premises, including greenhouses but excluding any grove, at which nursery stock is grown or maintained.

Nursery stock. Living plants and plant parts intended to be planted, to remain planted, or to be replanted.

* * * * *

Regulated fruit, regulated nursery stock, regulated plant, regulated seed, regulated tree. Any fruit, nursery stock, plant, seed, or tree defined as a regulated article.

* * * * *

■ 3. In § 301.75–2, paragraph (a) is revised to read as follows:

§ 301.75–2 General prohibitions.

(a) Regulated articles may not be moved interstate from a quarantined area except in accordance with a protocol in §§ 301.75–6, 301.75–7, or 301.75–8, or in accordance with § 301.75–4 if less than an entire State is designated as a quarantined area. Regulated articles may be moved in accordance with the regulations in § 301.75–9 for scientific or experimental purposes only.

* * * * *

■ 4. Section 301.75–6 is revised to read as follows:

§ 301.75–6 Interstate movement of regulated nursery stock from a quarantined area.

(a) Regulated nursery stock may not be moved interstate from a quarantined area except for immediate export in accordance with paragraph (c) of this section; *Provided*, that calamondin and

kumquat plants may be moved interstate from a quarantined area in accordance with paragraph (b) of this section.

(b) Calamondin (*Citrus mitus*) and kumquat (*Fortunella* spp.) plants, with or without fruit attached, may be moved interstate from a quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(1) The plants are own-root-only and have not been grafted or budded;

(2) The plants are started, are grown, and have been maintained solely at the nursery from which they will be moved interstate.

(3) If the plants are not grown from seed, then the cuttings used for propagation of the plants are taken from plants located on the same nursery premises or from another nursery that is eligible to produce calamondin and kumquat plants for interstate movement under the requirements of this paragraph (b). Cuttings may not be obtained from properties where citrus canker is present.

(4) All citrus plants at the nursery premises have undergone State inspection and have been found to be free of citrus canker no less than three times. The inspections must be at intervals of 30 to 45 days, with the most recent inspection being within 30 days of the date on which the plants are removed and packed for shipment.

(5) All vehicles, equipment, and other articles used in providing inspection, maintenance, or related services in the nursery must be treated in accordance with § 301.75–11(d) before entering the nursery to prevent the introduction of citrus canker. All personnel who enter the nursery to provide these services must be treated in accordance with § 301.75–11(c) before entering the nursery to prevent the introduction of citrus canker.

(6) If citrus canker is found in the nursery, all regulated plants and plant material must be removed from the nursery and all areas of the nursery's facilities where plants are grown and all associated equipment and tools used at the nursery must be treated in accordance with § 301.75–11(d) in order for the nursery to be eligible to produce calamondin and kumquat plants to be moved interstate under this paragraph (b). Fifteen days after these actions are completed, the nursery may receive new calamondin and kumquat seed or cuttings from a nursery that is eligible to produce calamondin and kumquat plants for interstate movement under this paragraph (b).

(7) The plants, except for plants that are hermetically sealed in plastic bags before leaving the nursery, are completely enclosed in containers or vehicle compartments during movement through the quarantined area.

(8) The calamondin or kumquat plants or trees are accompanied by a limited permit issued in accordance with § 301.75–12. The statement ''Limited permit: Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States'' must be displayed on a plastic or metal tag attached to each plant, or on the box or container if the plant is sealed in plastic. In addition, this statement must be displayed on the outside of any shipping containers used to transport these plants, and the limited permit must be attached to the bill of lading or other shipping document that accompanies the plants.

(c) Regulated nursery stock produced in a nursery located in a quarantined area that is not eligible for movement under paragraph (b) of this section may be moved interstate only for immediate export. The regulated nursery stock must be accompanied by a limited permit issued in accordance with § 301.75–12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

■ 5. Section 301.75–7 is amended by redesignating paragraph (a)(5) as paragraph (a)(6) and by adding a new paragraph (a)(5) to read as follows:

§ 301.75–7 Interstate movement of regulated fruit from a quarantined area.

(a) * * *

(5) All vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in the grove must be treated in accordance with § 301.75–11(d) upon leaving the grove. All personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75–11(c) upon leaving the grove.

* * * * *

§ 301.75–12 [Amended]

■ 6. In § 301.75–12, the introductory text of paragraph (b)(1) is amended by removing the word ''Certificates'' and adding the words ''Except as provided in § 301.75–6(b)(8) for calamondin and kumquat plants, certificates'' in its place.

Done in Washington, DC, this 16th day of March 2007.

Nick Gutierrez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5229 Filed 3–21–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2006–0138]

Brucellosis in Cattle; State and Area Classifications; Wyoming

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Wyoming from Class A to Class Free. We have determined that Wyoming meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Wyoming.

DATES: Effective on March 22, 2007, we are adopting as a final rule the interim rule published at 71 FR 54402–54404 on September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Debbi A. Donch, Senior Staff Veterinarian, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5952.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

In an interim rule [1] effective September 12, 2006, and published in the **Federal Register** on September 15, 2006 (71 FR 54402–54404, Docket No. APHIS–2006–0138), we amended the

[1] To view the interim rule and the comments we received, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0138, then click ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

regulations by changing the classification of the State of Wyoming from Class A to Class Free. That action relieved certain restrictions on the interstate movement of cattle from Wyoming.

Comments on the interim rule were required to be received on or before November 14, 2006. We received one comment by that date, from an industry group.

The commenter supported our determination that Wyoming has met the requirements to be classified as a Class Free State. The commenter also raised separate points related to this change in classification, which we will address in this document.

The interim rule stated that the last brucellosis-infected herd of cattle in Wyoming was depopulated in December 2004. The commenter stated that, because the requirements for Class Free classification state that all cattle herds in a Class Free State or area must remain free of field strain *Brucella abortus* for 12 consecutive months, Wyoming should have been upgraded to the Class Free classification much earlier than September 2006.

In addition to satisfying the requirement for freedom in paragraph (b)(1) of the criteria for a Class Free State or area in § 78.1, the Animal and Plant Health Inspection Service (APHIS) must determine that a State or area meets all the other requirements in those criteria prior to classifying a State or area as Class Free. This process can take some time, but it would not be appropriate to classify a State or area as Class Free until the process is completed.

The commenter also referred to surveillance programs and risk mitigation measures that are in place to address the risk associated with reservoirs of brucellosis in wild animals in Sublette, Teton, Lincoln, Fremont, Hot Springs, and Park Counties in Wyoming. The commenter stated that APHIS required that this surveillance and risk mitigation be undertaken in order for Wyoming to be reclassified as a Class Free State. The commenter stated that the regulations and the Animal Health Protection Act (7 U.S.C. 8301–8317) do not give APHIS the authority to impose such requirements in order to achieve Class Free status.

The commenter inaccurately characterizes the origin of these surveillance programs and risk mitigation measures. APHIS' review of the Wyoming brucellosis program recommended that surveillance programs and risk mitigation measures be established to address the risk of infection transmitted from wild animals. We also recommended that the State of Wyoming develop a memorandum of understanding with APHIS to implement these programs and measures. The State of Wyoming recognized the risk associated with the reservoirs of brucellosis that exist in wild animals in parts of that State and took action in cooperation with APHIS.

We based our decision to reclassify Wyoming as a Class Free State for brucellosis on the State's compliance with the requirements in the regulations regarding Class Free status.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

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

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 71 FR 54402–54404 on September 15, 2006.

Done in Washington, DC, this 16th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5230 Filed 3–21–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2007–03]

RIN 1550–AC08

Community Reinvestment Act—Interagency Uniformity

AGENCY: Office of Thrift Supervision, Treasury (OTS), Treasury.

ACTION: Final rule.

SUMMARY: In this final rule, OTS is changing its Community Reinvestment Act (CRA) regulations in four areas to reestablish uniformity between its regulations and those of the other federal banking agencies. OTS is making these revisions to its CRA rule to promote consistency and help facilitate objective evaluations of CRA performance across the banking and thrift industries. Consistent standards will allow the public to make more effective comparisons of bank and thrift CRA performance. Additionally, OTS is incorporating changes that reinforce CRA objectives consistent with the ongoing performance of savings associations in meeting the financial services needs of the communities they serve.

To advance these objectives OTS is aligning its CRA rule with the rule adopted by the banking agencies by: (1) Eliminating the option of alternative weights for lending, investment, and service under the large, retail savings association test; (2) defining small savings associations with between $250 million and $1 billion in assets as ''intermediate small savings associations'' and establishing a new community development test for them; (3) indexing the asset threshold for small and intermediate small savings associations annually based on changes to the Consumer Price Index (CPI); and (4) clarifying the impact on a savings association's CRA rating if OTS finds evidence of discrimination or other illegal credit practices.

DATES: This rule is effective on July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7990; Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

The CRA requires the federal banking and thrift agencies to assess the record of each insured depository institution of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and to take that record into account when evaluating an application by the institution for a deposit facility. 12 U.S.C. 2903. In 1995, when OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the four agencies) adopted major

amendments to regulations implementing the CRA, they committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. 60 FR 22156, 22177 (May 4, 1995). The four agencies indicated that they would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under the CRA, consistent with the Act's authority, mandate, and intent.

The four agencies initiated their public review in July 2001 with publication in the **Federal Register** of an advance notice of proposed rulemaking (ANPR). 66 FR 37602 (July 19, 2001). In the ANPR, the agencies requested comment on whether the regulations were effective in meeting the stated goals of the 1995 rulemaking and whether any changes should be made to the rules. The agencies also solicited comment on a wide variety of issues including the large retail institution test, the small institution test, the community development test for limited purpose and wholesale institutions, strategic plans, performance context, assessment areas, affiliate activities, and data collection and maintenance of public files.

After nearly three years of discussions, in February 2004, the four agencies published a notice of proposed rulemaking. 69 FR 5729 (Feb. 6, 2004). Through it, the Agencies proposed to raise the small institution asset threshold to $500 million without regard to holding company affiliation; to amend the regulations to provide that certain discriminatory, illegal, or abusive credit practices would adversely affect the evaluation of the institution's CRA performance; and to enhance the data disclosed in CRA public evaluations and CRA disclosure statements.

On July 16, 2004, the OCC and the Board announced that they would not proceed with their respective February 2004 proposals. The OCC did not formally withdraw the proposal, but did not adopt it. The Board formally withdrew its proposal.

On August 18, 2004, OTS published a final rule that raised the small savings association asset threshold to $1 billion without regard to holding company affiliation effective October 1, 2004. 69 FR 51155 (Aug. 18, 2004).

On August 20, 2004, the FDIC issued another proposed rule. 69 FR 51611 (Aug. 20, 2004). The FDIC proposed to raise the small institution asset threshold to $1 billion, while adding a community development activity criterion to the small institution test for banks with assets greater than $250 million up to $1 billion. It also proposed to expand the definition of ''community development'' to encompass a broader range of activities in rural areas.

On November 24, 2004, OTS proposed further CRA regulatory reforms. 69 FR 68257 (Nov. 24, 2004). Like the FDIC, it proposed to expand the definition of ''community development'' to encompass certain community development activities in underserved nonmetropolitan areas. OTS also solicited comment on expanding the definition of ''community development'' to encompass certain community development activities in areas affected by natural or other disasters or other major community disruptions without regard to whether those areas or the individuals served were low- or moderate-income. Further, OTS solicited comment on providing additional flexibility in the CRA examinations of large retail institutions.

On March 2, 2005, OTS adopted a final rule effective April 1, 2005, that provided additional flexibility under the large retail savings association test allowing savings associations to choose to be evaluated under weights that differed from the standard previously adopted by the agencies whereby approximately 50 percent weight was placed on lending, 25 percent weight on services, and 25 percent weight on investments. 70 FR 10023 (Mar. 2, 2005).

After OTS adopted final rules on CRA regulatory reform, the other agencies also amended their CRA rules. On August 2, 2005, following their publication of a notice of proposed rulemaking (70 FR 12148, 12149 (Mar. 11, 2005)), the OCC, the Board, and the FDIC (collectively, the three agencies) issued a joint final rule amending their CRA regulations. 70 FR 44256 (Aug. 2, 2005). The three agencies' August 2005 final rule extended eligibility for streamlined lending evaluations and the exemption from data reporting to banks under $1 billion, without regard to holding company assets. The three agencies' final rule expanded the definition of ''community development'' to include certain activities in underserved rural areas and disaster areas.

The three agencies' final rule contained some differences from provisions OTS had proposed or finalized. It provided that the three agencies would separately evaluate and rate the community development records of institutions between $250 million and $1 billion (termed ''intermediate small banks'' by the three agencies), but under a new, more streamlined basis than under the large retail institution test. Under this new test, the three agencies no longer require an intermediate small bank to collect and report data on small business or small farm loans or on the location of certain nonmetropolitan mortgage loans. However, the new test contains two components, a lending test and a community development test.

The three agencies' final rule also refined one aspect of the February 2004 joint proposal to provide that evidence of discrimination or evidence of credit practices that violate an applicable law, rule, or regulation could adversely affect an agency's evaluation of a bank's CRA performance. The final rule included an illustrative list of such practices. Further, it provided that the asset thresholds would be adjusted annually for inflation, based on changes to the Consumer Price Index.

On April 12, 2006, OTS adopted a further final rule revising the definition of ''community development'' to reduce burden and provide greater flexibility to meet community needs. The revised definition is the same as the definition that the Board, OCC, and FDIC adopted in their August 2, 2005 final rule.

B. OTS's November 2006 Proposal

On November 24, 2006, OTS issued a new proposed rule. In the **SUPPLEMENTARY INFORMATION** to that rule, OTS stated its belief that its rule changes over the past three years had achieved regulatory burden reduction. All four agencies have reduced the regulatory burden associated with the CRA regulations through steps such as amending the definition of small bank. However, OTS also stated its belief that consistent standards applied equally across the banking and thrift industries could facilitate objective evaluations of CRA performance and ensure accurate assessments of institutions that operate in the same market. As a result, OTS proposed to align its CRA regulation with those of the other federal banking agencies to best serve the interests of insured depository institutions and their communities by providing for consistency in regulation and compliance.

In issuing the proposal, OTS noted that savings associations have an excellent record in the provision of credit, investments, and services in their markets, particularly in low- to moderate-income communities. OTS observed that in its experience, as a percentage of their total assets, savings associations far outdistance banks and other lenders in originating multi-family

housing loans, a vehicle frequently utilized to provide affordable housing.[1] OTS stated its belief that savings associations would continue to serve their markets, including low- and moderate-income communities, regardless of the applicable CRA rules.

OTS proposed changes to its CRA regulations in four areas. While the preamble addressed each area in turn, the **SUPPLEMENTARY INFORMATION** highlighted that the overriding question OTS posed to commenters with respect to each area was whether the benefits of greater regulatory uniformity and any other benefits outweigh any potential disadvantages. OTS also invited comment on all aspects of the proposal, including whether OTS should make any variations to the approach adopted by the other federal banking agencies in any of these areas.

1. Alternative Weights

OTS's March 2005 final rule provided additional flexibility for the weights given to lending, services, and investments for each examination under the large retail savings association test. OTS issued guidance on April 7, 2005, explaining the methodology it would apply through Thrift Bulletin 85 (April 7, 2005). The other three agencies have not adopted this approach.

In its November 24, 2006 proposal, OTS proposed to eliminate alternative weights to facilitate uniformity in the assessment of CRA performance between banks and thrifts. Most large institutions elected to continue to allocate weights under the three performance categories of lending, investments, and services.

OTS noted that if the agency eliminated the alternative weight option for large savings associations, large savings associations would retain flexibility to focus their CRA efforts with emphasis on lending, just as they have in the past. For example, a savings association with outstanding performance in lending and services would still receive an ''outstanding'' CRA rating overall, even if it makes few or no qualified investments. Additionally, a savings association with a poor record on the service test and few or no qualified investments would still receive a ''satisfactory'' CRA rating overall if its lending is at least highly satisfactory.

The **SUPPLEMENTARY INFORMATION** recounted how a savings association with a strong lending record has always been able to receive at least a ''low satisfactory'' rating on the investment test while making few or no qualified investments due to limits on savings associations' investment authority. This policy originated in the preamble to 1995 CRA rule. Because of differences between savings associations and other financial institutions (*e.g.*, the qualified thrift lender test and lending and investment limits on commercial loans and community development investments) a savings association could receive at least a ''low satisfactory'' rating on the investment test without making qualified investments depending upon its lending performance. 60 FR at 22163. Similarly, the 2001 Interagency Q&A Regarding Community Reinvestment indicates that a savings association that has made few or no qualified investments due to its limited investment authority may still receive a satisfactory rating under the investment test if it has a strong lending record. Q&A 21(b)(4), 66 FR 36620, 36631 (July 12, 2001). The **SUPPLEMENTARY INFORMATION** explained that if OTS were to eliminate the alternative weight option, these principles would continue to apply.

The **SUPPLEMENTARY INFORMATION** also pointed out that a savings association that would like OTS to evaluate its performance based on even more flexible criteria could opt for a strategic plan. While a strategic plan for a large retail savings association should generally address all three performance categories (lending, service, and investment), a different emphasis, including a focus on one or more performance categories, may be appropriate. The CRA rule specifically provides—and would continue to provide—that such a focus may be appropriate if responsive to the characteristics and credit needs of its assessment area, considering public comment and the savings association's capacity and constraints, product offerings, and business strategy. 12 CFR 563e.27(f)(ii).

2. Community Development Test

OTS's August 2004 final rule raised the small savings association asset threshold from $250 million to $1 billion and eliminated consideration of holding company affiliation. This change enabled OTS to evaluate the CRA performance of savings associations with $250 million or more, but less than $1 billion, in assets under the small savings association test. In contrast to OTS, the other three agencies imposed a different community development test for institutions with $250 million or more, but less than $1 billion, in assets, called ''intermediate small banks.'' Under their test, the three agencies evaluate an intermediate small bank's lending performance under the small bank lending criteria, but they also evaluate the bank's community development performance under the following criteria:

- The number and amount of community development loans;
- The number and amount of qualified investments;
- The extent to which the bank provides community development services; and
- The bank's responsiveness through such activities to community development lending, investment, and services needs.

OTS proposed to adopt the intermediate small institution test. In the supplementary information to the November 24, 2006 proposal, OTS stated its belief that intermediate small savings associations are responsive to the community development needs within the communities they serve. The adoption of the intermediate small institution test would provide a more comprehensive framework for assessing the community development performance of intermediate small savings associations than the small savings association performance criteria. In addition, adopting the intermediate small institution test would assist the public in making a reasonable comparison of community development performance between banks and savings associations operating in the same market.

OTS explained that it anticipated that if it adopted this test, it would allow flexibility. This proposal did not prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, OTS explained that based on the savings association's assessment of community development needs in its assessment area(s), it would be able to engage in those categories of community development activities that are responsive to observed needs and consistent with the savings association's capacity. Savings associations that have been providing community development loans and services, would find that OTS would continue to give those activities credit when OTS evaluates compliance under the new test.

Further, as under the large retail institution test, examiners would take into account statutory and supervisory limitations on a savings association's ability to engage in any lending, investment, and service activities. For

[1] OTS calculated that as of June 30, 2006, savings association had 4.41% of their assets in multifamily loans whereas commercial banks had only 1.03% of their assets in multifamily loans.

example, OTS could still deem a savings association that has made few or no qualified investments due to limits on investment authority to have satisfied the criterion in the community development component of the test regarding ''the number and amount of qualified investments'' if the institution has a strong lending record.

3. Indexing Asset Thresholds

The **SUPPLEMENTARY INFORMATION** to the November 24, 2006 proposal pointed out that OTS had not previously proposed to index the relevant asset thresholds for purposes of determining whether an institution is small or large. In contrast, the three agencies' final rule provides that they annually adjust the asset thresholds for small and intermediate small banks based on changes to the Consumer Price Index (CPI). Therefore, to ensure consistency in the standards for evaluating small and intermediate savings associations, OTS proposed to index the asset threshold consistent with the approach adopted by the other federal banking agencies.

As the three agencies explained in the preamble to their March 11, 2005 proposed rule (70 FR at 12151), there is precedent for indexing asset thresholds to the CPI. Under the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*, institutions under a certain asset threshold are exempt from HMDA requirements. The threshold is adjusted annually to the CPI and rounded to the nearest multiple of $1 million. 12 U.S.C. 2808.

4. Discriminatory or Other Illegal Credit Practices

The **SUPPLEMENTARY INFORMATION** to the November 24, 2006 proposal referred to the preamble to OTS's August 2004 final rule, which explained why OTS had withdrawn one part of its portion of the February 2004 joint proposed rule. The withdrawn language would have added regulatory text providing that evidence that an institution or affiliate engages in discriminatory, illegal, or abusive credit practices would adversely affect the evaluation of the institution's CRA performance. Opposition came from financial institutions and consumer groups. OTS indicated in August 2004 that it would continue to rely on the more general provision in its rule that evidence of discriminatory or other illegal credit practices adversely affects the performance evaluation as interpreted in interagency Q&A 28(c)–1, 66 FR at 36640.

The language adopted by the other three agencies in their August 2005 final rule stated that with respect to discrimination in affiliate lending, the three agencies would reduce a rating based on discrimination in an affiliate's loans made inside the institution's assessment area where the loans have been considered as part of the institution's lending performance. The three agencies explained in the preamble to their August 2, 2005 final rule (70 FR at 44263) that a bank may not elect to include as part of its CRA evaluation affiliate loans outside the bank's assessment area. OTS proposed to amend its CRA rule to reflect this approach.

C. The Comments

1. Overview of the Comments

OTS received 66 comments in total on the proposed rule from: One member of Congress in support; three trade associations, one in support (or at least not opposed) and two opposed; three savings associations opposed; 58 from individuals and organizations dedicated to consumer, affordable housing, and community development causes in support; and one national bank in support.

Fifty-four commenters supported all aspects of the proposal. Another six supported everything except indexing of asset thresholds. One trade association did not oppose the proposal and supported indexing of asset thresholds. Two other trade associations supported indexing of asset thresholds; one of these also supported the provision on discriminatory or other illegal credit practices.

In contrast, two trade associations and two large savings associations opposed eliminating alternative weights. Those trade associations and one intermediate small savings association (as defined by the final rule) opposed imposing the new community development test on intermediate small institutions.

Most who commented recommend that the changes take effect right away. In contrast, one trade association supported a two-year transition period for large and intermediate small savings associations. Another trade association requested a transition period of at least one examination cycle for intermediate small institutions if OTS changes its rule. One organization that advocates for community reinvestment said it did not object to OTS waiting six months to a year before conducting more exams for large or intermediate small savings associations.

2. Comments in Support of Proposal

Many of the commenters who supported the proposal raised similar points. The member of Congress who supported all aspects of the proposal, explained that it would restore uniformity and eliminate temptation to flip charters based on different CRA standards. That letter urged OTS to adopt the proposed changes as soon as possible.

The industry trade association that supported (or at least did not oppose) the proposal explained that while it prefers OTS's approach on alternative weights and would have preferred that the other federal banking agencies had adopted OTS's rule, it realizes that the other federal banking agencies have not done so. It credited OTS with breaking the interagency logjam and allowing much needed progress on CRA. But it explained that given the position of the other agencies, it understood OTS's desire to make its rule uniform with the others. It added that uniformity would eliminate confusion for bankers and examiners and that consistency among the agencies would outweigh the benefits of only OTS offering alternative weights. This commenter supported indexing asset thresholds and did not oppose the provision on discriminatory or other illegal credit practices for uniformity. This commenter urged OTS, however, to provide a two-year transition period for large thrifts that relied on alternate weights and intermediate small thrifts that relied on the streamlined lending test to give them time to adjust their policies and procedures.

One national organization that advocates for community reinvestment submitted a detailed letter and its comments were echoed by dozens of others dedicated to consumer protection, affordable housing, and community development causes. This organization supported all aspects of the proposal for several reasons including: (1) It would increase lending, investing, and services in low- and moderate-income communities; (2) establishing the same CRA standards are necessary for the public to be able to effectively compare performance; (3) weaker standards for thrifts make it difficult to hold thrifts accountable for responding to community needs; (4) different standards increase the possibility of some shirking their CRA obligations; (5) the large bank test has worked well; (6) the anti-predatory lending provision is necessary to penalize thrifts through lower CRA ratings if they engage in illegal, discriminatory, and abusive lending practices; (7) research demonstrates that OTS's different rule resulted in declines by thrifts in community development lending, investments, and the number of

branches in low- and moderate-income communities; and (8) there is more CRA exam rating grade inflation for thrifts under OTS's rule. (A few other comment letters referred to this research as well.) While most of this organization's supporters urged OTS to make the changes effective immediately, the organization said that it did not object to OTS waiting six months to a year before conducting any more exams for mid-size and large thrifts to let them adjust to the new exams and find and execute community development financing and service activities. It also suggested that OTS could use performance context to take into account that a thrift's community development activities might be on the low side for the period in which the thrift was covered by the different rules because of the rules that existed during that period.

One national organization that advocates for affordable housing lending supported all aspects of the proposal. It stated that consistency among regulators helps communities and institutions maximize the opportunities to make loans and sell services and that consistency among regulators avoids a regulatory ''race to the bottom.'' Many other commenters echoed these sentiments.

OTS also received several letters from housing authorities supporting the proposal except for indexing asset thresholds. These commenters argued that over time, indexing would exempt more large thrifts from the large retail exam and more intermediate small thrifts from the new community development test.

3. Comments Opposed to Proposal

The industry trade associations that opposed eliminating alternative weights and imposing the new community development test for intermediate small thrifts made several arguments: (1) Uniformity is not necessary to ensure that savings associations meet the credit needs of their communities; (2) OTS's current rule significantly reduces burden, which outweighs potential benefits, if any, of uniformity; and (3) the extensive narratives in OTS's examination reports make savings associations' performance readily comparable to banks' even if the tests applied are different. These commenters advocated that the other federal banking agencies should adopt OTS's rule to create uniformity.

With specific regard to alternative weights, they commented that it is necessary and appropriate for large savings association to have a flexible test given differences between the thrift charter and bank charters. This flexibility simply recognizes that thrifts have always been evaluated somewhat differently from banks under the OTS policy of granting savings associations with strong lending records at least a low satisfactory rating on the investment test even if they make few or no qualified investments.

One trade association specifically criticized the new CD test for creating an additional layer of regulatory complexity. Another urged OTS to provide a transition period of at least one examination cycle for those intermediate small institutions that had reallocated their CRA activities relying on the ability to comply with the streamlined lending test.

One trade association concluded, based on its analysis, that applying the small institution test to savings associations up to $1 billion in assets had not resulted in a reduction of their commitments to their communities. Another indicated, however, that if OTS changed its rule to realign with the other federal banking agencies, the change would not have a negative effect on the way savings associations are already meeting the credit needs of their communities. These commenters both supported indexing asset thresholds; one also supported the provision on discriminatory or other illegal credit practices.

The thrifts that commented made similar arguments. One also expressed a specific concern about relying on the OTS policy of granting savings associations with strong lending records at least a low satisfactory rating on the investment test even if they make few or no qualified investments due to limits on savings associations' investment authority. This thrift suggested that unless the alternative weight option is retained in the rule, OTS might, at any time, discontinue the policy or begin requiring a savings association to make an individualized showing of how restrictions on investment authority have limited that particular thrift's investments.

D. Today's Final Rule

The comments largely supported the proposal. Having carefully considered the comments, OTS is revising its rule for the same reasons it issued the proposal as discussed in part B of this **SUPPLEMENTARY INFORMATION**. OTS believes the revisions will promote consistency and help facilitate objective evaluations of CRA performance across the banking and thrift industries. Consistent standards will allow the public to make more effective comparisons of bank and thrift CRA performance. Additionally, the revisions reinforce principal objectives of the CRA.

OTS would like to address some of the specific comments. While some commenters submitted information to support claims that alternative weights and the extension of the streamlined small institution test to institutions with assets of less than $1 billion had a negative impact on community development, others submitted information to support claims that changes did not have a negative impact. OTS believes the experience with these innovations was too brief to be conclusive either way. However, the revisions reinforce CRA objectives consistent with long standing performance of savings associations in providing access to credit, making investments, and providing services that support the communities they serve.

Regarding the elimination of alternative weights, OTS wishes to reassure the commenter who expressed concern about relying on the OTS policy of granting savings associations with strong lending records at least a low satisfactory rating on the investment test even if they make few or no qualified investments due to limits on savings associations' investment authority. OTS notes—as discussed in detail in part B.1. of this **SUPPLEMENTARY INFORMATION**—that this policy is long-standing. Further, it is a direct outgrowth of section 563e.21(b) of the CRA rule, which addresses the performance context. As discussed in part B.2. of this **SUPPLEMENTARY INFORMATION**, OTS will apply a similar approach under the new community development test for intermediate small savings associations.

OTS highlights that in one small respect, today's final rule departs slightly from the proposal. That departure concerns indexing asset thresholds. As proposed, the regulation provides that OTS will publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 563e.12(u)(2).

Since OTS's proposal, however, the OCC, Board, and FDIC updated their regulations to make this annual adjustment. 71 FR 78335 (December 29, 2006). The preamble to their joint rule noted that during the one-year period ending November 2006, the CPIW increased by 3.32 percent. As a result, they revised their rule to provide that beginning January 1, 2007, banks that,

as of December 31 of either of the prior two calendar years, had assets of less than $1.033 billion are ''small banks.'' Small banks with assets of at least $258 million as of December 31 of both of the prior two calendar years and less than $1.033 billion as of December 31 of either of the prior two calendar years are ''intermediate small banks.''

To enable OTS to adjust the asset thresholds applicable for savings associations consistently with the other federal banking agencies, the rule text provides that savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.033 billion are ''small savings associations.'' Small savings associations with assets of at least $258 million as of December 31 of both of the prior two calendar years and less than $1.033 billion as of December 31 of either of the prior two calendar years are ''intermediate small savings associations.'' These inflation-adjusted asset thresholds will take effect once today's final rule takes effect on July 1, 2007.[2]

E. Effective Date

Today's final rule takes effect July 1, 2007. The rule changes will apply to examinations that begin in the third quarter of 2007.

However, OTS recognizes that some savings associations may have adjusted their CRA-related programs in reliance on the availability of the alternative weight option under the large retail savings association test and on the availability of the streamlined small institution test for institutions with up to $1 billion in assets (inflation adjusted). Rather than providing a long delay in effective date as a few commenters requested, OTS will provide relief in another way. OTS examiners will take the elimination of the alternative weight option under the large retail savings association test and the elimination of the streamlined small institution test for institutions with $250 million to $1 billion in assets (inflation adjusted) into consideration as part of the performance context when conducting examinations of savings associations affected, since these regulatory changes could have impacted their operations. Section 563e.21(b) of the CRA rule provides that OTS applies the CRA tests in the context of various factors including ''(7) Any other information deemed relevant by the OTS.'' OTS deems these two changes to its CRA relevant for performance context purposes.

The period during which OTS's rules allow for alternative weights under the large retail savings association test started April 1, 2005 and ends July 1, 2007. Accordingly, for CRA examinations under the large retail savings associations test that encompass all or part of this period, OTS examiners will take into account in performance context that a reduction in investment or service performance during this period could be attributable in part to reliance on the alternative weight option.

The period during which OTS's rules applied the small savings association test to savings associations between $250 million and $1 billion in assets started October 1, 2004 and ends July 1, 2007. For CRA examinations of intermediate small savings associations under the new community development test that encompass all or part of this period, OTS examiners will take into account in performance context that a reduction in investment or service performance during this period could be attributable in part to reliance on the availability of the small savings association test.

OTS further notes that under section 563e.21(a)(3), savings associations that prefer to be evaluated under the large retail savings association test have that option, but only if they collect and report data required under section 563e.42. The large retail savings association test applied to savings associations with between $250 million and $1 billion in assets before October 1, 2004. Thus, evaluation under the large retail savings association test would be an option available to intermediate small savings associations if they collected and reported data for each year covered by the performance evaluation.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is currently approved under OMB Control Number 1550–0012. This final rule would not change the collection of information.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that the final rule will not have a significant economic impact on a substantial number of small entities. None of the provisions impose any additional paperwork or regulatory reporting requirements. Eliminating the option of alternative weights only affects savings associations with assets of $1 billion or more. Imposing a community development test for intermediate small savings associations only affects savings associations with assets of $250 million up to $1 billion. Likewise, indexing the asset thresholds only affect savings associations with around $250 million in assets or more. In contrast, the Small Business Administration (SBA) has defined ''small entities'' for banking purposes as those with assets of $165 million or less. 13 CFR 121.201.

Incorporating language into the rule regarding discriminatory or illegal credit practices has no impact whatsoever. It does not change the laws or regulations applicable to savings associations that prohibit discriminatory or illegal conduct. It simply affects the way OTS considers noncompliance with these laws and regulations as part of the CRA performance evaluation.

Executive Order 12866 Determination

OTS has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement nor specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

[2] Until July 1, 2007, the small savings association asset threshold OTS applies remains at $1 billion.

Office of Thrift Supervision

12 CFR Chapter V

■ For the reasons outlined in the preamble, the Office of Thrift Supervision amends part 563e of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 563e—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. In § 563e.12 revise paragraph (u), to read as follows:

§ 563e.12 Definitions.

* * * * *

(u) *Small savings associations*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.033 billion. *Intermediate small savings association* means a small savings association with assets of at least $258 million as of December 31 of both of the prior two calendar years and less than $1.033 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OTS, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

§ 563e.21 [Amended]

■ 3. Amend § 563e.21(a)(1) by removing ‘‘, and to the extent consistent with § 563e.28(d)’’.

■ 4. Revise § 563e.26 to read as follows:

§ 563e.26 Small savings association performance standards.

(a) *Performance criteria*—(1) *Small savings associations with assets of less than $250 million.* The OTS evaluates the record of a small savings association that is not, or that was not during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small savings associations.* The OTS evaluates the record of a small savings association that is, or that was during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small savings association's lending performance is evaluated pursuant to the following criteria:

(1) The savings association's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the savings association's assessment area(s);

(3) The savings association's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the savings association's loans; and

(5) The savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small savings association's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the savings association provides community development services; and

(4) The savings association's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small savings association performance rating.* The OTS rates the performance of a savings association evaluated under this section as provided in Appendix A of this part.

■ 5. Amend § 563e.28 by:

■ a. Removing ‘‘paragraphs (b), (c), and (d) of this section’’ in paragraph (a) and by adding in lieu thereof ‘‘paragraphs (b) and (c) of this section’’;

■ b. Removing paragraph (d);

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

§ 563e.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The OTS's evaluation of a savings association's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the savings association or any affiliate whose loans have been considered as part of the savings association's lending performance. In connection with any type of lending activity described in § 563e.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the savings association's assigned rating, the OTS considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

■ 6. In Appendix A to part 563e, revise paragraph (d) to read as follows:

Appendix A to Part 563e—Ratings

* * * * *

(d) *Savings associations evaluated under the small savings association performance standards.*—(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The OTS rates a small savings association's lending performance ‘‘satisfactory’’ if, in general, the savings association demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the savings association's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income

individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the savings association's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the savings association's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small savings association that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small savings association may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small savings associations.*—(i) *Eligibility for a satisfactory community development test rating.* The OTS rates an intermediate small savings association's community development performance ''satisfactory'' if the savings association demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the savings association's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the savings association's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OTS rates an intermediate small savings association's community development performance ''outstanding'' if the savings association demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the savings association's capacity and the need and availability of such opportunities for community development in the savings association's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small savings association may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating.*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small savings association may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small savings association that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small savings association that is not an intermediate small savings association that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OTS considers the extent to which the savings association exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small savings association may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

* * * * *

Dated: March 16, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–5188 Filed 3–21–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE263; Special Conditions No. 23–203–SC]

Special Conditions: Aviation Technology Group, Incorporated, Javelin Model No. 100; Firewalls for Fuselage Mounted Engines and Fire Extinguishing for Aft Fuselage Mounted Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Aviation Technology Group, Incorporated, Javelin Model No. 100 airplane. This airplane will have novel or unusual design features associated with aft mounted engine fire protection. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Leslie B. Taylor, Regulations & Policy Branch, ACE–111, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, Missouri 64106; telephone (816) 329–4134; facsimile (816) 329–4090, e-mail at *leslie.b.taylor@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 2005, Aviation Technology Group, Incorporated applied for a type certificate for their new Javelin Model No. 100. The Javelin Model No. 100 is a two-place acrobatic airplane with two fuselage mounted turbofan engines.

Part 23 historically addressed fire protection on multiengine airplanes based on the assumption that the engines are sufficiently separated to essentially eliminate the possibility of an engine fire spreading to another engine. On traditional multiengine airplanes, this has been achieved by locating engines on the wings separated by the fuselage. This configuration ensures that an engine fire on one side does not migrate to the opposite engine. This configuration also protects the opposite engine from heat radiating from the engine fire. Prevention, identification, and containment are traditional means of fire protection. Prevention has been provided through minimizing the potential for ignition of flammable fluids and vapors. Identification has been provided by locating engines within the pilots' primary field of view and/or with the incorporation of fire detection systems. This has provided both rapid detection of a fire and confirmation when it was extinguished. Containment has been provided through the isolation of designated fire zones through flammable fluid shutoff valves and firewalls. This philosophy also ensures that components of the engine control system will function effectively to permit a safe shutdown of an engine. However, containment has only been demonstrated for 15 minutes. If a fire occurs in traditional part 23 airplanes, the appropriate corrective action is to land as soon as possible. For a small, simple airplane originally envisioned by part 23, it is possible to descend and land within 15 minutes. Thus, the occupants can safely exit the airplane before the firewall is breached. These simple airplanes normally have the engine located away from critical flight control systems and primary structure.

This has ensured that, throughout a fire event, a pilot can continue safe flight, and it has made the prediction of fire effects relatively easy.

Title 14 CFR part 23, did not envision the type of configuration of the Javelin Model No. 100 airplane.

Type Certification Basis

If the Administrator finds that the applicable airworthiness regulations in 14 CFR part 23 do not contain adequate or appropriate safety standards for the Javelin Model No. 100 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Javelin Model No. 100 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Javelin Model No. 100 will incorporate the following novel or unusual design features:

The Javelin Model No. 100 incorporates two turbofan engines located side-by-side in compartments in the aft fuselage.

Discussion of Comments

Notice of proposed special conditions No. 23–07–01–SC for the Aviation Technology Group, Incorporated, Javelin Model No. 100 airplanes was published on January 8, 2007 (72 FR 660). One comment was received. It agreed with the proposed special conditions. No change was requested.

Applicability

As discussed above, these special conditions are applicable to the Javelin Model No. 100. Should Aviation Technology Group, Incorporated, apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Aviation Technology Group, Incorporated, Javelin Model No. 100 airplanes.

Title: Firewalls for Fuselage Mounted Engines and Fire Extinguishing for Aft Fuselage Mounted Engines.

Fire Isolation and Extinguishing

The fire protection system of the airplane must include features to isolate each fire zone from any other zone and the airplane to maintain isolation of the engines during a fire. Therefore, these special conditions mandate that the firewall required by § 23.1191 be extended to provide firewall isolation between either engine. These special conditions require that heat radiating from a fire originating in any fire zone must not affect components, airframe structure, systems, or flight controls in adjacent compartments in a way that endangers the airplane.

Each fire zone should be ventilated to prevent the accumulation of flammable vapors. It must also be designed such that it will not allow entry of flammable fluids, vapors, or flames from other fire zones. It must be designed such that it does not create an additional fire hazard from the discharge of vapors or fluids.

1. SC 23.1195—Add the requirements of § 23.1195 while deleting ''For commuter category,'' adding the requirement to ''minimize the probability of re-ignition,'' and deleting the statement ''An individual 'one-shot' system may be used.''

23.1195, Fire Extinguishing Systems

(a) Fire extinguishing systems must be installed and compliance shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids or gases for which a fire originating in these sections is shown to be controllable, a fire extinguisher system must serve each engine compartment;

(2) The fire extinguishing system, the quantity of extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires and minimize the probability of re-ignition;

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) If an auxiliary power unit is installed in any airplane certificated to this part, that auxiliary power unit compartment must be served by a fire extinguishing system meeting the requirements of paragraph (a)(2) of this section.

2. SC 23.1197—Add the requirements of § 23.1197 while deleting ''For commuter category airplanes.''

23.1197, Fire Extinguishing Agents

The following applies:

(a) Fire extinguishing agents must—

(1) Be capable of extinguishing flames emanating from any burning fluids or other combustible materials in the area protected by the fire extinguishing system; and

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored.

(b) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors (from leakage during normal operation of the airplane or as a result of discharging the fire extinguisher on the ground or in flight) from entering any personnel compartment, even though a defect may exist in the extinguishing system. This must be shown by test except for built-in carbon dioxide fuselage compartment fire extinguishing systems for which—

(1) Five pounds or less of carbon dioxide will be discharged under established fire control procedures into any fuselage compartment; or

(2) Protective breathing equipment is available for each flight crewmember on flight deck duty.

3. SC 23.1199—Add the requirements of § 23.1199 while deleting ''For commuter category airplanes.''

23.1199, Extinguishing Agent Containers

The following applies:

(a) Each extinguishing agent container must have a pressure relief to prevent bursting of the container by excessive internal pressures.

(b) The discharge end of each discharge line from a pressure relief connection must be located so that discharge of the fire-extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(c) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(d) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from—

(1) Falling below that necessary to provide an adequate rate of discharge; or

(2) Rising high enough to cause premature discharge.

(e) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

4. SC 23.1201—Add the requirements of § 23.1201 while deleting ''For commuter category airplanes.''

23.1201, Fire Extinguishing System Materials

The following apply:

(a) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard.

(b) Each system component in an engine compartment must be fireproof.

Issued in Kansas City, Missouri, on March 12, 2007.

James E. Jackson,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5183 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25008; Airspace Docket No. 06–ACE–6]

RIN 2120–AA66

Modification of Class E Airspace; Kaiser/Lake, Ozark, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on August 8, 2006 (71 FR 44885), Docket No. FAA–2006–25008, Airspace Docket No. 06–ACE–6. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state ''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 16, 2005''. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 22, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On August 8, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2006–25008, Airspace Docket No. 06–ACE–6 that amended Title 14 Code of Federal Regulations part 71 by modifying the Class E airspace area at Kaiser/Lake Ozark, MO (71 FR 44885). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of ''* * * September 1, 2005, and effective September 16, 2005'', the dates should read ''* * * September 1, 2006, and effective September 15, 2006 * * *''.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA–2006–25008, Airspace Docket No. 06–ACE–6, as published in the **Federal Register** on August 8, 2006 (71 FR 44885), is corrected as follows:

■ On page 44885, column 3, lines 16, 18 and 19, and page 44886, column 2, lines 17, 18 and 19, amend the language to read:

§ 71.1 [Amended]

* * * * *

• ''* * * FAA Order 7400.9P'' instead of ''FAA Order 7400.9N * * *''.

• ''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 16, 2005 * * *''.

* * * * *

Issued in Washington, DC, March 14, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–5186 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23902; Airspace Docket No. 06–AGL–01]

RIN 2120–AA66

Modification of Class E Airspace; Fremont, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on July 18, 2006 (71 FR 40652), Docket No. FAA–2006–23902, Airspace Docket No. 06–AGL–01. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state ''* * * September 1, 2006, and effective September 15, 2006 * * *'', instead of ''* * * September 1, 2005, and effective September 16, 2005''. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 22, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On July 18, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2006–23902, Airspace Docket No. 06–AGL–01, that amended Title 14 Code of Federal Regulations part 71 by modifying Class E Airspace; Fremont, MI (71 FR 40652). In that rule,

the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of ''* * * September 1, 2005, and effective September 16, 2005'', the dates should read ''* * * September 1, 2006, and effective September 15, 2006 * * *''.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA–2006–23902, Airspace Docket No. 06–AGL–01, as published in the **Federal Register** on July 18, 2006 (71 FR 40652), is corrected as follows:

■ On page 40653, column 1, lines 38 and 39, and column 2, lines 34, 36 and 37, amend the language to read:

§ 71.1 [Amended]

* * * * *

''* * * FAA Order 7400.9P'' instead of ''FAA Order 7400.9N * * *''.

''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * *September 1, 2005, and effective September 16, 2005 * * *''.

* * * * *

Issued in Washington, DC, March 14, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–5182 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23709; Airspace Docket No. 06–AAL–02]

RIN 2120–AA66

Establishment of Class E Airspace; Willow, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on August 1, 2006 (71 FR 43356), Docket No. FAA–2006–23709, Airspace Docket No. 06–AAL–02. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state ''* * * September 1, 2006, and effective September 15, 2006 * * *'', instead of ''* * * September 1, 2005, and effective September 15, 2005''. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 22, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On August 1, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2006–23709, Airspace Docket No. 06–AAL–02, that amended Title 14 Code of Federal Regulations part 71 by establishing Class E Airspace; Willow, AK (71 FR 43356). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of ''* * * September 1, 2005, and effective September 15, 2005'', the dates should read ''* * * September 1, 2006, and effective September 15, 2006 * * *''.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA–2006–23709, Airspace Docket No. 06–AAL–02, as published in the **Federal Register** on August 1, 2006 (71 FR 43356), is corrected as follows:

■ On page 43357, column 1, lines 11, 12, 13 and 14, and column 2, lines 36, 38 and 39, amend the language to read:

§ 71.1 [Amended]

* * * * *

''* * * FAA Order 7400.9P'' instead of ''FAA Order 7400.9N * * *''.

''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 15, 2005 * * *''.

* * * * *

Issued in Washington, DC, March 14, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–5180 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24869; Airspace Docket No. 06–ACE–4]

RIN 2120–AA66

Modification of Class E Airspace; Wellington Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on June 5, 2006 (71 FR 32271), Docket No. FAA–2006–24869, Airspace Docket No. 06–ACE–4. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state ''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 16, 2005''. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 22, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 5, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2006–24869, Airspace Docket No. 06–ACE–4, that amended Title 14 Code of Federal Regulations part 71 by modifying the Class E Airspace area at Wellington Municipal Airport, KS (71 FR 32271). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of ''* * * September 1, 2005, and effective September 16, 2005'', the dates should read ''* * * September 1, 2006, and effective September 15, 2006 * * *''.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA–2006–24869, Airspace Docket No. 06–ACE–4, as published in the **Federal Register** on June 5, 2006 (71 FR 32271), is corrected as follows:

■ On page 32271, column 3, lines 34, 36 and 37, on page 32272, column 2, lines 32, 33, and 34, amend the language to read:

§ 71.1 [Amended]

* * * * *

''* * * FAA Order 7400.9P'' instead of ''FAA Order 7400.9N * * *''.

''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 16, 2005 * * *''.

* * * * *

Issued in Washington, DC, March 14, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–5185 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23872; Airspace Docket No. 06–AAL–9]

RIN 2120–AA66

Establishment of Offshore Airspace Area 1485L and Revision of Control 1485H; Barrow, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on June 30, 2006 (71 FR 37492), Docket No. FAA–2006–23872, Airspace Docket No. 06–AAL–9. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9O. The correct reference is FAA Order 7400.9P. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 22, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 30, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2006–23872, Airspace Docket No. 06–AAL–9 that amended Title 14 Code of Federal Regulations part 71 by establishing and revising offshore airspace; Barrow, AK (71 FR 37492). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9O. The correct reference is FAA Order 7400.9P.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Airspace Docket No. FAA–2006–23872, Airspace Docket No. 06–AAL–9, as published in the **Federal Register** on June 30, 2006 (71 FR 37492), is corrected as follows:

■ On page 37493, column 1, line 30, and column 3, line 41, amend the language to read:

§ 71.1 [Amended]

* * * * *

''FAA Order 7400.9P'' instead of ''FAA Order 7400.9O''.

* * * * *

Issued in Washington, DC, March 14, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–5181 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 748 and 774

[Docket No. 070308049–7056–01]

RIN 0694–AD98

Corrections to Rule that Implemented the New Formula for Calculating Computer Performance: Adjusted Peak Performance (APP) in Weighted TeraFLOPS

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: This rule corrects errors that were published on April 24, 2006, in the rule that implemented the new formula for calculating computer performance in Weighted TeraFLOPS (71 FR 20876). These errors include references to Missile Technology controls that were removed by the April 24, 2006 rule, as well as errors related to scope of controls and license exceptions described in certain Export Control Classification Numbers.

DATES: *Effective Dates:* This rule is effective: March 22, 2007.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature contact: Joseph Young, Office of National Security and Technology Transfer Controls at 202–482–4197 or e-mail: *jyoung@bis.doc.gov*. For questions of a non-technical nature contact: Sharron Cook, Office of Exporter Services at 202–482–2440 or e-mail: *scook@bis.doc.gov.*

SUPPLEMENTARY INFORMATION

Background

A rule published on April 24, 2006, added to the Export Administration Regulations (EAR) provisions that implemented the new formula for calculating computer performance in Weighted TeraFLOPS (WT). That rule included the removal of missile technology (MT) controls on certain commodities in Export Control Classification Number (ECCN) 4A003. Since publication, however, it was observed that some references to MT controls were inadvertently left in Note 1 of the License Requirement section and in the License Exception LVS eligibility section. This rule removes references to MT controls from 4A003.

In addition, because of the removal of MT controls from ECCNs 4A003 and 4D001 in the April 24, 2006 rule, the sentence in section 740.7 of the EAR (License Exception APP) that states ''Technology for computers controlled for missile technology (MT) reasons are not eligible for License Exception APP'' is no longer necessary and is therefore removed by this rule.

This rule corrects and simplifies the headings of ECCNs 4E001 and 4D001 by removing specific ECCN references and pointing to the List of Items Controlled section to determine the technology and software controls for these ECCNs. In addition, this rule revises the National Security control text by removing specific references to ECCNs and simplifying it to read ''NS applies to entire entry.'' This rule also corrects and simplifies the License Exception TSR eligibility text in the License Exception section of ECCN 4D001 to read ''Yes, for 'software' described in 4D001.b with an 'Adjusted Peak Performance' ('APP') equal to or less than 0.1 WT.'' A similar revision is made to correct and simplify

the License Exception TSR eligibility text in ECCN 4E001.

This rule also removes a duplicate paragraph in paragraph (c) of Supplement No. 2 to part 748, which was unintentionally left in this paragraph.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other of the collections has been approved by OMB under control number 0694–0106, '' Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to *scook@bis.doc.gov*.

List of Subjects

15 CFR Parts 740 and 748

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

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 748 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

§ 740.7 [Amended]

■ 2. Section 740.7 is amended by removing the last sentence in paragraph (a)(2).

PART 748—[AMENDED]

■ 3. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

Supplement No. 2 to Part 748 [Amended]

■ 4. Supplement No. 2 to part 748 is amended by removing the undesignated paragraph following the introductory text of paragraph (c).

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

Supplement No. 1 to Part 774 [Amended]

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A003 is amended by revising the License Requirements section and the License Exceptions section, to read as follows:

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, as follows, and specially designed components therefor.

License Requirements

Reason for Control: NS, CC, AT, NP.

Control(s)	Country chart
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.a, .e, and .g.	NS Column 2.
CC applies to ''digital computers'' for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on ''digital computers'' with a APP $ 0.00001 but # to 0.75 WT).	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

Note 1: For all destinations, except those countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an ''Adjusted Peak Performance'' (''APP'') not exceeding 0.75 Weighted TeraFLOPS (WT) and for ''electronic assemblies'' described in 4A003.c that are not capable of exceeding an ''Adjusted Peak Performance'' (''APP'') exceeding 0.75 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in § 746.3 (Iraq).

Note 2: Special Post Shipment Verification reporting and recordkeeping requirements for exports of computers to destinations in Computer Tier 3 may be found in § 743.2 of the EAR.

License Exceptions

LVS: $5000; N/A for 4A003.b and .c.

GBS: Yes, for 4A003.e, and .g and specially designed components therefor, exported separately or as part of a system.

APP: Yes, for computers controlled by 4A003.a or .b, and ''electronic assemblies'' controlled by 4A003.c, to the exclusion of other technical parameters, with the exception of 4A003.e (equipment performing analog-to-digital conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.

CIV: Yes, for 4A003.e, and .g.

* * * * *

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by revising the Heading, the License Requirements section, and the License Exceptions section, to read as follows:

4D001 Specified ''software'', see List of Items Controlled.

License Requirements

Reason for Control: NS, CC, AT, NP.

Control(s)	Country chart
NS applies to entire entry ..	NS Column 1.
CC applies to ''software'' for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry ..	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

License Exceptions

CIV: N/A

TSR: Yes, for ''software'' described in 4D001.b with an ''Adjusted Peak Performance'' (''APP'') equal to or less than 0.1 WT.

APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria)

* * * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E001 is amended by revising the Heading, the License Requirements section, and the License Exceptions section, to read as follows:

4E001 Specified ''technology'', see List of Items Controlled.

License Requirements

Reason for Control: NS, MT, CC, AT, NP.

Control(s)	Country chart
NS applies to entire entry ..	NS Column 1.
MT applies to ''technology'' for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1.
CC applies to ''technology'' for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry ..	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

CIV: N/A

TSR: Yes, for ''technology'' described in 4E001.b with an ''Adjusted Peak Performance'' (''APP'') equal to or less than 0.1 WT.

APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria).

* * * * *

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. E7–5271 Filed 3–21–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 382

[Docket No. RM00–7–012]

Revision of Annual Charges to Public Utilities (Westar Energy, Inc. and Kansas Gas and Electric Company)

Issued March 15, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on remand and announcement of policy.

SUMMARY: In this order, the Federal Energy Regulatory Commission (Commission) addresses issues raised by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on remand in *Westar Energy Inc.,* Docket No. RM87–3–000. The Commission here affirms its regulation at 18 CFR 382.201 (2006), adopted in Order No. 641, allowing correction of transmission volumes, but in response to the remand allows Westar Energy, Inc. to submit corrected transmission volumes out-of-time.

The Commission clarifies going forward that it will accept timely FERC Reporting Requirement No. 582 (FERC 582) corrections but will accept only those late-filed FERC 582 corrections that are discovered through a Commission-conducted audit and that correct previously under-reported transmission volumes. When a public utility underreports, it is assessed comparatively smaller annual charges, and other public utilities are assessed relatively larger annual charges thereby subsidizing those utilities who underreport.

DATES: *Effective Date:* This order on remand is effective March 15, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Rinker, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6563.

SUPPLEMENTARY INFORMATION: *Before Commissioners:* Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order on Remand and Announcing Policy on Submission of Corrected Electric Annual Charge-Related Data

1. This order addresses issues raised by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on remand.[1] The Commission here affirms its regulation allowing correction of transmission volumes,[2] adopted in Order No. 641,[3] but in response to the remand allows Westar Energy, Inc. (Westar) to submit corrected transmission volumes out-of-time. The Commission clarifies going forward that it will accept timely FERC Reporting Requirement No. 582 (FERC 582) corrections but will accept only those late-filed FERC 582 corrections that are discovered through a

[1] *Westar Energy Inc.,* Docket No. RM87–3–000 (Apr. 8, 2004) (unpublished letter order), *reh'g denied sub nom. Revision of Annual Charges to Public Utilities (Westar Energy, Inc. and Kansas Gas and Electric Company),* 111 FERC ¶ 61,086 (2005), *remanded sub nom. Westar Energy, Inc.* v. *FERC,* 473 F.3d 1239 (D.C. Cir. 2007).

[2] 18 CFR 382.201 (2006).

[3] *Revision of Annual Charges to Public Utilities,* Order No. 641, FERC Stats. & Regs. ¶ 31,109 (2000), *reh'g denied,* Order No. 641–A, 94 FERC ¶ 61,290 (2001).

Commission-conducted audit and that correct previously under-reported transmission volumes.[4]

Background

2. As required by Section 3401 of the Omnibus Budget Reconciliation Act of 1986,[5] the Commission's regulations provide for the payment of annual charges by public utilities.[6] The Commission intends that its electric annual charges in any fiscal year will recover the Commission's estimated electric regulatory program costs (other than the costs of regulating Federal Power Marketing Agencies (PMAs) and electric regulatory program costs recovered through electric filing fees) for that fiscal year. In the next fiscal year the Commission adjusts the annual charges up or down, as appropriate, both to eliminate any over-or under-recovery of the Commission's actual costs and to eliminate any over-or under-charge of any particular public utility. The Commission accomplishes this by recalculating the annual charges and carrying over any over-or under-charge from the prior year as a credit or debit on the next fiscal year's annual charges bill.[7]

3. In calculating annual charges, the Commission determines its total electric regulatory program costs and subtracts all PMA-related costs and electric filing fee collections to determine its collectible electric regulatory program costs. That amount is charged to public utilities that provide transmission service. Public utilities that provide transmission service and thus are subject to annual charges must submit FERC 582 to the Office of the Secretary by April 30 of each year, providing data for the previous calendar year.[8] The reports include their transmission of electric energy in interstate commerce, as measured by: (1) Unbundled wholesale transmission; (2) unbundled retail transmission; and (3) bundled wholesale power sales which, by definition, include a transmission component, where the transmission component is not separately reported as unbundled transmission.

4. Importantly, the Commission uses that data to allocate its collectible electric regulatory program costs among all public utilities that provide transmission service; changing the amount owed by one public utility has an effect on the amount owed by all of the others. The Commission issues bills for annual charges based on each public utility's transmission service (as reported in the FERC 582) as compared to the total of all public utilities' transmission service, and the bills must be paid within 45 days of the date on which the Commission issues the bills.[9] The regulations allow public utilities to make corrections to their previously filed FERC 582s, but they must do so within a specified time:

> Corrections to the information reported on [FERC] 582, as of January 1, 2002, must be submitted under oath to the Office of the Secretary on or before the end of each calendar year in which the information was originally reported (i.e., on or before the last day of the year that the Commission is open to accept such filings).[10]

The Commission adjusts the annual charges in the following fiscal year (FY), using this corrected information, in order to eliminate any over or under recovery both of the Commission's actual costs and of the charges to each public utility.[11]

Earlier Filings and Orders

5. On December 18, 2003, Westar submitted a corrected FERC 582 for both 2002 and 2003, correcting the data reported for the years 2001 and 2002, respectively. Westar explained that its internal review, prompted by a change in the Commission's reporting requirements, revealed that it had over-reported transmission in several particulars. Westar requested a waiver of the Commission's regulations, observing that the Commission had permitted another company, Kansas City Power and Light Company (KCPL), to file a correction for calendar year 2001 in 2003.[12]

6. By letter order dated April 8, 2004, the Director of the Commission's Division of Financial Services, Office of the Executive Director, accepted Westar's corrections for FY 2003 (reporting corrected calendar year 2002 transmission data), but rejected Westar's proposed corrections for FY 2002 (reporting corrected calendar year 2001 transmission data) on the ground that it was untimely under section 382.201(c)(2) of the Commission's regulations. On May 7, 2004, Westar sought rehearing.

7. The Commission subsequently denied rehearing for four reasons: *first,* the Commission's regulations expressly provided that corrections be made by the end of the calendar year in which the information was originally filed; *second,* the broader interest in preserving the finality of annual charges weighed against Westar's individual interest in allowing an untimely correction; *third,* the Commission had offered no assurances that it would correct erroneously filed information beyond the deadline for filing corrected information expressly spelled out in the regulations; and *fourth,* Westar and KCPL were not similarly situated because the Commission itself caused KCPL's late filing and it would, therefore, have been inequitable to reject KCPL's out-of-time corrections to the detriment of the company.[13]

8. Westar filed a petition for review with the D.C. Circuit, and on January 16, 2007, the D.C. Circuit vacated and remanded the Commission's not allowing Westar's corrected FERC 582 for FY 2002, finding the Commission's order provided no basis ''in fact or in logic for the Commission's refusal to treat Westar as it had treated KCPL.'' [14]

Discussion

9. In light of the D.C. Circuit's finding, and to bring this matter to an expeditious conclusion, the Commission will allow Westar to submit the corrected FY 2002 transmission volumes that the Commission had previously rejected because they had been filed out-of-time.

10. The Commission does, however, reiterate its continued commitment to the policy reflected in part 382 of the Commission's regulations, namely that corrected transmission volumes must be filed by the end of the calendar year in which the transmission volumes were originally filed. This is what the Commission's regulations require.[15] The court found, while vacating and remanding the Commission's determination as to Westar, that the first three of the Commission's four reasons

[4] When a public utility underreports, it is assessed comparatively smaller annual charges, and other public utilities are assessed relatively larger annual charges. The effect is that the underreporting utility pays less than its fair share of the Commission's costs, and is effectively subsidized by other utilities who will pay more than their fair share of the Commission's costs.

[5] 42 U.S.C. 7178 (2000).

[6] 18 CFR 382.201 (2006).

[7] 18 CFR 382.201 (2006); *see, e.g.*, Order No. 641, FERC Stats. & Regs. ¶ 31,109 at 31,841–42; *accord Annual Charges under the Omnibus Budget Reconciliation Act of 1986 (CNG Power Services),* 87 FERC ¶ 61,074 at 61,302 (1999) (*CNG*); *Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Phibro Inc.*), 81 FERC ¶ 61,308 at 62,424–25 (1997).

[8] 18 CFR 382.201 (2006).

[9] *See, e.g.*, Order No. 641, FERC Stats. & Regs. ¶ 31,109 at 31,848–20; Order No. 641–A, 94 FERC at 62,037.

[10] 18 CFR 382.201(c)(2) (2006).

[11] *See* Order No. 641, FERC Stats & Regs. ¶ 31,109 at 31,857; *Revision of Annual Charges to Public Utilities (California Independent System Operator, Inc.*), 101 FERC ¶ 61,043 at 61,163, *reh'g dismissed,* 101 FERC ¶ 61,326 at P 9 (2002) (*CAISO*); *accord CNG,* 87 FERC at 61,303.

[12] *Kansas City Power & Light,* Docket No. FA03–17–000 (August 14, 2003).

[13] 111 FERC ¶ 61,086 at P 10–12.

[14] 473 F.3d. at 1243.

[15] 18 CFR 382.201(c)(2) (2006).

for denying Westar's request both alone and together justify this policy: (1) The regulations expressly required filing of corrections by a date certain; (2) waiving the deadline would undermine the certainty that the annual charges would not be indefinitely subject to change; and (3) the Commission has never suggested it would ignore the deadline spelled out in its regulations.[16]

11. We also announce a policy, going forward, as to when we will waive the regulation and allow untimely submissions. The Commission's policy going forward will be to grant waiver and accept only those late-filed corrections discovered through a Commission-conducted audit in order to remedy an underreporting of transmission volumes (and thus where other utilities have subsidized the underreporting utility).

12. As stated above, the Commission allocates its collectible electric regulatory program costs among public utilities. A reduction in the amount owed by one utility necessarily has an effect, an increase, on the amount owed by all of the others. Therefore, if a utility does not accurately report its transmission volumes, the Commission cannot charge it appropriately.[17] The allocation of costs based on transmission volumes creates a natural incentive for utilities to underreport their transmission volumes in a given year. Just as public utilities have a natural incentive to ''abuse their market power,'' [18] so, by analogy, public utilities subject to reporting transmission volumes for purposes of calculating their proportionate share of the Commission's collectible electric regulatory program costs have similar incentives to underreport their transmission volumes and thereby reduce the costs allocated to them. The effect of such underreporting is an inequitable subsidization by other utilities of any utility that underreported. The agency's audit process provides a check on that natural incentive. Therefore, the Commission will allow late-filed corrections resulting from an audit revealing that a utility has underreported its transmission volumes and consequently forced other utilities to bear costs that should have been borne by the underreporting utility. The Commission thus retains its ability to make right the situation where the remainder of the industry has paid amounts which rightfully were owed by another.[19]

13. However, the reverse is not true. Overreporting does not raise the same concerns as underreporting; if a company overreports its transmission volumes and fails to file corrections by the deadline, it does so to its detriment and harms no one but itself. Errors of overreporting discovered after the deadline, by Commission-conducted audit or otherwise, thus may not be corrected. The D.C. Circuit acknowledged that any one of the first three justifications provided by the Commission, described above, justify a Commission policy of not accepting a corrected FERC 582 after the deadline. Indeed, the Commission need not have structured its regulation to allow corrections at all. The data the utilities must report is, after all, the utilities' data, and that data must be filed under oath; in other words, full and complete reporting at the outset should be the norm. The Commission, however, elected to build leniency into its requirement to submit transmission volumes, in the form of an 8-month window from the April 30 filing deadline to the December 31 corrections deadline. That 8-month window provides more than sufficient time for utilities to identify and correct their overreporting.

The Commission orders:

(A) The Commission hereby grants waiver of the annual charges reporting requirement, FERC 582, to allow Westar to submit corrected information for FY 2002 (reporting corrected calendar year 2001 transmission data). The upcoming annual charges will be calculated to reflect this corrected information.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5052 Filed 3–21–07; 8:45 am]

BILLING CODE 6717–01–P

[16] 473 F.3d. at 1241–42. As noted above, it was the Commission's failure to adequately explain the fourth reason that led to the remand.

[17] As we have noted, the transmission volumes utilities report are the utilities' data. These data are, moreover, filed under oath. 18 CFR 382.201(c)(1) (2006); *see Revision of Annual Charges to Public Utilities (PJM Interconnection),* 105 FERC ¶ 61,093 at P 8 (2003); *Midwest Independent Transmission System Operator, Inc.,* 103 FERC ¶ 61,048 at P 13–14, *reh'g denied,* 104 FERC ¶ 61,060 (2003); *CAISO,* 101 FERC ¶ 61,326 at P 9; *CAISO,* 101 FERC ¶ 61,043 at P 10. While utilities are thus required to report complete and accurate data (by April 30 of each year), we nevertheless recognize that utilities may err in their reporting, and so we allow corrections to be filed up to eight months following their original filing, *i.e.,* by the end of the calendar year.

[18] *Pennsylvania Elec. Co.* v. *FERC,* 11 F.3d 207, 211 n.5 (D.C. Cir. 1993); *Nat'l Fuel Gas Supply Corp.* v. *FERC,* 468 F.3d 831, 834–835 (D.C. Cir. 2006); *United Distribution Cos.* v. *FERC,* 88 F.3d 1105, 1122 & n.4 (D.C. Cir. 1996); *Associated Gas Distribs.* v. *FERC,* 824 F.2d 981, 1010 (D.C. Cir. 1987).

[19] If the Commission finds that the underreporting was intentional, it may seek to invoke its civil penalty authority as well.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[MSN–2006–1; FRL–8290–4]

New Stationary Sources; Supplemental Delegation of Authority to the Mississippi Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The Mississippi Department of Environmental Quality (MSDEQ or agency) has requested that EPA delegate authority for implementation and enforcement of existing New Source Performance Standards (NSPS) which have been previously adopted by the agency but have remained undelegated by EPA, and has requested that EPA approve the mechanism for delegation (adopt-by-reference) of future NSPS. The purpose of MSDEQ's request for approval of its delegation mechanism is to streamline existing administrative procedures by eliminating any unnecessary steps involved in the Federal delegation process. With this NSPS delegation mechanism in place, a new or revised NSPS promulgated by EPA will become effective in the State of Mississippi on the date the NSPS is adopted-by-reference pursuant to a rulemaking of the MSDEQ, if the agency adopts the NSPS without change. ''Adopt-by-reference'' means the EPA promulgated standard has been adopted directly into the State regulations by reference to the Federal law. No further agency requests for delegation will be necessary. Likewise, no further **Federal Register** notices will be published.

In this action, EPA is delegating authority to MSDEQ for implementation and enforcement of existing NSPS which have been previously adopted by MSDEQ and which are identified in the Supplementary Information section below. In addition, EPA is approving MSDEQ's ''adopt-by-reference'' mechanism for delegation of future NSPS.

DATES: *Effective Date:* The effective date is March 22, 2007.

ADDRESSES: Copies of the request for delegation of authority are available for public inspection during normal

business hours at the following locations:

Environmental Protection Agency, Region 4, Air Toxics and Monitoring Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303;

Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address:

Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Keith Goff, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, 404–562–9137. Mr. Goff can also be reached via electronic mail at *goff.keith@epa.gov.*

SUPPLEMENTARY INFORMATION: Sections 101, 110, 111(c)(1), and 301 of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS. On November 30, 1981, EPA initially delegated the authority for implementation and enforcement of the NSPS program to the MSDEQ. This agency has subsequently requested a delegation of authority for implementation and enforcement of the previously adopted, undelegated part 60 NSPS categories listed below.

1. 40 CFR part 60, subpart Eb, adopted January 25, 1996.
2. 40 CFR part 60, subpart Ec, adopted January 22, 1998.
3. 40 CFR part 60, subpart WWW, adopted August 22, 1996.
4. 40 CFR part 60, subpart AAAA, adopted August 22, 2002.
5. 40 CFR part 60, subpart CCCC, adopted August 22, 2002.

EPA's review of Mississippi's pertinent laws, rules, and regulations has shown them to be adequate for implementation and enforcement of these existing, previously adopted, undelegated NSPS. Based on this review, EPA has determined that delegation of the above-referenced NSPS is appropriate, with the non-delegable exceptions noted below. All sources subject to the delegable requirements in these NSPS subparts will now be under the jurisdiction of the MSDEQ, although EPA reserves the right to implement the Federal NSPS directly and continues to retain concurrent enforcement authority. The NSPS subparts and portions of subparts that may not be delegated, and are therefore not delegated by this action are:

1. Subpart A—§ 60.8(b) (2) and (3), § 60.11(e) (7) and (8), § 60.13 (g), (i) and (j)(2)
2. Subpart B—§ 60.22, § 60.27, and § 60.29
3. Subpart Da—§ 60.45a
4. Subpart Db—§ 60.44b(f), § 60.44b(g), § 60.49b(a)(4)
5. Subpart Dc—§ 60.48c(a)(4)
6. Subpart Ec—§ 60.56c(i)
7. Subpart J—§ 60.105(a)(13)(iii), § 60.106(i)(12)
8. Subpart Ka—§ 60.114a
9. Subpart Kb—§ 60.111b(f)(4), § 60.114b, § 60.116b(e)(3) (iii) and (iv), § 60.116b(f)(2)(iii)
10. Subpart O—§ 60.153(e)
11. Subpart EE—§ 60.316(d)
12. Subpart GG—§ 60.334(b)(2), § 60.335(f)(1)
13. Subpart RR—§ 60.446(c)
14. Subpart SS—§ 60.456(d)
15. Subpart TT—§ 60.466(d)
16. Subpart UU—§ 60.474(g)
17. Subpart VV—§ 60.482–1(c)(2) and § 60.484
18. Subpart WW—§ 60.496(c)
19. Subpart XX—§ 60.502(e)(6)
20. Subpart AAA—§ 60.531, § 60.533, § 60.534, § 60.535, § 60.536(i)(2), § 60.537, § 60.538(e), § 60.539
21. Subpart BBB—§ 60.543(c)(2)(ii)(B)
22. Subpart DDD—§ 60.562–2(c)
23. Subpart III—§ 60.613(e)
24. Subpart NNN—§ 60.663(e)
25. Subpart RRR—§ 60.703(e)
26. Subpart SSS—§ 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a), § 60.716
27. Subpart TTT—§ 60.723(b)(1), § 60.723(b)(2)(i)(C), § 60.723(b)(2)(iv), § 60.724(e), § 60.725(b)
28. Subpart VVV—§ 60.743(a)(3)(v)(A) and (B), § 60.743(e), § 60.745(a), § 60.746
29. Subpart WWW— § 60.754(a)(5)
30. Subpart CCCC—§ 60.2030(c)

In addition, EPA is approving MSDEQ's ''adopt-by-reference'' delegation mechanism for future NSPS. EPA's review of the pertinent laws, rules, and regulations for the agency has shown them to be adequate for implementation and enforcement of existing, previously adopted, undelegated NSPS and future NSPS. Future NSPS regulations will contain a list of sections that cannot be delegated for that subpart. With this NSPS ''adopt-by-reference'' delegation mechanism in place, a new or revised NSPS promulgated by EPA will become effective in the State of Mississippi on the date the NSPS is adopted-by-reference pursuant to a rulemaking of the Mississippi Department of Environmental Quality, if the agency adopts the NSPS without change. EPA reserves the right to implement the Federal NSPS directly and continues to retain concurrent enforcement authority.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action delegates pre-existing requirements under Federal law and does not impose any additional enforceable duty beyond that required by Federal 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 action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely delegates the implementation and enforcement of an existing Federal standard and approves a delegation mechanism for future Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

In reviewing delegation requests and mechanisms for delegation, 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 delegation request or disapprove a proposed delegation mechanism for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a delegation request or proposed delegation mechanism, to use VCS in place of a delegation request or proposed delegation mechanism 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 action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This action granting delegation authority for implementation and enforcement of existing NSPS and approving a delegation mechanism for future NSPS is issued under the authority of sections 101, 110, 111, and 301 of the Clean Air Act, 42 U.S.C. 7401, 7410, 7411, and 7601.

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

Dated: March 1, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E7–5261 Filed 3–21–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–8290–7]

Colorado; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on the State of Colorado's Application for Final Approval.

SUMMARY: The State of Colorado has applied for approval of the underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Colorado application and has reached a final determination that Colorado's underground storage tank program satisfies all of the requirements necessary to qualify for approval under the regulations. Thus, the EPA is granting final approval to the State of Colorado to operate its Underground Storage Tank Program for petroleum and hazardous substances.

DATES: *Effective Date:* Final approval for the State of Colorado's Underground Storage Tank Program is effective on April 23, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–UST–2006–0295. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the following addresses: (1) Colorado Department of Labor & Employment, Division of Oil and Public Safety, Public Records Center, 633 17th Street, Suite 200, Denver, CO 80202 from 8 a.m. to Noon, and (2) U.S. EPA, Library, Region 8, 1595 Wynkoop Street, Room 2139, Denver, CO 80202–1129 from 10 a.m. to 4 p.m. We recommend that you contact Francisca Chambus, UST Team, at 303.312.6782 before visiting the Region 8 office.

FOR FURTHER INFORMATION CONTACT: Francisca Chambus U.S. EPA, Region 8, MC: 8P–W–GW, 1595 Wynkoop Street, Denver, CO 80202–1129 or at 303.312.6782.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: Is ''no less stringent'' than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions.

II. Colorado

The Colorado Department of Labor & Employment, Division of Oil & Public Safety (OPS) is the lead implementing agency for the UST program in Colorado.

On November 13, 2002 the EPA received Colorado's application for State Program Approval (SPA) of Colorado's UST program. EPA reviewed their application and determined it to be complete. On November 27, 2006, the EPA published a tentative decision announcing its intent to grant Colorado final approval. Along with the tentative determination, EPA announced the availability of the application for public comment and provided notice that a public hearing would be provided if significant public interest was shown. EPA did not receive any comments or requests for a public hearing.

III. Decision

I conclude that the State of Colorado's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Colorado is granted final approval to operate its Underground Storage Tank Program in lieu of the Federal program. This final determination to approve the Colorado program applies to all areas within the State except for land within formal Indian reservations located within or abutting the State of Colorado, including: the Ute Mountain Ute and Southern Ute Indian Reservations, any off-reservation land held in trust by the United States for an Indian tribe; and any other areas that are ''Indian country'' within the meaning of 18 U.S.C. 1151. The State of Colorado now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program except for facilities located within ''Indian Country,'' where EPA will retain regulatory authority. Colorado also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA 42 U.S.C. 6991d and to take

enforcement actions under section 9006 of RCRA 42 U.S.C. 6991e.

IV. Statutory and Executive Order Reviews

This rule only applies to the Colorado Department of Labor & Employment's underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see Supplementary Information). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866:* Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866.

2. *Paperwork Reduction Act:* This rule does not impose an information collection burden under the Paperwork Reduction Act.

3. *Regulatory Flexibility Act:* After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act:* Because this rule codifies 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.

5. *Executive Order 13132:* Federalism—EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

6. *Executive Order 13175:* Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects 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).

7. *Executive Order 13045:* Protection of Children from Environmental Health & Safety Risks: This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks.

8. *Executive Order 13211:* Actions that Significantly Affect Energy Supply, Distribution, or Use: This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866.

9. *National Technology Transfer and Advancement Act:* Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: March 15, 2007.

Kerrigan G. Clough,

Deputy Regional Administrator, Region 8.

[FR Doc. E7–5263 Filed 3–21–07; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 72, No. 55
Thursday, March 22, 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 Part 39

[Docket No. FAA–2007–27193; Directorate Identifier 2007–CE–009–AD]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate No. A–806 Previously Held by deHavilland Inc.) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III 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 that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A report has been received of stress corrosion cracking occurring in the wing lift strut lower clevis fitting, part number C2W–1097A.

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

DATES: We must receive comments on this proposed AD by April 23, 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: George J. Duckett, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, Valley Stream, New York 11581; telephone: (516) 228–7325; fax: (516) 794–5531.

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–2007–27193; Directorate Identifier 2007–CE–009–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

We issued AD 88–08–02, Amendment 39–5889, to address an unsafe condition on the products listed above.

Since we issued AD 88–08–02, additional airplanes have been identified that need to be added to the Applicability section. Viking Air Limited has issued Revision C to Service Bulletin No. 2/41 that changes the inspection method from dye penetrant to fluorescent penetrant. Viking Air Limited has also issued Service Bulletin 2/55 that allows for eddy current inspections, which extend the repetitive inspection intervals.

Transport Canada, which is the aviation authority for Canada, has issued AD No. CF–1985–08R4, dated September 28, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A report has been received of stress corrosion cracking occurring in the wing lift strut lower clevis fitting, part number C2W–1097A.

The MCAI requires:

This AD revision is being issued to allow operators the option of continuing with the existing inspection intervals in accordance with CF–85–08R3 (Part A) or incorporating the improved alternate inspection method in accordance with Part B, to permit an increase in inspection intervals.

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

Relevant Service Information

Viking Air Limited has issued Service Bulletin S/B No. 2/41, Revision ''C'', dated June 23, 2006; and Service Bulletin No. 2/55, dated June 23, 2006. The actions described in these service

bulletins 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 392 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $219,520, or $560 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing $6,227 for each wing strut assembly, for a cost of $6,787 per wing strut assembly. We have no way of determining the number of products that may need these actions.

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 removing Airworthiness Directive (AD) 88–08–02, Amendment 39–5889, and adding the following new AD:

Viking Air Limited (Type Certificate No. A–806 previously held by deHavilland Inc.): Docket No. FAA–2007–27193; Directorate Identifier 2007–CE–009–AD.

Comments Due Date

(a) We must receive comments by April 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, that:

(1) Are certificated in any category; and

(2) Are equipped with wing lift strut assemblies, part numbers (P/Ns) C2W1103, C2W1103A, C2W1104, or C2W1104A.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

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

A report has been received of stress corrosion cracking occurring in the wing lift strut lower clevis fitting, part number C2W–1097A.

Retained Requirements of AD 88–08–02

(f) For all Models DHC–2 Mk. I and DHC–2 Mk. III airplanes certificated in any category that are equipped with wing lift strut assemblies, P/Ns C2W1103, C2W1103A, C2W1104, or C2W1104A: Within 100 hours time-in-service (TIS) or one month after May 11, 1988 (the effective date of AD 88–08–02), whichever occurs first, and thereafter at intervals not to exceed 500 hours TIS or 12 calendar months, whichever occurs first:

(1) Remove wing strut assemblies, C2W1103 or C2W1103A and C2W1104 or C2W1104A from the airplane and prepare the assemblies for inspection as described in the ''ACCOMPLISHMENT INSTRUCTIONS'' section of DeHavilland Service Bulletin (S/B) No. 2/41, Revision A, dated August 14, 1987.

(2) Conduct a dye penetrant inspection with a 10-power glass for cracks in the lugs of the lower attachment clevis fitting.

(3) If cracks are found, prior to further flight replace the complete strut assembly with a strut assembly of the same part number that has had the lower clevis fitting inspection using the dye penetrant procedure and has been found free of cracks, or strut assembly C2W1115–1 or C2W1115–2, as appropriate.

(4) If no cracks are found, clean the lower clevis fitting and reinstall the wing strut assembly.

(5) If wing strut assembly C2W1115–1 or C2W1115–2 is installed, the recurring inspection specified in paragraph (f) of this AD is no longer required.

New Requirements of This AD: Actions and Compliance

(g) Unless already done, do either (1) or (2) of the following actions:

(1) *Inspection using fluorescent penetrant method:* Perform the Accomplishment Instructions of Viking Air Ltd. Service

Bulletin No. 2/41, Revision C, dated June 23, 2006.

(i) *For airplanes previously affected by AD 88–08–02:* Inspect within 12 calendar months after the last inspection required by AD 88–08–02 or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12 calendar months.

(ii) *For airplanes not previously affected by AD 88–08–02:* Inspect within the next 100 hours time-in-service (TIS) or 12 calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 12 calendar months.

(2) *Inspection using eddy current method:* Perform the Accomplishment Instructions of Viking Air Ltd. SB No. 2/55, dated June 23, 2006.

(i) *For airplanes previously affected by AD 88–08–02:* Inspect within 12 calendar months after the last inspection required by AD 88–08–02 or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 24 calendar months.

(ii) *For airplanes not previously affected by AD 88–08–02:* Inspect within 100 hours TIS or 12 calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 24 calendar months.

(3) If cracks are found during any inspection required by either paragraph (g)(1) or (g)(2) of this AD, before further flight:

(i) Replace the complete strut assembly with a strut assembly of the same part number that has had the lower clevis fitting inspected using either the fluorescent penetrant method specified in paragraph (g)(1) of this AD or the eddy current method specified in paragraph (g)(2) of this AD and is found free of cracks; or

(ii) Replace the complete strut assembly with strut assembly C2W1115–1 or C2W1115–2, as appropriate. Installing wing strut assembly C2W1115–1 or C2W1115–2 as replacement parts terminates the recurring inspections required in paragraphs (g)(1) and (g)(2) 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

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, FAA, ATTN: George J. Duckett, Aerospace Engineer, 10 Fifth Street, Valley Stream, New York 11581; telephone: (516) 228–7325; fax (516) 794–5531, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) AMOCs approved for AD 88–08–02 are not approved for this AD.

(3) *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.

(4) *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

(i) Refer to MCAI Transport Canada AD CR–1985–08R4, dated September 28, 2006; and Viking Air Limited Service Bulletin S/B No. 2/41, Revision ''C'', dated June 23, 2006; and Service Bulletin No. 2/55, dated June 23, 2006; for related information.

Issued in Kansas City, Missouri, on March 15, 2007.

David R. Showers,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5215 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–003]

RIN 1625–AA00

Safety Zone; Kenosha Harbor, Kenosha, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in Kenosha Harbor at the east end of the south pier. This zone is intended to restrict vessels from portions of Lake Michigan and Kenosha Harbor during a fireworks display on August 11, 2007. This zone is necessary to protect the public from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before April 23, 2007.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The Sector Lake Michigan Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Sector Lake Michigan Prevention Department between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–07–003], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Sector Lake Michigan Prevention Department at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port Lake Michigan has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of

persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Kenosha Days of Discovery fireworks display. The fireworks display will occur between 8 p.m. (local) and 10 p.m. (local) on August 11, 2007.

The safety zone for the fireworks will encompass all waters of Lake Michigan and Kenosha Harbor within a 300 yard radius of position 42°35′14″ N, 087°48′29″ W (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

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

The Coast Guard will only use this safety zone for two hours on the date specified. This safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners of vessels intending to transits or anchor in a portion of Kenosha Harbor between 8 p.m. (local) and 10 p.m. (local) on August 11, 2007. The safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 2 hours. Vessel traffic can safely pass around the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This proposed rule establishes a regulated navigation area and as such is covered by this paragraph.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–003 to read as follows:

§ 165.T09–003 Safety Zone, Kenosha Harbor, Kenosha, WI.

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Michigan and Kenosha Harbor within a 300-yard radius of position 42°35′14″ N, 087°48′29″ W (NAD 83).

(b) *Effective period.* This regulation is effective from 8 p.m. (local) on August 11, 2007 to 10 p.m. (local), on August 11, 2007.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: March 8, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Commander, Coast Guard Sector Lake Michigan.

[FR Doc. E7–5179 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–HQ–OAR–2007–0170; FRL–8290–9]

Supplemental Proposed Rulemaking on 8-Hour Ozone Redesignations for Various Areas in Michigan, Ohio and West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour ozone standard. This supplemental proposed rulemaking sets forth EPA's views on the potential effect of the Court's ruling on a number of proposed redesignation actions. This rulemaking applies to eighteen 8-hour ozone nonattainment areas in Michigan, Ohio and West Virginia, for which EPA has proposed approval of the States' redesignation requests. For the reasons set forth in the notice, EPA proposes to find that the Court's ruling does not alter any requirements relevant to these proposed redesignations that would prevent EPA from finalizing these redesignations. The EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that may be filed, imposes no impediment to moving forward with redesignation of these areas to attainment, because in either circumstance, redesignation is appropriate under the relevant redesignation provisions of the Clean Air Act (CAA) and EPA's longstanding policies regarding redesignation requests.

DATES: Comments must be received on or before April 6, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0170 by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's

normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0170. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid 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 additional instructions on submitting comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Butch Stackhouse, Air Quality Policy Division, Office of Air Quality Planning and Standards, State and Locals Program Group, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–5208; e-mail address: *stackhouse.butch@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to you if you are a State that has proposed areas for redesignation from nonattainment to attainment of the 8-hour ozone standard, but EPA has not yet finalized such actions. *This action is applicable therefore to the following States:* Michigan; Ohio, and West Virginia. This supplemental proposed rulemaking applies to eighteen 8-hour ozone nonattainment areas, sixteen of which were designated nonattainment for the 8-hour ozone standard and classified under Subpart 1 of Part D of the CAA, and which were previously designated Unclassifiable/Attainment, or Attainment subject to a CAA section 175A maintenance plan under the 1-hour standard. EPA has published proposed rulemakings to redesignate these areas to attainment for the 8-hour ozone standard. The areas and dates of proposed rulemakings for these areas are: Parkersburg-Marietta, OH-WV (Washington County, OH), request submitted on November 17, 2006 and proposed on January 17, 2007, 72 FR 1956, previously Unclassifiable/Attainment for the 1-hour standard; Parkersburg-Marietta, OH-WV (Wood County, WV), request submitted on September 8, 2006 and proposed on January 12, 2007, 72 FR 1474, previously Attainment subject to a maintenance plan for the 1-hour standard; Steubenville-Weirton, OH-WV (Brooke and Hancock Counties, WV) request submitted on August 3, 2006 and proposed on October 2, 2006, 71 FR 57905, previously designated Unclassifiable/Attainment for the 1-hour standard; Wheeling, OH-WV (Marshall and Ohio counties, WV) request submitted on July 24, 2006 and proposed on October 2, 2006, 71 FR 57894, previously designated Unclassifiable/Attainment for the 1-hour standard; Flint (Genesee and Lapeer Counties), MI request submitted on June 13, 2006 and proposed on January 8, 2007, 72 FR 699, previously designated Attainment subject to a maintenance plan for the 1-hour standard (Genesee County) and Unclassifiable/Attainment (Lapeer County) for the 1-hour standard; Benton Harbor (Berrien County), MI request submitted on June 13, 2006 and proposed on January 8, 2007, 72 FR 699, previously designated Unclassifiable/Attainment for the 1-hour standard; Benzie County, MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/ Attainment for the 1-hour standard; Grand Rapids, (Kent and Ottawa Counties), MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Attainment subject to a maintenance plan for the 1-hour standard; Huron County, MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Lansing-East Lansing (Clinton, Eaton, and Ingham counties), MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Mason County, MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Canton-Massillon (Stark County), OH request submitted on August 24, 2006 and proposed on December 27, 2006, 71 FR 77678, previously designated Attainment subject to a maintenance plan for the 1-hour standard; Lima (Allen County), OH request submitted on August 24, 2006 and proposed on December 27, 2006, 71 FR 77678, previously designated Unclassifiable/Attainment for the 1-hour standard; Wheeling, OH-WV (Belmont County, OH) request submitted on August 24, 2006 and proposed on December 27, 2006, 71 FR 77666, previously designated Unclassifiable/ Attainment for the 1-hour standard; and Steubenville-Weirton, OH-WV (Jefferson County, OH) request submitted on October 3, 2006 and proposed on January 8, 2007, 72 FR 711, previously designated Attainment

subject to a maintenance plan for the 1-hour standard.

This rulemaking also applies to two 8-hour nonattainment areas that were classified under Subpart 2 for the 8-hour ozone standard. These areas, Muskegon, (Muskegon county), MI and Cass County, MI, were also previously designated Attainment subject to a maintenance plan (Muskegon) and Unclassifiable/Attainment (Cass County) for the 1-hour standard. The request was submitted on June 13, 2006 and proposed rulemakings for these areas on January 8, 2007, 72 FR 699.

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

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

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

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

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. Environmental Protection Agency, OAQPS Document Control Officer, 109 TW Alexander Drive, Room C404–02, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

C. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of this proposed rule is also available on the World Wide Web. Following signature by the EPA Acting Assistant Administrator for Air and Radiation, a copy of this proposed rule will be posted on the EPA's *http://www.epa.gov/ozonedesignations/*.

D. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does This Action Apply To Me?
B. What Should I Consider as I Prepare My Comments for EPA?
C. Where Can I Obtain Additional Information?
D. How Is This Preamble Organized?
II. What is the Background for This Action?
III. What are EPA's Views on the Potential Effect of the Court's Ruling on the Proposed Redesignation Actions Identified in This Action?
A. Areas Classified Under Subpart 1
B. Areas Classified Under Subpart 2: Muskegon and Cass County, MI
IV. What Action is EPA proposing?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. What Is the Background for This Action?

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *E.P.A.*, 472 F.3d 882 (DC Cir. December 22, 2006). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the CAA. The Court rejected EPA's reasons for implementing the 8-hour ozone standard in nonattainment areas under subpart 1 in lieu of subpart 2 of Title I, part D of the CAA. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas in the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; (4) and the requirement to demonstrate that certain types of projects meet certain conformity requirements. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. The Court has established March 22, 2007, as the date by which any rehearing petitions must be filed.

III. What Are EPA's Views on the Potential Effect of the Court's Ruling on the Proposed Redesignation Actions Identified in This Action?

This action sets forth EPA's views on the potential effect of the Court's ruling on the proposed redesignation actions that are the subject of this document. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to these proposed redesignations and does not prevent EPA from finalizing these redesignations. The EPA believes that the Court's decision, as it currently stands or as it may be modified based

upon any petition for rehearing that may be filed, imposes no impediment to moving forward with redesignation of these areas to attainment, because in either circumstance, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

A. Areas Classified Under Subpart 1

1. Possible Subpart 2 Requirements

With respect to the 16 8-hour nonattainment areas EPA classified under Subpart 1 at the time of designation, EPA notes that the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard and remanded that matter to the Agency. Consequently, it is possible that these areas could, during a remand to EPA, be reclassified under Subpart 2. Although any future decision by EPA to classify these areas under subpart 2 might trigger additional future requirements for such areas, EPA believes that this does not mean that redesignation of the areas that are the subject of this notice cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating redesignation requests in accordance with only the requirements due at the time the request was submitted; (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future and, (3) with respect to certain of the areas that are the subject of this notice, the fact that the redesignation requests preceded even the earliest possible due dates of any requirements for Subpart 2 areas.

First, at the time the redesignation requests for the 16 Subpart 1 areas that are the subject of this notice were submitted, the areas were classified under Subpart 1 and were obligated to meet the Subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant State Implementation plan (SIP) requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division); See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor). *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See, *e.g.*, also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis). At the time the redesignation requests were submitted, the 16 areas were not classified under Subpart 2 and no Subpart 2 requirements were applicable for purposes of redesignation.

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted, but which might later become applicable. The DC Circuit has recognized the inequity in such retroactive rulemaking, See *Sierra Club* v. *Whitman* 285 F. 3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory timeframe, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly, here it would be unfair to penalize the areas included in this notice by applying to them for purposes of redesignation any additional SIP requirements under Subpart 2 that were not in effect at the time they submitted their redesignation requests, but that might apply in the future.

Third, even if a future Subpart 2 classification were applied to these areas retroactively, for many of the Subpart 1 areas subject to this notice, the Subpart 2 requirements would still not be considered applicable for purposes of redesignation. As set forth above, the applicable requirements for purposes of redesignation are only those that became due prior to submission of the redesignation request. In the case of eight of the areas subject to this rulemaking,[1] the submission of the redesignation request preceded even the earliest possible due date of requirements for areas classified under Subpart 2 effective June 2004. These requests were all submitted before the earliest such submission date, which was June 15, 2006, for the emissions statement requirement under section 182(a)(3)(B) and emissions inventories under section 182(a)(1). Thus for this additional reason alone these additional Subpart 2 requirements would not be applicable for purposes of evaluating redesignation requests for these areas. In addition, to the extent that areas had complied with the emissions statement requirement for the 1-hour standard under section 182(a)(3)(B), this could also be considered to satisfy the requirement under the 8-hour standard.

2. Requirements Under the 1-Hour Standard

With respect to the Court's ruling regarding EPA's revocation of the 1-hour standard, all of the Subpart 1 areas that are the subject of the pending redesignation actions were designated attainment or unclassifiable/ attainment or attainment subject to a maintenance plan for the 1-hour standard. Those areas designated attainment or unclassifiable/attainment were never designated nonattainment for the 1-hour standard. Thus, the provisions at issue in the antibacksliding portion of the Court's decision never applied to these areas and would not apply. For those areas designated attainment subject to a CAA section 175A maintenance plan for the 1-hour standard, the Court's ruling could be interpreted to require continuation of certain conformity requirements, such as the requirement to submit a transportation conformity SIP that addresses the 1-hour standard.[2] EPA approved conformity SIPs for those subpart 1 areas in Michigan and Ohio that were attainment subject to a maintenance plan for the 1-hour standard.[3]

Moreover, under longstanding EPA policy, EPA interprets the conformity SIP requirements as not being applicable requirements for purposes of evaluating a redesignation request under section 107(d). See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), (upholding this interpretation). See also 60 FR 62748 (Dec. 7. 1995) (Tampa, FL redesignation). This is because state conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. 40 CFR 93.151 and 40

[1] Benzie County, MI, Grand Rapids, MI, Huron County, MI, Kalamazoo-Battle Creek, MI, Lansing-East Lansing, MI, Benton Harbor, MI, Mason County, MI, Flint, MI.

[2] CAA section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

[3] Grand Rapids (MI), the Genesee County portion of Flint (MI), Canton-Massillon (OH), the Ohio portion of Steubenville-Weirton (OH) EPA approved Michigan's conformity SIP on December 18, 1996 (61 FR 66609), and Ohio's on May 30, 2000 (65 FR 34395).

CFR 51.390. Thus the decision in *South Coast* should not alter requirements for these areas that would preclude EPA from finalizing its proposed redesignations.

B. Areas Classified Under Subpart 2: Muskegon and Cass County, MI

1. Subpart 2 Requirements

The two 8-hour nonattainment areas listed above are classified under subpart 2 for the 8-hour standard. We do not believe that any part of the Court's opinion could require that these subpart 2 classifications be changed upon remand to EPA. However, even assuming that they may (and Muskegon and Cass County would be subject to a different classification under a classification scheme created in a future rule in response to the court's decision) that would not prevent EPA from finalizing the proposed redesignation for these areas. For the same reasons set forth above with respect to the applicability of Subpart 2 requirements to areas that were classified Subpart 1 at the time of submission of redesignation requests, any additional requirements that might apply based on that different classification would not be applicable for purposes of evaluating their redesignation requests.

2. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard, since Cass County was never designated nonattainment for the 1-hour standard, there are no outstanding 1-hour nonattainment area requirements that it would be required to meet under the anti-backsliding requirements.

Muskegon was a maintenance area under the 1-hour standard; thus, the conformity requirement is the only relevant anti-backsliding requirement that was at issue before the court. As noted above, EPA approved Michigan's transportation conformity SIP on December 18, 1996 (61 FR 66609). Also, for the reasons set forth above with respect to the areas classified under Subpart 1, EPA believes that having an approved conformity SIP is not an applicable requirement for purposes of redesignation.

IV. What Action Is EPA Proposing?

Thus, for the reasons discussed above, EPA proposes that the Court's ruling in *South Coast*, whether it stands as initially rendered or is modified based on any petition for rehearing or other further court proceeding, does not alter any requirements applicable for purposes of evaluating the redesignation requests for these areas that would prevent the Agency from finalizing its proposed determinations.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not contain any recordkeeping or reporting requirements.

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

An Agency does 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 control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule sets forth EPA's views on the potential effect of the ruling of the U.S. Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d. 882 (DC Cir. December 22, 2006) on a number of areas proposed for redesignation of the 8-hour ozone standard.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory

alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Since this proposed rule does not impose a mandate upon any source, this rule is not estimated to result in the expenditure by State, local and Tribal governments or the private sector of $100 million in any 1 year. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Thus, this proposed rule is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed action does not impose any new mandates on State or local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule for this action from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This action does not have any direct effects on Indian Tribes. Thus, Executive Order 13175 does not apply to this proposed rule. The EPA specifically solicits additional comment on this proposed rule from Tribal officials where there are applicable Tribal lands in the affected areas.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This proposed action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this proposed rule present a disproportionate risk or safety risk to children. This proposed rule sets forth EPA's views regarding the potential effect of a recent Court's ruling, vacating the Phase 1 Ozone Implementation rule, on previously proposed redesignation actions. Furthermore, at the time those actions were proposed in the **Federal Register**, it was determined that Executive Order 13045 did not apply to those actions.

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

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

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental

justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of health or environmental protection, but instead merely sets forth EPA's views on the potential effect of the ruling of the U.S. Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (DC Cir. December 22, 2006) on a number of areas proposed for redesignation of the 8-hour ozone standard.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: March 16, 2007.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. E7–5352 Filed 3–21–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[OAR–2005–0047; FRL–8290–3]

RIN 2060–AL92

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Regulations Requiring Onboard Diagnostic Systems on 2010 and Later Heavy-Duty Engines Used in Highway Applications Over 14,000 Pounds; Revisions to Onboard Diagnostic Requirements for Diesel Highway Heavy-Duty Vehicles Under 14,000 Pounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period within the context of our proposed heavy-duty onboard diagnostics (OBD) requirements. (72 FR 3200, January 24, 2007) Specifically, we are extending the comment period for comments pertaining to the proposed service information availability requirements for engines used in highway vehicles over 14,000 pounds. These proposed requirements can be found in the proposed § 86.010–38(j). (72 FR 3322) The comment period will be extended from March 26, 2007 to May 4, 2007. We are extending the comment period in response to a request to do so from the Engine Manufacturers Association.

DATES: Written comments pertaining to the proposed service information availability requirements of the proposed § 86.010–38(j) must be received on or before May 4, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0047, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Mail:* Onboard Diagnostic (OBD) Systems on 2010 and Later Heavy-Duty Highway Vehicles and Engines, Environmental Protection Agency, *Mailcode:* 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2005–0047.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0047. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4405, fax (734) 214–4816, e-mail *sherwood.todd@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

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

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

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

Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of this notice and an electronic copy of the proposed heavy-duty OBD and associated service information availability requirements can be found at *http://www.epa.gov/obd/regtech/heavy.htm.* The request from the Engine Manufacturers Association to extend the comment period can be found in the docket with the document ID number EPA–HQ–OAR–2005–0047–0016.

Dated: March 16, 2007.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. E7–5266 Filed 3–21–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AV15

Migratory Bird Permits; Regulations for Managing Resident Canada Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On August 10, 2006, the U.S. Fish and Wildlife Service (Service or ''we'') published a final rule on resident Canada goose management. This proposed rule clarifies and slightly modifies several program requirements regarding eligibility, definitions, methodologies, and dates.

DATES: Comments on this proposed rule must be received by April 23, 2007.

ADDRESSES: You may submit comments, identified by RIN 1018–AV15, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: (703) 358–2217.

Mail: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP 4107, Arlington, Virginia 22203–1610.

Hand Delivery: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

Instructions: All submissions received must include Regulatory Information Number (RIN) 1018–AV15 at the beginning. All comments received, including any personal information provided, will be available for public inspection at the address given above for hand delivery of comments. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading in the **SUPPLEMENTARY INFORMATION** section of this document.

You may obtain copies of the Final Environmental Impact Statement (FEIS) on resident Canada goose management from the above address or from the Division of Migratory Bird Management Web site at *http://fws.gov/migratorybirds/issues/cangeese/finaleis.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358–1714 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act), which implements the above-mentioned treaties, provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles VII, V, and II.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of ''The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States'' provides specific limitations on allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there

be a ''closed season'' on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated in title 50, Code of Federal Regulations (CFR), parts 13 and 21, and issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory birds under sport hunting seasons in 50 CFR part 20.

Background

On August 10, 2006, we published in the **Federal Register** (71 FR 45964) a final rule establishing regulations in 50 CFR parts 20 and 21 authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. Since publication of the August 10 rule, several questions and issues have been raised by the public regarding various restrictions and requirements of the new regulations. This proposed rule clarifies and slightly modifies several program requirements regarding eligibility, definitions, methodologies, and dates.

Definition of Resident Canada Geese

The current definition of resident Canada geese contained in § 20.11 and § 21.3 states that ''Canada geese that nest within the lower 48 States in the months of March, April, May, or June, or reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August'' are considered resident Canada geese. The proposed change would modify the first portion of this definition by inserting ''add the District of Columbia'' following the word ''States'' to clarify that those Canada geese that nest within the District of Columbia in the months of March, April, May, or June, are included. It was not our original intention to exclude them from the definition.

Expanded Hunting Methods During September Special Seasons

One of the components in the resident Canada goose management program is to provide expanded hunting methods and opportunities to increase the sport harvest of resident Canada geese above that which results from existing September special Canada goose seasons. The regulatory changes in § 20.21(b) and (g) codified in the August 10 final rule provide State wildlife management agencies and Tribal entities the option of authorizing the use of electronic calls and unplugged shotguns during the first portion of existing, operational September Canada goose seasons (i.e., September 1–15). The August 10 final rule also stated that utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (i.e., September 16–30) could be approved by the Service and would require demonstration of a minimal impact to migrant Canada goose populations. Further, these seasons would be authorized on a case-by-case basis through the normal migratory bird hunting regulatory process. All of these expanded hunting methods and opportunities must be conducted outside of any other open waterfowl season (i.e., when all other waterfowl and crane hunting seasons were closed).

However, the regulatory changes codified in the August 10 final rule did not allow for utilization of these additional hunting methods outside of the September 1–15 period, although this was clearly our intent. We propose to modify § 20.21(b) and (g) to allow State selection of these expanded hunting methods during the September 16–30 period, when approved in the annual regulatory schedule in subpart K of part 20.

Clarification of Airports' Radius

Since publication of the August 10 final rule we have received questions regarding interpretation of the 3-mile radius restriction on resident Canada goose activities at airports and military airfields. We propose a change to clarify this restriction by inserting the term ''boundary'' at the end of the first sentence. Thus, resident Canada goose management activities at airports and military airfields would be restricted to a radius of 3 miles from the airports' boundaries.

Eligibility and Participation in the Nest and Egg Depredation Order

Currently, § 21.50 authorizes private landowners and managers of public lands to destroy resident Canada goose nests and eggs on property under their jurisdiction when necessary to resolve or prevent injury to people, property, agricultural crops, or other interests. We propose modifying this eligibility to include also homeowners' associations and village, town, municipal, and county governments (collectively termed local governments). Homeowners' associations and local governments would be allowed to register under the nest and egg depredation order and conduct nest and egg destruction anywhere within their jurisdiction, provided that they have landowner permission to conduct such activities.

Our proposal is based on several factors. First, we currently issue individual depredation permits allowing resident Canada goose nest and egg destruction to these groups, particularly in the northeastern United States. We believe the extension of eligibility to these groups to operate under the nest and egg depredation order is not outside the intent of the depredation order, is formalization of an already established practice under our permit system, and is simply an administrative modification. Second, since the publication of the August 10 rule, we have received numerous public comments requesting this modification. Modification of this requirement would help ensure public satisfaction and satisfy our original objective of providing affected States and the public with flexibility sufficient to deal with the problems caused by resident Canada geese. Lastly, since local governments are in an obvious position of local authority and jurisdiction, we believe they are a logical extension of our existing landowner definition. The proposed changes would include referring to these persons and entities collectively as ''registrants.'' Necessary conforming changes in a number of subsections also would be made.

Nest and Egg Destruction Methodologies Under Section 21.50

We propose to modify the approved methodologies for nest and egg destruction under the depredation order for resident Canada geese nests and eggs in § 21.50(d)(3). Currently, the regulations state that eggs may be oiled or eggs and nest material may be removed and disposed of. All of the other depredation and control orders pertaining to resident Canada geese (§§ 21.49, 21.51, and 21.52) allow egg oiling and egg and nest destruction. We believe the latter language is more comprehensive and includes such methodologies as egg addling (egg shaking), puncturing, and egg replacement. It was not our intent to be more restrictive regarding nest and egg destruction methodologies under the nest and egg depredation order than the other resident Canada goose depredation and control orders or what we currently allow on permits allowing nest and egg destruction. We believe this modification is minor in nature, satisfies numerous public requests for clarification and alignment, simplifies restrictions, and maintains the original intent of the regulation.

Web Address Under Section 21.50

We have modified the Web address for registering and submitting annual reports of the take of nests and eggs under the depredation order for resident Canada geese nests and eggs in § 21.50(d)(1) and (6).

Applicable Dates of Section 21.61 Population Control

We have corrected § 21.61(d)(2) to read ''August 31'' rather than ''August 30.'' This was strictly an oversight.

Public Participation

You may submit written comments on this proposal to the location identified in the **ADDRESSES** section, or you may submit electronic comments to the Internet address listed in the **ADDRESSES** section. We must receive your comments before the date listed in the **DATES** section. Following review and consideration of comments, we will issue a final rule on the proposed regulation changes.

When submitting electronic comments, please include your name and return address in your message, identify it as comments on the resident Canada goose management regulations change, and submit your comments as an ASCII file. Include RIN 1018–AV15 in the subject line of your message. Do not use special characters or any encryption.

When submitting written comments, please include your name and return address in your letter and identify it as comments on the resident Canada goose management regulations change, RIN 1018–AV15. You must submit written comments on 8½-inch-by-11-inch paper.

All comments on the proposed rule will be available for public inspection during normal business hours at Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, Virginia 22203–1610.

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.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we published the availability of a DEIS on March 7, 2002 (67 FR 10431), followed by a 91-day comment period. We subsequently reopened the comment period for 60 additional days (68 FR 50546, August 21, 2003). On November 18, 2005, both the Service and the Environmental Protection Agency published notices of availability for the FEIS in the **Federal Register** (70 FR 69966 and 70 FR 69985). On August 10, 2006, we published our Record of Decision (ROD) in the **Federal Register** (71 FR 45964). The FEIS is available to the public (see **ADDRESSES**). The proposed changes to the resident Canada goose regulations fall within the scope of the FEIS.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' We completed a biological evaluation and informal consultation (both available upon request; see **ADDRESSES**) under Section 7 of the ESA for the action described in the August 10 final rule. In the letter of concurrence between the Division of Migratory Bird Management and the Division of Endangered Species, we concluded that the inclusion of specific conservation measures in the final rule satisfied concerns about certain species and that the action was not likely to adversely affect any threatened, endangered, or candidate species.

Prior to issuance of any final rule on these proposed modifications, we will comply with provisions of the ESA, to ensure that these proposed modifications and clarifications are not likely to adversely affect any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. As such, we have requested a letter of concurrence from the Division of Endangered Species on these proposed changes.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. We discussed these impacts in the August 10 final rule. For the reasons detailed in that rule, we have determined that a Regulatory Flexibility Act analysis is not required.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this action is not a significant regulatory action subject to Office of Management and Budget (OMB) review. This rule will not have an annual economic effect of $100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit economic analysis is not required. This action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The Federal agency most interested in this action is Wildlife Services. The action is consistent with the policies and guidelines of other Department of the Interior bureaus. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This action will not raise novel legal or policy issues because we have previously managed resident Canada geese under the Migratory Bird Treaty Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act and Information Collection

This proposed rule does not contain any new information collection or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). OMB has approved and assigned control number 1018–0133, which expires on 08/31/2009, to the regulations concerning the control and management of resident Canada geese. We may not conduct or sponsor

and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The purpose of the act is to strengthen the partnership between the Federal Government and State, local, and tribal governments and to end the imposition, in the absence of full consideration by Congress, of Federal mandates on these governments without adequate Federal funding, in a manner that may displace other essential governmental priorities. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this action will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this action is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this action, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this action will help alleviate private and public property damage and concerns related to public health and safety and allow the exercise of otherwise unavailable privileges.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, it is in the best interest of the migratory bird resource for us to work cooperatively with the Flyway Councils and States to develop and implement the various migratory bird management plans and strategies.

The August 10 final rule and this proposed rule were developed following extensive input from the Flyway Councils, States, and Wildlife Services. Individual Flyway management plans were developed and approved by the four Flyway Councils, and States actively participated in the scoping process for the DEIS. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. The rule allows States the latitude to develop and implement their own resident Canada goose management action plan within the frameworks of the selected alternative. Therefore, in accordance with Executive Order 13132, this rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that this rule has no effects on Federally-recognized Indian tribes.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby propose to amend parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Amend § 20.11 by revising paragraph (n) to read as follows:

§ 20.11 What terms do I need to understand?

* * * * *

(n) *Resident Canada geese* means Canada geese that nest within the lower 48 States and the District of Columbia in the months of March, April, May, or June, or reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

3. Revise paragraphs (b) and (g) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. However, this restriction does not apply during:

(1) A light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine,

Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. However, this restriction does not apply during:

(1) A light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

* * * * *

PART 21—[AMENDED]

4. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

5. In subpart A, amend § 21.3 by revising the definition for ''Resident Canada geese'' to read as follows:

§ 21.3 Definitions.

* * * * *

Resident Canada geese means Canada geese that nest within the lower 48 States and the District of Columbia in the months of March, April, May, or June, or reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

* * * * *

6. In subpart D, amend § 21.49 by revising paragraph (d)(5) to read as follows:

§ 21.49 Control order for resident Canada geese at airports and military airfields.

* * * * *

(d) * * *

(5) Resident Canada geese may be taken only within a 3-mile radius of the airport's or military airfield's boundary. Airports and military airfields or their agents must first obtain all necessary authorizations from landowners for all management activities conducted outside the airport or military airfield's boundaries and be in compliance with all State and local laws and regulations.

* * * * *

7. In subpart D, amend § 21.50 by revising paragraphs (b), (c), (d)(1) through (d)(7), the introductory text of (d)(8), and (e) to read as follows:

§ 21.50 Depredation order for resident Canada geese nests and eggs.

* * * * *

(b) *What is the depredation order for resident Canada geese nests and eggs, and what is its purpose?* The nest and egg depredation order for resident Canada geese authorizes private landowners and managers of public lands (landowners); homeowners' associations; and village, town, municipality, and county governments (local governments); (and the employees or agents of any of these persons or entities) to destroy resident Canada goose nests and eggs on property under their jurisdiction when necessary to resolve or prevent injury to people, property, agricultural crops, or other interests.

(c) *Who may participate in the depredation order?* Only landowners, homeowners' associations, and local governments (and their employees or their agents) in the lower 48 States and the District of Columbia are eligible to implement the resident Canada goose nest and egg depredation order.

(d) * * *

(1) Before any management actions can be taken, landowners, homeowners' associations, and local governments must register with the Service at *https://epermits.fws.gov/eRCGR.* Landowners, homeowners' associations, and local governments (collectively termed ''registrants'') must also register each employee or agent working on their behalf. Once registered, registrants and agents will be authorized to act under the depredation order.

(2) Registrants authorized to operate under the depredation order must use nonlethal goose management techniques to the extent they deem appropriate in an effort to minimize take.

(3) Methods of nest and egg destruction or take are at the registrant's discretion from among the following:

(i) Egg oiling, using 100 percent corn oil, a substance exempted from regulation by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, and

(ii) Egg and nest destruction, including but not limited to the removal and disposal of eggs and nest material.

(4) Registrants may conduct resident Canada goose nest and egg destruction activities between March 1 and June 30. Homeowners' associations and local governments or their agents must obtain landowner consent prior to destroying nests and eggs on private property within the homeowners' association or local government's jurisdiction and be in compliance with all State and local laws and regulations.

(5) Registrants authorized to operate under the depredation order may possess, transport, and dispose of resident Canada goose nests and eggs taken under this section. Registrants authorized to operate under the program may not sell, offer for sale, barter, or ship for the purpose of sale or barter any resident Canada goose nest or egg taken under this section.

(6) Registrants exercising the privileges granted by this section must submit an annual report summarizing activities, including the date, numbers, and location of nests and eggs taken by October 31 of each year at *https://epermits.fws.gov/eRCGR* before any subsequent registration for the following year.

(7) Nothing in this section authorizes the destruction of resident Canada goose nests or the take of resident Canada goose eggs contrary to the laws or regulations of any State or Tribe, and none of the privileges of this section may be exercised unless the registrant is

authorized to operate under the program and possesses the appropriate State or Tribal permits, when required. Moreover, this section does not authorize the killing of any migratory bird species or destruction of their nest or eggs other than resident Canada geese.

(8) Registrants may not undertake any actions under this section if the activities adversely affect species designated as endangered or threatened under the authority of the Endangered Species Act. Persons operating under this order must immediately report the take of any species protected under the Endangered Species Act to the Service. Further, to protect certain species from being adversely affected by management actions, registrants must:

* * * * *

(e) *Can the depredation order be suspended?* We reserve the right to suspend or revoke this authorization for a particular landowner, homeowners' association, or local government if we find that the registrant has not adhered to the terms and conditions specified in the depredation order. Final decisions to revoke authority will be made by the appropriate Regional Director. The criteria and procedures for suspension, revocation, reconsideration, and appeal are outlined in §§ 13.27 through 13.29 of this subchapter. For the purposes of this section, ''issuing officer'' means the Regional Director and ''permit'' means the authority to act under this depredation order. For purposes of § 13.29(e), appeals must be made to the Director. Additionally, at such time that we determine that resident Canada goose populations no longer need to be reduced in order to resolve or prevent injury to people, property, agricultural crops, or other interests, we may choose to terminate part or all of the depredation order by subsequent regulation. In all cases, we will annually review the necessity and effectiveness of the depredation order.

* * * * *

8. In subpart E, amend § 21.61 by revising paragraph (d)(2) to read as follows:

§ 21.61 Population control of resident Canada geese.

* * * * *

(d) * * *

(2) Control activities may be conducted under this section only between August 1 and August 31.

* * * * *

Dated: March 6, 2007.

David M. Verhey,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–5199 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 070125020–7020–01; I.D. 010907A]

RIN 0648–AV15

Protective Regulations for Killer Whales in the Northwest Region under the Endangered Species Act and Marine Mammal Protection Act

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We, the National Marine Fisheries Service (NMFS), listed the Southern Resident killer whale distinct population segment (DPS) as endangered under the Endangered Species Act (ESA) on November 18, 2005. In the final rule announcing the listing, we identified vessel effects, including direct interference and sound, as a potential contributing factor in the recent decline of this population. Both the Marine Mammal Protection Act (MMPA) and the ESA prohibit take, including harassment, of killer whales, but these statutes do not prohibit specified acts. We are considering whether to propose regulations that would prohibit certain acts, under our general authorities under the ESA and MMPA and their implementing regulations. The Proposed Recovery Plan for Southern Resident killer whales (published November 29, 2006) includes as a management action the evaluation of current guidelines and the need for regulations and/or protected areas. The scope of this advance notice of proposed rulemaking (ANPR) encompasses the activities of any person or conveyance that may result in the unauthorized taking of killer whales and/or that may cause detrimental individual-level and population-level impacts. NMFS requests comments on whether—and if so, what type of—conservation measures, regulations, or other measures would be appropriate to protect killer whales from the effects of these activities.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than June 20, 2007. Public meetings have been scheduled for April 18, 2007, 2–4 p.m. in The Grange Hall, Friday Harbor, WA and April 19, 2007, 7–9 p.m. at the Seattle Aquarium, Seattle, WA. Requests for additional public meetings must be made in writing by April 23, 2007.

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

- E-mail: *orca.plan@noaa.gov*.
- Federal e-rulemaking Portal: *http://www.regulations.gov*.
- Mail: Assistant Regional Administrator, Protected Resources Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, Northwest Regional Office, 206–526–4745; or Trevor Spradlin, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

Viewing wild marine mammals is a popular recreational activity for both tourists and locals. In Washington, killer whales (*Orcinus orca*) are the principal target species for the commercial whale watch industry—easily surpassing other species, such as gray whales (*Eschrichtius robustus*), porpoises, and pinnipeds (Hoyt, 2001). NMFS is concerned that some whale watch activities may cause unauthorized taking of killer whales or cause detrimental individual-level and population-level impacts.

Killer whales in the eastern North Pacific have been classified into three forms, or ecotypes, termed residents, transients, and offshore whales. Resident killer whales in the North Pacific consist of the following groups: Southern, Northern, Southern Alaska (includes Southeast Alaska and Prince William Sound whales), Western Alaska, and Western North Pacific Residents. The Southern Resident killer whale population contains three pods—J pod, K pod, and L pod and was designated as a depleted stock under the MMPA and listed as endangered under the ESA.

During the spring, summer, and fall, the Southern Residents' range includes the inland waterways of Puget Sound, Strait of Juan de Fuca, and Southern Strait of Georgia. Their occurrence in the coastal waters off Oregon, Washington, Vancouver Island, and more recently off the coast of central California in the south and off the Queen Charlotte Islands to the north has

been documented. Little is known about the winter movements and range of Southern Residents.

Scientific studies have documented human disturbance of Southern Resident killer whales by vessels engaged in whale watching in the inland waters of Washington. Short-term behavioral changes in Northern and Southern Residents have been observed and studied by several researchers (Kruse, 1991; Kriete, 2002; Williams *et al.*, 2002a, 2002b, 2006; Foote *et al.*, 2004; Bain *et al.*, 2006), although it is not well understood whether it is the presence and activity of the vessel, the sounds the vessel makes, or a combination of these factors that disturbs the animals. Individual animals can react in a variety of different ways to whale watching, including swimming faster, adopting less predictable travel paths, making shorter or longer dive times, moving into open water, and altering normal patterns of behavior at the surface (Kruse, 1991; Williams *et al.*, 2002a; Bain *et al.*, 2006). High frequency sound generated from recreational and commercial vessels moving at high speed in the vicinity of whales may mask echolocation and other signals the species rely on for foraging, communication (Foote *et al.*, 2004) and navigation.

In rare instances, killer whales are injured or killed by collisions with passing ships and powerboats, primarily from being struck by the turning propeller blades (Visser, 1999c; Ford *et al.*, 2000; Visser and Fertl, 2000; Baird, 2001; Carretta *et al.*, 2001, 2004). Some animals with severe injuries eventually make full recoveries, such as a female described by Ford *et al.* (2000) that showed healed wounds extending almost to her backbone. One resident whale mortality from a vessel collision was previously reported for Washington and British Columbia from the 1960s to 1990s (Baird, 2002). However, two additional mortalities have recently been reported. In March of 2006 the lone Southern Resident killer whale, L98, residing in Nootka Sound for several years was killed by a tug boat. While L98 exhibited unusual behavior and often interacted with vessels, his death demonstrates the risk of vessel accidents. In July 2006, the death of a stranded Northern Resident female was attributed to blunt trauma, probably from a vessel strike (M. Joyce, pers. comm.) Five additional accidents between vessels and killer whales have been documented in the region since the 1990s (Baird, 2001; DFO, unpubl. data, NMFS, unpubl. data). One took place on the Washington side of Haro Strait in 1998 and involved a slow moving boat that apparently did not injure the whale. In 1995, a Northern Resident was struck by a speedboat, causing a wound to the dorsal fin that quickly healed. Another Northern Resident was injured by a high-speed boat in 2003, but also recovered. A 2005 collision of a Southern Resident with a commercial whale watch vessel resulted in a minor injury to the whale, which subsequently healed. An additional Northern Resident calf was struck by a vessel in July 2006.

We are concerned about the potential for individual-level and population-level effects because of vessel activities. Vessel effects were identified as a factor in the ESA listing of the Southern Residents and are addressed in the recovery plan which is available on our web page at *http://www.nwr.noaa.gov/*. NMFS has received an increasing number of complaints from the public alleging that killer whales in the core summer area along the west side of San Juan Island are routinely being disturbed by people attempting to closely approach and interact with the whales by vessel (motor powered or kayak). Concerns have been expressed by the U.S. Marine Mammal Commission, as well as members of the scientific community, researchers, wildlife conservation organizations, and some commercial tour operators.

Current MMPA and ESA Prohibitions and NMFS Guidelines and Regulations

The Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, contains a general prohibition on take of marine mammals. Section 3(13) of the MMPA defines the term take as ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.'' Except with respect to military readiness activities and certain scientific research activities, the MMPA defines the term harassment as ''any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild, [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

In addition, NMFS regulations implementing the MMPA further describe the term take to include: ''the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild'' (50 CFR 216.3).

The MMPA provides limited exceptions to the prohibition on take for activities such as scientific research, public display, and incidental take in commercial fisheries. Such activities require a permit or authorization, which may be issued only after a thorough agency review.

The ESA generally prohibits the taking of endangered species. The ESA defines take to mean ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Both the ESA and MMPA require wildlife viewing to be conducted in a manner that does not cause take.

NMFS has regulated close vessel approaches to large whales in Hawaii, Alaska, and the North Atlantic. In 1995, NMFS published a final rule to establish a 100–yard (91.4–m) approach limit for humpback whales in Hawaii (60 FR 3775, January 19, 1995). In 2001, NMFS published a final rule (66 FR 29502, May 31, 2001) to establish a 100–yard (91.4–m) approach limit for humpback whales in Alaska that included a speed limit for when a vessel is near a whale. In 1997, an interim final rule was published to prohibit approaching critically endangered North Atlantic right whales closer than 500 yards (457.2 m) (62 FR 6729, February 13, 1997).

In addition to these specific regulations, NMFS has provided general guidance for wildlife viewing that does not cause take. This is consistent with the philosophy of responsible wildlife viewing advocated by many federal and state agencies to unobtrusively observe the natural behavior of wild animals in their habitats without causing disturbance (see *http://www.watchablewildlife.org/*.

Each of the six NMFS Regions has developed recommended viewing guidelines to educate the general public on how to responsibly view marine mammals in the wild and avoid causing a take. These guidelines are available on line at: *http://www.nmfs.noaa.gov/prot_res/MMWatch/MMViewing.html*

The ''Be Whale Wise'' guidelines developed for marine mammals by the NMFS Northwest Regional Office and partners are also available at: *http://www.nwr.noaa.gov/Marine-Mammals/upload/BeWhaleWise.pdf*

Be Whale Wise is a transboundary effort to develop and revise guidelines for viewing marine wildlife. NMFS has partnered with commercial operators, whale advocacy groups, U.S. and Canadian government agencies and enforcement divisions over the past

several years to promote safe and responsible wildlife viewing practices through the development of outreach materials, training workshops, on-water education and public service announcements. The 2006 version of the Be Whale Wise guidelines recommends that boaters parallel whales no closer than 100 yards (91.4 m), approach animals slowly from the side rather than from the front or rear, and avoid putting the vessel within 400 yards (365 m) in front of or behind the whales. Vessels are also recommended to reduce their speed to less than 7 knots (13 km/h) within 400 meters of the whales, and to remain on the outer side of the whales near shore. Two voluntary no-boat areas off San Juan Island are recognized by San Juan County although this is separate from the Be Whale Wise guidelines. The first is a ½–mile (800 m)–wide zone along a 3–km stretch of shore centered on the Lime Kiln lighthouse. The second is a 1/4–mile (400 m)–wide zone along much of the west coast of San Juan Island from Eagle Point to Mitchell Point. These areas were established to facilitate shore-based viewing and to reduce vessel presence in an area used by the whales for feeding, traveling, and resting.

NMFS supports the Soundwatch program, an on-water stewardship and monitoring group, to promote the Be Whale Wise guidelines and monitor vessel activities in the vicinity of whales. Soundwatch reports (Koski, 2004, 2006) characterize trends in incidents when the guidelines are not followed and there is the potential for disturbance of the whales. Incidents are frequently observed involving both recreational and commercial whale watching vessels. Soundwatch also serves as a crucial education component, providing information on the viewing guidelines to boaters that are approaching areas with whales.

Despite the regulations, guidelines and outreach efforts, interactions between vessels and killer whales continue to occur in the waters of Puget Sound and the Georgia Basin. Advertisements on the Internet and in local media in the Pacific Northwest promote activities that appear inconsistent with what is recommended in the NMFS guidelines. NMFS has received letters from the Marine Mammal Commission, members of the scientific research community, environmental groups, and members of the general public expressing the view that some types of interactions with wild marine mammals have the potential to harass and/or disturb the animals by causing injury or disruption of normal behavior patterns. NMFS has also received inquiries from members of the public and commercial tour operators requesting clarification of NMFS' policy on these matters.

In 2002, NMFS published an ANPR requesting comments from the public on what types of regulations and other measures would be appropriate to prevent harassment of marine mammals in the wild caused by human activities directed at the animals (67 FR 4379, January 30, 2002). The 2002 ANPR was national in scope and covered all species of marine mammals under NMFS' jurisdiction (whales, dolphins, porpoises, seals and sea lions), and requested comments on ways to address concerns about the public and commercial operators closely approaching, swimming with, touching or otherwise interacting with marine mammals in the wild. Several potential options were proposed for consideration and comment, including: (1) codifying the current NMFS Regional marine mammal viewing guidelines into regulations; (2) codifying the guidelines into regulations with additional improvements; (3) establishing minimum approach regulations similar to the ones for humpback whales in Hawaii and Alaska and North Atlantic right whales; and (4) restricting activities of concern similar to the MMPA regulation prohibiting the public from feeding or attempting to feed wild marine mammals. The 2002 ANPR specifically mentioned the complaints received from researchers and members of the public concerning close vessel approaches to killer whales in the Northwest. Over 500 comments were received on the 2002 ANPR regarding human interactions with wild marine mammals in United States waters and along the nation's coastlines.

Request for Information and Comments

NMFS is requesting information and comments on whether — and if so, what type of — conservation measures, regulations, or other measures would be appropriate to protect killer whales in inland waters of Washington from human activities that result in the unauthorized taking of killer whales and/or that may cause detrimental individual-level and population-level impacts.

NMFS has received input on potential measures to address vessel impacts during the ESA listing and recovery planning process. Suggestions included regulations governing all vessels (including aircraft) or only commercial whale watch vessels. Suggestions included a moratorium on all whale watching, prohibiting whale watching for one or more days per week, developing a permit program for commercial operators, and requiring whale watch vessels to purchase and install Vessel Monitoring System (VMS) equipment to allow for monitoring their activities. Based on the comments received, and the regulations implemented for other marine mammals, NMFS has developed a preliminary list of options for consideration and comment:

Codify the current Be Whale Wise marine mammal viewing guidelines – Codifying the guidelines, in whole or in part, as regulations would make them requirements rather than recommendations, and would allow enforcement of these provisions and penalties for violations.

Establish minimum approach rule – Similar to the minimum approach rules for humpback whales in Hawaii and Alaska, and right whales in the North Atlantic (50 CFR 224.103; 66 FR 29502, May 31, 2001), a limit could be established by regulation to accommodate killer whale viewing opportunities while minimizing the potential detrimental impacts from humans. If establishing a minimum approach rule is appropriate, then we would have to consider whether the current guideline of 100 yards (approximately 100 m) is appropriate for this regulation. We would consider exceptions for situations in which marine mammals approach vessels as well as other situations in which approach is not reasonably avoidable.

Prohibit vessel activities of concern – The current guidelines address specific activities of concern. A regulation could prohibit vessel operators from engaging in these activities or others of concern. Activities of concern include using vessels to herd whales, surrounding whales or otherwise preventing a reasonable means of escape, leapfrogging whales or positioning a vessel in their predictable path, separating calves from attending adults, approaching whales at or above specified speeds, or running a vessel through a group of whales.

Establish time-area closures – Similar to the prohibitions used to protect fish stocks or habitat, we could establish a regulation restricting human access to specific areas. These restrictions could restrict all human entry to the area or restrict only specified acts within an area; they could be full-time or limited to certain seasons when killer whales are likely to be present; or a closure could be any combination of the above.

Operator permit or certification program – We could adopt approach rules or establish closed areas that applied to all vessels except those

operated under a whale watching permit or certification. Issuance of a permit or certification could be based on the operator's knowledge of whale behavior and proper procedures for operating vessels around whales. A permit or certification could allow the whale watch operator to get closer to the whales than those who do not have one. For example, a general approach limit of 200 m could be implemented for all non-permitted or uncertified operators, and only operators who are permitted or certified would be allowed to approach to 100 m of the whales. Sanctions, up to and including loss of permit or certification for noncompliance with applicable regulations, would be possible. The issuance of permits or certifications could be directly related to an assessment of the appropriate level of whale watching in Puget Sound. This would require us to evaluate the current level of whale watching effort and limit the maximum number of vessels that can be engaged in whale watching activity. The limit could be adjusted based on monitoring and ongoing evaluation of what is appropriate to protect the whales.

We recognize that the most appropriate regulations may be some combination of the above measures, or that additional possibilities may exist.

Regulations adopted under the MMPA could apply to all three killer whale ecotypes - residents, transients, and offshores. To the average wildlife viewer, these whales are difficult to differentiate between visually, and all three could potentially be found in the inland waters of Washington State where whale watching occurs.

The geographic scope of regulations, if proposed, would likely be the inland waters of the State of Washington, since this is where vessel interactions are concentrated. The coastal waters off Washington and Oregon do not currently have a significant level of documented vessel interactions, and the small number of killer whale sightings in these areas makes it unlikely that they will develop whale watching operations at significant levels in the future.

NMFS invites information and comment from the public on the advisability of regulations, on the above options, and on other possible measures that will help the agency decide what type of regulations, if any, would be most appropriate to consider for protecting killer whales in the Pacific Northwest. In particular, we are seeking information and comments concerning:

(1) The advisability of and need for regulations;

(2) The geographic scope of regulations;

(3) Management options for regulating vessel interactions with killer whales, including but not limited to the options listed in this notice;

(4) Scientific and commercial information regarding the effects of vessels on killer whales and their habitat;

(5) Information regarding potential economic effects of regulating vessel interactions; and

(6) Any additional relevant information that NMFS should consider should it undertake rulemaking.

You may submit information and comments concerning this ANPR by any one of several methods (see **ADDRESSES**). Materials related to this notice can be found on the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/*. We will consider all comments and information received during the comment period in preparing a proposed rule.

References Cited

A complete list of all references cited in this advanced notice of proposed rulemaking can be found on our Web site at *http://www.nwr.noaa.gov/* and is available upon request from the NMFS office in Seattle, Washington (see **ADDRESSES**).

Public Hearings

Based on the level of interest in killer whales and whale watching, public meetings have been scheduled for April 18, 2007, 2–4 p.m. in The Grange Hall, Friday Harbor, WA and April 19, 2007, 7–9 p.m. at the Seattle Aquarium, Seattle, WA. Requests for additional public hearings or special accommodations must be made in writing (see **ADDRESSES**) by April 23, 2007.

Classification

This ANPR was determined to be significant for purposes of E.O. 12866.

Dated: March 15, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7–5262 Filed 3–21–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 55

Thursday, March 22, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0565.

Form Number: N/A.

Title: Certification Agreement.

Type of submissions: Reinstatement.

Purpose: The United States Agency for International Development (USAID) needs to require applicants for assistance to certify that it does not and will not engage in financial transactions with, and does not and will not provide material support and resources to individuals or organizations that engage in terrorism. The purpose of this requirement is to assure that USAID does not directly provide support to such organizations or individuals, and to assure that recipients are aware of these requirements when it considers individuals or organizations are subrecipients.

Annual reporting burden:

Respondents: 2,000.

Total annual responses: 4,000.

Total annual hours requested: 1,500.

Dated: March 15, 2007.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 07–1399 Filed 3–21–07; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 19, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Field Crops Production.

OMB Control Number: 0535–0002.

Summary of Collection: One of the National Agricultural Statistics Services' (NASS) primary functions is to prepare and issue current state and national estimates of crop and livestock production. The general authority for collecting these NASS collects information on field crops to monitor agricultural developments across the country that may impact on the nation's food supply. To help set these estimates, field crops production data is collected. NASS will collect information through the use of mail, telephone, and personnel interviews surveys.

Need and Use of the Information: NASS collects information on field crops to monitor agricultural developments across the country that may impact on the nation's food supply. The Secretary of Agriculture uses estimates of crop production to administer farm program legislation and to make decisions relative to the export-import programs. Collecting this information less frequently would eliminate the data needed to keep the Department abreast of changes at the State and national level.

Description of Respondents: Farms; Business or other for-profits.

Number of Respondents: 350,075.

Frequency of Responses: Reporting: Weekly, Monthly, Quarterly, Annually.

Total Burden Hours: 118,624.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–5231 Filed 3–21–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Research Data Archive Use Tracking

AGENCY: Forest Service, USDA.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Research Data Archive Use Tracking.

DATES: Comments must be received in writing on or before May 21, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dave Rugg; Forest Service, USDA; 1992 Folwell Avenue; St. Paul, MN 55108.

Comments also may be submitted via facsimile to (651) 649–5285 or by e-mail to: *drugg@fs.fed.us.*

The public may inspect comments received at Forest Service—Northern Research Station, 1992 Folwell, Avenue, St. Paul, MN, during normal business hours. Visitors are encouraged to call ahead to (651) 649–5000 or (651) 649–5173 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dave Rugg, Forest Service, Northern Research Station, 651–649–5173. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Research Data Archive Use Tracking.

OMB Number: 0596-New.

Type of Request: New.

Abstract: The Forest Service Research and Development (FS R&D) group is planning to create a data archive to store and disseminate data collected in the course of its scientific research. Preparing data sets for the archive requires significant effort from researchers. The Forest Service has an obligation to encourage ethical use of archived FS R&D data sets and needs to know how others are using the archived data sets. This information assists FS R&D personnel in evaluating the research program. Information about the use of the products of a scientist's research is of significant importance in scientist performance evaluations.

When a member of the public requests a copy of a data set, FS R&D will collect the following information: Name; affiliation; contact information (including e-mail address); Statement of Intended Use; and Data Use Agreement. The Data Use Agreement and associated information collection closely follow the data access structure used by the National Science Foundation's Long Term Ecological Research network. FS R&D managers believe that this structure provides a sound balance between meeting obligations to its scientific staff and ease-of-access by the research community. The Statement of Intended Use will not determine access to a particular data set.

A form at the archive web site will collect the information. Forest Service archive staff will review the individual Data Use Agreements prior to approving release of the data set to the requestor. This review is solely to ensure that submitted information is complete and correct.

The data set author will use the Data Use Agreements to describe the impact of research accomplishments prior to performance appraisals.

The collection of Data Use Agreements will be evaluated by the data archiving program to identify opportunities for improving the archive's function and offerings; the FS R&D communications office will use the agreements to assist in assessing the effectiveness of FS R&D research and technology transfer.

The proposed FS R&D data archive is a new activity and participation is voluntary. This information collection is a critical component in the campaign to encourage Forest Service scientists to deposit their research data in the archive system. Sharing research data is very useful to the broader research community and sharing of well-documented FS R&D data sets via the archive will be impossible without this information collection.

Estimate of Annual Burden: 10–15 minutes.

Type of Respondents: Scientists, particularly in fields studying natural resources; resource specialists in nonprofits and other government agencies.

Estimated Annual Number of Respondents: 100.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: March 16, 2007.

Ann M. Bartuska,

Deputy Chief for Research and Development.

[FR Doc. E7–5259 Filed 3–21–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee Charter Renewal

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; Committee charter renewal.

SUMMARY: The Secretary of Agriculture is renewing the charter of the Roadless Area Conservation National Advisory Committee, under the authority of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II). The purpose of the Roadless Area Conservation National Advisory Committee is to provide advice and recommendations to the Secretary on management and conservation of roadless areas. This includes, but is not limited to, petitions by States to the Secretary, or his designee, under the authority of the Administrative Procedure Act, 5 U.S.C. 553(e) and 7 CFR 1.28.

FOR FURTHER INFORMATION CONTACT: Bill Supulski, National Roadless Coordinator, at *bsupulski@fs.fed.us* or (202) 205–0948, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1104, Washington, DC 20250. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Agriculture intends to renew the charter of the Roadless Area Conservation National Advisory Committee (Committee). The Secretary has determined the work of this Committee is in the public interest and relevant to the duties of the Department of Agriculture. The purpose of the Roadless Area Conservation National Advisory Committee is to provide advice and recommendations to the Secretary on management and conservation of roadless areas. This includes, but is not limited to, petitions by States to the Secretary, or his designee, under the authority of the Administrative Procedure Act, 5 U.S.C. 553(e) and 7 CFR 1.28. The Committee

will review submitted petitions and provide advice and recommendations to the Secretary. The Committee will also provide advice and recommendations to the Secretary on any subsequent State-specific rulemakings.

This Advisory Committee shall consist of up to 15 members appointed by the Secretary of Agriculture. The Committee Chair will be elected by the members. Officers or employees of the Forest Service may not serve as members of the Advisory Committee. The Advisory Committee shall consist of members who represent diverse national organizations interested in the conservation and management of National Forest System inventoried roadless areas.

Dated: March 16, 2007.

Gilbert L. Smith Jr.

Deputy Assistant Secretary for Administration.

[FR Doc. E7–5258 Filed 3–21–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Manoa Watershed, Honolulu County, Hawaii

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500) and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is being prepared for the Manoa Watershed, Honolulu County, Hawaii.

FOR FURTHER INFORMATION CONTACT: Lawrence T. Yamamoto, Director, Pacific Islands Area, Natural Resources Conservation Service, 300 Ala Moana Boulevard, Room 4–118, P.O. Box 50004, Honolulu, HI 96850–0050, Telephone: (808) 541–2600, ext. 105.

SUPPLEMENTARY INFORMATION: A preliminary assessment of this federally funded action indicates that the project may cause significant impacts on the environment. As a result, Lawrence T. Yamamoto, Director, has determined that the preparation and review of an Environmental Impact Statement (EIS) is needed for this project.

This project will be implemented under the Watershed Protection and Flood Prevention Act (Pub. L. 83–566, as amended), for the purpose of flood mitigation in Manoa Valley. The NRCS will work with the affected community and sponsoring local organizations to develop an acceptable plan to address the flood problem. Sponsoring local organizations include the State Department of Land and Natural Resources and the City and County of Honolulu.

The project aims to mitigate flooding of the magnitude experienced on October 30, 2004, when an intense rainstorm cell hit the upper watershed area of Manoa Valley. Runoff from the storm damaged streambanks and bridges throughout the valley. Bridges obstructed by debris diverted floodwater from the stream channel onto roads, damaging homes and other neighborhood improvements, as well as the University of Hawaii. The total damage from the flood event neared $100 million.

A full range of possible programs and actions will be considered in order to meet the project goal of flood mitigation. Currently under consideration are detention basins on public lands, flood walls, debris basins and other debris management actions, flood-proofing structures within the flood plain, diversion of flood waters, flood warning systems, widening of the channel, acquisition of properties within the floodplain, maintenance easements, and a drainage district. As hydrologic and hydraulic analyses are performed and stakeholder consultations are conducted, additional concepts may be developed.

A draft Environmental Impact Statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft EIS. All written and verbal comments received in response to this Notice of Intent will be considered when determining the scope of the EIS. The sponsoring local organizations will be issuing an Environmental Impact Statement Preparation Notice pursuant to Hawaii Revised Statutes Chapter 343, and a public participation process in the affected community has already been initiated. NEPA and HRS 343 requirements will be coordinated in the preparation of the EIS document.

A public meeting will be held on Wednesday, April 25, 2007, at the Noelani Elementary School cafeteria from 6:30 p.m. to 8:30 p.m., to determine the scope of analysis of the proposed action. Further information on the proposed action or the public scoping meeting may be obtained from Lawrence T. Yamamoto, Director, at the above address or telephone number.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: March 14, 2007.

Lawrence T. Yamamoto,

Director, Pacific Islands Area.

[FR Doc. E7–5255 Filed 3–21–07; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Inviting Applications for Renewable Energy Systems and Energy Efficiency Improvements Grants and Guaranteed Loans

AGENCY: Rural Business—Cooperative Service (RBS), USDA

ACTION: Notice.

SUMMARY: Rural Business—Cooperative Service (RBS), an Agency within USDA Rural Development, announces it is accepting applications for fiscal year (FY) 2007 to purchase renewable energy systems and make energy efficiency improvements for agriculture producers and rural small businesses in eligible rural areas. Funding will be available in the form of grants, guaranteed loans, and combined guaranteed loans and grant applications.

For renewable energy systems, the minimum grant request is $2,500 and the maximum is $500,000. For energy efficiency improvements, the minimum grant request is $1,500 and the maximum is $250,000. The maximum amount of a guaranteed loan made to a borrower will be $10 million. Fifty percent of the available grant funding will be reserved for the grant portion of combination grant and guaranteed loan applications. For FY 2007, the guarantee fee amount is 1 percent of the guaranteed portion of the loan and the annual renewal fee is 0.125 percent (one-eighth of one percent) of the guaranteed portion of the loan.

DATES: The United States Department of Agriculture (USDA) will conduct one competitive grant solicitation in FY 2007.

Grants

Applications must be completed and submitted to the appropriate USDA Rural Development State Office no later than May 18, 2007. Any unused guaranteed loan funding as of August 1, 2007, may be pooled and revert to grant funding. It is anticipated that grant award announcements will be made approximately 75 days following the submission deadline.

Guaranteed Loans and Combined Guaranteed Loans and Grants

Applications for guaranteed loans as well as combined guaranteed loan and grant packages must be completed and submitted to the appropriate USDA Rural Development State Office no later than July 2, 2007. Combined guaranteed loan and grant packages will compete and be awarded on a bi-weekly basis. Guaranteed loan applications will be accepted and processed in a rolling application manner.

The application closing deadlines for grants, guaranteed loans and combined guaranteed loan and grant packages are firm. USDA Rural Development will not consider any application that is received after the closing deadline. In accordance with RD Instruction 1940–G, all environmental assessments must be completed before the State Office forwards the application to the National Office for funding consideration.

ADDRESSES: Submit applications to the USDA Rural Development State Office in the State where your project is located. A list of the USDA Rural Development State Offices and Energy Coordinators addresses and telephone numbers follow. For further information about this solicitation, please contact the applicable State Office. This document is available on our Web site at *http://www.rurdev.usda.gov/rbs/farmbill/index.html*.

USDA State Rural Development Offices

Alabama

Mary Ann Clayton, USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3615.

Alaska

Dean Stewart, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7722.

Arizona

Alan Watt, USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8769.

Arkansas

Shirley Tucker, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280.

California

Charles Clendenin, USDA Rural Development, 430 G Street, AGCY 4169, Davis, CA 95616, (530) 792–5825.

Colorado

April Dahlager, USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2909.

Delaware-Maryland

James Waters, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3626.

Florida/Virgin Islands

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3482.

Georgia

J. Craig Scroggs, USDA Rural Development, 333 Phillips Drive, McDonough, GA 30253, (678) 583–0866.

Hawaii

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313.

Idaho

Brian Buch, USDA Rural Development, 725 Jensen Grove Drive, Suite 1, Blackfoot, ID 83221, (208) 785–5840, Ext. 118.

Illinois

Molly Hammond, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6210.

Indiana

Jerry Hay, USDA Rural Development, 2411 N. 1250 W., Deputy, IN 47230, (812) 873–1100.

Iowa

Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4447.

Kansas

F. Martin Fee, USDA Rural Development, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2744.

Kentucky

Scott Mass, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435.

Louisiana

Kevin Boone, USDA Rural Development, 905 Jefferson Street, Suite 320, Lafayette, LA 70501, (337) 262–6601.

Maine

John F. Sheehan, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168.

Massachusetts/Rhode Island/Connecticut

Sharon Colburn, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4303.

Michigan,

Rick Vanderbeek, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5218.

Minnesota

Lisa Noty, USDA Rural Development, 1400 West Main Street, Albert Lea, MN 56007, (507) 373–7960 Ext. 120.

Mississippi

G. Gary Jones, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457.

Missouri

Matt Moore, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9321.

Montana

John Guthmiller, USDA Rural Development, 900 Technology Blvd., Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2540.

Nebraska

Karissa Hagedorn, USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508, (402) 437–5568.

Nevada

Dan Johnson, USDA Rural Development, 555 West Silver Street, Suite 101, Elko, NV 89801, (775) 738–8468, Ext. 112.

New Hampshire (See Vermont)

New Jersey

Victoria Fekete, USDA Rural Development, 8000 Midlantic Drive,

5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7753.

New Mexico

Eric Vigil, USDA Rural Development, 6200 Jefferson Street, NE, Room 255, Albuquerque, NM 87109, (505) 761–4952.

New York

Thomas Hauryski, USDA Rural Development, 415 West Morris Street, Bath, NY 14810, (607) 776–7398 Ext. 132.

North Carolina

H. Rossie Bullock, USDA Rural Development, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (910) 739–3349 Ext. 4.

North Dakota

Mark Wax, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2029.

Ohio

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2424.

Oklahoma

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036.

Oregon

Don Hollis, USDA Rural Development, 1229 SE Third Street, Suite A, Pendleton, OR 97801–4198, (541) 278–8049, Ext. 129.

Pennsylvania

Bernard Linn, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2182 .

Puerto Rico

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251.

South Carolina

R. Gregg White, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5881.

South Dakota

Gary Korzan, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1142.

Tennessee

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1350.

Texas

Daniel Torres, USDA Rural Development, Federal Building, Suite 102, South Main Street, Temple, TX 76501, (254) 742–9756.

Utah

Richard Carrig, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84111, (801) 524–4328.

Vermont/New Hampshire

Lyn Millhiser, USDA Rural Development, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6069.

Virginia

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594.

Washington

Tuana Jones, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7707.

West Virginia

Cheryl Wolfe, USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4882.

Wisconsin

Kelley Oehler, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615, Ext. 141.

Wyoming

Milton Geiger, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 820, Casper, WY 82602, (307) 672–5820 Ext. 4.

SUPPLEMENTARY INFORMATION: This solicitation is issued pursuant to Section 9006 of the Farm Security and Rural Investment Act of 2002 (2002 Act), which established the Renewable Energy Systems and Energy Efficiency Improvements Program. The program is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the Nation's critical energy needs. The 2002 Act mandates the maximum percentage USDA Rural Development will provide in funding for these types of projects. USDA Rural Development grants under this program will not exceed 25 percent of the eligible project costs. USDA Rural Development guaranteed loans will not exceed 50 percent of the eligible project costs. USDA Rural Development combined grant and guaranteed loan funding packages will not exceed 50 percent of eligible project cost, with the grant portion not to exceed 25 percent of eligible project costs.

As stated in 7 CFR 4280.108, projects must be for a pre-commercial or commercially available technology. In accordance with the definition of ''commercially available'' found in 7 CFR 4280.103, a proven operating history specific to the proposed application may be established domestically or outside of the United States (US). If the system is available commercially outside the U.S., applicants must provide authoritative evidence of the operating history, performance, and reliability. Additionally, applicants must provide evidence that professional service providers, trades, large construction equipment providers and labor are readily available domestically and familiar with installation procedures and practices, and spare parts and service are readily available in the U.S. to properly maintain and operate the system. All warranties must be valid in the U.S.

In accordance with the definition of ''pre-commercial'' technology found in 7 CFR 4280.103, technical and economic potential for commercial application must be demonstrated to the Agency's satisfaction through a documented operating history which may be established domestically or outside of the U.S., specific to the proposed application and at scalable size. To demonstrate that the system has emerged through research and development as well as the demonstration process, applicants must provide to the Agency's satisfaction, authoritative evidence of the operating history, performance, and reliability past completion of start-up, shake-down, and/or commissioning. Typically, and inline with performance evaluation protocol, the documented operating history should provide performance data for a duration of 12 months. In accordance with demonstrating the potential for commercial application, applicants must provide evidence that professional service providers, trades, large construction equipment providers, and

labor are potentially available domestically and sufficiently familiar with installation procedures and practices, and spare parts and service are available in the U.S. to properly maintain and operate the system. Any warranties would have to be valid in the U.S.

Information required to be in the grant application package is contained in 7 CFR 4280.111. Awards are made on a competitive basis using specific evaluation criteria contained in 7 CFR 4280.112(e). To ensure that projects are accurately scored by USDA, applicants are requested to tab and number each evaluation criteria and include in that section, its corresponding supporting documentation and calculations according to 7 CFR 4280.112. Only projects that have completed the environmental review process according to 7 CFR 4280.114(d), demonstrated project eligibility according to 7 CFR 4280.108, and demonstrated technical feasibility will be eligible for funding consideration.

State Offices will submit eligible grant funding requests, with the State Office executed score sheets, including supporting documentation to the National Office for funding consideration.

To reduce scoring bias by technology and scale, a standard statistical normalization process will be applied to all competitive grant application scores. All applicants will be notified by the USDA Rural Development State Offices of the Agency's decision on the awards.

Information required to be in the guaranteed loan application and the combination guaranteed loan and grant application package is contained in 7 CFR 4280.128 and 7 CFR 4280.193(c), respectively. Guaranteed loan applications are received and processed on a rolling basis until funds are exhausted. Combined guaranteed loans and grant packages compete bi-weekly at the national level and are awarded on a bi-weekly basis until funds are exhausted. All applicants will be notified by the USDA Rural Development State Offices in regards to the Agency's decision on their application.

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.775 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA is participating as a partner in the government-wide Grants.gov site. Applicants may submit grant-only applications to the Agency in either electronic or paper format. Please be mindful that the application deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Washington, DC time. The paper format deadline is local time for each USDA Rural Development State Office.

Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to USDA Rural Development; however, the Agency encourages your participation in Grants.gov.

- 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. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. To use Grants.gov, applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform*.
- You may submit all documents electronically through the Web site, including all information typically included on the application for Renewable Energy Systems and Energy Efficiency Improvements Program, and all necessary assurances and certifications. After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the 5 p.m. (Washington, DC time) deadline, print out your application and submit it to your respective State Office. If applicants submit applications to a State Office, applicants must meet the closing date and local time deadlines.

Applicants may access the electronic grant application for Renewable Energy Systems and Energy Efficiency Improvements Program at *http://www.Grants.gov*.

Please note that applicants must locate the downloadable application package for this program by the CFDA Number or FedGrants Funding Opportunity Number, which can be found at *http://www.Grants.gov*.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0570–0050.

Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: March 8, 2007.

Ben Anderson,

Acting Administrator, Rural Business—Cooperative Service.

[FR Doc. E7–5198 Filed 3–21–07; 8:45 am]

BILLING CODE 3410–XY–P

ARCTIC RESEARCH COMMISSION

[USARC 07–029]

Notice of Meeting

AGENCY: United States Arctic Research Commission.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 83rd meeting in Washington, DC on April 16–17, 2007. The Business Session, open to the public, will convene at 8:30 a.m. Monday, April 16, 2007 in Washington, DC. An Executive Session will follow adjournment of the Business Session.

The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 82nd Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

CONTACT PERSON FOR MORE INFORMATION: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Dated: March 13, 2007.

John Farrell,

Executive Director.

[FR Doc. 07–1400 Filed 3–21–07; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 070309052–7053–01]

Solicitation of Proposals and Applications for Economic Development Assistance Programs

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for proposals and applications.

SUMMARY: The Economic Development Administration (EDA) is soliciting proposals or applications (as appropriate) for the following programs authorized by the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) (PWEDA): (1) Public Works and Economic Development Investments Program, (2) Planning Program, (3) Local Technical Assistance Program, and (4) Economic Adjustment Assistance Program. EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In implementing this mission pursuant to its authorizing statute, PWEDA, EDA advances economic growth by assisting communities and regions experiencing chronic high unemployment and low per capita income to create an environment that fosters innovation, promotes entrepreneurship, and attracts increased private capital investment. Under the Trade Act of 1974, as amended (19 U.S.C. 2341–2391) (Trade Act), EDA also provides technical assistance to firms adversely affected by increased import competition.

DATES: Proposals are accepted on a continuing basis and applications are invited and processed as received. Generally, two months are required for EDA to reach a final decision after receipt of a complete application that meets all requirements. Proposals or applications (as appropriate) received after the date of this notice will be processed in accordance with the requirements set forth herein and in the related Federal funding opportunity (FFO) announcement, until the next annual FFO is posted on *http://www.Grants.gov* and related notice and request for proposals and applications is published in the **Federal Register**.

Pre-Application and Application Submission Requirements

Proponents are advised to carefully read the instructions contained in the complete FFO announcement for this request for proposals and applications, and in the *Pre-Application for Investment Assistance* (Form ED–900P) and *Application for Investment Assistance* (Form ED–900A). The requirements of the pre-application are different than the requirements of the application. The content of the pre-application or the application (as appropriate) is the same for paper submissions as it is for electronic submissions. EDA will not accept facsimile transmissions of pre-applications and applications.

Proposals under EDA's Public Works Program (CFDA No. 11.300) or Economic Adjustment Assistance Program (CFDA No. 11.307) must be submitted on Form ED–900P, which may be submitted in two formats: (i) In paper (hardcopy) format at the applicable regional office address provided below; or (ii) electronically in accordance with the procedures provided on *http://www.Grants.gov.*

For projects under EDA's Planning Program (CFDA No. 11.302) or Technical Assistance Program (CFDA No. 11.303), please contact the appropriate EDA regional office listed below for instructions as to whether you should complete a pre-application or an application. In the case of a continuation grant, no pre-application is required.

The following forms may be accessed and downloaded as follows: (i) Forms ED–900P and ED–900A at *http://www.eda.gov/InvestmentsGrants/Application.xml;* (ii) Standard Forms (SF) at either *http://www.Grants.gov* or at *http://www.eda.gov/InvestmentsGrants/Application.xml;* and (iii) Department of Commerce (CD) forms at *http://www.doc.gov/forms.*

Addresses and Telephone Numbers for EDA's Regional Offices: Applicants in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee, may submit paper submissions to:

Economic Development Administration, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308, Telephone: (404) 730–3002, Fax: (404) 730–3025.

Applicants in Arkansas, Louisiana, New Mexico, Oklahoma and Texas, may submit paper submissions to:

Economic Development Administration, Austin Regional Office, 504 Lavaca, Suite 1100, Austin, Texas 78701–2858, Telephone: (512) 381–8144, Fax: (512) 381–8177.

Applicants in Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin, may submit paper submissions to:

Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606, Telephone: (312) 353–7706, Fax: (312) 353–8575.

Applicants in Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming, may submit paper submissions to:

Economic Development Administration, Denver Regional Office, 1244 Speer Boulevard, Room 670, Denver, Colorado 80204, Telephone: (303) 844–4715, Fax: (303) 844–3968.

Applicants in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands, Virginia and West Virginia, may submit paper submissions to:

Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, Pennsylvania 19106, Telephone: (215) 597–4603, Fax: (215) 597–1063.

Applicants in Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Marshall Islands, Micronesia, Nevada, Northern Mariana Islands, Oregon, Republic of Palau and Washington, may submit paper submissions to:

Economic Development Administration, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174, Telephone: (206) 220–7660, Fax: (206) 220–7669.

Paper Submissions: To apply for Public Works or Economic Adjustment Assistance under this notice, you may submit a proposal on a completed pre-application (ED–900P) to the applicable EDA regional office listed above. Proponents choosing this option should

download and print copies of Form ED–900P and the *Application for Federal Assistance* (Form SF–424) at *http://www.eda.gov/InvestmentsGrants/Application.xml,* complete Parts I, II and III of Form ED–900P and Form SF–424, and attach the project narrative statement requested in section IV.B.1. of the FFO announcement for this request for proposals and applications. To apply for Planning or Technical Assistance under this notice, the EDA regional office may instruct you to submit an application in lieu of the pre-application. After consultation with the regional office, you may submit a completed pre-application or an application, as instructed, to the applicable EDA regional office.

A proponent must submit one (1) original and two (2) copies of a completed pre-application or application (as appropriate) via postal mail, shipped overnight or hand-delivered to the applicable regional office, unless otherwise directed by EDA staff. Proponents are advised that Department of Commerce mail security measures may delay receipt of United States Postal Service mail for up to two weeks. Proponents may wish to use guaranteed overnight delivery services.

Electronic Submissions: Proponents applying under the Public Works Program or the Economic Adjustment Assistance Program may submit pre-applications electronically in accordance with the instructions provided at *http://www.Grants.gov*. You may access the pre-application package by following the instructions provided on *http://www.grants.gov/applicants/apply_for_grants.jsp*. The preferred file format for electronic attachments (*e.g.*, the project narrative statement and exhibits to Form ED–900P) is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, Lotus or Excel formats.

Applicants for assistance under the Planning Program or the Technical Assistance Program may not need to submit a pre-application. If the regional office instructs you to submit an application (Form ED–900A) instead of a pre-application (Form ED–900P) for projects under these two programs, you may submit the application in paper (hardcopy) format or you may submit the application electronically via *http://www.Grants.gov.* If the regional office instructs you to submit a pre-application, you also may submit the pre-application in paper (hardcopy) format or electronically via *http://www.Grants.gov.*

Applicants should access the following link for assistance in navigating *http://www.Grants.gov* and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp*. If you do not find an answer to your question under *Frequently Asked Questions*, try consulting the Applicant's User Guide. If you still cannot find an answer to your question, contact *http://www.Grants.gov* via email at s*upport@grants.gov* or telephone at 1.800.518.4726. The hours of operation for *http://www.Grants.gov* are Monday–Friday, 7 a.m. to 9 p.m. (EST) (except for Federal holidays).

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the FFO announcement, contact the appropriate EDA regional office listed above. EDA's Internet Web site at *http://www.eda.gov* also contains additional information on EDA and its programs.

SUPPLEMENTARY INFORMATION:

Program Information: EDA encourages the submission of only those proposals or applications, as appropriate, which will significantly benefit regions with distressed economies. Distress may exist in a variety of forms, including high levels of unemployment, low income levels, large concentrations of low-income families, significant declines in per capita income, large numbers (or high rates) of business failures, sudden major layoffs or plant closures, trade impacts, military base closures, natural or other major disasters, depletion of natural resources, reduced tax bases, or substantial loss of population because of the lack of employment opportunities. EDA believes that regional economic development to alleviate these conditions is effected primarily through investments and decisions made by the private sector. EDA will give preference to proposals or applications (as appropriate) that include cash contributions (over in-kind contributions) as the matching share.

EDA will evaluate and select proposals or applications (as appropriate) according to the investment policy guidelines and funding priorities set forth below under ''Evaluation Criteria'' and ''Funding Priorities'' and in section V. of the FFO announcement.

Electronic Access: The FFO announcement for the FY 2007 Economic Development Assistance Programs competition is available at *http://www.Grants.gov.* Additional information is available through EDA's Internet Web site at *http://www.eda.gov.*

Funding Availability: EDA is operating with appropriations made available under the Revised Continuing Appropriations Resolution, 2007, Public Law 110–5 (February 15, 2007). This Act makes $250.741 million available in FY 2007 for the economic development assistance programs authorized by PWEDA and for the Trade Adjustment Assistance for Firms Program (TAA Program) authorized under the Trade Act.

This notice will remain in effect until it is terminated or supplanted by a future **Federal Register** notice. The funding periods and funding amount(s) referenced in this notice and in the FFO announcement are subject to the availability of funds at the time of award, as well as to Department of Commerce and EDA priorities at the time of award. The Department of Commerce and EDA will not be held responsible for proposal or application preparation costs. Publication of this notice and the FFO announcement does not obligate the Department of Commerce or EDA to award any specific grant or cooperative agreement or to obligate all or any part of available funds.

This request for proposals and applications covers the following programs under PWEDA: (1) Public Works and Economic Development Investments Program; (2) Planning Program; (3) Technical Assistance Program; and (4) Economic Adjustment Assistance Program. Under the Technical Assistance Program, this request for proposals and applications covers Local Technical Assistance only. A separate FFO announcement will be posted on *http://www.Grants.gov* that will set forth the specific funding priorities, application and selection processes, time frames, and evaluation criteria for certain National Technical Assistance projects to be funded with FY 2007 appropriations. Similarly, a separate FFO announcement has been posted at *http://www.Grants.gov* that sets forth the specific funding priorities, application and selection processes, time frames, and evaluation criteria for University Center projects to be funded with FY 2007 appropriated program funds. With respect to the TAA Program under the Trade Act, continuation grants will not be competed and no new Trade Adjustment Assistance Center (TAAC) grants will be awarded this year. *See* 19 U.S.C. 2341–2391 and 13 CFR part 315.

Statutory Authority: The authority for the (1) Public Works and Economic Development Investments Program, (2) Planning Program, (3) Technical Assistance Program, and (4) Economic Adjustment Assistance Program is PWEDA. The authorities for the TAA

Program are Chapters 3 and 5 of Title II of the Trade Act. EDA published final regulations (codified at 13 CFR Chapter III) in the **Federal Register** on September 27, 2006 (71 FR 56658). The final regulations became effective upon publication and reflect changes made to PWEDA by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373, 118 Stat. 1756). The final regulations and PWEDA are accessible on EDA's Internet Web site at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.*

Catalog of Federal Domestic Assistance (CFDA) Numbers: 11.300, Grants for Public Works and Economic Development Facilities; 11.302, Economic Development—Support for Planning Organizations; 11.303, Economic Development—Technical Assistance; 11.307, Economic Adjustment Assistance; 11.313, Economic Development—Trade Adjustment Assistance.

Applicant Eligibility: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance include a(n): (i) District Organization; (ii) Indian Tribe or a consortium of Indian Tribes; (iii) State, a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (iv) institution of higher education or a consortium of institutions of higher education; or (v) public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3. Projects eligible for Public Works or Economic Adjustment investment assistance include those projects located in regions meeting ''Special Need'' criteria (as defined in 13 CFR 300.3), as set forth in section VIII.B. of the FFO announcement.

For-profit, private-sector entities do not qualify for investment assistance under PWEDA, with one minor exception: EDA may award a grant under section 207 (42 U.S.C. 3147) of PWEDA under its Local Technical Assistance Program or National Technical Assistance Program to a for-profit organization for the specific purposes set forth in 13 CFR 306.1. EDA is not authorized to provide grants directly to individuals or to for-profit entities seeking to start or expand a private business. Such requests may be referred to State or local agencies, or to non-profit economic development organizations serving the region in which the project will be located.

Any community affected by the 1988, 1991, 1993, 1995 or 2005 base realignment and closure (BRAC) actions, which qualifies under EDA's Public Works Program or Economic Adjustment Assistance Program, may apply for assistance under one or both of these programs. EDA anticipates that proponents with construction proposals will seek funding from the Public Works Program, and strategic planning, credit enhancement or other innovative financing proposals will compete under the Economic Adjustment Assistance Program.

Cost Sharing Requirements: Generally, the amount of the EDA grant may not exceed fifty (50) percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty (30) percent, based on the relative needs of the region in which the project will be located, as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). For Planning Assistance, the minimum EDA investment rate for projects under 13 CFR part 303 is fifty (50) percent, and the maximum allowable EDA investment rate may not exceed eighty (80) percent. *See* 13 CFR 301.4(b)(3). For projects of a national scope under 13 CFR part 306 (Training, Research and Technical Assistance), and for all other projects under 13 CFR part 306, the Assistant Secretary of Commerce for Economic Development has the discretion to establish a maximum EDA investment rate of up to one-hundred (100) percent where the project (i) merits and is not otherwise feasible without an increase to the EDA investment rate; or (ii) will be of no or only incidental benefit to the recipient. *See* section 204(c)(3) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(4). In the case of EDA investment assistance to a(n) (i) Indian Tribe, (ii) State (or political subdivision of a State) that the Assistant Secretary determines has exhausted its effective taxing and borrowing capacity, or (iii) non-profit organization that the Assistant Secretary determines has exhausted its effective borrowing capacity, the Assistant Secretary has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent of the total project cost. *See* sections 204(c)(1) and (2) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(5). Potential applicants should contact the appropriate EDA regional office to make these determinations.

In the proposal (or application) review process, EDA will consider the nature of the contribution (cash or in-kind) and the amount of the matching share funds. While cash contributions are preferred, in-kind contributions, fairly evaluated by EDA, may provide the required non-federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144) and section I.B. of the FFO announcement for this request for proposals and applications. In-kind contributions, which may include assumptions of debt and contributions of space, equipment and services, are eligible to be included as part of the non-federal share of eligible project costs if they meet applicable Federal cost principles and uniform administrative requirements. Funds from other federal financial assistance awards are considered matching share funds only if authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project, available as needed and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Proposals or applications for assistance under EDA's programs are subject to the State review requirements imposed by Executive Order 12372, ''*Intergovernmental Review of Federal Programs.*''

Evaluation and Selection Procedures: Each pre-application or application (as appropriate) is circulated by a project officer within the applicable EDA regional office for review and comments. When the necessary input and information are obtained, the pre-application or application (as appropriate) is considered by the regional office's Investment Review Committee (IRC), which is comprised of regional office staff. The IRC discusses the pre-application or application (as appropriate) and evaluates it on two levels to (a) determine if the pre-application or application (as appropriate) meets the program-specific award and application requirements provided in 13 CFR 305.2 for Public Works investments, 13 CFR 303.3 for Planning investments, 13 CFR 306.2 for Local and National Technical Assistance, and 13 CFR 307.2 and 307.4 for Economic Adjustment Assistance; and (b) evaluate each pre-application or application (as appropriate) using the general evaluation criteria set forth in 13 CFR 301.8. These general evaluation criteria also are provided below under ''Evaluation Criteria.''

In the case of a pre-application, after completing its evaluation, the IRC recommends to the Regional Director whether an application should be

invited, documenting its recommendation in the meeting minutes or in the Investment Summary and the Project Proposal Summary and Evaluation Form. For quality control assurance, EDA Headquarters reviews the IRC's analysis of the project's fulfillment of the investment policy guidelines set forth below under ''Evaluation Criteria'' and in 13 CFR 301.8. After receiving quality control clearance, the Selecting Official, who is the Regional Director, considers the evaluations provided by the IRC and the degree to which one or more of the funding priorities provided below are included, in making his/her decision as to which proponents should be invited to submit formal applications for investment assistance. The Selecting Official then formally invites successful proponents to submit full applications (on Form ED–900A). If the Selecting Official declines to invite a full application, he/she provides written notice to the proponent.

If a proponent is selected to submit a formal application, the appropriate regional office will provide application materials and guidance in completing them. The proponent will generally have thirty (30) days to submit the completed application materials to the regional office. EDA staff will work with the proponent to resolve application deficiencies. EDA will notify the applicant if EDA accepts a completed application, and it is forwarded for final review and processing in accordance with EDA and Department of Commerce procedures.

Evaluation Criteria: EDA will select investment proposals or applications (as appropriate) competitively based on the investment policy guidelines and funding priority considerations identified in this notice. EDA will evaluate the extent to which a project embodies the maximum number of investment policy guidelines and funding priorities possible and strongly exemplifies at least one of each. All investment proposals or applications (as appropriate) will be competitively evaluated primarily on their ability to satisfy one (1) or more of the following investment policy guidelines, each of equivalent weight and which also are set forth in 13 CFR § 301.8.

1. *Be market-based and results driven.* An EDA investment will capitalize on a region's competitive strengths and will positively move a regional economic indicator measured on EDA's Balanced Scorecard, such as: An increased number of higher-skill, higher-wage jobs; increased tax revenue; or increased private sector investment.

2. *Have strong organizational leadership.* An EDA investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a project's successful execution.

3. *Advance productivity, innovation and entrepreneurship.* An EDA investment will embrace the principles of entrepreneurship, enhance regional industry clusters, and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

4. *Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.* An EDA investment will be part of an overarching, long-term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters, or attracting new regional economic drivers.

5. *Demonstrate a high degree of local commitment by exhibiting:*

- High levels of local government or non-profit matching funds and private sector leverage;
- Clear and unified leadership and support by local elected officials; and
- Strong cooperation between the business sector, relevant regional partners and local, State and Federal governments.

In addition to using the investment policy guidelines set forth above, EDA also will evaluate all Planning proposals or applications (as appropriate) based on the (i) quality of the proposed scope of work for the development, implementation, revision or replacement of a comprehensive economic development strategy (CEDS); and (ii) qualifications of the proponent to implement the goals and objectives resulting from the CEDS. *See* 13 CFR 303.3(a)(1) and (2). To ensure that the proposal fully meets these requirements, proponents should pay particular attention to 13 CFR 303.7(b), which sets forth specific technical requirements for the CEDS.

Funding Priorities: Successful proposals or applications (as appropriate) for EDA's investment programs will be regionally-driven initiatives in areas of the Nation that are underperforming and eligible for EDA assistance, and that meet one or more of the following core criteria (investment proposals or applications that meet more than one core criterion will be given more favorable consideration):

1. *Investments in support of long-term, coordinated and collaborative regional economic development approaches:*

- Establish comprehensive regional economic development strategies that identify promising opportunities for long-term economic growth.
- Exhibit demonstrable, committed multi-jurisdictional support from leaders across all sectors:

i. Public (e.g., mayors, city councils, county executives, senior state leadership);

ii. Institutional (e.g., institutions of higher learning);

iii. Non-profit (e.g., chambers of commerce, development organizations); and

iv. Private (e.g., leading regional businesses, significant regional industry associations).

- Generate quantifiable positive economic outcomes.

2. *Investments that support innovation and competitiveness:*

- Develop and enhance the functioning and competitiveness of leading and emerging industry clusters in an economic region.
- Advance technology transfer from research institutions to the commercial marketplace.
- Bolster critical infrastructure (e.g., transportation, communications, specialized training) to prepare economic regions to compete in the world-wide marketplace.

3. *Investments that encourage entrepreneurship:*

- Cultivate a favorable entrepreneurial environment consistent with regional strategies.
- Enable economic regions to identify innovative opportunities among growth-oriented small and medium-size enterprises.
- Promote community and faith-based entrepreneurship programs aimed at improving economic performance in an economic region.

Additional consideration will be given to investment proposals or applications (as appropriate) which also:

- Respond to sudden and severe economic dislocations (e.g., major layoffs and/or plant closures, disasters).
- Enable BRAC-impacted communities to transition from a military to civilian economy.
- Advance the goals of linking historic preservation and economic development as outlined by Executive Order 13287, ''Preserve America.''
- Support the economic revitalization of brownfields.

The Department of Commerce Pre-Award Notification Requirements for

Grants and Cooperative Agreements: The administrative and national policy requirements for all Department of Commerce awards, contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements,* published in the **Federal Register** on December 30, 2004 (69 FR 78389), are applicable to this competitive solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Forms ED–900P (*Pre-Application for Investment Assistance*) and ED–900A (*Application for Investment Assistance*) has been approved by the Office of Management and Budget (OMB) under the control number 0610–0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866 (Regulatory Planning and Review): This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 16, 2007.

Sandy K. Baruah,

Assistant Secretary of Commerce for Economic Development.

[FR Doc. E7–5223 Filed 3–21–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–838)

Clad Steel Plate from Japan: Continuation of Antidumping Duty Order

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 duty order on clad steel plate from Japan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing notice of continuation of this antidumping duty order.

EFFECTIVE DATE: March 22, 2007.

FOR FURTHER INFORMATION CONTACT: Nichole Zink 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) 482–0049 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2006, the Department initiated and the ITC instituted a sunset review of the antidumping duty order on clad steel plate from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1]

As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2] On March 5, 2007, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on clad steel plate from Japan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The scope of this order is all clad[4] steel plate of a width of 600 millimeters (mm) or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.

Stainless clad steel plate is manufactured to American Society for Testing and Materials (ASTM) specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel–base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all–inclusive.

Clad steel plate within the scope of this order is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of this antidumping duty order would likely lead to continuation or recurrence of dumping and 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 antidumping duty order on clad steel plate from Japan.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal**

[1] *See Initiation of Five-Year ("Sunset") Reviews*, 71 FR 57921 (Oct. 2, 2006); and *Clad Steel Plate From Japan*, Investigation No. 731-TA-739 (Second Review), 71 FR 57996 (Oct. 2, 2006).

[2] *See Clad Steel Plate from Japan; Final Results of the Expedited Sunset Review (Second Review) of the Antidumping Duty Order*, 72 FR 4482 (Jan. 31, 2007).

[3] *See Clad Steel Plate from Japan*, Investigation No. 731-TA-739 (Second Review), 72 FR 10556 (Mar. 8, 2007).

[4] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (*e.g.*, by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition of superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (*e.g.*, electrocladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling. *See* Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV) (C) (2) (e).

Register of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than February 2012.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i) of the Act.

Dated: March 15, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–5269 Filed 3–21–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–489–502)

Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 27, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (''CVD'') order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2005, through December 31, 2005. *See Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 68550 (November 27, 2006) (''*Pipe Preliminary Results*''). The Department preliminarily found that the Borusan Group (''Borusan''), the producer/exporter of subject merchandise covered by this review, received countervailable subsidies during the period of review (''POR''). We did not receive any comments on our preliminary results and have made no revisions to those results.

EFFECTIVE DATE: March 22, 2007.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** the CVD order on certain welded carbon steel pipe and tube products from Turkey. *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986). On November 27, 2006, the Department published in the **Federal Register** the preliminary results for this review. *See Pipe Preliminary Results*, 71 FR 68850.

In accordance with 19 CFR 351.213(b), this review covers Borusan, the only producer/exporter of the subject merchandise for which a review was specifically requested.[1] In the *Pipe Preliminary Results*, we invited interested parties to submit case briefs commenting on the preliminary results or to request a hearing. We did not hold hearing in this review, as one was not requested, and did not receive any case briefs.

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (''HTSUS'') as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of Review

As noted above, the Department received no comments concerning the preliminary results. Therefore, consistent with the *Pipe Preliminary Results*, we continue to find that Borusan received countervailable subsidies during the POR. In accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''), we calculated a total net subsidy rate of 0.23 percent *ad valorem*, which is *de minimis*, pursuant to 19 CFR 351.106(c).

As there have been no changes to or comments on the preliminary results, we are not attaching a decision memorandum to this **Federal Register** notice. For further details of the programs included in this proceeding, see the *Pipe Preliminary Results*.

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of this review, to liquidate shipments of subject merchandise by Borusan entered, or withdrawn from warehouse, for consumption on or after January 1, 2005, through December 31, 2005, without regard to countervailing duties because a *de minimis* subsidy rate was calculated. We will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise by Borusan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non–reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

Return of Destruction of Proprietary Information

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 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 is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 16, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–5270 Filed 3–21–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] During the POR, Borusan was comprised of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031507C]

Receipt of an Application for Incidental Take Permit (1603)

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

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the North Carolina Division of Marine Fisheries (NCDMF) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a conservation plan designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile sea turtles associated with commercial shrimp trawling without the use of a turtle excluder device (TED) off the coast of North Carolina from Browns Inlet to Rich Inlet due to high concentrations of algae which clog shrimp trawls and TEDs. The duration of the proposed Permit is for 5 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the Permit application and Plan must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Eastern daylight time on April 23, 2007.

ADDRESSES: Written comments on this action should be addressed to David Cottingham, Chief, Marine Mammal and Sea Turtle Conservation Division, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910; or by fax (301) 427–2522, or by e-mail at: *nmfs.itp.1603@noaa.gov*. The application is available for download and review at *http://www.nmfs.noaa.gov/pr/permits/esa__review.htm*.

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder (ph. 301–713–2322, fax 301–427–2522, e-mail *Barbara.Schroeder@noaa.gov*; Dennis Klemm (ph. 727–824–5312, fax 727–824–5309, e-mail *Dennis.Klemm@noaa.gov*). Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301–713–2322.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

NMFS issued Permit 1325 to NCDMF (66 FR 51023, October 5, 2001) and Permit 1008 (61 FR 39442, July 29, 1996). Permit 1325 expired December 31, 2006 and had been issued for the years 2001–2006, replacing the previous permit (1008) which had been issued for the years 1996–2000. Permit 1008 replaced NMFS emergency rules which were issued from 1992 through 1995. The two previously issued permits and the emergency rules allowed limited tow times in lieu of the use of TEDs in an area off the North Carolina coast from Browns Inlet to Rich Inlet (approximately 30 nautical miles long (55.6km) and extending 1 nautical mile (1.9km) offshore) because of high concentrations of algae which clog shrimp trawl nets and TEDs. On December 18, 2006 NCDMF submitteD an application to NMFS for a Permit (1603) to authorize the continued use of limited tow times in lieu of TEDs in the same area (Browns Inlet to Rich Inlet) when high concentrations of algae clog shrimp trawl nets and TEDs.

Conservation Plan

The conservation plan prepared by the NCDMF describes measures designed to monitor, minimize, and mitigate the incidental take of ESA-listed sea turtles annually from April 1 through November 30. The conservation plan includes two primary management measures, the issuance of proclamations by the NCDMF requiring vessels to obtain a tow time permit if they wish to trawl without TEDs in the restricted area and the implementation of seasonally-based tow time requirements in lieu of TEDs within the restricted area for authorized vessels. NCDMF proposes to monitor compliance and effectiveness of the management measures via monitoring of sea turtle strandings. NCDMF proposes to terminate or modify tow time permits if strandings exceed specified thresholds in the restricted area. This is a change in monitoring from the previous conservation plan and permit, which included on-board observer coverage. The conservation plan also includes enforcement of tow times in the restricted area by Marine Patrol officers.

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: March 16, 2007.

Thomas C. Eagle,

Acting Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–5272 Filed 3–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology Nomination Evaluation Committee Meeting

AGENCY: Technology Administration, U.S. Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The National Medal of Technology Nomination Evaluation Committee will meet in closed session on Tuesday, April 3, 2007. The primary purpose of the meeting is the discussion of relative merits of persons and companies nominated for the Medal.

DATES: The meeting will convene Tuesday, April 3, 2007 at 10 a.m. and adjourn at 4 p.m.

ADDRESSES: The meeting will be held at the Department of Commerce, Technology Administration, 1401 Constitution Avenue, NW., Washington, DC, Room 4824.

FOR FURTHER INFORMATION CONTACT: Connie Chang, Research Director, Office of the Under Secretary, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Herbert C. Hoover

Building, Room 4824, Washington, DC 20230, telephone: 202–482–1575.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Medal of Technology Nomination Evaluation Committee (NMTNEC), Technology Administration, will meet at the U.S. Department of Commerce in the District of Columbia.

The committee, consisting of twelve members, was established in accordance with the provisions of the Committee's charter and the Federal Advisory Committee Act. The NMTNEC meeting will be closed to the public in accordance with Section 552b(c)(9)(B) of Title 5, U.S.C. because it will involve discussion of relative merits of persons and companies nominated for the Medal. Public disclosure of this information would likely frustrate implementation of the National Medal of Technology program because premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal.

The Secretary of Commerce is responsible for recommending to the President prospective recipients of the National Medal of Technology. The committee makes its recommendations for Medal candidates to the Secretary of Commerce, who in turn makes recommendations to the President for final selection. Committee members are drawn from both the public and private sectors and are appointed by the Secretary for three-year terms, with eligibility for one reappointment. The committee members are composed of distinguished experts in the fields of science, technology, business and patent law.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 14, 2007 pursuant to Section 10(d) of the Federal Advisory Committee Act, that the meeting may be closed because they are concerned with matters that are within the purview of 5 U.S.C. 552(c)(4), (6) and (9)(B). Due to closure of the meeting, copies of the minutes of the meeting will not be available. A copy of the determination is available for public inspection in Technology Administration, Room 4824, U.S. Department of Commerce.

Dated: March 19, 2007.

Robert C. Cresanti,

Under Secretary for Technology.

[FR Doc. 07–1436 Filed 3–21–07; 8:45 am]

BILLING CODE 3510–18–M

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 Learn and Serve America Progress Report 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, Ms. Cara Patrick at (202) 606–6905. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 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 October 3, 2006. This comment period ended December 11, 2006. No public comments were received from this notice.

Description: The Corporation was soliciting comments concerning the proposed renewal of its Learn and Serve America Progress Report. These reports must be completed by all Learn and Serve America grantees in order to ensure appropriate Federal oversight, determine progress toward meeting program objectives and make decisions related to continuation funding.

Learn and Serve America provides grants to state education agencies, higher education institutions, tribes, and U.S. Territories, national nonprofits and state commissions on nation and community service to implement service-learning programs. To ensure appropriate oversight of Federal funds, Learn and Serve America requires all grant recipients to submit Progress Reports describing grant activities and progress toward approved program objectives. Information received from the reports informs continuation funding decisions and how to target training and technical assistance.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Progress Report.

OMB Number: 3045–0089.

Agency Number: None.

Affected Public: State and Local Government, Not-for-profit institutions.

Total Respondents: 103.

Frequency: Twice annually.

Average Time Per Response: 2 hours.

Estimated Total Burden Hours: 412 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 27, 2007.

Amy Cohen,

Director, Learn and Serve America.

[FR Doc. E7–5228 Filed 3–21–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Final Environmental Impact Statement (FEIS) for Base Closure and Realignment (BRAC) Actions at Fort Sam Houston, TX

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of an FEIS which evaluates the potential environmental impacts associated with realignment actions directed by the BRAC Commission at Fort Sam Houston and Camp Bullis, Texas.

DATES: The waiting period for the FEIS will end 30 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: For more information or to obtain a copy of the FEIS, please contact: Mr. Phillip Reidinger, Public Affairs Office, Building 124, 1212 Stanley Road, Fort Sam Houston, Texas 78234; e-mail *Phillip.Reidinger@samhouston.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Reidinger at (210) 221–1151.

SUPPLEMENTARY INFORMATION: The subject of the FEIS and the Proposed Action are the construction and renovation activities, and movement of personnel associated with the BRAC directed realignment of Fort Sam Houston. The FEIS also evaluates effects of Army Modular Force transformation activities that will occur at Fort Sam Houston at the same time that the BRAC actions are being implemented.

To implement the applicable portions of the BRAC recommendations, Fort Sam Houston will be receiving personnel, equipment, and missions from various realignment and closure actions within the Department of Defense. Additionally, the Army had planned to conduct a series of non-BRAC transformations to position its forces strategically for the future. These transformations require consideration in conjunction with the BRAC initiatives at Fort Sam Houston. Additionally, permanent facilities will be constructed or renovated to house the 470th Military Intelligence Brigade and various Headquarters units of the new Army North and Sixth Army (U.S. Army South or USARSO), which are currently located in a mix of temporary and existing facilities.

To enable implementation of the BRAC Commission recommendations and accommodation of the concurrent Army initiatives, the Army must provide the necessary facilities/buildings and infrastructure to support the changes in force structure.

Following a rigorous examination of all implementation alternatives, those alternatives found not to be viable were dropped from further analysis in the Fort Sam Houston FEIS. Alternatives carried forward include (1) The Preferred Alternative and (2) a No Action Alternative. The Preferred Alternative includes construction, renovation, and operation of proposed facilities to accommodate incoming military missions at Fort Sam Houston. Minor siting variations of proposed facilities were also evaluated.

Planned undertakings within the National Historical Landmark (NHL) District, including the demolition of existing buildings and construction of new buildings, will be reviewed using the Installation Design Guide historic review requirements and the Standard Operating Procedures (SOPs) in the Historic Properties Component (HPC) of the Integrated Cultural Resources Management Plan. If demolition cannot be avoided, the determination of effects to cultural resources of the NHL District and required mitigation will be determined per the HPC SOPs. Implementation of the preferred alternative will have no long-term, significant impacts on other environmental resources of Fort Sam Houston or Camp Bullis or their surrounding areas.

The FEIS analyses indicate that implementation of the preferred alternative would have no long-term, significant impacts on the other environmental resources of Fort Sam Houston or Camp Bullis or their surrounding areas. Potential minor impacts to visual resources from implementation of the preferred alternative would generally occur only within the physical boundaries of Fort Sam Houston and Camp Bullis. No long-term significant impacts to earth (geology, topography, caves, karst features or soils) or wetlands will occur at either installation. Potential land use impacts are expected at Fort Sam Houston. Use of utilities and generation of hazardous and non-hazardous wastes will likely increase at both installations, but not in significant amounts.

Minor air, noise and transportation impacts would also occur during short-term construction activities under the preferred alternative at both installations and continue after final construction and occupancy. No significant impacts to biological resources (vegetation, wildlife, and threatened and endangered species) are expected from the implementation of the preferred alternative. Alternative siting variations would result in similar impacts and benefits as compared to the preferred alternative.

An electronic version of the FEIS can be viewed or downloaded from the following Web site: *http://www.hqda.army.mil/acsimweb/brac/nepa_eis_docs.htm.*

Dated: March 15, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health).

[FR Doc. 07–1393 Filed 3–21–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for Base Realignment and Closure (BRAC) and Enhanced Use Lease (EUL) Actions at Fort Meade, MD

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of the DEIS which evaluates the potential environmental impacts associated with realignment actions directed by the Base Realignment and Closure (BRAC) Commission and Army Enhanced Use Lease (EUL) Actions at Fort Meade, Maryland.

DATES: The public comment period for the DEIS will end 45 days after publication of an NOA in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Please send written comments on the DEIS to: Ms. Melanie Moore at Fort Meade, Public Affairs Office, 4550 Pershing Hall, Room 102, Fort Meade, MD 20755 or via e-mail at *melanie.moore@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Moore at (301) 677–1301 during normal business hours Monday through Friday.

SUPPLEMENTARY INFORMATION: The Proposed Action and subject of the DEIS covers the construction activities, and movement of personnel associated with the BRAC realignment activities. The DEIS also covers the proposed Army EUL actions that will occur at Fort Meade at the same time that the BRAC action is being implemented.

To implement the BRAC recommendations, Fort Meade will be receiving personnel, equipment, and missions from various realignment and

closure actions within the Department of Defense. Additionally, Fort Meade plans to use the EUL program to implement projects that would allow the installation to better execute its comprehensive master plan and would support the proposed BRAC-directed projects. The EUL actions are considered concurrently with the BRAC initiatives at Fort Meade. To implement the BRAC Commission recommended initiatives, the Army will provide the necessary facilities/buildings and infrastructure to support the changes as recommended. Permanent facilities will be constructed to house the Defense Information Systems Agency (DISA), the DoD Media Activities (DMA), and the Adjudication and Office of Hearing and Appeals Offices, which are currently located in a mix of leased facilities and at government installations.

To implement the EUL action, Fort Meade proposes to lease to a private developer approximately 173 acres in two parcels for a term of 50 years. The installation would receive in-kind development of a 367-acre parcel. Because the development of these three parcels would have potential impacts in the same region as the BRAC realignment actions, it is considered in this DEIS. The two EUL parcels that will be leased are located on installation property outside the fence line. The parcel for in-kind development is located within the fence line along the perimeter of the installation.

Following an examination of all implementation alternatives, those alternatives found not to be viable were dropped from further analysis in the Fort Meade DEIS. Alternatives carried forward include: (1) The Preferred BRAC Realignment and EUL Action Alternative, (2) BRAC Realignment without EUL and associated construction, and (3) a No action Alternative. The Preferred Alternative includes construction and operation of proposed facilities to accommodate incoming military missions at Fort Meade as mandated by the 2005 BRAC recommendations and Army EUL actions. Alternative siting variations of proposed BRAC facilities were also evaluated.

The DEIS analyses indicate that implementation of the preferred alternative, BRAC and EUL Actions Alternative, would have long-term, significant impacts on transportation, land use, socioeconomics (demographics and schools), visual and aesthetic resources, biological (vegetation and wildlife), utilities (wastewater and storm water drainage). Implementation of the preferred alternative would have short-term significant impacts to noise, energy sources, and solid waste disposal; and short-term minor effects to surface water during construction activities. Implementation of the preferred alternative would have no significant impacts to air quality, geology and soils; water resources (ground-water, floodplains, and coastal zones); biological (rare, threatened, and endangered species and aquatic species); socioeconomics (economic development, housing, and law enforcement); utilities (potable water, energy sources-operations, solid waste-operations); and hazardous and toxic substances. There would be no impacts to cultural resources, socioeconomics (environmental justice or protection of children) from implementation of the BRAC and EUL Actions Alternative. Alternative siting variations would provide similar impacts and benefits as compared to the preferred alternative. The no action alternative provides the baseline conditions for comparison to the preferred alternative.

The Army invites the general public, local governments, other Federal agencies, and state agencies to submit written comments or suggestions concerning the alternatives and analyses addressed in the DEIS. The public and government agencies are invited to participate in a public meeting where oral and written comments and suggestions will be received. The public meeting will be held on April 18, 2007 from 6 p.m. to 8 p.m. at the School-Age Services Building, 1900 Reece Road, Fort Meade, MD 20755. The DEIS is available at *http://www.hqda.army.mil/acsimweb/brac/nepa_eis_docs.htm.*

Dated: March 15, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health).

[FR Doc. 07–1394 Filed 3–21–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Model Demonstration Centers on Early Childhood Language Intervention; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326M.

Dates:

Applications Available: March 22, 2007.

Deadline for Transmittal of Applications: May 7, 2007.

Deadline for Intergovernmental Review: July 5, 2007.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $1,200,000.

Estimated Average Size of Award: $400,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 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**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. As described in the *Priority* section of this notice, the Secretary may fund the project for a fifth year to collect and analyze data on children's developmental progress following their participation in the intervention model.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program promotes academic achievement and improves results for children with disabilities by supporting technical assistance, model demonstration projects, dissemination of useful information, and implementation activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

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:

Model Demonstration Centers on Early Childhood Language Intervention

Background:

Children's ability to communicate and the quality of their communication

affect their developmental trajectories, their learning, their ability to interact with and relate to others, and their success in school. Communication is accomplished through the use of a shared code, i.e., language, which can be a spoken, written or other symbol system. While language development typically is a robust process for children, there are factors that can negatively affect language acquisition either by limiting the quality or quantity of linguistic input a child receives or by interfering with the way in which a child processes that input (National Research Council, 2000). A language disorder is defined as impaired comprehension and/or use of language. While a language disorder may be a child's primary disability, it may be secondary to other disabilities such as autism or a hearing impairment (including deafness).

Many young children receiving services under IDEA participate in speech and language interventions. In the National Early Intervention Longitudinal Study (NEILS), service providers reported that 53 percent of infants and toddlers received speech and language therapy within the first six months of beginning early intervention services. Additionally, the 2004 IDEA child count data indicate that 47 percent of three through five year olds served under the Part B program of IDEA have speech or language impairments, though the actual number is likely to be much higher because this number does not include children who have speech or language impairments but are identified as having a developmental delay and children with primary disabilities other than speech or language impairments who also have language disorders.

Functional or naturalistic language interventions have been shown to be effective in increasing the overall quantity and quality of children's communication and language skills (Owens, 2004; Warren, Yoder, & Leew, 2002). A functional language approach to intervention is grounded in the principle that language develops for the purpose of communicating within a social environment. Intervention practices or teaching strategies are therefore implemented within the context of children's daily activities and routines to promote their communication and language development. This intervention approach is child-centered in that it focuses on children's interests and supports their attempts to communicate within social interactions. A functional language approach stresses the importance of engaging adults in a child's environment, including family members, childcare providers, and interventionists as language facilitators so that they can use empirically valid strategies to support children's language and communication development across communicative contexts and partners. A functional language approach is different from language interventions that are directed by an adult and target discrete, isolated language skills within artificial situations.

Children with significant language disorders are often served by a variety of professionals, and it is not uncommon for them to receive interventions that are based on one theoretical and empirical framework for the first few years and then transition to a program that emphasizes a very different approach with divergent theoretical underpinnings and empirical support. If this shift in intervention approaches is dramatic, the child may lose skills he or she has acquired under the previous approach and family members may experience confusion and uncertainty about what the child should be learning and how they should support those experiences. Continuity in the interventions that are provided across early intervention and preschool settings could lessen any confusion and uncertainty experienced by families of young children with disabilities as they transition from one program to another.

Children with significant language disorders are at high risk for social and academic difficulties. To support infants, toddlers, and preschoolers with disabilities in developing the skills they will need to communicate competently, there is a need for a scientifically based evaluation of effective functional language intervention models implemented within natural settings. This need is especially critical for young children with significant language disorders who are served across both early intervention and preschool programs. The Department is interested in evaluating functional language intervention models that address the diverse population of infants, toddlers, and preschool children served under both Part C and Part B of IDEA, especially those children who need intensive language interventions as a result of a specific language disorder, or a language disorder that is secondary to other disabilities such as autism or a hearing impairment (including deafness).

Priority:

The purpose of this priority is to support three (3) Centers to evaluate models that incorporate scientifically based research related to language interventions for children birth through five with significant language disorders served across the Part C and Part B preschool programs under IDEA. Each Center will work with no less than three sites and will implement the same functional language intervention model in each of these sites. Each site must serve children with disabilities ages birth through five, either in separate early intervention and preschool programs within the same community or through a coordinated system that serves children with disabilities ages birth through five. Each site must include both an early intervention component and a preschool component so that critical elements of the language intervention models are consistent as children transition from IDEA Part C to Part B services.

Each Center must implement and evaluate the functional language intervention model in early childhood environments, such as child care settings, Head Start programs, private or public preschools, early childhood special education settings, and home/community-based environments to determine their usefulness, effectiveness, and general applicability to these typical settings.

An applicant must describe, in its application—

(a) The proposed model and the supporting evidence for the model as a whole, including empirical support of the critical components that comprise the model;

(b) The knowledge, experience, and capabilities of the key staff who will be responsible for the development and implementation of the functional language intervention model across the early intervention and preschool programs;

(c) The methods to be used for recruiting and selecting sites, and if the applicant has identified sites that would be willing to participate in the model demonstrations, a description of the population of children typically served by these sites. The final site selection will be determined following the first cross-project meeting; and

(d) The partnership that the Center has established with local early intervention and preschool programs to implement the model and to increase the likelihood that personnel will develop sufficient expertise in order to sustain the model after project completion.

To meet the requirements of this priority, each Center, at a minimum, must—

(1) Conduct a systematic review of the research on evidence-based language interventions that focuses on functional communication within natural settings that are appropriate for young children

ages birth through five with significant language disorders. To the extent possible, the Center must use the standards established by the What Works Clearinghouse, (*http://www.whatworks.ed.gov/reviewprocess/study_standards_final/pdf*). If it is not possible to use these standards, other rigorous standards must be used to identify evidence-based interventions and practices;

(2) Design and implement a language intervention model that: (a) Focuses on language development and readiness skills for young children ages birth through five with significant language disorders; (b) is grounded in a scientifically based functional approach to language intervention that is embedded within the context of practices that are developmentally appropriate and empirically supported; (c) takes into account continuity of interventions by enrolling children in the Part C program and following them through the Part B program until the completion of the model demonstration project; (d) can be adapted based on specific characteristics of the child, such as age and disability; and (e) is designed to lead to improved outcomes for young children with significant language disorders;

(3) Provide initial and ongoing professional development to early interventionists, early childhood special educators, related service providers, and early care and education personnel in the project working with young children with disabilities and who are charged with implementing the model. Ensure that there is a process for providing feedback to personnel participating in the project on their implementation of the language intervention model;

(4) Implement an evaluation plan that includes a detailed description of the full model and the critical elements of the model, a description of the system variables required to implement and sustain the model, and the processes for collecting and analyzing specific project and cross-project data related to: (a) The effectiveness of the language intervention model, including child outcomes; (b) the fidelity of the implementation of the model and acceptable variations; (c) the continuity of the model across the Part C and Part B programs; and (d) the effectiveness of the professional development provided to personnel participating in the model demonstrations. Common cross-site data to be collected will be determined following the first cross-project meeting;

(5) Document the effects of a consistent language intervention approach on the transition process as children move from the IDEA Part C program to the Part B program;

(6) Identify methods for effectively supporting communication and collaboration among families, community agencies, and program/Center staff to implement the language intervention model across the Part C and Part B programs;

(7) Coordinate with the other Centers funded under this competition and the Model Demonstration Coordination Center (MDCC) to determine a cross-project plan for evaluating the impact of these models on children's developmental progress and outcomes. The MDCC is a separate center funded by OSEP that is responsible for coordinating implementation and analyzing data to determine the effectiveness of intervention models. The MDCC is developing a data coordination plan and cross-site data collection instruments and will generate common evaluation questions, synthesize and analyze data, monitor implementation fidelity, ensure data reliability, and foster information dissemination. As part of cross-site coordination, Centers will be asked to collect common measures that may or may not be the same as those proposed by the applicant. Common measures may include observations or assessments of programs, classrooms, or children participating in the language intervention model as well as programs, classrooms, or children who were not part of the language intervention model. The purpose of the data is to provide general information on the contexts in which models are more fully implemented and effective;

(8) Develop regular communication with OSEP's other funded centers, as appropriate, to share information regarding topics such as successful strategies and implementation challenges for language interventions for children with significant language disorders in early childhood environments;

(9) As appropriate, develop and apply strategies for disseminating implementation information to specific audiences, including early interventionists, preschool special educators, related service providers, families, administrators, policymakers, and researchers. These dissemination strategies must involve collaboration with MDCC, and with technical assistance providers, including parent centers funded by OSEP;

(10) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the Project Officer to be designated by OSEP and the document review board of OSEP's Dissemination Center;

(11) Budget for the Center's project director to attend a three-day Project Directors' meeting in Washington, D.C. during each year of the project; and one additional yearly meeting with OSEP and the MDCC (the first meeting to take place within one month of the project's January 1, 2008 start date);

(12) If a Web site is maintained, format the information and documents on the Web site in a manner that meets a government or industry-recognized standard for accessibility.

Fifth Year of the Project:

In deciding whether to continue funding the Center for the fifth year, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center;

(b) The degree to which the Center recruited and retained a large enough sample of children to allow for meaningful data collection and analysis of where children were served, the type of services they received, and their developmental progress and outcomes once they exited preschool programs.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of IDEA makes the public comment requirements under the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply only to IHEs.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,200,000.

Estimated Average Size of Award: $400,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 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**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. As described in the *Priority* section of this notice, the Secretary may fund the project for a fifth year to collect and analyze data on children's developmental progress following their participation in the intervention model.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), 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 84.326M.

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 Grants and Contracts Services Team 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. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 22, 2007.

Deadline for Transmittal of Applications: May 7, 2007.

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**.

Deadline for Intergovernmental Review: July 5, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

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.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide *Grants.gov* Apply site in FY 2007. The Model Demonstration Centers on Early Childhood Language Intervention-CFDA Number 84.326M is one of the competitions included in this project. We request your participation in *Grants.gov.*

If you choose to submit your application electronically, you must use the *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for The Model Demonstration Centers on Early Childhood Language Intervention at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

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 time and date stamped. Your application must be fully uploaded and submitted, and must be date/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/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/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 application 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 of the steps in the *Grants.gov* registration process (*see http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, (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 successfully submit an application via *Grants.gov.*
- 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.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to 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 above 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 an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include 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 System Unavailability

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 as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the 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 (if available). 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: Extensions referred to 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 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 84.326M), 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 84.326M), 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, or

(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, or

(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 84.326M), 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 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34

CFR 75.210 and are listed in the application package.

2. *Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

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.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed measures that will yield information on various aspects of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on: the extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Christy Kavulic, U.S. Department of Education, 400 Maryland Avenue, SW., room 4057, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7359.

If you use a telecommunications device for the deaf (TDD), you may call 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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. *Telephone:* (202) 245–7363.

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: March 16, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–5267 Filed 3–21–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–9–000]

Bay Gas Storage Company, Ltd.; Notice of Rate Filing

March 16, 2007.

Take notice that on March 8, 2007, Bay Gas Storage Company, Ltd. (Bay Gas) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. Bay Gas requests the Commission to approve incremental rates for Bay Gas's mainline facilities for firm transportation and interruptible transportation services and also rates for Bay Gas's Whistler spur facilities for firm transportation and interruptible services for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978. In addition, Bay Gas proposes a tracking methodology for lost-and-unaccounted-for gas volumes cost recovery, and a gas quality/interchangeability provision.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time March 27, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5203 Filed 3–21–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–11–005]

Enbridge Pipelines (Louisiana Intrastate) LLC; Notice of Compliance Filing

March 16, 2007.

Take notice that on March 5, 2007, Enbridge Pipelines (Louisiana Intrastate) LLC filed its annual revision of the fuel percentage on its system pursuant to section 3.2 of its Statement of Operating Conditions. Louisiana Intrastate seeks an effective date of April 1, 2007.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 27, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5202 Filed 3–21–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–98–000]

Southern Natural Gas Company; Notice of Application

March 16, 2007.

Take notice that on March 16, 2007, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP07–98–000 an application pursuant to section 7(b) of the Commission's regulations under the Natural Gas Act (NGA), for authorization to abandon, by sale, to Atmos Energy Corporation (Atmos), its Columbus Lateral Line, its Columbus Lateral Loop Line, and its Columbus Meter Station. Southern also proposes to construct a new meter station under Section 157.211(a) and its blanket authority granted in Docket No. CP82–406–000 on September 1, 1982, to replace the Columbus Meter Station that will be sold to Atmos. The new meter station will be constructed and installed at the new interconnection between Southern's facilities and Atmos' facilities on Southern's West Point Line and Loop. All of the facilities are located in Lowndes County, Mississippi.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

In addition, Southern states that the proposed abandonment by sale and construction will not cause any adverse impact to its customers or their requirements because the sale will simply result in relocation of the existing custody transfer point for the Columbus Delivery Point and shippers' transactions will not be affected.

Any questions regarding this application should be directed to Patrick B. Pope, Vice President and General Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7126, or Patricia S. Francis, Senior Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7696.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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, 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, or in support of or in opposition to 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. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. 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.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: April 6, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5201 Filed 3–21–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 16, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–421–001.
Applicants: Wisconsin Power and Light Company.
Description: Wisconsin Power and Light Company submits a revised Power Supply Agreement in compliance with FERC's 2/16/07 Order.
Filed Date: 03/14/2007.
Accession Number: 20070315–0084.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 04, 2007.

Docket Numbers: ER07–612–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits corrected tariff sheets for its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff.
Filed Date: 03/09/2007.
Accession Number: 20070315–0086.
Comment Date: 5 p.m. Eastern Time on Friday, March 23, 2007.

Docket Numbers: ER07–613–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits certain amendments to the currently-effective ISO Tariff designed to facilitate implementation of the Market Redesign and Technology Upgrade Program.
Filed Date: 03/09/2007.
Accession Number: 20070315–0087.
Comment Date: 5 p.m. Eastern Time on Friday, March 30, 2007.

Docket Numbers: ER07–614–000.
Applicants: American Transmission Systems, Incorporated.
Description: American Transmission Systems, Inc submits a Construction Agreement designated as Service Agreement 349, FERC Electric Tariff, Second Revised Volume 1, effective 1/5/07.
Filed Date: 03/09/2007.
Accession Number: 20070315–0088.
Comment Date: 5 p.m. Eastern Time on Friday, March 30, 2007.

Docket Numbers: ER07–619–000.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Company submits the Cost Allocation Agreement for Braintree Tap Upgrades between NSTAR and Braintree Electric Light Department, designated as Rate Schedule 215.
Filed Date: 03/14/2007.
Accession Number: 20070315–0085.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 04, 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5204 Filed 3–21–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–354–000; CP06–401–000; CP06–423–000]

Rockies Express Pipeline, LLC; TransColorado Gas Transmission Company; Questar Overthrust Pipeline Company; Notice of Availability of the Final Environmental Impact Statement for the Rockies Western Phase Project

March 16, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final Environmental Impact Statement (EIS) for the construction and operation of the natural gas pipeline facilities proposed by Rockies Express Pipeline LLC (Rockies Express), TransColorado Gas Transmission Company (TransColorado), and Questar Overthrust Pipeline Company (Overthrust) in the above-referenced dockets. These individual project sponsors have submitted separate and distinct proposals to the Commission; however, the FERC views the proposed facilities as interconnected projects that are necessary components of a larger, combined natural gas transportation system. As such, all three project proposals have been included in the final EIS, and are collectively referred to as the Rockies Western Phase Project (or the Project). The Project facilities would be located in Colorado, Wyoming, Nebraska, Kansas, Missouri, and New Mexico.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) and the Federal Land Management and Policy Act. The U.S. Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS) are federal land management agencies with lands affected by this proposal and are cooperating agencies for the development of the EIS. A cooperating agency has jurisdiction by law or special expertise with respect to potential environmental impacts associated with the proposal, and is involved in the NEPA analysis. The Project would cross federal land under the jurisdiction of the BLM Rawlins, Kemmerer, and Rock Springs Field Offices. Lands administered by the FWS would also be crossed by the Project. Under section 185(f) of the Mineral Leasing Act of 1920, the BLM has the authority to issue Right-of-Way Grants for all affected federal lands.

The FERC staff has concluded that if the Project is constructed and operated in accordance with applicable laws and regulations, and each project sponsor's proposed mitigation, and the staffs' additional mitigation recommendations, it would have limited adverse environmental impact and would be an environmentally acceptable action.

As currently proposed, the Rockies Western Phase Project would consist of the construction and operation of approximately 795.6 miles of natural gas pipeline and a total of 237,320 horsepower of new compression. Following completion of the proposed facilities, the Project would transport up to 1.5 billion cubic feet of natural gas per day. Specifically, the final EIS addresses the potential environmental effects of the construction and operation of the following natural gas pipeline facilities proposed by Rockies Express, TransColorado, and Overthrust:

Rockies Express (REX-West Project)

- 712.7 miles of 42-inch-diameter natural gas pipeline in Wyoming, Colorado, Nebraska, Kansas, and Missouri;
- 5.3 miles of 24-inch-diameter pipeline (Echo Springs Lateral) in Sweetwater and Carbon Counties, Wyoming;
- Five new compressor stations (Cheyenne Compressor Station in Weld County, Colorado; Julesburg Compressor Station in Sedgwick County, Colorado; Echo Springs Compressor Station in Sweetwater County, Wyoming; the Steele City Compressor Station in Gage County, Nebraska; and Turney Compressor Station in Clinton County, Missouri);
- Four new compressor units at two previously certificated compressor stations (Meeker Compressor Station in Rio Blanco County, Colorado and Wamsutter Compressor Station in Sweetwater County, Wyoming); and
- 8 new meter stations, 41 mainline valves, and associated facilities.

TransColorado (Blanco to Meeker Project)

- 392 feet of discharge line and 478 feet of suction line, 1,300 feet of 24-inch-diameter pipeline, and 60 feet of 16-inch-diameter pipeline in San Juan County, New Mexico;
- Two new compressor stations (Blanco Compression Station in San Juan County, New Mexico and the Conn Creek Compressor Station in Garfield County, Colorado);
- Modifications at four existing compressor stations (Mancos Compressor Station in Montezuma County, Colorado; Redvale Compressor Station in Montrose County, Colorado; Whitewater Compressor Station in Mesa County, Colorado, and the Greasewood Compressor Station in Rio Blanco County, Colorado); and
- One new meter station, one mainline valve, and associated facilities.

Overthrust (Wamsutter Expansion Project)

- 77.2 miles of 36-inch-diameter natural gas pipeline in Sweetwater County, Wyoming;
- 0.1 mile of 20-inch-diameter pipeline (TL–90 Tie-in);
- Two new compressor stations in Wyoming (Roberson Compressor Station in Lincoln County and Rock Springs Compressor Station in Sweetwater County); and
- Two new meter stations, three mainline valves, and associated facilities.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

CD–ROM copies of the final EIS have been mailed to federal, state, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the final EIS or provided comments during scoping; libraries and newspapers in the Project area; and parties to this proceeding. Hard copy versions of the final EIS were mailed to those specifically requesting them. A limited number of hard copies and CD–ROMs are available from the Public Reference Room identified above.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also

provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5200 Filed 3–21–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8290–8]

Science Advisory Board Staff Office; Notification of Two Public Teleconferences and a Meeting of the Science Advisory Board Integrated Nitrogen Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board Staff Office announces two public teleconferences and a meeting of the EPA Science Advisory Board Integrated Nitrogen Committee.

DATES: The teleconference meetings will be held on Thursday, April 19, 2007, from 3 p.m. to 5 p.m. (Eastern Time) and on June 8, 2007 from 2 p.m. to 4 p.m. (Eastern Time). A face-to-face meeting will be held on June 20, 2007 from 1 p.m. to 5 p.m. (Eastern Time), continuing from 8:30 a.m. to 5 p.m. (Eastern Time) on June 21, and from 8:30 a.m. to 3 p.m. on June 22.

ADDRESSES: The teleconferences will be conducted by phone only. The June 20–22, 2007 face-to-face meeting will be held at the SAB Conference Center, located at 1025 F Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the call-in number and access code for the teleconferences; attend the face-to-face meeting; or receive further information concerning the teleconferences and meeting may contact Ms. Kathleen White, Designated Federal Officer (DFO). Ms. White may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: (202) 343–9878; fax: (202) 233–0643; or e-mail at: *white.kathleen@epa.gov*. General information concerning the EPA SAB can be found on the EPA Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The SAB Integrated Nitrogen Committee is conducting an evaluative study on the need for integrated research and control management strategies. To begin its work, the Committee held a public meeting on January 30–31, 2007, to develop a work plan for the study. Background information on that meeting was provided in a **Federal Register** notice (72 FR 1989, January 17, 2007). On the April 19, 2007 call the Committee will discuss information needs on sources, transport, fate, effects, impacts and metrics relating to reactive nitrogen in the environment; and discuss options for meeting those needs through the literature, committee work, and invited speakers for the face-to-face meeting. On the June 8, 2007 call, members of the Committee will present the information they have developed, make recommendations for refining the agenda, and conduct other Committee business. At the June 20–22, 2007 face-to-face meeting the Committee will complete information gathering for the first phase of its work, relating to sources, transport, fate, effects, impacts and metrics relating to reactive nitrogen in the environment and make appropriate related writing assignments for its report. The Committee will also begin the second phase of its work addressing the relationship of nitrogen to ecosystem scale through case studies. The Committee may undertake other Committee business as needed and time allows.

Availability of Meeting Materials: The draft agenda, and other materials for this teleconference will be posted on the SAB Web site at *http://epa.gov/sab/panels/ad_hoc_inr_committee.htm* prior to the meeting

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the Integrated Nitrogen Committee to consider during the course of their study. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Ms. White, DFO, in writing (preferably via e-mail), by April 12, 2007, for the April 19 teleconference, by June 1 for the June 8 teleconference, and by June 13 for the June 20–22 meeting, at the contact information noted above, to be placed on the list of public speakers for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by the same dates. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. White at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 16, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–5264 Filed 3–21–07; 8:45 am]

BILLING CODE 6560–50–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, with revision, of the following reports

1. Report title: Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets

Agency form number: FR 2416 and FR 2644

OMB Control number: 7100–0075

Frequency: Weekly

Reporters: U.S.–chartered commercial banks

Annual reporting hours: FR 2416, 22,386 hours; FR 2644, 80,652 hours

Estimated average hours per response: FR 2416, 8.61 hours; FR 2644, 1.41 hours

Number of respondents: FR 2416, 50; FR 2644, 1,100

General description of report: These information collections are voluntary [12 U.S.C. § 225(a) and 248(a)(2)]. Individual respondent data are regarded as confidential under the Freedom of Information Act [5 U.S.C. § 552(b)(4)].

Abstract: The FR 2416, FR 2644, and the Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks (FR 2069; OMB No. 7100–0030) are referred to collectively as the bank credit reports. The FR 2416 is a detailed balance sheet that covers domestic offices of large U.S.–chartered commercial banks. The FR 2644 collects less–detailed information on investments, loans, total assets, and several memoranda items, covering domestic offices of small U.S.–chartered commercial banks. The bank credit reports are collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR 2416 is used on a stand–alone basis as the large domestic bank series. The FR 2644 collects sample data, which are used to estimate universe levels using data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036) (Call Report). Data from the bank credit reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, *Assets and Liabilities of Commercial Banks in the United States*, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestic, small domestic, and foreign–related components.

Current Actions: On January 11, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 1325) requesting public comment for 60 days on the extension, with revision, of the FR 2416 and FR 2069. The comment period for this notice expired on March 12, 2007. The Federal Reserve received one supportive comment letter from a federal agency describing its use of the data to prepare monthly, quarterly, and annual estimates of personal interest payments, a component of personal outlays in the national income and product accounts.

2. Report title: Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks

Agency form number: FR 2069

OMB Control number: 7100–0030

Frequency: Weekly

Reporters: U.S. branches and agencies of foreign banks

Annual reporting hours: 14,560 hours

Estimated average hours per response: 4.00 hours

Number of respondents: 70

General description of report: This information collection is voluntary [12 U.S.C. §§ 248(a)(2) and 3105(a)(2)]. Individual respondent data are regarded as confidential under the Freedom of Information Act [5 U.S.C. § 552(b)(4)].

Abstract: The FR 2069 is a detailed balance sheet that covers large U.S. branches and agencies of foreign banks. This report, along with the FR 2416 and FR 2644, is collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR2069 collects sample data, which are used to estimate universe levels using data from the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032). Data from the bank credit reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, *Assets and Liabilities of Commercial Banks in the United States*, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestic, small domestic, and foreign–related components.

Current Actions: On January 11, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 1325) requesting public comment for 60 days on the extension, with revision, of the FR 2069. The comment period for this notice expired on March 12, 2007. The Federal Reserve did not receive any comments.

3. Report titles: Report of Changes in Organizational Structure, Annual Report of Bank Holding Companies

Agency form numbers: FR Y–10 and FR Y–6

OMB Control numbers: 7100–0297

Effective Dates: FR Y–6, December 31, 2007; FR Y–10, April 30, 2008

Frequency: Event–generated, annual

Reporters: Bank holding companies (BHCs), foreign banking organizations (FBOs), member banks, Edge and agreement corporations

Annual reporting hours: FR Y–10, 16,608 hours; FR Y–6, 27,069 hours

Estimated average hours per response: FR Y–10, 1.00 hour; FR Y–6, 5.25 hours;

Number of respondents: FR Y–10, 2,768; FR Y–6, 5,156

General description of report: These information collections are mandatory under the Federal Reserve Act, the BHC Act, and the International Banking Act (12 U.S.C. 248 (a)(1), 321, 601, 602, 611a, 615, 1843(k), 1844(c), and 3106, and Regulations K and Y (12 CFR 211.13(c), 225.5(b), and 225.87). Individual respondent data are not considered confidential. However, respondents may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the FOIA, 5 U.S.C. § 552(b).

Abstract: The FR Y–10 is an event–generated information collection submitted by top–tier domestic BHCs, including financial holding companies (FHCs), and state member banks unaffiliated with a BHC, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and

regulated investments of these entities engaged in banking and nonbanking activities.

The FR Y–6 is an annual information collection submitted by top–tier BHCs and nonqualifying FBOs. It collects financial data, an organization chart, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act and Regulation Y (12 CFR 225).

Current Actions: On September 13, 2006, the Federal Reserve published a notice in the Federal Register (71 FR 54075) requesting public comment for 60 days on the extension, with revision, of the Structure Reports.[1] The comment period for this notice expired on November 13, 2006. The Board received comment letters from four large BHCs and three industry trade associations. Most of these comments were addressed in a final Federal Register notice dated December 28, 2006 (71 FR 78207). In this notice, the Federal Reserve stated that it was continuing to evaluate several substantive comments on the collection of domestic branch data and would address these comments in a separate Federal Register notice in 2007. Below is a summary of the original proposal, a summary of the comments received, and the modifications to the original proposal.

Original Proposal

FR Y–6 Organization Chart

The Federal Reserve proposed to add to the organization chart an annual requirement for institutions to verify a list of domestic branches that the Federal Reserve has on file for the institution. The list of domestic branches would include those of depository institutions and Edge and agreement corporations held directly or indirectly by the respondent.

The Federal Reserve would provide institutions with a hardcopy of their data and, in response to industry feedback, a means for institutions to download their data in a spreadsheet format. The institutions would be required to return to the Federal Reserve an annotated document incorporating any changes or corrections to the data. The effective date for this proposed change would have been December 31, 2006.

FR Y–10 Domestic Branch Schedule

The Federal Reserve proposed to add a schedule to collect data on domestic branches and offices of depository institutions, held directly or indirectly, and domestic branches of Edge and agreement corporations. Data regarding branch openings, acquisitions, sales, closings or relocations would be collected on an event–generated basis, parallel to the other schedules on the FR Y–10, within thirty calendar days following the event. Institutions would be permitted to combine multiple transactions occurring within a 30–day period into a single monthly filing. The effective date for this proposed change would have been June 30, 2007.

Data would be submitted for the following branches and offices:

1. Full service (brick and mortar, retail) – traditional offices.
2. Electronic banking – offices where Internet and other similar deposits are booked.
3. Limited service (military, drive–through, mobile or seasonal, and retail) – limited, but often take or include deposits.
4. Loan production offices (LPOs) and consumer credit – limited, normally nondeposit, but extend credit.
5. Trust – limited and nondeposit
6. Administrative (administrative, contractual, messenger) – all other limited and nondeposit

Summary of Comments

Several commenters indicated that adding a schedule to the FR Y–10 to collect data on domestic branches would be overly burdensome and may be duplicative of other information collected by the Federal Reserve or other regulators. As explained in the initial proposal, the current process for gathering domestic branch structure data is inadequate. Branch data for domestic state member banks are communicated to the Federal Reserve primarily through the application process. Information for all other domestic bank branches (branches of national and nonmember banks) is obtained by searching Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) bulletins. The results of this process are data that are not consistent and are often stale. The timing and extent of notifications to various bank regulators do not allow for consistent maintenance of the data. For example, branch openings and closings are reported with different lags and through different channels. Also, domestic bank branch data are submitted to the FDIC on the Summary of Deposits (OMB No. 3064–0061) as of June 30 each year.[2] However, the volume of branch structure changes is large. As a result, the relevancy of the annual data substantially diminishes over time. The Federal Reserve needs a formal information collection to ensure that these data are consistent, complete, and current.

One commenter questioned the usefulness of the data, since only institutions regulated by the Federal Reserve would be required to submit the data. This commenter noted that the data would be incomplete for analyzing the competitive effects of proposed bank mergers and acquisitions in specific markets. As described in the original proposal, 95 percent of all domestic banking branches and 82 percent of all banking and thrift branches would be covered by this information collection. Information for the remaining small percentage of branches would continue to be collected using the current process for gathering domestic branch structure data discussed above. Although the information for these branches will not be as reliable as that obtained from the FR Y–10 respondents, the overall quality of the branch data will be dramatically improved by this framework.

Several commenters asked the Federal Reserve to coordinate with the other agencies to collect consistent structure data. The Federal Reserve acknowledges that coordination with other agencies could achieve organizational and technical efficiencies for both banking organizations and the regulatory community. The Federal Reserve has been in contact with the other agencies during the development of this proposal. Discussions among the regulatory agencies regarding possible gains from coordination, as well as changes and enhancements to the technological platforms used for the collection are ongoing.

Two commenters requested amending the information collection to allow respondents to provide their complete list of branches monthly on a separate report rather than providing changes on an event–generated basis on the FR Y–10. The Federal Reserve believes that the data would be more accurately and efficiently collected if banking organizations submit changes directly to the Federal Reserve, rather than requiring Federal Reserve staff to discern changes by comparing monthly filings. Furthermore, relative to existing

[1] The Structure Reports included in the initial notice were the Report of Changes in Organizational Structure (FR Y–10), the Report of Changes in FBO Organizational Structure (FR Y–10F), the Supplement to the Report of Changes in Organizational Structure (FR Y–10S), the Notification of Foreign Branch Status (FR 2058), the Annual Report of Bank Holding Companies (FR Y–6), and the Annual Report of Foreign Banking Organizations (FR Y–7).

[2] Thrift branches are reported as of June 30 each year to the OTS, on their annual Branch Office Survey (OMB No. 1550–0004).

branches, the number of branch openings, closings, sales, and relocations is quite small. The current proposal allows for greater flexibility in how the schedule is filed, which should allow banks to find efficient ways to transmit the data.

One commenter requested clarification of the administrative branch type. This term was defined in the draft instructions as a branch that has limited nondeposit functions, including back office operations and check processing facilities.

Modifications to the Original Proposal

In response to comments and industry feedback, the Federal Reserve approved the following modifications to the original proposal:

• Eliminating LPOs, consumer credit offices, and administrative offices from the list of reportable branches on the FR Y–6 and FR Y–10;

• Excluding from the FR Y–10 address changes that result from changes in street names or zip codes, with no actual change in the physical location of the branch;

• Making FR Y–10 reporting of branch relocations of less than 1,000 feet optional, if the move does not involve a change of county; and

• Changing the implementation dates to December 31, 2007, for the FR Y–6 revisions and April 30, 2008, for the FR Y–10 revisions.

Final approval under OMB delegated authority the implementation of the following survey:

Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity

Agency form number: FR 3036

OMB control number: 7100–0285

Frequency: One–time

Reporters: Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

Annual reporting hours: 3,150 hours

Estimated average hours per response: Turnover survey: 51 hours; outstandings survey: 60 hours

Number of respondents: 60

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a)(2), 358, and 3105(c)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The FR 3036 is the U.S. part of a global data collection that is conducted by central banks every three years. More than fifty central banks plan to conduct the survey in 2007. The Bank for International Settlements compiles national data from each central bank to produce global market statistics.

The Federal Reserve System and other government agencies use the survey to monitor activity in the foreign exchange and derivatives markets. Respondents use the published data to gauge their market share.

Current actions: On January 11, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 1325) requesting public comment for 60 days on the implementation of the FR 3036 survey. The comment period for this notice expired on March 12, 2007. The Federal Reserve received no comments on the proposed survey and will implement it as proposed.

Board of Governors of the Federal Reserve System, March 16, 2007.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. E7–5192 Filed 3–21–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–05CO]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Joan F. Karr, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Notice of Republication of 60 day FRN

Title of Project

Evaluation of the Centers for Disease Control and Prevention's Consumer Response Service Center—New—National Center for Healthcare Marketing (NCHM), Centers for Disease Control and Prevention (CDC).

Description of Republication

Due to expiration of the 60Day–05–05CO on July 21, 2005 OMB Desk Officer (John Kraemer) has requested that the 60Day–07–05CO be republished using the date of 02/15/2007, which is currently the 30Day–07–05CO publication date. Public comments will be considered until COB of April 15, 2007. We are working to put measures in place to ensure this does not happen again. The 30 day FRN will be republished at a later date.

Background and Brief Description

CDC is launching an integrated ''one face to the public'' approach across all communication channels to handle inquiries concerning a broad spectrum of public health topics. The overall objective is to ensure consistent, timely, reliable health information for dissemination to a variety of consumers (public, health professionals, researchers, etc.) and to address variations in inquiry volumes related to public health emergencies, news events, and dynamic, shifting public health priorities. The CDC has integrated over 40 hotlines into one Consumer Response Services Center—CDC–INFO. CDC–INFO has an exceptionally wide scope because content currently divided between over 40 hotlines handling nearly 2,000,000 telephone contacts annually will be consolidated under CDC–INFO. All CDC hotlines were consolidated in one center beginning in February 2005, with all CDC program areas transitioning into CDC–INFO through a phased approach during the next three years. CDC–INFO itself will be operational for at least the next seven years.

The primary objectives of the national evaluation are to (1) Proactively evaluate customer interactions and service effectiveness by employing assessment measures and data collection mechanisms to support performance management, gathering insights and understandings for improving service levels, and implementing effective measures to meet customer satisfaction goals; (2) develop an ongoing understanding of customer requirements and satisfaction

trends to achieve best of practice quality standards and to provide qualitative assessments, quantitative data, and cost factors to drive improvement and reinforce operational objectives; (3) measure CDC–INFO contractor service performance to assist in determining whether performance incentives have been achieved; and (4) to collect data in order to address public concern and response to emergencies, outbreaks, and media events.

Sample size, respondent burden, and intrusiveness have been minimized to be consistent with national evaluation objectives. Procedures will be employed to safeguard the privacy and confidentiality of participants. Pilot tests assisted in controlling burden and ensuring the user-relevance of questions. The following table shows the estimated annualized burden for data collection. There are no respondent costs other than the amount of time required to respond to the survey.

Estimated Annualized Burden Hours:

Data collection instrument	Number of respondents	Responses /respondent	Average burden per response (in hrs)	Average annual burden hours
Satisfaction survey (callers)	25,000	1	3/60	1,250
Satisfaction survey (e-mail inquiries)	330	1	3/60	17
Follow up survey	3,125	1	7/60	365
Key informant survey	100	1	7/60	12
Postcard survey for bulk mailing	950	1	1/60	16
Postcard survey for individual publications	2,100	1	1/60	35
Web survey for e-mail publication orders	1,000	1	1/60	17
Web survey for internet publications	950	1	1/60	16
Special event/Outreach survey—General Public	25,600	1	5/60	2,133
Special event/Outreach survey—Professionals	10,400	1	5/60	867
Emergency response survey—Level 1 emergency—General Public	31,151	1	5/60	2596
Emergency response survey—Level 1 emergency—Professionals	7,459	1	5/60	622
Emergency response survey—Level 2 emergency—General Public	57,579	1	5/60	4798
Emergency response survey—Level 2 emergency—Professionals	51,821	1	5/60	4318
Emergency response survey—Level 3 emergency—General Public	351,863	1	5/60	29,322
Emergency response survey—Level 3 emergency—Professional	316,678	1	5/60	26,390
Emergency response survey—Level 4 emergency—General Public	645,630	1	5/60	53,803
Emergency response survey—Level 4 emergency—Professional	596,504	1	5/60	49,709
Total Burden Hours				176,286

Dated: March 15, 2007.

Deborah Holtzman,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–5218 Filed 3–21–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH 101]

A Public meeting to provide input regarding the draft document, ''Long-Term Field Evaluation (LTFE) Program Concept''

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

Meeting Date and Time: March 22, 2007, 9 a.m.–4 p.m.

Place: DoubleTree Pittsburgh Airport Hotel, 8402 University Blvd., Moon Township, PA 15108.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) announces the availability of opportunity for the public to provide input regarding the draft document, ''Long-Term Field Evaluation (LTFE) Program Concept.'' The public meeting will be held on March 22, 2007 at the DoubleTree Pittsburgh Airport Hotel, 8402 University Blvd., Moon Township, PA 15108.

NIOSH is the Federal agency responsible for conducting research and making recommendations for the approval for self-contained, self-rescuer (SCSR) closed circuit escape respirators, Title 42, Code of Federal Regulations (CFR), Part 84. The LTFE program for self-contained self-rescuers (SCSRs) for miners was initiated more than 20 years ago by the U.S. Bureau of Mines. The objective for the LTFE program is to obtain data to determine the expected performance characteristics of SCSRs used in the mining industry. LTFE program results based on scientific principles can provide useful information to monitor expected SCSR performance and assess possible degradation due to the physical stresses of in-mine use. Of utmost concern is the successful performance of any SCSR that passes its inspection criteria specified by the manufacturer. It is such an apparatus that must be relied upon in an emergency.

A copy of the draft document can be found at: *http://www.cdc.gov/niosh/review/public/NPPTL-LTFE/.*

ADDRESSES: Comments should be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway. M/S C–34, Cincinnati, OH 45226, telephone 513/533–8450, fax 513/533–8285. Comments may also be submitted directly at *http://www.cdc.gov/niosh/review/public/NPPTL-LTFE/.*

The document will remain available for comment until April 5, 2007. Comments should reference docket number NIOSH–101 in the subject heading.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Person for Technical Information: Les Boord, NIOSH Director for National Personal Protective Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 18070, Pittsburgh, PA 15236.

Dated: March 15, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–5216 Filed 3–21–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH); Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), Subcommittee for Dose Reconstruction Reviews (SDRR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following meeting of the aforementioned subcommittee:

Subcommittee Meeting Time and Date: 10 a.m.–5 p.m., April 11, 2007.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, KY 41018. Phone 859.334.4611, Fax 859.334.4619.

Conference Call Access: Phone 866.643.6504, Participant Pass Code 9448550.

Status: Open to the public.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2007.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, providing advice to the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Need for Basic vs. Advanced Reviews; How to Conduct Blind Reviews; Status of Individual Dose Reconstruction Audits; Planning Future Dose Reconstruction Audits; and Assignment of Two Board Member Teams to Oversee Audit Process.

The agenda is subject to change as priorities dictate. There is no public comment period, however, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for Further Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone 513.533.6825, Fax 513.533.6826.

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.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–5225 Filed 3–21–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention Announces the Following: Implementation of New Record Schedule

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: NIOSH is implementing a new record schedule governing the retention of records transferred to the agency by employers pursuant to the regulations of the Occupational Safety and Health Administration (OSHA). Pursuant to this schedule, NIOSH will review these records to determine if they document exposures or medical conditions as required under the OSHA regulations and have research value. Those records that NIOSH determines meet the OSHA regulations and have a research value will be retained for 30 years.

Those records that do not document exposure or medical condition and treatment or have no research value will not be retained.

SUPPLEMENTARY INFORMATION: The hazard-specific standards of the Occupational Safety and Health Administration (OSHA)(Title 29, Code of Federal Regulations [CFR], Parts 1910.1001 through 1910.1450) contain requirements stating that when a company closes and leaves no successor employer, it must transfer (or in some instances, offer to transfer) its employee's medical and exposure records to NIOSH. The OSHA carcinogens standards (29 CFR 1910.1003–1910.1016) also require that such records be transferred to NIOSH when an employee resigns, retires, or dies. The transfer of these records to NIOSH is intended to preserve them for research purposes.

NIOSH has amended its record schedule pertaining to these records, *Employee Exposure and Medical Records (NIOSH), (NARA job Number N1–442–98–1, Item 2), Item 2–80 in the CDC Records Control Schedule (RCS) B–321*, to reduce the retention period of those records and permit the destruction of the records which do not serve any research purpose. Under the new schedule, those records that meet the requirements of the OSHA regulations and serve a research purpose will now be retained for 30 years, rather than 40 years (as under the previous record schedule). However, if upon review NIOSH determines that the records are not medical records or exposure records required to be transferred to NIOSH or were not systematically collected and will not serve a research purpose, the records will not be retained and will be destroyed.

On September 16, 2005, the National Archives and Records Administration (NARA) published in the **Federal Register** [70(179):54774–54776] a notice of availability of this proposed record schedule, Employee Exposure and Medical Records (NIOSH), (NARA job number N1–442–2005–1, Item 1) and request for comments. Following receipt and review of comments, NARA approved this revised record schedule on December 16, 2005. This notice announces adoption of the revised schedule by NIOSH. A copy of the revised record schedule can be obtained from NIOSH.

FOR FURTHER INFORMATION CONTACT: Rodger Tatken, National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia

Parkway, Cincinnati, OH 45226 (513) 533–8370.

Dated: March 14, 2007.

James D. Seligman,

Chief Information Officer, Center for Disease Control and Prevention.

[FR Doc. E7–5219 Filed 3–21–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0092]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Food and Drug Administration Rapid Response Surveys

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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the use of rapid response surveys to obtain data on safety information to support quick-turnaround decisionmaking about potential safety problems or risk management solutions from health care professionals, hospitals and other user-facilities (e.g., nursing homes, etc.); consumers; manufacturers of biologics, drugs, and medical devices; distributors; and importers when FDA must quickly determine whether or not a problem with a biologic, drug, or medical device impacts the public health.

DATES: Submit written or electronic comments on the collection of information by May 21, 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: 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: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed 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.

Generic Food and Drug Administration Rapid Response Surveys (OMB Control Number 0910–0500)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. Under section 519 of the act (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device-related deaths, serious injuries, and malfunctions to FDA; to require user facilities to report device-related deaths directly to FDA and to manufacturers; and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process. FDA's regulations governing application for agency approval to market a new drug (21 CFR part 314) and regulations governing biological products (21 CFR part 600) implement these statutory provisions. Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch reporting systems using FDA Forms 3500 and 3500A (OMB control number 0910–0291) and the vaccine adverse event reporting system. FDA is seeking OMB clearance to collect vital information via a series of rapid response surveys. Participation in these surveys will be voluntary. This request covers rapid response surveys for community based health care professionals, general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), other health care professionals, patients, consumers, and risk managers working in medical facilities. FDA will use the information gathered from these surveys to obtain quickly vital information about medical product risks and interventions to reduce risks so the agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	30	6,000	.5	3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA projects 30 emergency risk related surveys per year with a sample of between 50 and 200 respondents per survey. FDA also projects a response time of 0.5 hours per response. These estimates are based on the maximum sample size per questionnaire that FDA can analyze in a timely manner. The annual frequency of response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while other respondents may be contacted several times annually, depending on the human drug, biologic, or medical device under evaluation. It is estimated that, given the expected type of issues that will be addressed by the surveys, it will take 0.5 hours for a respondent to gather the requested information and fill in the answers.

Dated: March 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5195 Filed 3–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0527]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

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 April 23, 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: 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 compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Threshold of Regulation for Substances Used in Food-Contact Articles (OMB Control Number 0910–0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) It conforms to an exemption for investigational use under section 409(j) of the act, (2) it conforms to the terms of a regulation prescribing its use, or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6) of the act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

The regulations in § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 part per billion (ppb). The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) The chemical composition of the substance for which the request is made, (2) detailed information on the conditions of use of the substance, (3) a clear statement of the basis for the request for exemption from regulation as a food additive, (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance, (5) results of a literature search for toxicological data on the substance and its impurities, and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (i.e., food packaging and food processing equipment) or of the articles themselves.

In the **Federal Register** of January 8, 2007 (72 FR 792), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

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 Frequencyper Response	Total Annual Responses	Hours per Response	Total Hours
170.39	15	1	15	48	720

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, FDA consulted its records of the number of regulation exemption requests received in the past 3 years. The annual hours per response reporting estimate is based on information received from representatives of the food packaging and processing industries and agency records.

FDA estimates that approximately 15 requests per year will be submitted under the threshold of regulation exemption process of § 170.39. The threshold of regulation process offers one advantage over the premarket notification process for food-contact substances established by section 409(h) of the act (OMB control number 0910–0495) in that the use of a substance exempted by the agency is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (e.g., use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both the agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and FDA would not have to review, similar submissions for identical components of food-contact articles used under identical conditions. Manufacturers and other interested persons can easily access an up-to-date list of exempted substances which is on display at FDA's Division of Dockets Management and on the Web site at *http://www.cfsan.fda.gov*. Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the agency has previously granted an exemption from the food additive listing regulation requirement.

Dated: March 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5196 Filed 3–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee, Blood Products Advisory Committee, Cellular, Tissue and Gene Therapies Advisory Committee, Transmissible Spongiform Encephalopathies Advisory Committee, and the Vaccines and Related Biological Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through January 31, 2008.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees, and therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae should be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Donald Jehn, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, e-mail: *donald.jehn@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members with appropriate expertise for vacancies listed below:

TABLE 1.

Advisory Committee and Expertise Needed to Fill Vacancies	No. of Vacancies	Approximate Date Members are Needed
Allergenic Products Advisory Committee—allergy, immunology, pediatrics, internal medicine, biochemistry, statistics, and related scientific fields	2 2	As soon as possible August 31, 2007
Blood Products Advisory Committee—clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, biotechnology, computer technology, epidemiology, consumer advocacy, sociology/ethics, clinical trials, behavioral science, risk communication and other related professions	2	September 30, 2007

TABLE 1.—Continued

Advisory Committee and Expertise Needed to Fill Vacancies	No. of Vacancies	Approximate Date Members are Needed
Cellular, Tissue, and Gene Therapies Advisory Committee—cellular therapies, tissue transplantation, gene transfer therapies and xenotransplantation including biostatistics, bioethics, hematology/oncology, human tissues and transplantation, reproductive medicine, general medicine and various medical specialties including surgery and oncology, immunology, virology, molecular biology, cell biology, developmental biology, tumor biology, biochemistry, rDNA technology, nuclear medicine, gene therapy, infectious diseases, and cellular kinetics	1	March 31, 2007
Transmissible Spongiform Encephalopathies Advisory Committee—clinical and administrative medicine, hematology, virology, neurovirology, neurology, infectious diseases, immunology, transfusion medicine, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, consumer advocacy, sociology/ethics, and other related professions	4 3	As soon as possible January 31, 2008
Vaccines and Related Biological Products Advisory Committee—immunology, molecular biology, rDNA, virology, bacteriology, epidemiology, biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, biochemistry, and other related scientific fields	3 5	As soon as possible January 31, 2008

I. Functions

A. Allergenic Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

B. Blood Products Advisory Committee

The committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases.

C. Cellular, Tissue and Gene Therapies Advisory Committee

The committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies and xenotransplantation products which are intended for transplantation, implantation, infusion and transfer in the prevention and treatment of a broad spectrum of human diseases and in reconstruction, repair, or replacement of tissues for various conditions.

D. Transmissible Spongiform Encephalopathies Advisory Committee

The committee reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

E. Vaccines and Related Biological Products Advisory Committee

The committee reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

II. Qualifications

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The particular need for vacancies on each committee through January 31, 2008, is shown in Table 1 of this document. The term of office is up to 4 years, depending on the appointment date.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: March 14, 2007.

Randall W. Lutter,

Associate Commissioner for Policy.

[FR Doc. E7–5193 Filed 3–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 1, 2007, from 8 a.m. to 5:30 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Teresa Watkins, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane,rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *teresa.watkins@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the efficacy supplement to new drug application (NDA) 21–077 for the approved product Advair Diskus 500/50 (fluticasone propionate/salmeterol inhalation powder) by GlaxoSmithKline, for the proposed indication of increased survival and reduced exacerbations in patients with chronic obstructive pulmonary disease (COPD).

FDA intends to make background material available to the public no later than 1 business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 11, 2007. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 3, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 4, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Teresa Watkins at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 14, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–5194 Filed 3–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

The National Cancer Advisory Board's Breast Cancer Prevention Trail P–4 Working Group will meet to discuss the P–4 trial which is designed to perform a 10-year study in risk-eligible, postmenopausal women to determine whether letrozole is more effective than raloxifene in reducing the incidence of invasive breast cancer in this otherwise healthy population. The meeting will be closed to the public.

The thoughts and input from this meeting will be summarized in a report that will be presented to the National Cancer Advisory Board in open session at an upcoming meeting.

Name of Work Group: National Cancer Advisory Board, Breast Cancer Prevention Trial P–4 Working Group.

Closed: March 23, 2007, 8:30 a.m. to 4:30 p.m.

Agenda: The purpose of the Work Group will be to ensure that funds are invested optimally to achieve outcomes that utilize the best of clinical and molecular sciences to answer key scientific questions, produce extremely valuable data sets for the community, and, in this instance, provide maximal benefit to breast cancer patients.

Place: Hyatt Regency Building, One Metro Center, Bethesda, MD 20814.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

SUPPLEMENTARY INFORMATION:

Background

Over the past several years the National Cancer Institute has performed a series of important prevention clinical trials to study the effects) of tamoxifen, raloxifene (Selective Estrogen Receptor Modulators—SERMS) and, subsequently, aromatase inhibitors such as letrozole on reducing the incidence of invasive breast cancer in defined populations of postmenopausal women. As follow-on to this series of breast cancer prevention trials, a new trial in the sequence, the P–4 trial, has been proposed and peer-reviewed. The P–4 trial is designed to perform a 10-year study in risk-eligible, postmenopausal women to determine whether letrozole is more effective than raloxifene in reducing the incidence of invasive breast cancer in this otherwise healthy population. The trial will accrue 12,800 patients over 4 years. The primary endpoint for this trial will be the first occurrence of invasive breast cancer. Secondary endpoints will include DCIS; LCIS; ischemic heart disease; fracture of the wrist, hip, and spine; DVTs; PEs; TIAs and stroke; death; other invasive cancers; and quality of life.

P–4 trial is a significant financial commitment on the part of the National Cancer Institute and of the cancer research community. Additionally, the outcome of this trail will require more than 10 years of study. Given the magnitude of this investment, the rapid acceleration of progress in molecular genetics and molecular biology, and the disparate range of views on the trial, the National Cancer Advisory Board is convening a group of experts to provide feedback to the National Cancer Advisory Board.

Any interested person may file written comments with the work group by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 16, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1408 Filed 3–21–07; 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 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 52b(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 Inherited Disease Research Access Committee, CIDR Group A.
Date: May 3–4, 2007.
Time: May 3, 2007, 7 p.m. to 9 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 740 Wisconsin Avenue, Bethesda, MD 20814.
Time: May 4, 2007, 8:30 a.m. to 1:45 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 740 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Scientific Review Branch, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301 402–0838.

Name of Committee: Center for Inherited Disease Research Access Committee, CIDR B.
Date: May 4, 2007.
Time: 2 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 740 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Rudy Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20852, (301) 402–0838.*pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1410 Filed 3–21–07; 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 Special Emphasis Panel, ENCODE Tech DEV RFA's
Date: April 5–6, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: University Inn, 4140 Roosevelt Way NE., Seattle, WA 98105.
Contact Person: Keith McKenney PhD, Scientific Review Administrator, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@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. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: March 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1411 Filed 3–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Loan Repayment.
Date: April 30, 2007.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Democracy One, 6701 Democracy Boulevard, 800, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Charles H. Washabaugh, PhD, Scientific Review Administrator, Review Branch, NIAMS/NIH, 6701 Democracy Blvd, Room 816, Bethesda, MD 20892, 301–594–1501, *washabac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1406 Filed 3–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Loan Repayment.

Date: April 25, 2007.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS, Building 4401, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709.
Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1407 Filed 3–21–07; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, NIH Support for Conferences and Scientific Meetings.
Date: March 29, 2007.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, ROOM 3AN–12, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Arthur L. Zachary, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1409 Filed 3–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immunology Quality Assessment Program.
Date: April 12, 2007.
Time: 9 a.m. to 12 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 4206, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Jo Ann S. Rinaudo, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–5658, *rinaudoj@mail.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Vaccine and Treatment Evaluation Units.
Date: April 18–20, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Bethesda North Marriot, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Kenneth E. Santora, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ks216i@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, HIV Information Resources Contract.
Date: April 18, 2007.
Time: 12 p.m. to 4:30 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3129, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 15, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1412 Filed 3–21–07; 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, Neurotransmitters and Neuroplasticity.
Date: March 29–30, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Suzan Nadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@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, Bacterial Pathogenesis Overflow.
Date: March 30, 2007.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@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, Global Research Initiative Program.
Date: April 10, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts.
Date: April 12–13, 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: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Musculoskeletal Rehabilitation Sciences.
Date: April 12, 2007.
Time: 11 a.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: John P. Holden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–496–8551, *holdenjo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Asthma Epidemiology.
Date: April 17–19, 2007.
Time: 11 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Sandra L. Melnick, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7770, Bethesda, MD 20892, 301–435–1251, *melnicks@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 16, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1405 Filed 3–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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: Pretesting of Substance Abuse Prevention and Treatment and Mental Health Services Communication Messages—(OMB No. 0930–0196)—Extension

As the Federal agency responsible for developing and disseminating authoritative knowledge about substance abuse prevention, addiction treatment, and mental health services and for mobilizing consumer support and increasing public understanding to overcome the stigma attached to addiction and mental illness, the Substance Abuse and Mental Health Services Administration (SAMHSA) is responsible for development and dissemination of a wide range of education and information materials for both the general public and the professional communities. This submission is for generic approval and will provide for formative and qualitative evaluation activities to (1) Assess audience knowledge, attitudes, behavior and other characteristics for the planning and development of messages, communication strategies and public information programs; and (2) test these messages, strategies and program components in developmental form to assess audience comprehension, reactions and perceptions. Information obtained from testing can then be used to improve materials and strategies while revisions are still affordable and possible. The annual burden associated with these activities is summarized below.

Activity	Number of respondents	Responses/respondent	Hours per response	Total hours
Individual In-depth Interviews:				
General Public	400	1	.75	300

Activity	Number of respondents	Responses/respondent	Hours per response	Total hours
Service Providers	200	1	.75	150
Focus Group Interviews:				
General Public	3,000	1	1.5	4,500
Service Providers	1,500	1	1.5	2,250
Telephone Interviews:				
General Public	335	1	.08	27
Service Providers	165	1	.08	13
Self-Administered Questionnaires:				
General Public	2,680	1	.25	670
Service Providers	1,320	1	.25	330
Gatekeeper Reviews:				
General Public	1,200	1	.50	600
Service Providers	900	1	.50	450
Total	11,700			9,290

Note: The hourly wage of $13.99 for the general public was calculated based on weighted data from the 2005 NSDUH respondents' personal annual income. The $25 hourly wage rate for providers is an average across counselors and other service provider staff.

Note: Brief interviews with callers to SAMHSA's public information centers to test message concepts and strategies following their call-in request to the 1–800 number.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 2, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–5212 Filed 3–21–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Targeted Capacity Expansion Grants for Jail Diversion Program Evaluation—Additional Trauma Measures—(OMB No. 0930–0277)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) has implemented the Targeted Capacity Expansion Grants for Jail Diversion Programs. The Program currently collects client outcome measures from program participants who agree to participate in the evaluation. Data collection consists of interviews conducted at baseline, 6- and 12-month intervals.

The current proposal requests:

1. Adding a new instrument, the PTSD Checklist (PCL), as a measure of trauma-specific symptoms to the baseline, 6- and 12-month interviews.

2. Extending the use of DC Trauma Screen, currently administered only at baseline, to be included in the 6- and 12-month interviews. The DC Trauma Screen examines the prevalence of experience of trauma within general types.

The PCL and the DC Trauma Screen each take 5 minutes to complete. Including these measures would add 5 minutes to the length of the baseline interview and ten minutes to the length of the 6- and 12-month interviews.

New grantees were awarded on April 30, 2006 under the TCE Grants for Jail Diversion program and will commence data collection efforts in FY 2007. The following tables summarize the burden for the data collection.

CY 2007 ANNUAL REPORTING BURDEN FOR THE ADDITIONAL MEASURES

Data collection activity	Number of respondents	Responses per respondent	Average hours per response	Annual hour burden
Client Interviews:				
Baseline Interview	220	1	.83	183
6-month Interview	90	1	.92	83
12-month Interview	10	1	.92	9
Total:	320	3		275

CY 2008 ANNUAL REPORTING BURDEN FOR THE ADDITIONAL MEASURES

Data collection activity	Number of respondents	Responses per respondent	Average hours per response	Annual hour burden
Client Interviews:				
Baseline Interview	300	1	0.83	249
6-month Interview	210	1	0.92	193

CY 2008 ANNUAL REPORTING BURDEN FOR THE ADDITIONAL MEASURES—Continued

Data collection activity	Number of respondents	Responses per respondent	Average hours per response	Annual hour burden
12-month Interview	150	1	0.92	138
Total:	660	3		580

CY 2009 ANNUAL REPORTING BURDEN FOR THE ADDITIONAL MEASURES

Data collection activity	Number of respondents	Responses per respondent	Average hours per response	Annual hour burden
Client Interviews:				
Baseline Interview	70	1	0.83	58
6-month Interview	70	1	0.92	64
12-month Interview	58	1	0.92	53
Total:	198	3		175

CY 2010 ANNUAL REPORTING BURDEN FOR THE ADDITIONAL MEASURES

[calculated up to the anticipated grant end date of April 30, 2010]

Data collection activity	Number of respondents	Responses per respondent	Average hours per response	Annual hour burden
Client Interviews:				
Baseline Interview	0	1	0.83	0
6-month Interview	20	1	0.92	18
12-month Interview	15	1	0.92	14
Total:	35	3		32

Written comments and recommendations concerning the proposed information collection should be sent by April 23, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: March 2, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–5214 Filed 3–21–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Form I–693, medical examination of aliens seeking adjustment of status, OMB control no. 1615–0033.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 27, 2006, at 71 FR 77772, allowing for a 60-day public comment period. USCIS received one comment from the public suggesting that USCIS add a vaccination record to the Form I–693. Accordingly, USCIS has included a vaccination record based on the comment.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 23, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0033 in the subject box. Written comments and suggestions from the public and affected agencies should

address one or more of the following four points:

(1) Evaluate whether the 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Medical Examination of Aliens Seeking Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–693. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. The information on the application will be used by USCIS in considering the eligibility for adjustment of status under 8 CFR part 209 and 8 CFR 210.5, 245.1, and 245a.3.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 responses at 2.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529; Telephone 202–272–8377.

Dated: March 19, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–5251 Filed 3–21–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the invasive species advisory committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on May 1–3, 2007 is to convene the full Advisory Committee and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: Tuesday, May 1, 2007 and Thursday, May 3, 2007; beginning at approximately 8 a.m., and ending at approximately 5 p.m. each day. Members will be participating in an off-site tour on Wednesday, May 2, 2007.

ADDRESSES: DoubleTree Grand Hotel Biscayne Bay, 1717 North Bayshore Drive, Miami, Florida 33132. General Session on both days will be held in the Grand Ballroom.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: March 13, 2007.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. E7–5257 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan for Arrowwood National Wildlife Refuge, Foster and Stutsman Counties, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Arrowwood National Wildlife Refuge (Refuge) is available. This draft CCP/EA describes how the Service intends to manage this Refuge for the next 15 years.

DATES: We must receive written comments on the draft CCP/EA by April 23, 2007. Submit comments by one of the methods under **ADDRESSES**.

ADDRESSES: Please provide written comments to Michael Spratt, Chief, Division of Refuge Planning, Mountain-Prairie Region, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486, or electronically to *Michael_Spratt@fws.gov*. A copy of the CCP can be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, CO 80228; or by download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Michael Spratt, 303–236–4366 (phone); 303–236–4792 (fax); or *Michael_Spratt@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: President Franklin D. Roosevelt signed Executive Order 7168 on September 4, 1935, ''establishing Arrowwood Migratory Waterfowl Refuge.'' Now known as Arrowwood National Wildlife Refuge, the 15,973-acre Refuge is in east-central North Dakota. The Refuge covers 14 miles of the James River Valley in Foster and Stutsman counties, approximately 30 miles north of Jamestown. The purposes of the Refuge are for use by migratory birds with emphasis on waterfowl and other water birds; the conservation of fish and wildlife resources; use as an inviolate sanctuary; or for any other management purposes, for migratory birds; and a Refuge and

breeding ground for migratory birds and other wildlife.

The Refuge lies on the Central Flyway migratory corridor and is an important stopover for many birds. The prairie grassland and wetland complex habitats provides a nesting and feeding habitat for waterfowl in the spring and summer. Hundreds of thousands of waterfowl migrate through the area and use the wetlands in the spring and fall for feeding and resting. The Refuge contains approximately 6,000 acres of native prairie; 5,340 acres of seed grasses; 3,850 acres of wetlands; 660 acres of wooded ravines and riparian woodlands; and 125 acres of planted trees including shelterbelts. It is important to note that 3,430 acres of wetlands are managed impoundments and pools. Public use and recreation at the Refuge includes the six priority wildlife-dependent uses: hunting, fishing, wildlife observation, wildlife photography, interpretation, and education.

This draft CCP/EA identifies and evaluates three alternatives for managing the Refuge for the next 15 years. Under Alternative A, the No Action alternative, the Service would manage habitats, wildlife, programs, and facilities at current levels as time, staff, and funds allow. There would be an emphasis on waterfowl migration and reproduction habitat. The Service would not develop any new management, restoration, or education programs at the Refuge. Target elevations of each wetland impoundment would be managed independently to achieve optimal habitat conditions.

Alternative B would maximize the biological potential of the Refuge for both wetland and upland habitats, and support a well-balanced and diverse flora and fauna representative of the Prairie Pothole Region. A scientific-based monitoring program would be developed as part of the habitat management plan (HMP). Public use opportunities would be expanded with the construction of additional facilities and development of educational programs.

Alternative C, the Proposed Action, would include those features described in Alternative B, as well as including a plan to improve the water quality entering the Refuge, and reducing peak flows in the upper James River watershed during spring runoff and summer rainfall events. This watershed management component would include working with private landowners through the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife program and other federal, state, and private conservation programs. The focus would be to protect and restore wetlands and grasslands, and reduce the impact on water quality from cropland and livestock operations. Improving the health of the upper James River watershed would not only benefit wildlife habitat in the watershed and at the Refuge, it would also benefit the Jamestown Reservoir and all downstream users.

The Proposed Action was selected because it best meets the purposes and goals of the Refuge, as well as the goals of the National Wildlife Refuge System. The Proposed Action will also benefit federally listed species, waterfowl, shorebirds, wading birds, grassland birds, and songbirds. Environmental education and partnerships will result in improved wildlife-dependent recreational opportunities. Cultural and historical resources, as well as federally listed species, will be protected.

Opportunities for public input will also be provided at a public meeting. Exact dates and times for these public meetings are yet to be determined, but will be announced via local media and a newsletter. All information provided voluntarily by mail, phone, or at public meetings (*e.g.*, names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information. The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR 1500–1508); other appropriate Federal laws and regulations; Executive Order 12996; the National Wildlife Refuge System Improvement Act of 1997; and Service policies and procedures for compliance with those laws and regulations.

Dated: November 17, 2006.

James J. Slack,

Deputy Regional Director, Region 6, Denver, Colorado.

Editorial Note: This document was received at the Office of the Federal Register on March 19, 2007.

[FR Doc. E7–5211 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6662–F, AA–6662–H, AA–6662 K, AA–6662–A2; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Choggiung Limited. The lands are in the vicinity of Ekuk, Alaska, and are located in:

Lot 3, U.S. Survey No. 6443, Alaska

Containing approximately 55 acres.

Seward Meridian, Alaska

T. 16 S., R. 58 W.,
Sec. 19; Sec. 20; Sec. 21; Sec. 28.
Containing 1,803.86 acres.
T. 17 S., R. 58 W.,
Secs. 30 and 31.
Containing 1,220.20 acres.
T. 18 S., R. 58 W.,
Secs. 6 and 7;
Secs. 18 and 19;
Secs. 29 to 33, inclusive.
Containing 5,618.40 acres.
Aggregating 8,697.44 acres.

Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 23, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a

week, to contact the Bureau of Land Management.

John Leaf,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–5224 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–920–07–1320–EL, UTU–84713]

Notice of Invitation To Participate in Coal Exploration License Application, Parallel Petroleum Corporation, UTU–84713, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation to Participate in Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR part 3410, all interested parties are hereby invited to participate with Parallel Petroleum Corporation on a pro rata cost sharing basis in a program for the exploration of coal deposits in the Vernal Coal Field owned by the United States of America in the following-described lands in Uintah County, Utah:

T. 3 S., R. 23 E., SLM, Utah
Sec. 7, lot 2;
Sec. 29, SW¼NE¼ .
T. 4 S., R. 22 E., SLM, Utah
Sec. 10, NE¼SW¼;
Sec. 35, NE¼SW¼.

Containing 159.57 acres.

DATES: Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and Parallel Petroleum Corporation, as provided in the **ADDRESSES** section below, no later than thirty days after publication of this invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan and license (serialized under the number of UTU 84713) are available for review during normal business hours in the public room of the BLM State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah. The written notice to participate in the exploration program should be sent to both the BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, and to William A. Ryan, Agent Rocky Mountain Consulting, Inc., 290 South 800 East, Vernal, Utah 94078.

SUPPLEMENTARY INFORMATION: All of the coal in the above-described land consists of unleased Federal coal. This coal is not within a known coal production area. This coal exploration license will be issued by the BLM. The exploration program is fully described and is being conducted pursuant to an exploration plan approved by the BLM. The plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate. This notice of invitation to participate was published in *The Vernal Express*, once each week for two consecutive weeks beginning the fourth week of August 2006 and in the **Federal Register**.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: February 13, 2007.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. E7–5207 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–07–1310–FI; COC64229]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64229 from Tatonka Oil and Gas Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64229 effective December 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 15, 2007

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E7–5241 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–07–1310–FI; COC64230]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64230 from Tatonka Oil and Gas Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64230 effective December 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 15, 2007.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E7–5242 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–07–1310–FI; COC64227]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64227 from Tatonka Oil and Gas, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64227 effective December 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 15, 2007.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E7–5243 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–07–1310–FI; COC64228]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64228 from Tatonka Oil and Gas Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64228 effective December 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 15, 2007.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E7–5244 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–07–1310–FI; COC64226]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64226 from Tatonka Oil and Gas Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64226 effective December 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 15, 2007.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E7–5245 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–071310–FI; COC64225]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64225 from Tatonka Oil and Gas Company, LLC for lands in Moffat

County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64225 effective December 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 15, 2007.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E7–5246 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–169–1220–AL]

Notice of Public Scoping Meeting, Carrizo Plain National Monument Resource Management Plan

SUMMARY: In accordance with Federal Land Policy and Management Act of 1976 (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), the National Environmental Policy Act of 1969 (NEPA), and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.2), the United States Department of the Interior, Bureau of Land Management (BLM), Carrizo Plain National Monument, Monument Advisory Committee members, the California State Department of Fish and Game and the Nature Conservancy will meet as indicated below:

DATES: The meeting will be held on Tuesday, May 1, 2007 at the Bakersfield Field Office at 3801 Pegasus Drive. The location is approximately 1 mile east of Hwy. 99 off the Porterville/Sequoia exit turn-off on Hwy. 65. The meeting will begin at 5:30 p.m. and finish at 7 p.m.

SUPPLEMENTARY INFORMATION: This meeting affords the public the opportunity to become informed about the Resource Management Plan planning and provide comments to be considered in the formulation of this plan. This meeting is open to the public, who may present written or verbal comments to be considered for the development of the Resource Management Plan, and discuss other coordination opportunities. Depending on the number of persons wishing to comment, and the time available, the time allotted for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact BLM as indicated below.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attention: Johna Hurl, Acting Monument Manager, 3801 Pegasus Drive, Bakersfield, CA., 93308. Phone at (661) 391–6093 or e-mail at: *jhurl@blm.gov*

Dated: March 6, 2007.

Johna Hurl,

Acting Manager, Carrizo Plain National Monument.

[FR Doc. E7–5210 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–169–1220–AL]

Notice of Public Scoping Meeting; Carrizo Plain National Monument Resource Management Plan

SUMMARY: In accordance with Federal Land Policy and Management Act of 1976 (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), the National Environmental Policy Act of 1969 (NEPA), and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.2), the United States Department of the Interior, Bureau of Land Management (BLM), Carrizo Plain National Monument, Monument Advisory Committee members, the California State Department of Fish and Game and the Nature Conservancy will meet as indicated below:

DATES: The meeting will be held Tuesday, April 24, 2007 at the San Luis Obispo Library located at 995 Palm Street. This location is less than 1 mile east of Hwy. 101 off the Osos exit. The meeting will begin at 5:30 p.m. and finish at 7 p.m.

SUPPLEMENTARY INFORMATION: This meeting affords the public the opportunity to become informed about the Resource Management Plan planning and provide comments to be considered in the formulation of this plan. This meeting is open to the public, who may present written or verbal comments to be considered for the development of the Resource Management Plan, and discuss other coordination opportunities. Depending on the number of persons wishing to comment, and the time available, the time allotted for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact BLM as indicated below.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attention: Johna Hurl, Acting Monument Manager, 3801 Pegasus Drive, Bakersfield, CA 93308. Phone at (661) 391–6093 or e-mail at: *jhurl@blm.gov*.

Dated: March 6, 2007.

Johna Hurl,

Acting Monument Manager, Carrizo Plain National Monument.

[FR Doc. E7–5227 Filed 3–21–07; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–921 (Review)]

Folding Gift Boxes From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on folding gift boxes from Fhina.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on folding gift boxes from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Gabriel Ellenberger (202–205–3289),

Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 6, 2007, the Commission determined that the domestic interested party group response to its notice of institution (71 FR 69586, December 1, 2006) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on April 3, 2007, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before April 6, 2007, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by April 6, 2007. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 15, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–5176 Filed 3–21–07; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Harvard Folding Box Co., Inc., to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–575]

In the Matter of Certain Lighters; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainants' Motion for Summary Determination That a Domestic Industry Exists and That There Is a Violation of Section 337; Schedule for Filing Written Submissions on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') in the above-captioned investigation granting complainants'' motion for summary determination that a domestic industry exists and that there is a violation of section 337. The Commission has also issued a briefing schedule for submissions on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 20, 2006, based on a complaint, as supplemented, filed by Zippo Manufacturing Company, Inc., of Bradford, Pennsylvania, and ZippMark, Inc. of Wilmington, Delaware (collectively ''Zippo''), alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighters by reason of infringement of United States Trademark Registration No. 2,606,241 (''the '241 mark''). 71 FR 35450 (June 20, 2006). The complaint further alleged that an industry in the United States exists or is in the process of being established as required by subsection(a)(2) of section 337. Complainants requested that the Commission issue a general exclusion order and cease and desist orders. The ALJ set July 20, 2007, as the target date for completion of the investigation.

The complaint named seven respondents: Tung Fong International Promotion Co., Ltd. of Hong Kong;

Wenzhou Star Smoking Set Co., Ltd. of China; Taizhou Rongshi Lighter Development Co., Ltd. of China; Wenzhou Tailier Smoking Set Co., Ltd. of China; Vista Wholesale of Greencastle, Indiana; beWild.com of Bellmore, New York; and Kalan LP of Landsdowne, Pennsylvania. Respondents Kalan and Wenzhou Star Smoking Set Company were terminated from the investigation on the basis of settlement agreements. The remaining five respondents were found to be in default by the ALJ and the Commission did not review that determination.

On November 7, 2006, complainants filed a motion seeking summary determination with respect to the domestic industry requirement and violation of section 337. Complainants also requested that the ALJ recommend a general exclusion order and a 100 percent bond during the Presidential review period. The Commission investigative attorney supported the motion for summary determination and the requested recommendation on remedy and bonding. No respondents responded to the motion.

On February 21, 2007, the ALJ issued an ID finding the domestic industry requirement satisfied, finding a violation of section 337, and containing a recommended determination on remedy and bonding. The ALJ found a violation of section 337 based on his conclusion that there are no genuine issues of material fact that respondents' accused products infringe the '241 mark and that a domestic industry exists as required by 19 U.S.C. 1337(a)(2). He recommended issuance of a general exclusion order and that the amount of bond for temporary importation during the Presidential review period be set at 100 percent of the entered value of the articles concerned. No petitions for review were filed and the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion). When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should be no more than twenty-five (25) pages and should address the recommended determination by the ALJ on remedy and bonding. The complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on March 29, 2007. Reply submissions must be filed no later than the close of business on April 5, 2007. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42–46 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–46.

By order of the Commission.

Issued: March 15, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–5175 Filed 3–21–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–004]

Government in the Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 26, 2007 at 1 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1110 (Preliminary)(Sodium Hexametaphosphate from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on March 26, 2007; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before April 2, 2007.).
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 19, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 07–1444 Filed 3–20–07; 2:22 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 9, 2007, a proposed consent decree with defendant Delta-Y Electric Co., Inc. was lodged in the civil action *United States* v. *B. & D Electric Co., Inc., et al.,* Civil Action No. 05–00063, in the United States District Court for the Eastern District of Missouri.

In this action the United States is seeking response costs pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, for costs incurred in response to releases of hazardous substances at the Missouri Electric Works Superfund Site (''the Site''), in Cape Girardieu, Missouri. The proposed consent decree will resolve the United States' claims against defendant Delta-Y Electric Co., Inc., under Section 107 of CERCLA, 42 U.S.C. 9607, at the Site. Under the terms of the proposed consent decree, defendant Delta-Y will make a cash payment of $5,000 to the United States. In return, the United States will grant Delta-Y a covenant not to sue under CERCLA with respect to the Site. The settlement is based on Delta-Y's demonstrated limited financial means.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the proposed consent decree with defendant Delta-Y Electric Co. in *United States* v. *B & D Electric Co., Inc., et al.,* D.J. Ref. 90–11–2–614/1.

The proposed consent decree may be examined at the office of the United States Attorney, 111 S. 10th Street, 20th Floor, St. Louis, Missouri 63102. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html* and at the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Public comments may be submitted by e-mail to the following e-mail address: *pubcomment-ees.enrd@usdoj.gov.*

Robert Maher,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1387 Filed 3–21–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 9, 2007, a proposed consent decree with defendant Sara Lee Corporation (''Sara Lee'') was lodged in the civil action *United States* v. *B & D Electric Co., Inc., et al.*, Civil Action No. 05–00063, in the United States District Court for the Eastern District of Missouri.

In this action the United States is seeking response costs pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, for costs incurred in response to releases of hazardous substances at the Missouri Electric Works Superfund Site (''the Site''), in Cape Girardieu, Missouri. The proposed consent decree will resolve the United States' claims against defendant Sara Lee under Section 107 of CERCLA, 42 U.S.C. 9607, at the Site. Under the terms of the proposed consent decree, defendant Sara Lee will make a cash payment of $25,000 to the United States. In return, the United States will grant Sara Lee a covenant not to sue under CERCLA with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the proposed consent decree with defendant Sara Lee Corporation in *United States* v. *B & D Electric Co., Inc., et al.*, D.J. Ref. 90–11–2–614/1.

The proposed consent decree may be examined at the office of the United States Attorney, 111 S. 10th Street, 20th Floor, St. Louis, Missouri 63102. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html* and at the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Public comments may be submitted by e-mail to the following e-mail address: *pubcomment-ees.enrd@usdoj.gov.*

Robert Maher,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1388 Filed 3–21–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 9, 2007, a proposed consent decree with defendant National Wrecking Company (''National Wrecking'') was lodged in the civil action *United States* v. *B & D Electric Co., Inc., et al.,* Civil Action No. 05–00063, in the United States District Court for the Eastern District of Missouri.

In this action the United States is seeking response costs pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, for costs incurred in response to releases of hazardous substances at the Missouri Electric Works Superfund Site (''the Site''), in Cape Girardieu, Missouri. The proposed consent decree will resolve the United States' claims against defendant National Wrecking under Section 107 of CERCLA, 42 U.S.C. 9607, at the Site. Under the terms of the proposed consent decree, defendant National Wrecking will make a cast payment of $30,000 to the United States. In return, the United States will grant National Wrecking a covenant not to sue

under CERCLA with respect to the Site. The settlement is based on National Wrecking's demonstrated limited financial means.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the proposed consent decree with defendant National Wrecking Company in *United States* v. *B &D Electric Co., Inc., et al.,* D.J. 90–11–2–614/1.

The proposed consent decree may be examined at the office of the United States Attorney, 111 S. 10th Street, 20th Floor, St. Louis, Missouri 63102. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html* and at the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Public comments may be submitted by e-mail to the following e-mail address: *pubcomment-ees.enrd@usdoj.gov.*

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1389 Filed 3–21–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Order Pursuant to Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on February 26, 2007, a Consent Judgment (''CJ'') in *United States* v. *Estate of Joseph Vazzana, Sr., et al.* Civil No. CV–04–0620 (E.D.N.Y.) was lodged with the United States District Court for the Eastern District of New York.

In this action the United States sued Joseph Vazzana, Jr. and the Estate of Joseph Vazzana, Sr. pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607(a), for recovery of response costs regarding the Spectrum Finishing Corp. Superfund Site in West Babylon, Suffolk County, New York (the ''Site''). The complaint also asserted a claim *in rem* against ''One Acre of Land,'' *i.e.,* the property comprising the Site. The property is subject to certain liens, and other parties have filed claims in this action regarding the property. The CJ requires Joseph Vazzana, Jr. to presently pay $1,000 and requires the Estate of Joseph Vazzana, Sr. to additionally pay up to $1,100,000 from the sale of real property in the Estate. The latter payment will be made according to a method and schedule to be determined in a subsequent settlement, judgment, or other action that addresses, to the extent appropriate, the claims filed in this action with respect to the Site property.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Estate of Joseph Vazzana, Sr., et al.,* D.J. Ref. 90–11–3–07461.

The settlement may be examned at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the Region II Office of the U.S. Environmental Protection Agency, Region II Record Center, 290 Broadway, 17th Floor, New York, NY 10007–1866. During the public comment period, the settlement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the settlement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.25 (37 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1390 Filed 3–21–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on March 8, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 17 new standards have been initiated and 8 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/01–27–07.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on November 9, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 22, 2006 (71 FR 77061).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–1397 Filed 3–21–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11408, et al.]

Proposed Exemption; The DeRose Dental Offices, Inc., S.C. Profit Sharing Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of a proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemption were requested in an applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The DeRose Dental Offices, Inc., S.C. Profit Sharing Plan (the Plan), Located in Racine, Wisconsin

[Application No. D–11408]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the December 29, 2006 sale by the Plan of 2,174 shares of stock (the Stock) in Wisconsin Bancshares, Inc. (the Company) each to Francesca DeRose (Francesca) and Nicolet DeRose (Nicolet), parties in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The sales of the Stock were one-time transactions for cash;

(b) The Plan paid no commissions or other fees in connection with the sales;

(c) The terms of the transactions were at least as favorable to the Plan as those the Plan could obtain in similar transactions with an unrelated party; and

(d) the sales price of the Stock was determined by a qualified, independent appraiser.

DATES: *Effective Date:* The proposed exemption, if granted, will be effective as of December 29, 2006.

Summary of Facts and Representations

1. The Plan is an individual account plan established by DeRose Dental Offices, Inc., S.C. (the Employer), a professional dental corporation located in Racine, Wisconsin. As of December 31, 2005 (the Last Valuation Date), the Plan had 10 participants and beneficiaries, and had total assets of $1,951,401. Francesca and Nicolet, the only dentists employed by the Employer, are participants in the Plan. Francesca, along with Ronald S. Rizzo, is also the co-trustee of the Plan. As of the Last Valuation Date, Francesca's account value was $747,061.71, and Nicolet's account value was $986,336.53. These account values constitute approximately 88.83% of the total assets of the Plan. The applicants represent that since the Last Valuation Date, the values of the participants' respective accounts have not significantly changed.

2. Among other assets, the Plan held shares (i.e., the Stock) of the Company, a closely-held bank holding company registered under the Bank Holding Company Act of 1956, as amended, and a financial holding company under the Gramm-Leach-Bliley Act of 1999. The Company is the 100% owner of Banks of Wisconsin (the Bank), a full service community bank with four locations in Wisconsin. As of December 8, 2006, 535,594 shares of Stock were issued and outstanding.

3. The applicants represent that the Plan initially acquired shares of common stock of the Bank in the secondary private stock offering by the Bank on July 29, 2003 at a price of $23 per share, or an aggregate purchase price of $100,004. On December 31, 2004, the Company was formed as a holding company for all of the shares of the common stock of the Bank. As of January 1, 2005, all of the shares of the Bank were converted into shares of the Stock. The price per share in the secondary offering was determined by the Board of Directors (the Board) of the Bank. The shares were offered to

existing shareholders of the Bank and to the Plan. The offer was not underwritten by any third party. The applicants represent that the Board determined the secondary offering price by calculating a hypothetical fair return for a start up bank after three years of operations and experience. All of the shares of the Bank were sold in the secondary offering, which raised approximately $2.8 million for the Bank. The Bank's initial private stock offering occurred on June 26, 2000 at a price of $20 per share. The Plan has not acquired any additional shares of Stock since the acquisition on July 29, 2003. The applicants represent that the Bank is, and at the time of the acquisition of the Stock by the Plan was, an entity unrelated to the Plan, and not a party in interest with respect to the Plan within the meaning of section 3(14) of the Act. The Company has at all times been an entity unrelated to the Plan.

4. Francesca also holds 3,950 shares of the Stock individually. In addition, David Barnes, her husband and the Chairman of the Board of the Bank, holds 37,777 shares of Stock individually and 2,050 shares as trustee of one or more custodial accounts established under the Uniform Transfer to Minors Act. Together, Mr. Barnes and Francesca hold approximately 9.02% of the issued and outstanding shares of Stock. Nicolet in her individual capacity holds 375 shares of Stock. Mr. Rizzo, the co-trustee of the Plan, holds 15,616 shares of the Stock individually, which represents approximately 2.92% of the issued and outstanding Stock. The Stock held by the Plan represented 0.81% of the issued and outstanding Stock. During the period of its ownership of the Stock, the Plan earned no dividends or other income and incurred no expenses with respect to the Stock. Except for Mr. Barnes, neither Mr. Rizzo, nor any family member (including the Plan participants) is an officer, director or controlling shareholder of the Bank or the Company.

5. The applicants have requested a retroactive prohibited transaction exemption for the purchase of 2,174 shares of the Stock by Francesca, and the purchase of 2,174 shares of the Stock by Nicolet. Both transactions occurred on December 29, 2006. The applicants represent that due to business and income tax considerations, the Company and Bank are both seeking to make a Subchapter S election, to be effective as of January 1, 2007. Although a tax-exempt qualified trust forming part of a stock bonus, pension or profit-sharing plan, such as the Plan and its related trust, can be an S corporation eligible shareholder, such exempt trust is required to pay the unrelated business income tax (UBIT) on all income attributable to ownership of stock of an S corporation, using the income tax rates. UBIT is due whether or not the S corporation actually distributes the income to the trust. In addition, any gain on the sale of the S corporation stock by a trust is generally subject to UBIT. Because the Plan would incur unfavorable tax consequences as a result of an S corporation election and the continued holding of the Stock, Nicolet and Francesca desired to purchase the Stock from the Plan. The decision on behalf of the Plan to sell the Stock was made solely by Mr. Rizzo in his capacity as co-trustee.

6. The Stock was independently appraised by an independent appraiser, Mercer Capital (Mercer). Mercer is an independent financial advisor experienced in the financial analysis and valuation of financial institutions. The Company retained Mercer, in connection with the S corporation election and related merger transaction, to assist the Board in determining a fair price for the Stock. Mercer delivered an appraisal to the Board at the Board's meeting on October 17, 2006, using the Company's September 30, 2006 financial data, whereby it determined the fair market value of the Stock to be $44 per share. On November 1, 2006, Mercer issued an opinion to the Board that the cash consideration to be received by the Bank's shareholders was fair to the shareholders. In arriving at its opinion and appraisal, Mercer reviewed and analyzed the Company's audited financial statements, quarterly reports, the Company's financial forecasts, the historical trading prices and activity for the Stock, the nature and financial terms of certain other merger and acquisition transactions involving banks, financial studies, analyses and investigations and relevant financial, economic and market criteria. In addition, Mercer met with the management of the Company to discuss past and current operations, financial condition and prospects, as well as the result of regulatory examinations.

7. On the date of the sale of the Stock to Francesca and Nicolet by the Plan, Mr. Rizzo, in his capacity as co-trustee for the Plan, contacted Mr. Andy Gibbs at Mercer in order to obtain an updated appraisal of the Stock or a confirmation that the value of Stock since the date of the appraisal had not changed. Mr. Gibbs advised Mr. Rizzo that Mercer was aware of no circumstances that would change its appraisal of the Stock as of September 30, 2006, and that the appraisal report and appraised value of $44 per share of Stock remained current as of the date of sale.

8. The applicants represent that there is no active trading market for the Stock, and no market is expected to develop for the Stock upon the consummation of the merger and the S corporation election. The sale of the Stock to Francesca and Nicolet presented an opportunity to provide better liquidity and diversification of investments in the Plan at a fair price. The applicants represent that the Plan benefited from significant appreciation in the value of the Stock since purchasing the Stock in the secondary offering. As demonstrated by the appraisal by Mercer, the value of the Stock as of September 30, 2006 ($44) significantly exceeds the purchase price paid by the Plan for the Stock ($23 per share on July 23, 2003) and the value of the Stock on the Last Valuation Date, which was determined to be $25 per share based on recent private sale transactions.

9. In summary, the applicants represent that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions were at least as favorable to the Plan as those the Plan could have obtained in similar transactions with an unrelated party; (b) the sales of the Stock were one-time transactions for cash, and the Plan paid no commissions or other fees in connection with the sales; (c) the sales price of the Stock was determined by a qualified, independent appraiser who confirmed the fair market value as of the date of the sales; (d) the Plan benefited from significant appreciation in the Stock since the time of its acquisition in July, 2003; and (e) the sales of the Stock provide better liquidity and diversification of investments in the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of March, 2007.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–5209 Filed 3–21–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11345]

Notice of Proposed Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 2000–34, Involving the Fidelity Mutual Life Insurance Company (FML), Located in Pittsburgh, PA

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption to amend and replace PTE 2000–34.

This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend and replace PTE 2000–34 (65 FR 41732, July 6, 2000), an exemption granted to FML. PTE 2000–34, relates to (1) the receipt of certain stock (Plan Stock) issued by Fidelity Insurance Group, Inc. (Group), a wholly owned subsidiary of FML, or (2) the receipt of plan credits (Plan Credits), by or on behalf of a FML mutual member (the Mutual Member), which is an employee benefit plan (the Plan), other than the Employee Pension Plan of Fidelity Mutual Life Insurance Company, in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation (the Third Amended Plan), approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and a rehabilitator (the Rehabilitator) appointed by the Pennsylvania Insurance Commissioner (the Commissioner). These transactions are described in a notice of proposed exemption (65 FR 18359, April 7, 2000), which underlies PTE 2000–34.

If granted, this proposed exemption would incorporate by reference many of the conditions contained in PTE 2000–34. The proposed exemption would also revise and update certain facts and representations set forth in PTE 2000–34 to include the terms of the Fourth Amended Plan of Rehabilitation (the Fourth Amended Plan) which supersedes the Third Amended Plan upon which PTE 2000–34 is based.

DATES: *Effective Date:* If granted, this proposed exemption would be effective as of the date the grant notice is published in the **Federal Register**.

DATES: Written comments should be received by the Department by April 24, 2007.

ADDRESSES: All written comments should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–11345. Interested persons are also invited to submit comments to the Department by e-mail to *uzlyan.katie@dol.gov* or by facsimile at (202) 219–0204.

The application pertaining to the proposed exemption and the comments will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, Office of Exemptions Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8552. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend and replace PTE 2000–34. PTE 2000–34 provides an exemption from the prohibited transaction restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1)(A) through (D) of the Code.

The proposed exemption has been requested in an application filed on behalf of FML pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. FML and Its Affiliates

As noted in the proposed exemption underlying PTE 2000–34, FML is a mutual life insurance company maintaining its principal place of business at 250 King of Prussia Road, Radnor, Pennsylvania. Prior to certain rehabilitation proceedings, FML was licensed to issue life insurance policies in 47 states and the District of Columbia. Because FML has been organized as a mutual form of life insurance company, it has no stockholders. Instead, the owners of its contracts (i.e., the Mutual Members) are vested with the right to vote and to receive an allocable portion of the divisible surplus. In addition, the Mutual Members have contractual rights under their contracts with FML.

FML owns all of the stock of Group, a Pennsylvania-domiciled stock corporation. Group, in turn, owns all of the stock of Fidelity Life Insurance Company (FLIC), a Pennsylvania stock life insurance company.

II. Description of FML and the Earlier Plans of Rehabilitation

During late 1990, the Pennsylvania Insurance Department began monitoring FML's operations because of concern over FML's real estate holdings, its decline in surplus and unrealized capital losses. In response to an increase in surrenders of FML insurance contracts (the Contracts), and loan requests for the period October 26 to November 5, 1992, the Pennsylvania Insurance Department and FML's Board of Directors petitioned the Court for an Order of Rehabilitation. As a result, FML was placed in rehabilitation on November 6, 1992. Under the Order of Rehabilitation, a moratorium was imposed on cash distributions, Contract surrenders, withdrawals and policy loans, except in certain hardship situations. The moratorium was intended to stop the outflow of cash and to afford the Rehabilitator time to stabilize FML's assets.

FML filed the Original Plan of Rehabilitation (the Original Plan), with the Court on June 30, 1994. The Original Plan and the successor amended plans of rehabilitation (i.e., the First Amended Plan of Rehabilitation (the First Amended Plan) and the Second Amended Plan of Rehabilitation (the Second Amended Plan)) are described in detail in PTE 2000–34 at 18361–18362.

III. The Third Amended Plan

Because the First Amended Plan and the Second Amended Plan were never implemented due to objections raised by a number of parties, FML filed the Third Amended Plan with the Court on June 30, 1998. According to PTE 2000–34, the Third Amended Plan provided that on the reorganization closing date (the Closing Date), FML would transfer its insurance operations (including assets and insurance-contract obligations) to FLIC pursuant to assumption reinsurance and transfer agreements. FLIC would then continue as a wholly owned subsidiary of Group and a successor to FML. Prior to the transfer to and assumption by FLIC, FML would modify the terms of its insurance contracts by endorsement. These contractual obligations (as modified by such endorsements) would remain in force after such transfer, with FLIC being the obligated insurer.

A. Sale of Group Stock

The Third Amended Plan further provided for FML to sell approximately 51% of the outstanding common stock of Group (Group Common Stock) to an investor (i.e., the Investor) in a private placement in exchange for cash. The Investor would be an independent foreign or domestic entity which satisfied certain securities law and certain minimum rating or capitalization criteria. The Investor would be selected according to bid procedures drawn up by the Commissioner and adopted by the Court, and would be subject to Court approval. Immediately after the Closing Date, the Investor would own slightly more than 50% of the Group Common Stock. Part of the cash received by FML from the sale of Group Common Stock to the Investor would be used by FML to pay the claims of its creditors. The remaining cash would be contributed by FML to the capital of FLIC in order to fund FLIC's future operations.

B. Classes of Claims

The Third Amended Plan set up classes of claims against FML and specified the priorities of each class of claims, in conformity with the Pennsylvania laws applicable to insurance company rehabilitations. For example, Class 3 covered the claims which holders of Contracts had in their capacities as Contractholders (and not in their capacities as Mutual Members). These claims included claims for death or annuity proceeds or other payments for insured losses under FML insurance policies. Contractholders would be permitted to surrender their Contracts for the full cash surrender value. The Contracts of Contractholders not exercising this surrender option would continue in effect, as modified by endorsement by FML, and then assumed and reinsured by FLIC. Class 10, the last and residual category, covered claims of FML's Mutual Members with respect to their Membership Interests.

C. Mutual Members

Under the Third Amended Plan, the claims of FML's Mutual Members would generally be satisfied on the Closing Date by distributing Group Common Stock and Group preferred stock (Group Preferred Stock) [1] to these Mutual Members in exchange for the relinquishment of their Membership Interests in FML. Group Common Stock would have voting rights of one vote per share. Group Preferred Stock would have a liquidation preference and redemption value of $25 per share. The holders of Group Preferred Stock would be entitled to receive cumulative annual dividends, payable quarterly, at the rate of 7% per annum of the liquidation preference (i.e., $1.75 per share annually). Group Preferred Stock would generally be non-voting.

Upon the liquidation of Group, a share of Group Preferred Stock would be entitled to a distribution preference of $25 per share, plus the amount of any accrued but unpaid dividends. Group could elect to redeem shares of Group Preferred Stock at any time after 20 years from the Closing Date (or the issue date, if later) at a redemption price of $25 per share plus the amount of any accrued but unpaid dividends. Group Preferred Stock would be convertible into shares of Group Common Stock at any time at the option of the holder.

Of the Plan Stock that would be allocated to Mutual Members for Class 10 claims, 20% would be allocated based on voting rights, and 80% would be based on the Contract's contribution to FML's surplus. Each Mutual Member receiving Plan Stock would receive Group Common Stock and Group Preferred Stock in the ratio of 3 common shares to 2.8 preferred shares.

Under the Third Amended Plan, a special distribution rule would apply to Mutual Members who held insurance contracts in connection with (a) retirement plans or arrangements described in sections 403(a) or 408 of the Code or (b) non-trusteed retirement plans described in Code section 401(a) (Non-Trusteed Tax-Qualified Retirement Funding Contracts). Mutual Members holding Non-Trusteed Tax-Qualified Retirement Funding Contracts would not receive Plan Stock in exchange for the relinquishment of their Membership Interests. These Mutual Members would instead be entitled to receive Plan Credits having a value equal in value to the Plan Stock they would otherwise have received. This special rule was adopted to take into account the legal impediments which frequently exist on the ability of holders of Non-Trusteed Tax-Qualified Retirement Funding Contracts to hold corporate stock.

The Investor would be required to purchase Plan Stock which would otherwise have been allocated to Non-Trusteed Tax-Qualified Retirement Funding Contracts. The proceeds of such sale would be contributed to the capital of FLIC. Mutual Members holding Non-Trusteed Tax-Qualified Retirement Funding Contracts would have the right to disclaim the Plan Credits which they would otherwise receive in exchange for their Membership Interests. Any Mutual Member which is a Plan or other member would have the right to disclaim its interest in the Plan Stock which it would otherwise receive in exchange for its Membership Interest.

[1] Group Common Stock and Group Preferred Stock are also collectively referred to as ''Plan Stock.''

D. Liquidation of FML; Continuation of Group and FLIC

Under the Third Amended Plan, FML would liquidate and dissolve shortly after the Closing Date. Any Group Common Stock and Group Preferred Stock which FML would continue to hold after the Closing Date would be returned to Group for cancellation. FLIC would then continue in existence as a wholly owned subsidiary of Group, and would continue FML's business in a substantially unchanged manner by receiving premiums, paying claims, and generally administering the FML contracts which FLIC had assumed.

E. Sale of Plan Stock; Commission-Free Purchase and Sales Program

Under the Third Amended Plan, Mutual Members would not be restricted from selling or transferring the Plan Stock received, including converting the Group Preferred Stock to Group Common Stock, although Group, its affiliates and the Investor would be subject to restrictions on purchasing or redeeming such Stock. Additionally, Group would not be precluded from establishing a commission-free purchase or sales program to allow Mutual Members who received a small number of shares of Plan Stock the opportunity to round-up those shares or sell such shares for a temporary period without the payment or sales commission. The Plan Stock would be publicly-traded and listed on the Nasdaq, or the New York or American Stock Exchange.

F. Protections for Plan Mutual Members

PTE 2000–34 provided certain protections for Mutual Members that are Plans. In this regard:

- The Third Amended Plan would be approved by the Court and implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and would be subject to review and/or supervision by the Commissioner and the Rehabilitator.
- The Court would determine whether the Third Amended Plan properly conserved and equitably administered the assets of FML in the interests of investors, the public and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors and the public; and (2) equitably apportioned any unavoidable loss through improved methods for rehabilitating FML.
- Each Mutual Member would have an opportunity to comment on the Third Amended Plan at hearings held by the Court after full written disclosure of the terms of the Third Amended Plan is given to such Mutual Member by FML.
- Participation by all Mutual Members in the Third Amended Plan, if approved by the Court, would be mandatory, although Mutual Members could disclaim Plan Stock.
- The decision by a Mutual Member, which was a Plan, to receive or disclaim Plan Stock or Plan Credits allocated to such Mutual Member would be made by one or more independent fiduciaries of such plan and not by FML, Group or FLIC. Consequently, neither FML nor any of its affiliates could exercise investment discretion nor render ''investment advice'' within the meaning of 29 CFR 2510.3–21(c) with respect to an independent plan fiduciary's decision to receive or disclaim Plan Stock or Plan Credits.
- Twenty percent (20%) of the Plan Stock would be allocated to a Mutual Member based upon voting rights and eighty percent (80%) would be allocated to a Mutual Member on the basis of the contribution of the Mutual Member's insurance or annuity Contract to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas would be approved by the Court and the Commissioner.
- The value of Plan Stock or Plan Credits that would be received by a Mutual Member would reflect the aggregate price paid by the Investor Group for Group Common Stock and for Plan Credits.
- All Mutual Members that were Plans would participate in the transactions on the same basis as all other Mutual Members that are not Plans.
- No Mutual Member would pay any brokerage commissions or fees in connection with the receipt of Plan Stock or Plan Credits.
- The Third Amended Plan would not affect the rights of a Contractholder, which is a Mutual Member. In this regard, FML's obligations to a Contractholder would be discharged and terminated upon their endorsement and assumption by FLIC, thereby making FLIC liable for the obligations under such Contract.

IV. The Fourth Amended Plan

Subsequent to the granting of PTE 2000–34, FML informed the Department of certain modifications to the Summary of Facts and Representations set forth in PTE 2000–34. Specifically, on November 23, 2005, the Fourth Amended Plan was submitted to the Court. The Fourth Amended Plan supersedes the Third Amended Plan. FML represents that it was not possible to implement the Third Amended Plan because a qualified bidder could not be obtained. Consequently, FML explains that in November 2005, the Fourth Amended Plan was introduced and submitted to the Court.

The Fourth Amended Plan calls for the Commissioner to adopt one of the following reorganization alternatives for FML: (a) Cause FML to sell its insurance operations, assets, and insurance-contract obligations to an Investor who is an asset purchaser (the Asset Purchaser) in exchange for cash (the Asset Acquisition Alternative); or (b) convert FML from a mutual company to a stock company, and cause FML to sell its stock to an Investor who is a stock purchaser (the Stock Purchaser) in exchange for Investor Stock and/or cash (the Stock Acquisition Alternative).[2]

The Rehabilitator will conduct a competitive bidding process in accordance with the bid procedures set forth in the Fourth Amended Plan. The Rehabilitator will have the right to reject any and all bids, and will have no authority to accept a bid without the prior approval of the proposed transaction by the Pennsylvania Insurance Department and by the Court after petition, notice, and hearing.

Bidders may bid for either the purchase of all of the stock of FML or the assumption of all of FML's insurance contracts. If an assuming insurer is the successful bidder, selected assets of FML will be transferred to the Asset Purchaser in exchange for its assumption and reinsurance of FML's obligations under all of FML's insurance Contracts. If a purchaser of FML's stock is the successful bidder, FML will be demutualized and converted into a stock corporation, and FML's stock will be sold to such Stock Purchaser.

As under the Third Amended Plan, cash obtained by FML will be used to pay the claims of FML's creditors. In addition, FML's Mutual Members will receive cash or a combination of cash and Investor Stock (or, in some cases, Plan Credits).

A. The Asset Acquisition Alternative

Under the Asset Acquisition Alternative, the Asset Purchaser will assume all of FML's insurance contracts on the Closing Date. These contractual obligations (as modified) will remain in force after such transfer, with the Asset Purchaser being the obligated insurer.

[2] For purposes of this proposed exemption, the Asset Acquisition Alternative and the Stock Acquisition Alternative are together referred to as ''the Alternatives.''

In addition, before the Closing Date, each FML Contract in force will be modified by endorsement to remove provisions for voting rights, participation in divisible surplus through dividends, and to provide for continued compliance with various tax provisions. Moreover, each Contract having a cash value will be modified to provide that the Contract will be eligible annually, in lieu of dividends, for certain contractual charges, payments and credits which are not guaranteed by the terms of the contract (the Non-Guaranteed Elements). The Contractholder may elect to apply these Non-Guaranteed Elements in accordance with the same options as were available for the application of dividends before the contract was modified. No Contract modifications will reduce any benefits and guarantees.

The cash value, the Non-Guaranteed Element accumulation account, and policy loan accounts of each Contract will be the same after the Closing Date as they were before the Closing Date. Additionally, the initial post-closing Non-Guaranteed Elements will be determined by the Rehabilitator and will be subject to notice, hearing, and Court approval.

Further, the Asset Purchaser will pay FML a ceding commission determined by competitive bidding in accordance with the bidding procedures. The bidding procedure will be subject to approval by the Court.

Also under the Asset Acquisition Alternative, FML will transfer to the Asset Purchaser the assets of its insurance operations and other assets having a total value equal to the net FML liabilities assumed by the Asset Purchaser (i.e., statutory reserves), less the agreed-upon purchase price as determined through the bidding procedures (i.e., the ceding commission). The transferred assets will be free and clear of all liens and claims arising from pre-closing to claims against FML, but will be subject to the obligations imposed by the assumed Contracts and ''the Assumption Reinsurance Agreement.'' Additionally, FML will transfer all of the outstanding common stock of FLIC to the Asset Purchaser in the event such assuming insurer submits a bid to purchase the stock of FLIC that is selected by the Rehabilitator and approved by the Court.

Further, holders of FML Contracts will have the right to reject the transfer of their Contracts to the Asset Purchaser. Each rejected contract will be cancelled by FML before the Closing Date, and the Contractholder will receive the cash surrender value of the Contract (if any). The Asset Purchaser will have no liability with respect to any rejected contract. The rights of Contractholders in their capacities as Mutual Members of FML will not be affected by any such Contract rejection.

As noted below, as soon as practicable after the Closing Date, FML will transfer to Mutual Members (including Mutual Members that are Plans), consideration in the form of cash or Plan Credits, in exchange for such Mutual Member's Membership Interest in FML.

B. The Stock Acquisition Alternative

Under the Stock Acquisition Alternative, FML will demutualize and convert to a stock corporation effective as of the Closing Date. All of FML's assets will vest in the stock corporation, and the Stock Purchaser will assume all of FML's liabilities which are not released, discharged, or otherwise retained under the Fourth Amended Plan. Moreover, FML's Contracts will be endorsed as under the Asset Acquisition Alternative.

Also under the Stock Acquisition Alternative, all of FML's post-conversion (Post-Conversion) issued and outstanding common stock [3] will be transferred to the Stock Purchaser on the Closing Date, in exchange for the consideration determined by competitive bidding, in accordance with the bidding procedures, and subject to approval by the Court. Such consideration may consist of (a) cash or (b) a combination of cash and common stock issued by the Stock Purchaser or the parent of the Stock Purchaser (Investor Stock), or a combination of both. Alternatively, the Stock Purchaser may acquire all of FML's stock pursuant to a merger for (a) cash or (b) a combination of cash and Investor Stock.

Investor Stock forming part of the consideration for FML's stock will be listed on either the Nasdaq or the New York Stock Exchange. The Investor Stock will also be registered under the Securities Exchange Act of 1934, and it will not be subject to transfer restrictions (except as may otherwise be required under relevant securities laws). As another option, pursuant to a registration exemption under the Securities Exchange Act of 1933, the Stock Purchaser may use as consideration, its shares of unregistered common stock if such Stock Purchaser obtains an SEC ''no action'' letter or a legal opinion as to the applicability of such SEC exemption.

[3] The applicant represents that neither Group nor FLIC has any preferred stock outstanding. The Fourth Amended Plan also does not propose to use any preferred stock.

If Investor Stock forms part of the consideration for FML's shares, the Stock Purchaser will be required to establish a ''round lot'' program under which each FML Mutual Member who receives fewer than 100 shares of Investor Stock under the Fourth Amended Plan may either (a) purchase additional shares of Investor Stock to increase his holdings to a ''round lot'' consisting of 100 shares, or (b) sell all of his or her shares of Investor Stock, without paying brokerage commissions or administrative or similar expenses.

At or before Closing, the Rehabilitator and the Stock Purchaser will determine how many shares of Investor Stock are allocable to Mutual Members which are entitled to receive Plan Credits instead of Investor Stock. Instead of transferring these shares as part of the consideration, the Stock Purchaser will pay to FML the market value of such shares as of the Closing Date, and FML will apply this amount as Plan Credits.

C. FML Creditors

Part of the cash received by FML from either the Asset Purchaser or the Stock Purchaser will be used to pay the claims of FML's creditors in full, together with interest at the rate of 6%. In addition, the Fourth Amended Plan sets up ten classes of claims against FML and specifies the priorities of each class of claims, in conformity with the Pennsylvania laws applicable to insurance company rehabilitations. These classes, priorities, and payment provisions are substantially identical to those included in the Third Amended Plan. In this regard, Mutual Members' claims for their Mutual Membership Interests in FML comprise class 10 claims.

D. Mutual Members

The Fourth Amended Plan provides that in exchange for the mandatory relinquishment of their Mutual Membership Interests, Mutual Members of FML will be entitled to receive FML's net assets (including cash or a combination of cash and Investor Stock) remaining after the satisfaction of all claims in Classes 1 through 9. Of the FML net assets allocated to Mutual Members for Class 10 claims, 20% will be allocated based on voting rights, and 80% will be based on the Contract's contribution to FML's surplus.

As under the Third Amended Plan, the Fourth Amended Plan provides for a special distribution rule. This special distribution rule will apply to Mutual Members, under both Alternatives, who hold Contracts in connection with Non-Trusteed Tax-Qualified Retirement Funding Contracts. These Mutual

Members will not receive any cash or Investor Stock in exchange for the relinquishment of their Membership Interests with respect to such Contracts, but will instead receive Plan Credits having a value equal to the cash or combination of cash and Investor Stock they would otherwise have received. Under the Stock Acquisition Alternative, the Stock Purchaser will be required to pay cash to this group of Mutual Members in lieu of Investor Stock, which will be replaced by Plan Credits.

Each Mutual Member will have the right to disclaim its interest in the cash or combination of cash and Investor Stock which such Mutual Member would otherwise receive in exchange for its Membership Interest.

E. Liquidation or Continuation of FML

Effective as of the Closing Date, FML will generally be discharged from any liability with respect to any and all of its liabilities claims and, obligations. Under the Asset Acquisition Alternative, FML will be liquidated and dissolved after all endorsed insurance contracts are assumed by the Asset Purchaser. Under the Stock Purchase Alternative, FML will continue in existence as an operating stock insurance company owned by the Stock Purchaser.

F. Protections for Plan Mutual Members

Under the Fourth Amended Plan, all Mutual Members that are Plans will be subject to the similar protections as those provided under the Third Amended Plan. In this regard:

- The Fourth Amended Plan will be approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and be subject to review and/or supervision by the Commissioner (both in her own capacity and in her capacity as Rehabilitator of FML). The Court will determine whether the Fourth Amended Plan (1) properly conserves and equitably administers the assets of FML, in the interests of investors, the public, and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors, and the public; and (2) equitably apportions any unavoidable loss through imposed methods for rehabilitating FML. The Court will also retain exclusive jurisdiction over the implementation, interpretation, and enforcement of the Fourth Amended Plan.
- The Fourth Amended Plan will provide for either: (1) the transfer of FML's assets to an independent Asset Purchaser in exchange for cash; or (2) the conversion of FML from a mutual life insurance company into a stock life insurance company and either (A) the transfer of the stock of Post-Conversion FML to the independent Stock Purchaser or (B) the merger of Post-Conversion FML into the Stock Purchaser or an affiliate of the Stock Purchaser.
- Each Mutual Member will have an opportunity to comment on the Fourth Amended Plan at hearings held by the Court after full written disclosure of the terms of the Plan will be given to such Mutual Member by FML.
- Participation by all Mutual Members in the Fourth Amended Plan, if approved by the Court, will be mandatory, although Mutual Members may disclaim the Investor Stock, cash, and/or Plan Credits which they would otherwise receive.
- The decision by a Mutual Member which is a Plan to receive or disclaim Investor Stock, cash, and/or Plan Credits allocated to such Mutual Member will be made by one or more independent fiduciaries of such Plan, and not by FML or any affiliate of FML. Consequently, neither FML nor any of its affiliates will exercise discretion nor render ''investment advice'' within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Investor Stock, cash, and/or Plan Credits.
- Twenty percent (20%) of the net assets which will be available for distribution to the Mutual Members would be allocated among the Mutual Members based upon voting rights, and eighty percent (80%) of such net assets will be allocated among the Mutual Members on the basis of the contribution of the Mutual Members' respective insurance or annuity contracts to the surplus of FML. The contribution to FML's surplus will be based on the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas will be approved by the Court and the Commissioner.
- The amount and value of the Investor Stock, cash, and/or Plan Credits received by a Mutual Member will reflect the aggregate consideration paid by the Investor.
- All Mutual Members that are Plans will participate in the transactions on the same basis as all other Mutual Members that are not Plans, except that Mutual Members which hold Non-Trusteed Tax-Qualified Retirement Funding Contracts will receive Plan Credits in exchange for their membership interests, rather than cash or cash and Investor Stock.
- No Mutual Member will pay any brokerage commissions or fees in connection with the receipt of Investor Stock, cash, and/or Plan Credits.
- Mutual Members will not be restricted from selling or otherwise transferring any Investor Stock which they receive. If Investor Stock comprises part of the consideration paid by the Investor, the Investor will be required to establish a commission-free purchase or sales program which would allow Mutual Members who receive a small number of shares of Investor Stock to ''round up'' such shares or sell such shares free of sales commissions.
- The Fourth Amended Plan will not adversely affect the rights of a Contractholder of the company which is a Mutual Member. In this regard, (1) if Post-Conversion FML is acquired by the Stock Purchaser, the obligations of FML to a Contractholder are retained by Post-Conversion FML, and (2) if FML's assets are purchased by the Asset Purchaser, FML's obligations to a Contractholder will be discharged and terminated upon their endorsement, and assumed by the Asset Purchaser, thereby making the Asset Purchaser liable for the obligations under the Contract.

G. Status of the Fourth Amended Plan

FML represents that the Fourth Amended Plan has been submitted to the Court. Written objections to the Fourth Amended Plan were due in April 2006 and no objections were received. By order dated August 29, 2006, the Court gave its preliminary approval to the Fourth Amended Plan which would allow the Rehabilitator to sell FML through a competitive bid process, with final approval to follow the selection of the winning bidder.

The competitive bid process has been initiated and the bidding was closed in February 2007. FML states that it is now very likely that its proposed acquisition under the Fourth Amended Plan will take the form of the Asset Acquisition Alternative. In addition, FML anticipates the successful bidder will be selected before the end of March 2007.

V. Request for Individual Exemptive Relief

FML requests an individual exemption from the Department that would apply to both Alternatives under the Fourth Amended Plan. Because FML is a service provider to Mutual Members that are Plans, FML is also a party in interest with respect to such plans under section 3(14)(B) of the Act. In addition, the successful bidder under

the Stock Acquisition Alternative would become a party in interest with respect to Mutual Members that are Plans under section 3(14)(H) of the Act. This is because the Stock Purchaser would own directly 100% of the common stock of FML.[4] Thus, in tendering cash, or a combination of cash and Investor Stock, or Plan Credits to Mutual Members that are Plans in exchange for their Mutual Membership Interests, FML and/or the Stock Purchaser would be engaging in a prohibited transaction in violation of section 406(a) of the Act. In this respect, the proposed transactions under the Fourth Amended Plan constitute material changes from the Third Amended Plan and necessitate an amendment to PTE 2000–34.

Accordingly, the Department is amending and replacing PTE 2000–34 to reflect the implementation of the Alternatives under the Fourth Amended Plan. All references to the Third Amended Plan in the operative language of PTE 2000–34 have been replaced with references to the Fourth Amended Plan.

If granted, the amendment would be effective on the date the final amendment is published in the **Federal Register.** The revised operative language and definitions, with emphasis added to show the modifications, appear as follows:

SECTION I. *COVERED TRANSACTIONS*

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of certain stock (the *Investor Stock*) issued by the corporation (the *Stock Purchaser*) which acquires Post-Conversion Fidelity Mutual Life Insurance Company (*Post-Conversion FML*) by stock purchase or by merger, (2) the receipt of plan credits (the Plan Credits), or (3) the receipt of cash, by or on behalf of a mutual member (the Mutual Member) of FML which is an employee benefit plan (a Plan), other than an in house Plan sponsored by FML and/or its affiliates, in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation of FML (the *Fourth Amended Plan*) approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and the Pennsylvania Insurance Commissioner (the Commissioner), who is acting as the rehabilitator of FML (the Rehabilitator).

This proposed exemption is subject to the following conditions set forth below in Section II.

SECTION II. *GENERAL CONDITIONS*

(a) The *Fourth Amended Plan* is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner (both in her own capacity and in her capacity as Rehabilitator of FML). The Court determines whether the *Fourth Amended Plan*—

(1) Properly conserves and equitably administers the assets of FML, in the interests of investors, the public, and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors, and the public; and

(2) Equitably apportions any unavoidable loss through imposed methods for rehabilitating FML.The Court retains exclusive jurisdiction over the implementation, interpretation, and enforcement of the *Fourth Amended Plan.*

(b) *The Fourth Amended Plan provides for either:*

(1) *The transfer of FML's assets to an independent purchaser (the Asset Purchaser) in exchange for cash; or*

(2) *The conversion of FML from a mutual life insurance company into a stock life insurance company and either (A) the transfer of the stock of Post-Conversion FML to the independent Stock Purchaser or (B) the merger of Post-Conversion FML into the independent Stock Purchaser or an affiliate of the Stock Purchaser.*

(c) Each Mutual Member has an opportunity to comment on the *Fourth Amended Plan* hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

(d) Participation by all Mutual Members in the *Fourth Amended Plan*, if approved by the Court, is mandatory, although Mutual Members may disclaim the *Investor Stock*, *cash,* and/or Plan Credits which they would otherwise receive.

(e) The decision by a Mutual Member which is a Plan to receive or disclaim *Investor Stock, cash,* and/or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such Plan, and not *by FML or any affiliate of FML.* Consequently, neither FML nor any of its affiliates will exercise discretion nor render ''investment advice'' within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim *Investor Stock, cash*, and/or Plan Credits.

(f) Twenty percent (20%) of the *net assets which are available for distribution to the Mutual Members is* allocated among the Mutual Members based upon voting rights, and eighty percent (80%) of such net assets is allocated among the Mutual Members on the basis of the contribution of the Mutual Members' respective insurance or annuity contracts (the Contracts) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas are approved by the Court and the Commissioner.

(g) *The amount and value of the Investor Stock, cash, and/or Plan Credits received by a Mutual Member reflect the aggregate consideration paid by the Stock Purchaser or Asset Purchaser, which is independent of FML.*

(h) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans, *except that Mutual Members which hold Non-Trusteed Tax-Qualified Retirement Funding Contracts receive Plan Credits in exchange for their membership interests, rather than cash and/or Investor Stock.*

(i) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of *Investor Stock, cash*, and/or Plan Credits.

(j) *Mutual Members are not restricted from selling or otherwise transferring any Investor Stock which they receive. If Investor Stock comprises part of the consideration paid by the Stock Purchaser, the Stock Purchaser is required to establish a commission-free purchase or sales program which will allow Mutual Members who receive a small number of shares of Investor Stock to ''round up'' such shares or sell such shares free of sales commissions.*

(k) *The Fourth Amended Plan does not adversely affect the rights of a contractholder of the company (the Contractholder) which is a Mutual Member. In this regard,*

(1) *If Post-Conversion FML is acquired by the Stock Purchaser, the obligations of FML to a Contractholder are retained by Post-Conversion FML; and*

(2) *If FML's assets are purchased by the Asset Purchaser, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by the Asset Purchaser, thereby making the Asset Purchaser liable for the obligations under the Contract.*

SECTION III. *DEFINITIONS*

For purposes of this proposed exemption:

(a) An ''affiliate'' of FML, *Post-Conversion FML, the Stock Purchaser, or the Asset Purchaser* includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.) or

(2) Any officer, director or partner in such person.

(b) *The term ''Asset Purchaser'' means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase FML's assets under an assumption reinsurance agreement.*

(c) The term ''FML'' means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, *as they exist before FML is converted from a mutual life insurance company into a stock life insurance company.*

(d) *The term ''Investor Stock'' means the common stock of the Stock Purchaser that will be allocated to Mutual Members if Post-*

[4] Although the Asset Purchaser will have an opportunity to purchase the common stock of FLIC, the Asset Purchaser will not become a direct or indirect owner of FML or a party in interest with respect to Mutual Members of FML that are Plans.

Conversion FML is acquired by the Stock Purchaser in exchange for consideration that includes common stock of the Stock Purchaser.

(e) The term ''Mutual Member'' means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the *Fourth Amended Plan.*

(f) *The term ''Non-Trusteed Tax-Qualified Retirement Funding Contracts'' means FML insurance contracts which are held in connection with retirement plans or arrangements described in section 403(a) or 408 of the Code or non-trusteed retirement plans described in section 401(a) of the Code.*

(g) The term ''Plan Credit'' means either—

(1) Additional paid up insurance for a traditional life policy; or

(2) Credits to the account values for Contracts that are not traditional (such as a flexible premium policy).

Under FML's Fourth Amended Plan, Plan Credits are to be allocated to Mutual Members who hold Non-Trusteed Tax-Qualified Retirement Funding Contracts, in lieu of Investor Stock and/or cash.

(h) *The term ''Post-Conversion FML'' means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist after FML is converted from a mutual life insurance company into a stock life insurance company.*

(i) *The term ''Stock Purchaser'' means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase the Post-Conversion FML, or to acquire Post-Conversion FML by merger, under a stock purchase agreement or merger agreement.*

Notice to Interested Persons

Notice of the proposed exemption will be provided by FML to Mutual Members which are Plans within 3 days of the publication of the notice of the proposed exemption in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 33 days after the date of publication of this pendency notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E)–(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 2000–34 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend and replace PTE 2000–34 as follows:

SECTION I. *COVERED TRANSACTIONS*

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of certain stock (the Investor Stock) issued by the corporation (the Stock Purchaser) which acquires Post-Conversion Fidelity Mutual Life Insurance Company (Post-Conversion FML) by stock purchase or by merger, (2) the receipt of plan credits (the Plan Credits), or (3) the receipt of cash, by or on behalf of a mutual member (the Mutual Member) of FML which is an employee benefit plan (a Plan), in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation of FML (the Fourth Amended Plan) approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and the Pennsylvania Insurance Commissioner (the Commissioner), who is acting as the rehabilitator of FML (the Rehabilitator). This proposed exemption is subject to the following conditions set forth below in Section II.

SECTION II. *GENERAL CONDITIONS*

(a) The Fourth Amended Plan is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner (both in her own capacity and in her capacity as Rehabilitator of FML). The Court determines whether the Fourth Plan—

(1) Properly conserves and equitably administers the assets of FML, in the interests of investors, the public, and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors, and the public; and

(2) Equitably apportions any unavoidable loss through imposed methods for rehabilitating FML.

(The Court will retain exclusive jurisdiction over the implementation, interpretation, and enforcement of the Fourth Amended Plan of Reorganization.)

(b) The Fourth Amended Plan provides for either:

(1) The transfer of FML's assets to an independent purchaser (the Asset Purchaser) in exchange for cash; or

(2) The conversion of FML from a mutual life insurance company into a stock life insurance company and either (A) the transfer of the stock of Post-Conversion FML to the independent Stock Purchaser or (B) the merger of Post-Conversion FML into the independent Stock Purchaser or an affiliate of the Stock Purchaser.

(c) Each Mutual Member has an opportunity to comment on the Fourth

Amended Plan at hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

(d) Participation by all Mutual Members in the Fourth Amended Plan, if approved by the Court, is mandatory, although Mutual Members may disclaim the Investor Stock, cash, and/or Plan Credits which they would otherwise receive.

(e) The decision by a Mutual Member which is a Plan to receive or disclaim Investor Stock, cash, and/or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such Plan, and not by FML or any affiliate of FML. Consequently, neither FML nor any of its affiliates will exercise discretion nor render ''investment advice'' within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Investor Stock, cash, and/or Plan Credits.

(f) Twenty percent (20%) of the net assets which are available for distribution to the Mutual Members is allocated among the Mutual Members based upon voting rights, and eighty percent (80%) of such net assets is allocated among the Mutual Members on the basis of the contribution of the Mutual Members' respective insurance or annuity contracts (the Contracts) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas are approved by the Court and the Commissioner.

(g) The amount and value of the Investor Stock, cash, and/or Plan Credits received by a Mutual Member reflect the aggregate consideration paid by the Stock Purchaser or Asset Purchaser, which is independent of FML.

(h) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans, except that Mutual Members which hold Non-Trusteed Tax-Qualified Retirement Funding Contracts receive Plan Credits in exchange for their membership interests, rather than cash and/or Investor Stock.

(i) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of Investor Stock, cash, and/or Plan Credits.

(j) Mutual Members are not restricted from selling or otherwise transferring any Investor Stock which they receive. If Investor Stock comprises part of the consideration paid by the Stock Purchaser, the Stock Purchaser is required to establish a commission-free purchase or sales program which will allow Mutual Members who receive a small number of shares of Investor Stock to ''round up'' such shares or sell such shares free of sales commissions.

(k) The Fourth Amended Plan does not adversely affect the rights of a contractholder of the company (the Contractholder) which is a Mutual Member. In this regard,

(1) If Post-Conversion FML is acquired by the Stock Purchaser, the obligations of FML to a Contractholder are retained by Post-Conversion FML; and

(2) If FML's assets are purchased by the Asset Purchaser, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by the Asset Purchaser, thereby making the Asset Purchaser liable for the obligations under the Contract.

SECTION III. *DEFINITIONS*

For purposes of this proposed exemption:

(a) An ''affiliate'' of FML, Post-Conversion FML, the Stock Purchaser, or the Asset Purchaser includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); or

(2) Any officer, director or partner in such person.

(b) The term ''Asset Purchaser'' means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase FML's assets under an assumption reinsurance agreement.

(c) The term ''FML'' means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist before FML is converted from a mutual life insurance company into a stock life insurance company.

(d) The term ''Investor Stock'' means the common stock of the Stock Purchaser that will be allocated to Mutual Members if Post-Conversion FML is acquired by the Stock Purchaser in exchange for consideration that includes common stock of the Stock Purchaser.

(e) The term ''Mutual Member'' means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the Fourth Amended Plan.

(f) The term ''Non-Trusteed Tax-Qualified Retirement Funding Contracts'' means FML insurance contracts which are held in connection with retirement plans or arrangements described in section 403(a) or 408 of the Internal Revenue Code or non-trusteed retirement plans described in Section 401(a) of the Internal Revenue Code.

(g) The term ''Plan'' means an employee benefit plan.

(h) The term ''Plan Credit'' means either (1) additional paid up insurance for a traditional life policy or (2) credits to the account values for Contracts that are not traditional (such as a flexible premium policy). Under FML's Fourth Amended Plan, Plan Credits are to be allocated to Mutual Members who hold Non-Trusteed Tax-Qualified Retirement Funding Contracts, in lieu of Investor Stock and/or cash.

(i) The term ''Post-Conversion FML'' means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist after FML is converted from a mutual life insurance company into a stock life insurance company.

(j) The term ''Stock Purchaser'' means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase the stock of Post-Conversion FML, or to acquire Post-Conversion FML by merger, under a stock purchase agreement or merger agreement.

This exemption is available to a Mutual Member of FML that is a Plan if the terms and conditions of the exemption are satisfied with respect to such Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 2000-34, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 16th day of March, 2007.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–5208 Filed 3–21–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,753]

Cerf Brothers Bag Co., Inc., Earth City, MO; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated January 13, 2007, a state representative requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The determination was issued on February 16, 2007 and published in the **Federal Register** on February 27, 2007 (72 FR 8795).

The negative determination was based on the Department's findings that that the petitioning workers of this firm or subdivision do not produce an article within the meaning of Section 222 of the Act.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify

reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th of March, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5239 Filed 3–21–07; 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 March 5 through March 9, 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 or 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–61,037; Flint Group North America Corporation, Flint Group Pigments Division, Holland, MI: February 27, 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–60,899; CCL Label St. Louis, Case Report Forms Dept., Aerotek, St. Charles, MO: January 30, 2006.

TA–W–60,928; Florence Design Group, Florence, AL: February 6, 2006.

TA–W–60,853; Artistree, Graham and Associates, Kernersville, NC: January 29, 2006.

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.

None.

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.

None.

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–60,772; Harve Bernard Ltd, Bernard and Morton Co., Inc., Clifton, NJ: January 12, 2006.

TA–W–60,898; Thyssen Krupp Crankshafts Company, LLC, Danville Machining Div. Manpower, Imac, Kelly, Danville, IL: January 8, 2006.

TA–W–60,921; Weyerhaeuser Company, I Level Veneer Technology Division, Springfield, OR: February 1, 2006.

TA–W–60,923; Novtex Corporation, Adams, MA: February 7, 2006.

TA–W–60,955; Red Lion Manufacturing, Inc., JFC Staffing & Sesame/ Personnel, Hallam, PA: February 2, 2006.

TA–W–60,980; WestPoint Home, Manpower Staffing, Bed Products, Abbeville, AL: February 14, 2006.

TA–W–60,983; United States Ceramic Tile Company, Lauffen International, Inc., East Sparta, OH: November 6, 2006.

TA–W–60,682; Meridian Automotive Systems, Plant 5, Kentwood, MI: December 21, 2005.

TA–W–60,807; NothelferGilman, Inc., Gilman Engineering and Manufacturing, Janesville, WI: January 22, 2007.

TA–W–60,851; Mastercraft Fabrics, LLC, Joan Fabrics Corporation, Cramerton, NC: January 29, 2007.

TA–W–60,856; Amery Technical Products, Inc., Lint Roller Division, Amery, WI: January 25, 2006.

TA–W–60,914; Martnrea Industries, Reed City Tool & Die Division, Reed City, MI: March 2, 2007.

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–60,873; CML Innovative Technologies, Inc., Hackensack, NJ: January 19, 2006.

TA–W–60,992; Kimberly-Clark/Ballard Medical Products, Aerotek, SOS, Strategic Staffing, Draper, UT: March 11, 2007.

TA–W–60,952; Scovill Fasteners, Inc., Etcon Staffing, Clarkesville, GA: February 2, 2006.

TA–W–61,007; Venture Lighting International, Solon Division, Solon, OH: January 24, 2006.

TA–W–61,040; Imperial World Inc., dba World Pacific, Westmont, IL: February 7, 2006.

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–60,816; Cooper Standard Automotive, Body and Chassis Div., Doubletree Personnel, Mega, Goldsboro, NC: January 23, 2006.

TA–W–60,872; Silberline Manufacturing Co., Inc., Corporation Division, Tamaqua, PA: January 22, 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–60,899; CCL Label St. Louis, Case Report Forms Dept., Aerotek, St. Charles, MO.

TA–W–60,928; Florence Design Group, Florence, AL.

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–60,853; Artistree, Graham and Associates, Kernersville, NC.

TA–W–61,037; Flint Group North America Corporation, Flint Group Pigments Division, Holland, MI.

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–60,911; Truth Hardware, West Hazleton, PA.

TA–W–60,957; Douglas Quikut, Stamping Department, Walnut Ridge, AR.

TA–W–60,987; Stant Manufacturing Company, Manufacturing Division, Connersville, IN.

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.

None.

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–60,548; Alan White Company, Sulligent, AL.

TA–W–60,757; Alan White Company, Shannon, MS.

TA–W–60,934; Golden Manufacturing Co., Marietta, MS.

TA–W–60,954; Congoleum Corporation, A Subsidiary of American Biltrite, Trainer, PA.

TA–W–60,738; Georgia Pacific LLC, A Subsidiary of Koch Industries, Crossett Paper Operations, Crossett, AR.

TA–W–60,811; George Weston Bakeries, Inc., Bayshore, NY.

TA–W–60,925; Westinghouse Electric, New Britain Operations Division, New Britain, CT.

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–60,104; International Business Machines (IBM), Division 35, San Jose, CA.

TA–W–60,969; RM International, Portland, OR.

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.

None.

I hereby certify that the aforementioned determinations were issued during the period of March 5 through March 9, 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: March 14, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–5236 Filed 3–21–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,688]

Lego Systems, Inc. Including Former On-Site Leased Workers of Adecco USA, Inc. Currently Employed With Staff Management, Enfield, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 16, 2007, applicable to workers of LEGO Systems, Inc., including on-site leased workers of Staff Management, Enfield, Connecticut. The notice was published in the **Federal Register** on February 7, 2007 (72 FR 5748).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the assembly of LEGO toy model kits.

New information shows that in February 2006, the leased workers of Adecco USA, Inc., employed on-site at the Enfield, Connecticut location of LEGO Systems, Inc., became employees of Staff Management due to a change in contracting firms.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers employed at LEGO Systems, Inc., Enfield, Connecticut who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–60,688 is hereby issued as follows:

All workers of LEGO Systems, Inc., including former on-site leased workers of Adecco USA, Inc., currently employed with Staff Management, Enfield, Connecticut, who became totally or partially separated from employment on or after January 2, 2006, through January 16, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of March 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5238 Filed 3–21–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,078]

Weyerhaeuser Company; Lebanon Lumber Division; Lebanon, OR; Notice of Negative Determination on Reconsideration

On December 15, 2006, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Weyerhaeuser Company, Lebanon Lumber Division, Lebanon, Oregon (the subject firm). The Department's Notice of affirmative determination was published in the **Federal Register** on December 21, 2006 (71 FR 76700).

The initial denial of the workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) was based on the Department's findings that the workers produce green softwood stud lumber; the subject firm neither imported green softwood stud lumber nor shifted production of green softwood stud lumber overseas during the relevant period; and the subject firm's major declining customers had negligible imports of green softwood stud lumber during the surveyed periods. The Department's Notice of determination was issued on October 19, 2006 and published in the **Federal Register** on November 6, 2006 (71 FR 65004).

The request for reconsideration, filed by the United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council, Local 2791 (Union), alleges that Weyerhaeuser Company purchased a softwood lumber production facility in Canada, inferring that the subject firm has increased imports of lumber or articles like or directly competitive with lumber produced at the subject facility.

During the reconsideration investigation, the Department discussed the allegations with the Union, sought clarification from the subject firm regarding Weyerhaeuser Company's Canadian lumber production facilities, and conducted a customer survey regarding imports of stud lumber and articles like or directly competitive with stud lumber produced at the subject firm during the relevant period.

During the reconsideration investigation, the Department determined that kiln-dried lumber and engineered wood products are like or directly competitive with green stud lumber. As such, the Department conducted an expanded customer survey to determine whether the subject firm's major declining customers had increased import purchases of green stud lumber and articles like or directly competitive with green stud lumber produced at the subject firm. The survey revealed no increased imports of green stud lumber or articles like or directly competitive with green stud lumber during the surveyed periods.

The reconsideration investigation also revealed that, contrary to the Union's allegation, Weyerhaeuser Company has not purchased any lumber production facilities in Canada during the relevant period. Further, an August 23, 2006 Weyerhaeuser Company news release (attached to the petition) states that the subject firm was replaced by a new, ''world-class'' sawmill in the Lebanon, Oregon area.

In the request for reconsideration, the Union requested that the Department review the articles submitted with the petition and the findings by the U.S. International Trade Commission (USITC) regarding Investigation Nos. 701–TA–414 and 731–TA–928.

''Increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition.'' 29 CFR Section 90.2 Because the petition is dated September 13, 2006, the Department determines that the relevant period is September 2005 through August 2006.

While ''News Release,'' Weyerhaeuser, August 23, 2006, states that Weyerhaeuser Company ''operates lumber mills in eight states and four provinces in Canada,'' it does not infer any shift of production to Canada or increased imports from Canada. Further, the article explains that the new sawmill to which production is shifting is also in the Lebanon, Oregon area.

While Weyerhaeuser Company's ''Forward Looking Statement'' (July 25, 2006) acknowledges that Weyerhaeuser

Company has concerns about its third quarter 2006 performance, it does not infer any shift of production to Canada or increased imports from Canada.

Although ''News Release,'' Weyerhaeuser, July 25, 2006, states that second quarter 2006 earnings are lower than second quarter 2005 earnings, the article also states that costs Weyerhaeuser Company incurred on Canadian softwood lumber sold into the U.S. in the second quarter of 2006 were lower than first quarter 2006.

''Coalition for Fair Lumber Imports: WTO Again Rejects Canadian Attack on Softwood Lumber Duties,'' Coalition for Fair Lumber Imports, April 13, 2006, states that the World Trade Organization Appellate Body's decision to support an ITC determination (issued on November 24, 2004) that U.S. lumber producers are threatened with material injury by imports of dumped and subsidized softwood lumber from Canada is correct. However, because the events relevant to the ITC's determination occurred outside the relevant period, it cannot be a basis for the subject workers' eligibility to apply for TAA.

Similarly, because data in the International Trade Report, December 2004, and the USITC determination (issued July 30, 2004) regarding Investigation Nos. 701–TA–414 and 731–TA–928, fall outside the relevant time period, they cannot be a basis for the subject workers' eligibility to apply for TAA.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Weyerhaeuser Company, Lebanon Lumber Division, Lebanon, Oregon.

Signed at Washington, DC this 14th day of March 2007

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5237 Filed 3–21–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: 29 CFR Part 825, The Family and Medical Leave Act of 1993 (WH–380 and WH–381). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 21, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601, *et seq.*, requires private sector employers of 50 or more employees and public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to ''eligible'' employees for certain family and medical reasons. Leave must be granted to ''eligible'' employees because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform any of the essential functions of his or her job. This information collection contains recordkeeping and notification requirements associated with the Act and regulations. Implementing regulations are found at 29 CFR Part 825. Two optional forms are included in this information collection request. The WH–380, Certification of Health Care Provider, may be used to certify a serious health condition under FMLA. The WH–381, Employer Response to Employee Request for Family or Medical Leave, may be used by an employer to respond to a leave request under FMLA. Both forms are third-party notifications and they are not submitted to the Department of Labor. This information collection is currently approved for use through August 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under FMLA, and in order for the Department of Labor to carry out its statutory obligation under FMLA to investigate and ensure employer compliance has been met.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: 29 CFR, Part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.
Agency Number: WH–380, WH–381.
Affected Public: Individuals or household, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Total Respondents: 6,656,500.
Total Responses: 15,058,850.
Time per Response: 1 to 20 minutes.
Frequency: On Occasion (Recordkeeping, Third-Party Disclosure).
Estimated Total Burden Hours: 1,370,288.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 15, 2007.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–5234 Filed 3–21–07; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops—29 CFR Part 575. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 21, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Fair Labor Standards Act (FLSA) section 13(c)(4), 29 U.S.C. 213(c)(4), authorizes the Secretary of Labor to grant a waiver of child labor provisions of the FLSA for the agricultural employment of 10 and 11 year old minors in the hand harvesting of short season crops if specific requirements and conditions are met. The Act also requires all employers covered by the FLSA to make, keep and preserve records of employees and of wages, hours, and other conditions and practices of employment. This information collection is currently approved for use through August 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to determine whether the statutory requirements and conditions for granting a requested exemption have been met.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops—29 CFR Part 575.
OMB Number: 1215–0120.
Affected Public: Farms; Individual or Households.
Total Respondents: 1.
Total Responses: 1.
Average Time per Response: 4 hours.
Estimated Total Burden Hours: 4.
Frequency: Annually.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 15, 2007.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–5235 Filed 3–21–07; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Exemption

1.0 Background

Connecticut Yankee Atomic Power Company (CYAPCO, the licensee) is holder of shutdown facility license No. DPR–61, which authorizes activities at the Haddam Neck Plant. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC).

The facility consists of a former reactor site undergoing decommissioning, and an Interim Spent Fuel Storage Installation (ISFSI) in East Hampton, Connecticut.

2.0 Request/Action

Appendix E to Title 10 of The Code of Federal Regulations specifies

Emergency Planning and Preparedness requirements for Part 50 licensees. Section IV, ''Content of Emergency Plans,'' Subpart F specifies that each licensee shall conduct an exercise of its onsite and offsite emergency plans (EPs) every two years. By letter dated August 28, 1998, NRC exempted the licensee from offsite emergency planning activities, including the offsite exercise requirement. As part of the exemption, the licensee committed to an increased frequency for onsite EP exercises, to once a year. By letter of September 18, 2006, the licensee submitted a revision to the Haddam Neck Plant (HNP) EP for NRC review and approval. Section 1.0 of the EP states that, ''This revision of the Emergency Plan is intended for end state conditions where power plant dismantlement and decommissioning have been completed and the ISFSI is the only thing remaining on the site * * * '' NRC will verify proper timing of the execution of the EP in the inspection process. The EP revision reduces the frequency of onsite exercises from every year to every other year. The Office of Federal and State Materials and Environmental Management Programs' review of this proposed change to the HNP EP is described below.

On December 5, 1996, the HNP reactor was permanently shut down. All the spent fuel was transferred to the ISFSI by March 2005. The NRC issued an exemption on August 28, 1998, that granted CYAPCO exemptions from portions of the 10 CFR 50.54(q) EP requirements.

The staff reviewed the revised EP for coping with radiological emergencies at the HNP site including the licensee's 10 CFR 50.54(q) evaluation to verify that the reduction in exercise frequency does not decrease the effectiveness of the plan and that the plan, as changed, continues to meet the standards contained in 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50 applicable to the approved Part 50 EP for the long-term defueled condition. The licensee identified that the exercise frequency reduction was a reduction in commitment. The NRC staff evaluation below, concludes the proposed change meets the requirements of § 50.47(b) and Appendix E to Part 50.

Section 8.2.3 of the HNP EP requires that an exercise will be conducted once each calendar year to demonstrate the capability to meet the EP. CYAPCO is proposing to revise the frequency of an exercise of its onsite EP from once per year to every other year. CYAPCO has determined that the proposed change in the frequency of an exercise constitutes a reduction in commitment and thus represents a decrease in effectiveness of the EP. However, the EP continues to meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to Part 50.

The plant is permanently shutdown and defueled. All spent fuel and greater than Class C waste have been placed in dry storage at the ISFSI, and there is no longer liquid radioactive waste or significant quantities of dry activated waste stored on site. Additionally, in order to ensure adequate emergency response capabilities are maintained during the time between exercises, CYAPCO is adding a requirement to Section 8.2 of the HNP EP as follows:

> During the interval between biennial exercises, CYAPCO will conduct drills, including at least one drill involving a combination of some of the principal functional areas of the onsite response capabilities (management, accident assessment, protective and corrective actions).

The proposed change is consistent with the 10 CFR 50, Appendix E, (IV)(F)(2)(b) requirement to conduct an onsite EP exercise every two years.

3.0 Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee's request for approval was submitted in conjunction with a proposed revision to the HNP onsite EP, and is effective when the site has only an ISFSI remaining onsite. NRC staff considers that requiring the licensee to meet a self-imposed standard above regulatory requirements is not necessary to achieve the underlying purpose of the rule. Therefore, special circumstances do exist for the granting of this exemption, as specified in 10 CFR 50.12.

Authorized by Law

This exemption would exempt CYAPCO from requirements in 10 CFR Part 50, Appendix E, as previously exempted on August 28, 1998, thus allowing onsite EP exercises to be conducted every two years vice annually. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

This exemption only affects the periodicity of onsite EP exercises. No new accident precursors are created by this exemption; accordingly, the probability of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety as a result of the exemption.

Consistent With Common Defense and Security

This exemption, as set forth above, affects the periodicity of onsite EP exercises. The revised periodicity is consistent with the Appendix E regulatory requirements for onsite EP exercises, and with 10 CFR 50.47(b)(14), which states, in part, ''Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities * * *. '' The licensee will continue to conduct other Emergency Planning drills during the time intervals between exercises in order to maintain its emergency response capabilities. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever the application of the regulation in the particular circumstances ''would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' The underlying purpose of Appendix E is to ensure that licensees' EPs are sufficient for use in attaining an acceptable state of emergency preparedness. The NRC staff has determined that the intent of this rule is not compromised by the licensee's proposed action because onsite exercises will be required every two years, which is consistent with Appendix E requirements. Therefore, since the underlying purpose of Appendix E is achieved, the special circumstances required by 10 CFR 50.12 (a)(2) for the granting of an exemption from Appendix E exist.

Environmental Evaluation

This exemption constitutes a regulatory action approving a change in operations that would not cause any increase in the amounts of any effluents that may be released offsite, increase any individual or cumulative occupational radiation exposure, has no construction impact, and has no

significant increase in potential for, or consequences from, a radiological accident. Therefore, the categorical exclusion defined in 10 CFR 51.22(c)(11) is applicable, and no further environmental evaluation is needed.

4. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Licensee request of September 18, 2006, ML062690475. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* The NRC exemption dated August 28, 1998, is available in the PDR.

These documents may also be viewed electronically on the public computers located at the NRC PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

5. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants CYAPCO an exemption to the licensee's previous exemptions from the requirements of 10 CFR 50.54(q), as granted by NRC on August 28, 1998 (ML980903182); which requires EPs to meet 10 CFR 50.47(b) and Appendix E to Part 50. Specifically, this exemption allows onsite EP exercises to be conducted once every two years, in lieu of the annual requirement currently in place.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of March, 2007.

For the U.S. Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–5248 Filed 3–21–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 052–00007]

Notice of Issuance of Early Site Permit for Exelon Generation Company, LLC, Site Located 6 Miles East of the City of Clinton, IL

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of early site permit.

FOR FURTHER INFORMATION CONTACT: Joelle L. Starefos, Senior Project Manager, AP1000 Projects Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–8488; Fax number: (301) 415–2390; e-mail: *jls1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice of the issuance of Early Site Permit (ESP) ESP–001 to Exelon Generation Company, LLC (EGC or the permit holder), for approval of a site located 6 miles east of the city of Clinton, Illinois, for one or more nuclear power facilities separate from the filing of an application for a construction permit or combined license for such a facility. The NRC has found that the application for an ESP filed by EGC complies with the applicable requirements of the Atomic Energy Act of 1954, as amended, and the applicable rules and regulations of the Commission, and all required notifications to other agencies or bodies have been duly made. Based on consideration of the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having design characteristics that fall within the site characteristics and controlling parameters of the EGC ESP Site can be constructed and operated without undue risk to the health and safety of the public. There is reasonable assurance that the permit holder will comply with the regulations in 10 CFR Chapter I, and the health and safety of the public will not be endangered. Issuance of an ESP to the permit holder will not be inimical to the common defense and security or the health and safety of the public.

There is no significant impediment to the development of emergency plans, as referenced in 10 CFR 52.17(b)(1) and 10 CFR 52.18, ''Standards for Review of Applications.'' The descriptions of contacts and arrangements made with Federal, State, and local governmental agencies with emergency planning responsibilities, as set forth in 10 CFR 52.17(b)(3), are acceptable. Major features A, B, C, D, E, F, G, I, J, K, L, O, and P of the emergency plan are acceptable to the extent specified in NUREG–1844, ''Safety Evaluation Report for an Early Site Permit (ESP) at the Exelon Generation Company, LLC (EGC) ESP Site.'' The issuance of this ESP, subject to the Environmental Protection Plan and the conditions for the protection of the environment set forth herein, is in accordance with the National Environmental Policy Act of 1969, as amended, and with applicable sections of 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' as referenced by Subpart A of 10 CFR Part 52, ''Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants,'' and all applicable requirements therein have been satisfied. The site redress plan incorporated into this permit demonstrates that there is reasonable assurance that redress carried out under the plan, if required, will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws, and those activities performed described in the site redress plan will not result in any significant adverse environmental impact that cannot be redressed. The permit holder's request for the proposed permit was previously noticed in the **Federal Register** on December 12, 2003, (68 FR 69426) with a notice of hearing and opportunity to petition for leave to intervene.

This early site permit complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and NRC's rules and regulations as set forth in 10 CFR Chapter I. Accordingly, Early Site Permit No. ESP–001 was issued to Exelon Generation Company, LLC on March 15, 2007, and is effective immediately.

II. Further Information

The NRC has prepared a Safety Evaluation Report (SER) and Environmental Impact Statement (EIS),

that document the information that was reviewed and NRC's conclusions. In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' details with respect to this action, including the SER, EIS, and accompanying documentation included in the early site permit package, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, members of the public can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

ML070670140	Issuance of Early Site Permit for Exelon Generation Company, LLC (ESP–001).
ML061210203	NUREG–1844—''Safety Evaluation Report for an Early Site Permit (ESP) at the Exelon Generation Company, LLC (EGC) ESP Site''.
ML061930264	NUREG–1815 Vol 1—''Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site'' Main Report.
ML061930275	NUREG–1815 Vol 2—''Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site'' Appendices A–K.
ML061100260	Exelon Early Site Permit Application—Revision 4.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 15th day of March, 2007.

For the Nuclear Regulatory Commission.

Stephanie M. Coffin,

Chief, AP1000 Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E7–5247 Filed 3–21–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice published in the **Federal Register** on March 13, 2007 (72 FR 11381), which informs the public that the NRC is considering issuance of an amendment to Renewed Facility Operating License No. DPR–72. This action is necessary to correct the name of the licensee.

FOR FURTHER INFORMATION CONTACT: Beverly A. Clayton, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3475, e-mail: *bac2@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 11381, appearing near the bottom of the second column, the heading is corrected to read as above, and in the last line of the second column and the first line of the third column, ''Florida Power and Light'' is corrected to read ''Florida Power Corporation.''

Dated in Rockville, Maryland, this 16th day of March 2007.

For the U.S. Nuclear Regulatory Commission.

Stewart N. Bailey,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–5249 Filed 3–21–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[HLWRS–ISG–02]

Preclosure Safety Analysis—Level of Information and Reliability Estimation; Availability of Final Interim Staff Guidance Document

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of the final interim staff guidance (ISG) document HLWRS–ISG–02, ''Preclosure Safety Analysis—Level of Information and Reliability Estimation,'' and NRC responses to the public comments received on that document. The ISG clarifies or refines the guidance provided in the Yucca Mountain Review Plan (YMRP) (NUREG–1804, Revision 2, July 2003). The YMRP provides guidance to NRC staff to evaluate a potential license application for a high-level radioactive waste at a geologic repository constructed or operated at Yucca Mountain (YM), Nevada.

ADDRESSES: The document HLWRS–ISG–02 is available electronically at NRC's Electronic Reading Room, at *http://www.nrc.gov/reading-rm.html.* From this site, a member of the public can access NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for ISG–02 is ML070260204. If an individual does not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or (301) 415–4737, or (by e-mail) at *pdr@nrc.gov.*

This document may also be viewed electronically on the public computers located at NRC's PDR, Mail Stop: O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

NRC Responses to Public Comments on HLWRS–ISG–02: In preparing final HLWRS–ISG–02, ''Preclosure Safety Analysis—Level of Information and Reliability Estimation,'' ADAMS ML070260204, the NRC staff reviewed and considered 23 comments, including two editorial comments, received from two organizations during the public comment period. Two of the comments were identical; three comments were related to the ISG process; one comment endorsed NRC's recognition of the use of the published reliability values for structures, systems, and components (SSCs); and the remaining comments included recommendations on specific clarifying changes to the ISG. Three comments on the ISG process were consistent with the comments made earlier on HLWRS–ISG–01, and were addressed in responses to public comment on HLWRS–ISG–01 [see 71 FR 57582, Comments 13(a) and (b)].

The following discussion indicates how the comments were addressed, and the changes, if any, made to ISG–02 as a result of the comments. Line numbers in the following comments refer to the draft HLWRS–ISG–02, ADAMS ML062360241, which was made available for public comment on September 29, 2006 (71 FR 57584).

Comment 1. One commenter was concerned that the changes in the YMRP, recommended in ISG lines 59–66, 222–224, and 271–273, appear to suggest that information regarding ''design bases and design criteria'' for non-important to safety (non-ITS) SSCs be similar to those for ITS SSCs. Since non-ITS SSCs have been determined not to be necessary to assure compliance with 10 CFR Part 63 preclosure performance objectives, the commenter states that subsection 63.21(c)(3) does not appear to support inclusion of information related to design bases and design criteria for non-ITS SSCs. The commenter recommends specific changes to ISG lines 62, 222, 239, 254, 258, 263, 266, and 272, to clarify its position.

Response. NRC agrees that information required for non-ITS SSCs would be less than for ITS SSCs. Subsection 63.21(c)(3) requires a description and discussion of the design of the YM geologic repository operations area, that is sufficient to permit an evaluation of the preclosure safety analysis (PCSA). DOE will have to provide sufficient information to discuss how the proposed design would function. This also includes the general arrangements of SSCs, capacities of SSCs, and levels at which the SSCs are operated. Staff agrees with the commenter that 10 CRF Part 63 requires the design bases and design criteria for ITS SSCs, and not for non-ITS SSCs.

ISG lines 62, 222, 254, and 272 have been revised to state that design bases and design criteria refer to SSCs that have been designated as ITS. ISG lines 239, 258, 263, and 266 have not been revised, because these lines refer to estimating the reliability of SSCs sufficient for performing the PCSA and identifying ITS SSCs, as per 63.112.

Comment 2. The commenter stated that, in lines 57–259, it would be more appropriate to use ''accept,'' instead of ''recognize,'' because it is unclear. The same commenter also noted that lines 276–284 do not include an acceptance criterion element related to ''acceptability of codes and standards,'' as proposed in lines 258–259, and supplemented in lines 121–124.

Response. NRC disagrees that the word ''recognize'' is unclear in the context of the sentence in lines 257–259. Staff believes that the use of the word ''accept'' would be inappropriate here, because the codes and standards do not provide explicit reliability values requiring acceptance. Staff also disagrees with the commenter's recommendation on the addition of a new acceptance criterion item (7), regarding the use of codes and standards to obtain a probability of unacceptable performance. Staff believes that, as stated in ISG lines 121–124, the application of the codes and standards, to the design and operation of an ITS SSC, is an accepted engineering practice, and is addressed as new item (2), of ''Acceptance Criterion 2,'' in ISG lines 276–277.

No changes to the ISG were made as a result of this comment.

Comment 3. The commenter states that the phrases ''risk-significant'' or ''risk-significance'' have a multiplicity of meanings. For example, in nuclear power plant probabilistic risk assessment applications, the terms refer to a metric of risk that is a function of both probability (or frequency) of occurrence, and consequences. However, in the context of Part 63, event sequence categorization is performed on the basis of probability, only. The consequences of interest (public and worker doses) are deterministic in nature. The commenter recommended that the terms ''risk-significant'' or ''risk-significance'' be avoided or defined specifically in the context of this ISG.

Response. NRC agrees that use of the terms ''risk-significant'' or ''risk-significance'' in the ISG requires clarification where reference is to the consequences only and not to the ''risk,'' which includes both the probability and the consequences. Changes to lines 41 and 162 were made to either clarify or remove redundancy of the ''risk'' term. Specific changes to the ISG, suggested by the commenter on lines 210, 268, 289, 382, and 574, are not made, because these lines refer to the ''risk'' consistent with the traditional definition (U.S. Nuclear Regulatory Commission, *White Paper on Risk-informed and Performance-based Regulation,* SECY–98–144, June 22, 1998, as revised by the Staff Requirements Memorandum, March 1, 1998).

The ISG has been revised as follows:

Line 41: Change ''risk-significant'' to ''significant.''

Line 162: Delete ''risk-significance or * * *''

Comment 4. The commenter suggested that the lines 86 and 240 of the ISG be revised to state that ''Explicit quantitative reliability estimates of software failure modes during event sequences are beyond the state-of-the-art and are not expected for the PCSA. It is acceptable to use reliability estimates of digital control units, which would implicitly include hardware and software effects.''

Response. NRC disagrees that revisions to lines 86 and 240 are needed. For SSCs where the reliability estimates include hardware and software effects, it is acceptable to use the reliability estimates, without explicit consideration of software failures. However, for SSCs where such data are not available, an estimate for reliability needs to include consideration of hardware and software failures. NRC believes that ISG lines 86 and 240 do not need to be revised because these statements allow the U.S. Department of Energy (DOE) the flexibility to consider hardware and software failures with appropriate technical bases.

No changes to the ISG were made as a result of this comment.

Comment 5. The commenter states that the sentence starting at line 89 be revised by replacing ''event'' with ''event sequences.''

Response. NRC agrees with the suggested change.

ISG line 89 has been revised to change ''events'' to ''event sequences.''

Comment 6. The commenter recommends that a definition of the mean value of a probability distribution be included after line 90 of the ISG.

Response. NRC disagrees that the mean value of a probability distribution needs to be defined in the ISG. The mean of a distribution is a clear and unambiguous statistical term.

No changes to the ISG were made as a result of this comment.

Comment 7. The commenter states that items 2 and 3, in lines 129–132 of the ISG, ''* * * appear to contradict the indication that a quantitative reliability estimate is needed,'' and recommends revising the ISG to clarify that quantitative reliability estimates are needed.

Response. NRC disagrees that the changes recommended by the commenter are necessary. As stated in the ISG, items 1, 2, and 3 are given as examples of methods that may be used, in combination with a code and standard, to obtain quantitative reliability estimates, and do not contradict the need for the quantitative reliability estimates.

No changes to the ISG were made as a result of this comment.

Comment 8. The commenter states that the use of the term ''procedure,'' in ISG line 229, does not recognize that

many of the actions associated with repository operations, such as crane and trolley operations, will also be skill-based. The commenter recommends that the ISG line 229 be revised to clarify that the review will be of ''procedures and activities,'' related to the controls and the human interactions associated with each SSC.

Response. NRC agrees with the commenter.

ISG line 229 has been revised to add ''and activities'' after ''procedures.''

Comment 9. The commenter states that, in Appendix A of the ISG, the probability of dropping a heavy load is estimated with empirical data, then multiplied by the number of times that heavy loads are lifted, to arrive at a number that is characterized as the ''expected number of drops.'' The use of the word ''expected'' is misleading, because it implies expected value, which is often used as a synonym for the mean value. The product of these two point estimates cannot be construed as a mean or expected value of the number of drops, because the underlying probability distributions were not developed for them. The commenter recommends that the phrase ''expected number of drops'' in ISG line 451 should be changed to ''point estimate number of drops.''

Response. NRC disagrees with the change recommended by the commenter. However, the ISG has been revised to clarify the staff's approach. Whereas the staff agrees that the use of the phrase ''expected number of drops'' may be misleading, the staff disagrees with the reason given in the comment. The ISG calculation uses a classical statistical approach. With this approach, the number of drops in L lifts has a binomial distribution which is typically approximated by a Poisson distribution. The expected value of the Poisson distribution is the product of the drop probability and the presumed number of lifts that may occur in the preclosure facility. Since the drop probability is estimated in this case, the expected number of drops is also estimated.

The ISG has been revised to add the above approach after line 449. ISG line 451 has been revised to change ''expected'' to ''estimated.'' Also, ISG lines 432 and 489 have been similarly changed.

Comment 10. Two commenters stated that scientific and technical precedent point to the use of the mean value of a frequency distribution as the appropriate metric for event sequence categorization. One commenter adds that, contrary to this, ISG lines 465–472 appear to point to the use of a fraction of a confidence interval, on which to base a conclusion about categorization of an event sequence. The commenter recommends deleting the sentence, beginning on line 467, and changing lines 470–472 to read as, ''The number of expected drops, in this example, would be the mean value of a joint probability distribution of both the conditional drop probability and the number of lifts.''

Response. In Appendix A of ISG–02, empirical data were used to derive a point estimate for the probability of dropping a cask. To address uncertainty in this point estimate, staff chose a standard statistical approach of the confidence interval method, to determine the confidence level in categorization of the event sequence for the example.

NRC does not agree that the sentence beginning on line 467 should be deleted, because it provides an example of a method to illustrate consideration of uncertainty. The 48-percent level of confidence is analogous to reporting the descriptive level of significance, which is often used in reporting the results of a test of a hypothesis.

According to the ''Statement of Considerations'' for Part 63, November 2, 2001 (66 FR 55742), the approach in the rule is to provide DOE with the flexibility to select the type of analysis it believes most appropriate for the license application. Whatever approach DOE uses will need to be supported, taking into account uncertainties. Therefore, analyses relying on point values (*e.g.*, best-estimate values) will need to discuss how uncertainties are taken into account.

NRC agrees that DOE can use the mean value of an event sequence frequency distribution to categorize an event sequence. However, DOE should to consider the uncertainty in any mean value used to categorize event sequences. In particular, DOE should to provide the technical bases for developing the event sequence frequency distribution, including consideration of uncertainties in performance of individual SSCs, the choice of distribution type, and the values of the parameters.

ISG lines 470–472 have been deleted, because these lines refer to the estimated conditional drop probability for a specific confidence level, which is not discussed in the ISG.

Comment 11. The commenter states that ISG line 592 be revised to clarify that the design bases are associated with SSCs and not with an event sequence category, as stated in the ISG.

Response. NRC agrees with the comment.

ISG line 592 has been revised to read as follows: ''Design bases (*e.g.*, loadings on SSCs associated with Category 1 and Category 2 event sequences, such as a canister drop event); and * * *.''

Comment 12. The commenter states that the definition of ''S = C/D,'' in line 617, appears to be inconsistent with the definition in Figure B–2 of the ISG. The commenter recommends that either the definition of ''S,'' in line 617, be revised, or that Figure B–2 be revised.

Response. NRC disagrees with the commenter that definition of ''S'' in ISG line 617, and Figure B–2 are inconsistent. Figure B–2 is consistent with the commonly used definition of the limit state function in the form of S = C/D, as shown in line 617, where C and D are the capacity and demand, respectively. Staff, however, recognizes that Y-axis labeling in Figure B–2, and description of the ISG lines 680–681, may have resulted in an appearance of inconsistency. As stated in ISG line 676, Figure B–2 shows the cumulative distribution function of S, with the probability of failure defined as the probability that S is less than or equal to 1. The curve, shown in Figure B–2, is for the constant demand D = 497 mega pascals (MPa) [72 kips per square inch (ksi)]. Similar curves are derived for two other values of demand values, listed in Appendix B, using a log-normal distribution of the capacity, C, divided by a constant demand, D (*see* Ref. B.3), and are included in the revised Figure B–2 in the ISG. Probability of failure values for three different demand values, along with their corresponding ratios of American Society of Mechanical Engineers (ASME) code allowable stress to demand, are shown in Table B–3. The results show, as expected, that the probability of failure decreases as the demand decreases. The ISG has been revised as follows:

- Figure B–2 has been revised to include plots for all three demand values shown in Table B–3, and the caption has been revised to include ''for three demand values'';
- Label for the ordinate axis has been changed from ''Probability of Failure (x 10^{-5})'' to ''Cumulative Probability,'' and is replotted in the log-scale;
- Line 622: The phrase, '' * * * which is traditionally defined as the limit state function'' is added at the end of the sentence.
- Line 680: A new sentence, ''Failure probabilities for various values of demand are shown in Figure B–2.'' has been added;
- Lines 680–681: sentence has been revised to ''Failure probabilities for various values of ratios of ASME

allowable stress to these corresponding demand values are given in Table B–3.''

Comment 13. The commenter stated that the paragraph beginning with line 156 of the ISG specifies that the NRC staff will verify that uncertainty is addressed in the PCSA. The commenter is concerned that this may be interpreted as requiring excessive conservatism in the analysis, and that such an approach would be the opposite of the intent of risk-informed regulation. The commenter recommends that text of the discussion on uncertainty be revised to explicitly recognize this intent.

Response. NRC agrees that excessive conservatism should be avoided in considering uncertainty. DOE has the flexibility to choose the method to demonstrate that the performance objectives are met. For example, DOE could perform a bounding calculation. As stated in the ''Statement of Considerations,'' for Part 63, ''* * * whatever approach DOE uses will need to be supported, taking into account uncertainties.'' For example, if DOE is to portray its PCSA results as best estimates, this term will need to be defined because it has no statistical meaning (*see* ''A Review of Staff Uses of Probabilistic Risk Assessment,'' NUREG–1489, March 1994). Staff believes that the paragraph on uncertainty, beginning with ISG line 156, is sufficiently clear, and that no changes are required.

No changes to the ISG were made as a result of this comment.

Comment 14. The commenter stated that the screening criteria in ISG lines 127–128 presume a preclosure period of 100 years by specifying that the lower bound of Category 2 event sequence frequency is 10^{-6} failures/yr. Instead, the staff should be consistent with Part 63 in referring to the lower bound of Category 2 event sequence frequency as the one chance in 10,000 during the period of operation.

Response. NRC agrees with the comment. Unless there is a reason to state otherwise, the staff will refer to the terminology, used in Part 63, for Category 2 event sequence frequency as having at least one chance in 10,000 of occurring during the preclosure period. The quantitative frequency limit of a Category 2 event sequence is determined by the duration of the preclosure period.

ISG line 127 has been revised to change ''(e.g., $\leq 10^{-6}$ failures/year)'' to ''(e.g., ≤ one chance in 10,000 of occurring during the preclosure period).''

ISG line 128 has been revised to delete ''(e.g., $\leq 10^{-6}$ failures/year).''

Comment 15. The commenter stated that, in ISG line 136, the NRC staff recognizes various sources of reasonable input to the PCSA. It is important that such information does not have to be created under an NRC-licensed quality assurance program. The sources cited in the ISG [e.g., ''Generic Data Base, developed by Savannah River Site,'' and the Equipment Performance and Information Exchange (EPIX) System], for reliability input, are reasonable, based on actual operating data, and not skewed by conservatism. Even though applying conservatism is acceptable for safety analysis purposes (e.g., for analytical simplification or bounding uncertainties), doing so distorts the foundation of risk-informed regulation by implying higher risks than actually exist.

Response. NRC agrees that DOE can use reliability information from published references. However, DOE must provide the technical basis to demonstrate that any reliability information is applicable to the proposed design of the GROA.

No changes to the ISG were made as a result of this comment.

Comment 16. The commenter stated that, in ISG lines 157–168, the staff should apply additional scrutiny or focus in its review, in cases where a reliability estimate is close to a Category 1 or 2 limit. The ISG should not be taken to imply that DOE is required to submit any additional analysis with its license application. The guidance should be clarified to explicitly recognize that it is incumbent on DOE to determine both if and when a reliability estimate is sufficiently close to a Category 1 or 2 limit to warrant additional consideration, in the license application, as well as the specific nature and extent of any such consideration in the application.

Response. NRC has not specified criteria for determining when a sequence frequency is close enough to a category limit to warrant additional scrutiny. DOE is expected to provide NRC with enough information to demonstrate that sequences have been correctly categorized.

No changes to the ISG were made as a result of this comment.

Comment 17. The commenter stated that the demand in ISG lines 636–638 is a function of several parameters (e.g., modulus of elasticity, dimension, thermal expansion). The commenter adds that these parameters would affect the material capacity, not the demands placed on the material, and recommends that this sentence be revised by deleting the words ''modulus of elasticity, dimensions, thermal expansion.''

Response. NRC agrees with the comment. Demand on an SSC because of an event, such as a drop or a natural event, would not depend on the modulus of elasticity, dimension, and thermal expansion.

ISG lines 636–637 have been revised to delete ''modulus of elasticity, dimensions, thermal expansion.''

Comment 18. One commenter suggested the following editorial changes: Lines 587–588: Revise ''* * * including major components of canister structure, internals'' to read ''* * * including major components of canister structure, and its internals''; Line 622: Revise ''function can developed'' to read ''function can be developed.''

Response. NRC agrees with the comment. The ISG has been revised to reflect the suggested changes.

In addition to the changes described above, the ISG has also been revised, as follows, for clarification:

Line 91: The sentence ''DOE should identify the key SSCs in an event sequence.'' was deleted because ''key'' SSCs is not formally defined; a new sentence to replace the deleted sentence has been added;

Line 446: The definition of λ (now $\hat{p}$ was reworded for clarity;

Lines 445: Though 453: λ was changed to, to distinguish this quantity from λ, which often is used to indicate a rate in the Poisson distribution, and that the quantity is an estimate;

Line 622: Clarifying words were added.

FOR FURTHER INFORMATION CONTACT: Jon Chen, Project Manager, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 [Telephone: (301) 415–5526; fax number: (301) 415–5399; e-mail: *jcc2@nrc.gov*];

Robert Johnson, Senior Project Manager, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 [Telephone: (301) 415–6900; fax number: (301) 415–5399; e-mail: *rkj@nrc.gov*].

Dated at Rockville, Maryland this 8th day of March, 2007.

For the Nuclear Regulatory Commission.,

N. King Stablein,

Chief, Project Management Branch B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 07–1404 Filed 3–21–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing on Potential Withdrawal of Tariff Concessions and Increase in Applied Duties in Response to European Union (EU) Enlargement

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning a list of goods for which tariff concessions may be withdrawn and duties may be increased in the event the United States cannot reach agreement with the European Communities (EC) for adequate compensation owed under World Trade Organization (WTO) rules as a result of EU enlargement.

SUMMARY: The United States is continuing to negotiate with the EU regarding the EU's provision of adequate and permanent compensation to the United States for an event that increased duties on U.S. imports to EU markets above WTO bound rates of duty. On January 1, 2007, as part of its enlargement process, the EU raised tariffs above bound rates on some imports into the countries of Romania and Bulgaria. If this issue is not resolved, the United States may seek to exercise its rights under Article XXVIII of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994'') to withdraw substantially equivalent concessions and raise tariffs on select goods primarily supplied by the EU. The Trade Policy Staff Committee (TPSC) seeks public comment on the attached list of goods for which U.S. tariff concessions may be withdrawn and applied duties may be raised. The TPSC will hold a public hearing on Tuesday, April 24, 2007, on the list.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon on April 19, 2007. A hearing will be held in Washington, DC on Tuesday, April 24, 2007. Written comments are due by noon on Thursday, April 19, 2007.

ADDRESSES: Submissions by electronic mail to *FR0628@ustr.eop.gov;* requests to testify should also be addressed to Martez Higgins at e-mail: *FR0628@ustr.eop.gov.* Submissions can be sent by facsimile to: Martez Higgins at fax: (202) 395–3974. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below).

FOR FURTHER INFORMATION CONTACT: For questions about procedural questions, contact Martez Higgins at (202) 395–4620. All other questions should be directed to: Laurie Molnar, Director for European Trade Issues, (202) 395–3320 or MaryEllen Smith, Director Agricultural Trade Policy, (202) 395–6127; Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Under WTO rules, the United States is entitled to compensation from the EU resulting from EU tariff changes as a result of EU enlargement. If agreement on compensation cannot be reached, the United States would be entitled to withdraw substantially equivalent concessions and apply increased duties on products of interest to the EU.

Enlargement: With the accession to the EU of Romania and Bulgaria (''the new EU Member States''), the EU withdrew the entire WTO tariff schedules of the new EU Member States and applied the common external tariff of the EU of twenty five to imports into the territory of the new EU Member States, resulting in increased tariffs on certain products.

Legal Background: Article XXVIII of the GATT 1994 establishes that a WTO Member may modify or withdraw a tariff concession bound in its WTO schedule by negotiation and agreement with certain affected Members, more specifically, those Members that initially negotiated the relevant concession or are determined to have a principal supplying interest or a substantial interest in the concession. Such affected Members are entitled to receive adequate compensation or, in the absence of successful compensation negotiations, to withdraw ''substantially equivalent concessions.'' Pursuant to Article XXIV:6 of the GATT 1994, where a WTO Member has modified or withdrawn a concession in the expansion of a customs union, the procedure under Article XXVIII also applies. The United States has negotiating and compensation rights on certain tariff concessions at issue as a result of enlargement. Affected WTO Members' rights to withdraw substantially equivalent concessions under Article XXVIII are time-limited; these rights expire within six months of the EU's withdrawal or modification of concessions unless exercised or extended. WTO Members intending to withdraw substantially equivalent concessions must provide notice to the WTO of their intent at least thirty days prior to the effective date of such action.

Whenever a foreign country withdraws, suspends, or modifies the application of trade agreement obligations of benefit to the United States without granting adequate compensation, the President is authorized under section 125(d) of the Trade Act of 1974 (19 U.S.C. 2135) to withdraw, suspend or modify the application of any substantially equivalent trade agreement obligations of benefit and proclaim under section 125(c) such increased duties or other import restrictions as are appropriate to effect adequate compensation. Section 125(c) authorizes the President to proclaim increased duties or other import restrictions as he deems necessary or appropriate in order to exercise the rights of the United States whenever the United States, acting in pursuance of its rights or obligations under certain trade agreements, withdraws, suspends or modifies any obligation with respect to foreign trade. Section 125(f) provides that the President, normally before taking any action under section 125 to withdraw, suspend, or modify trade agreement obligations or to increase duties, must provide for a public hearing, at which time interested persons will be given an opportunity to be present, to produce evidence, and to be heard.

Pursuant to section 125(c), any new tariff rates proclaimed by the President would not exceed 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or 20 percent *ad valorem* above the rate existing on January 1, 1975, whichever is higher. If imposed, the increased duties would apply to imports from all countries that are subject to the rates of duty set forth in the Column 1 General rate of duty column of the Harmonized Tariff Schedule of the United States (HTSUS). The products affected by a suspension of concessions and duty increase would be drawn from the list of products set forth in the Annex to this notice. In recommending any action to the President under section 125, the TPSC will consider all comments and testimony by interested persons submitted in accordance with the procedures described below.

Public Comment on Potential Actions; Hearing Participation

Pursuant to section 125(f) of the Trade Act of 1974 (19 U.S.C. 2135), the TPSC, chaired by the Office of the United States Trade Representative, has scheduled a public hearing beginning at 9 a.m. on Tuesday, April 24, 2007, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC 20508. Further details on the hearing and submission of testimony is provided below. In lieu of or in addition to participation at the public hearing, parties may submit

written comments to be received no later than noon, Thursday, April 19, 2007.

Written comments and/or written or oral testimony of interested persons should be limited to the following issues: (1) The appropriateness of withdrawing WTO tariff concessions upon the products listed in the Annex to this notice; (2) the appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (3) the levels at which U.S. customs duties should be set for particular items; and (4) the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex.

Persons wishing to testify orally at the hearing must provide both a written notification of their intention and a copy of their testimony by noon on Thursday, April 19, 2007. The notification should include: (1) The name, address, and telephone number, fax number, and firm or affiliation of the person wishing to testify; (2) a short (one or two paragraph) summary of the oral presentation; and (3) list of goods of interest (including HTSUS numbers). Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

Requirements for Submissions

In order to facilitate prompt processing of submissions, the TPSC strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''EU Enlargement'' followed by (as appropriate) ''Written Comments,'' ''Notice of Testimony,'' or ''Testimony.'' Documents should be submitted as either Adobe PDF, WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning USTR may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

ANNEX: PROPOSED WITHDRAWAL OF CONCESSIONS TARIFF LIST

HTS#	Description	MFN rate 2007	MFN unit 2007	Proposed new tariff rate	Proposed new tariff rate unit
02032920	Frozen retail cuts of meat of swine, nesoi	1.40	cents/kg	92.21	Cents/kg.
02101200	Bellies (streaky) and cuts thereof of swine, salted, in brine, dried or smoked.	1.40	cents/kg	92.9	Cents/kg.
02101900	Meat of swine other than hams, shoulders, bellies (streaky) and cuts thereof, salted, in brine, dried or smoked.	1.40	cents/kg	177.9	Cents/kg.
07129074	Tomatoes, dried in powder	9%		55%	
16010020	Pork sausages and similar products of pork, pork offal or blood; food preparations based on these products.	0.80	cents/kg	73.7	Cents/kg.
16024940	Prepared or preserved pork, not containing cereals or vegetables, nesi	1.40	cents/kg	72.8	Cents/kg.
20019025	Artichokes, prepared or preserved by vinegar or acetic acid	10%		55%	
20032000	Truffles, prepared or preserved otherwise than by vinegar or acetic acid	0		20%	
20049010	Antipasto, prepared or preserved otherwise than by vinegar or acetic acid, frozen.	3%		50%	
20079935	Peach jam	7%		55%	
20087020	Peaches (excluding nectarines), otherwise prepared or preserved, not elsewhere specified or included.	17%		55%	
38099350	Finishing agents, dye carriers and other preparations used in leather and like industries, < 5% by weight aromatic (mod.) substance(s).	6%		55%	
70133130	Glassware for table or kitchen purposes (o/than drinking glasses), of lead crystal, valued over $3 but n/over $5 each.	10.5%		90%	
71141130	Spoons and ladles with handles of sterling silver	3.3%		97.5%	
84201020	Calendering or similar rolling machines for making paper pulp, paper or paperboard.	0		55%	

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E7–5268 Filed 3–21–07; 8:45 am]

BILLING CODE 3190–W7–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Supplement to Claim of Person Outside the United States; OMB 3220–0155. Under the Social Security Amendments of 1983 (Pub. L. 98–21), which amends Section 202(t) of the Social Security Act, the Tier I or the O/M (overall minimum) portion of an annuity and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the U.S., may be withheld effective January 1, 1985. The benefit withholding provision of Public Law 98–21 applies to divorced spouses, spouses, minor or disabled children, students, and survivors of railroad employees who (1) Initially became eligible for Tier I amounts, O/M shares, and Medicare benefits after December 31, 1984; (2) are not U.S. citizens or U.S. nationals; and (3) have resided outside the U.S. for more than six consecutive months starting with the annuity beginning date. The benefit withholding provision does not apply, however to a beneficiary who is exempt under either a treaty obligation of the United States, in effect on August 1, 1956, or a totalization agreement between the United States and the country in which the beneficiary resides, or to an individual who is exempt under other criteria specified in Public Law 98–21.

RRB Form G–45, Supplement to Claim of Person Outside the United States, is currently used by the RRB to determine applicability of the withholding provision of Public Law 98–21. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent. The RRB estimates that 100 Form G–45s are completed annually. The completion time for Form G–45 is estimated at 10 minutes per response.

The RRB proposes no changes to Form G–45.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–5240 Filed 3–21–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55479; File No. SR–Amex–2006–114]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Clarifying the Continued Listing Standards for Units

March 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Amex. On February 22, 2007, Amex filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Section 1003(g) of the Amex Company Guide to strengthen the procedures applicable to units when their components fall below continued listing standards and clarify the application of continued listing standards to individual components comprising units once some (but not all) of the units have separated into their component parts and (2) make minor, technical changes to Sections 1003(a), (c), (d) and (f) of the Amex Company Guide. The text of the proposal is available at Amex, at the Commission's Public Reference Room, and on Amex's Web site at *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 1003(g) of the Amex *Company Guide* currently provides that the Exchange will ''normally consider'' suspending or delisting units if any of their component parts do not meet the applicable continued listing standards. However, if one or more of the components is otherwise qualified for listing, such component may remain listed. For example, a unit comprised of both a common stock component and a debt component would face suspension or delisting procedures if either the common stock or the debt component no longer met its applicable continued listing standards. As a result, if the debt component failed to meet the continued listing standards for bonds, both the unit and such debt component would be subject to suspension or delisting procedures, but the common stock component could independently remain listed and continue to trade on the

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

[2] 17 CFR 240.19b–4.

Exchange, provided such common stock component met the continued listing standards for equity securities.

The Exchange proposes to strengthen Section 1003(g) of the Amex *Company Guide* so that in the event a component of a unit does not meet its continued listing standards, the Exchange would no longer ''consider'' suspending or delisting the unit, but would commence a formal, continued listing evaluation of such component and unit in accordance with Section 1009 of the Amex *Company Guide.* Section 1009 sets forth the suspension and delisting procedures, timelines, and requirements applicable to issuers identified as being below certain continued listing standards. For example, an issuer of particular securities that receives notification from the Exchange that it is below the continued listing criteria for such securities must publicly announce receipt of such notification and the policies and standards upon which the determination is based.[3]

The Exchange also proposes to add language to Section 1003(g) to clarify the applicability of certain continued listing standards relating to components of units that have separated. When units in good standing begin to separate into their component securities, the remaining units that are still intact and the components of those units which have separated may all be separately listed and continue to trade, provided that they meet the applicable continued listing standards. The proposal specifies that, in determining whether a particular component meets the continued listing distribution standards set forth in Section 1003(b) of the *Company Guide,* the distribution values for units that are intact and freely separable into their component parts and for separately-traded components will be aggregated. For example, if 120,000 shares of common stock are publicly held after their separation from their units, and 210,000 intact and freely separable units are publicly held, the common stock will be credited with having 330,000 shares publicly held, enabling it to satisfy one of the distribution standards for common stock, which requires at least 200,000 shares of common stock to be publicly held.[4] If the units cease to exist or are no longer freely separable and/or listed on the Exchange, the separately-traded components will still be required to meet their applicable continued listing standards, but the distribution values will not be aggregated.[5]

The Exchange will also consider suspending trading in, or removing from listing, an individual component or unit if the distribution values of such component or unit become so reduced as to make continued listing inadvisable and despite the fact that the aggregated distribution values satisfy the continued listing distribution standards. In its review of the advisability of the continued listing of an individual component or unit under such circumstances, the Exchange proposes to take into account the trading characteristics of the component or unit and whether it would be in the public interest for trading in such component or unit to continue. The Exchange believes that this proposal will enhance the transparency of its continued listing standards.

The Exchange also proposes to make technical revisions to Sections 1003(a), (c), (d) and (f) in order to consistently use the term ''issuer'' as opposed to ''company.''

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange 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

The Exchange did not receive any written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–114 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Amex–2006–114. 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 Exchange. All

[3] *See* Section 1009(j) of the Amex *Company Guide.*

[4] *See* Section 1003(b)(i)(A) of the Amex *Company Guide.*

[5] *See* proposed Section 1003(g) of the Amex *Company Guide.* The Commission notes that under proposed Section 1003(g), if in the above example the units are no longer freely separable into common stock, there would be no aggregation of units with the common stock for purposes of evaluating whether the units and comment stock meet the continued listing standards.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–114 and should be submitted on or before April 12, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5205 Filed 3–21–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55477; File No. SR–Amex–2006–99]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Reverse Mergers

March 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2006, the American Stock Exchange LLC (the ''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 14, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend (i) Section 341 of the Amex Company Guide to clarify the circumstances under which a listed issuer will be deemed to have engaged in a reverse merger thereby requiring the post-transaction entity to satisfy the initial listing standards and the process a listed issuer must follow when applying for initial listing in connection with a reverse merger and (ii) Section 713 of the Amex Company Guide to require shareholder approval in connection with the issuance or potential issuance of additional listed securities that will result in a change of control of a listed issuer.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 341 of the Amex Company Guide currently provides that if an issuer listed on the Amex engages in any plan of acquisition, merger or consolidation, the net effect of which is that the listed issuer is acquired by an unlisted entity, even if the listed issuer is the nominal survivor, the post-transaction entity is required to satisfy the initial listing standards. Such transactions are typically referred to as ''Reverse Mergers.'' Because the issuer resulting from a Reverse Merger is essentially a different entity from the listed issuer, Section 341 does not permit the post-transaction entity to remain listed on the Amex unless it qualifies as a new listing. This prohibition is intended to prevent ''back door listings'' whereby an unqualified entity attempts to obtain an Amex listing. Both the New York Stock Exchange LLC (''NYSE'')[4] and Nasdaq[5] have comparable provisions.

Many Reverse Mergers are entered into for bona fide business reasons, however, in some cases listed issuers that are not in compliance with the continued listing standards, and face potential delisting, attempt to enter into Reverse Mergers with private entities in order to retain their Amex listing. In other situations, a listed issuer may be in compliance with the continued listing standards but the post-transaction entity would not satisfy the initial listing standards. In both of these cases, a change of control occurs but the listed issuer attempts to structure the transaction so that it will not be deemed a Reverse Merger under the current rule.

The Exchange proposes amending Section 341 to provide greater clarity and transparency as to (i) what constitutes a Reverse Merger, (ii) the factors the Exchange will consider in determining whether a transaction or series of transactions constitute(s) a Reverse Merger, (iii) the consequences of entering into a Reverse Merger and (iv) the process a listed issuer must follow in connection with a Reverse Merger. The proposed rule change will provide that, in addition to meeting the initial listing standards, a listed company entering into a Reverse Merger will need to obtain shareholder approval in accordance with Section 713 in order to issue additional listed securities in connection with such Reverse Merger. In addition, while the determination of whether a Reverse Merger has occurred or will occur is to some degree subjective, the Exchange proposes to amend Section 341 to more clearly delineate the factors that will be considered by the Exchange in its analysis of a transaction.[6]

With regards to the process to be followed by listed issuers in connection with Reverse Mergers, Section 341

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 makes revisions to the proposed rule text, including revisions conforming the proposed rule text to a filing submitted by The NASDAQ Stock Market LLC (''Nasdaq'') and approved by the Commission in the period following submission of the original filing (Securities Exchange Act Release No. 55052 (January 5, 2007), 72 FR 1569 (January 12, 2007) (SR–NASDAQ–2006–047)) and revisions incorporating an immediately effective filing submitted by Amex in the same period (Securities Exchange Act Release No. 55096 (January 12, 2007), 72 FR 2563 (January 19, 2007) (SR–Amex–2007–03)). Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] Section 703.08(E) of the NYSE Listed Company Manual.

[5] Nasdaq Rule 4340(a).

[6] The Exchange's proposed Section 341 states that a ''Reverse Merger'' is: ''any plan of acquisition, merger or consolidation whereby a listed company combines with, or into, a company not listed on the Exchange, resulting in a change of control of the listed company and potentially allowing such unlisted company to obtain an Exchange listing. In determining whether a change of control constitutes a Reverse Merger, the Exchange will consider all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the listed company. The Exchange will also consider the nature of the businesses and the relative size of both the listed and the unlisted companies.'' *See* proposed Section 341 of the Amex Company Guide.

currently recommends that listed issuers submit any proposed plan which could constitute a Reverse Merger to the Exchange for an informal opinion prior to the plan's promulgation. The intent of such provision is to permit Exchange staff to review the proposed transaction in order to determine if it constitutes a Reverse Merger and, in the case of a Reverse Merger, to review the post-transaction entity in order to confirm that it will meet initial listing standards. The Exchange proposes to make such process more transparent by requiring a listed issuer to submit an initial listing application with sufficient time to permit the Exchange to complete its review of the post-transaction entity and providing that delisting proceedings will be commenced if such initial listing application has not been approved prior to consummation of the Reverse Merger. The Commission approved a similar rule change filed by Nasdaq.[7]

In association with the proposed changes to Section 341, the Exchange also proposes to amend Section 713. Section 713 currently requires shareholder approval as a prerequisite to Exchange approval of applications to list additional shares issued in connection with a transaction (other than a public offering) which would involve the application of the initial listing standards as described in Section 341. The Exchange proposes revising Section 713 to require shareholder approval as a prerequisite to Exchange approval of additional listing applications when the issuance or potential issuance of additional securities will result in a change of control of a listed issuer, regardless of whether such change of control also constitutes a Reverse Merger. Additionally, the Exchange proposes changes to Sections 341 and 713 to clarify the relationship between their respective requirements. Both NYSE[8] and Nasdaq[9] require shareholder approval under such circumstances and the Exchange believes it is necessary and appropriate to require listed issuers to obtain shareholder approval of any issuance or potential issuance of additional listed securities that will result in a change of control. The proposed rule change will provide investors of listed issuers with more input and participation with respect to such decisions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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. Instead, the Exchange believes that the proposed rule change will promote greater uniformity with the listing standards of other markets.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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 Exchange 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 *rulecomments@sec.gov.* Please include File Number SR–Amex–2006–99 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Amex–2006–99. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–99 and should be submitted on or before April 12, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5206 Filed 3–21–07; 8:45 am]

BILLING CODE 8010–01–P

[7] *See supra* note 3.

[8] Section 312.03(d) of the NYSE Listed Company Manual.

[9] Nasdaq Rule 4350(i)(1)(B).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55480; File No. SR–BSE–2006–46]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change Amending Rules To Require Securities Become Eligible for a Direct Registration System

March 15, 2007.

I. Introduction

On October 26, 2006, the Boston Stock Exchange, Inc. (''BSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–BSE–2006–46 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 7, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.[3]

II. Description

The Direct Registration System (''DRS'') allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer of her choice through a facility currently administered by The Depository Trust Company (''DTC'').[4] DRS, therefore, enables an investor to have securities registered in her name on the books of the issuer without having a securities certificate issued to her and to electronically transfer her securities to her broker-dealer in order to effect a transaction without the risk, expenses, and delays associated with the use of securities certificates.

Investors holding their securities in DRS retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

BSE believes that DRS will be an important step in reducing the use of securities certificates, which should facilitate transfers in securities and could eventually lead to lower risks and costs for issuers and investors.[5] To encourage the use of DRS, the BSE will require that all listed securities be eligible to participate in DRS. As approved, BSE would add Section 3 to Chapter XXVII that will require any security initially listing on BSE on or after January 1, 2007, to be eligible for a DRS that is operated by a clearing agency registered under Section 17A of the Act. This requirement, however, would not extend to (i) securities of companies which already have securities listed on BSE, (ii) securities of companies which immediately prior to such listing had securities listed on another securities exchange in the U.S., or (iii) non-equity securities which are book-entry only. Under the rule, on and after January 1, 2008, all securities listed on BSE, other than non-equity securities which are book-entry only, must be eligible for a DRS that is operated by a clearing agency registered under Section 17A of the Act.[6] While this rule change would require that securities be DRS eligible, it would not mandate the elimination of securities certificates and, subject to applicable state law and the company's governing documents, an investor could still elect to receive a securities certificate if an issuer elects to issue securities certificates.

In order for a security to be eligible for the only DRS in operation today, the issuer is required to use a transfer agent that meets certain insurance and connectivity requirements.[7] As a result, some transfer agents may have to make changes to comply with their requirements. In addition, certain issuers may have to make amendments to their governing documents, such as their by-laws or corporate charters, to be eligible to issue book-entry positions. To allow sufficient time for these changes, BSE proposed implementing the proposed requirement on January 1, 2008, for issuers with securities already listed on BSE or another listed marketplace when the rule is approved. Companies listing for the first time would have greater flexibility to adopt any required changes and therefore the proposed requirement would be applicable to new listings beginning January 1, 2007.

III. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[8] For the reasons described below, the Commission finds that BSE's rule change is consistent with Section 6(b)(5) of the Act.

The use of securities certificates has long been identified as an inefficient and risk-laden mechanism by which to hold and transfer ownership.[9] Because

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

[2] Securities Exchange Act Release No. 54832 (November 29, 2006), 71 FR 71000 (December 7, 2006) [File No. SR–BSE–2006–46].

[3] Concurrent with this order, the Commission is approving similar rule changes submitted by the Philadelphia Stock Exchange, Inc., and Chicago Stock Exchange, Inc. Securities Exchange Act Release Nos. 54834 (November 29, 2006), 71 FR 71013 (December 7, 2006) [File No. SR–Phlx–2006–69] and 54833 (November 29, 2006), 71 FR 71004 (December 7, 2006)[File No. SR–CHX–2006–33]. The Commission has also granted approval to similar rule changes submitted by the New York Stock Exchange LLC (''NYSE''), American Stock Exchange LLC (''Amex''), The NASDAQ Stock Market LLC (''Nasdaq''), and the NYSE Arca, Inc. (''NYSE Arca''). Securities Exchange Act Release Nos. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR–NYSE–2006–29]; 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR–Amex–2006–40]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR–NASDAQ–2006–08]; 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) [File No. SR–NYSE Arca–2006–31].

[4] Currently, the only registered clearing agency operating a DRS is DTC. For a detailed description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[5] In that regard, in March 2004 the Commission published a concept release that discussed, among other things, whether more should be done to reduce the use of physical securities certificates by individual investors. The Commission noted that the use of physical certificates increases the costs and risks of clearing and settling securities transactions, costs that most often are ultimately borne by investors. Securities Exchange Act Release No. 8398 (March 11, 2004), 69 FR 12922 (March 18, 2004). Issuers may save money by not having to print or process physical certificates but may incur other ongoing expenses to maintain book-entry records, such as mailing statements to shareholders.

[6] The exact text of the BSE's proposed rule change is set forth in its filing, which can be found at *http://www.bostonstock.com/legal/pending_rule_filings.html.*

[7] DTC's rules require that a transfer agent (including an issuer acting as its own transfer agent) acting for a company issuing securities in DRS must be a DRS Limited Participant. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15].

[8] 15 U.S.C. 78f(b)(5).

[9] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004),

securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and presents the risk of certificates being lost or stolen. Many of these costs and risks are ultimately borne by investors.[10] Congress has recognized the problems and dangers that the use of certificates presents to the safe and efficient operation of the U.S. clearance and settlement system and has given the Commission the responsibility and the authority to address these issues.[11]

Consistent with its Congressional directives and in its efforts to improve efficiencies and decrease risks associated with processing securities transactions, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilization or dematerialization of securities and has encouraged the use of alternatives to holding securities in certificated form. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities[12] and that require any security listed for trading must be depository eligible if possible.[13] More recently the Commission has approved the implementation and expansion of DRS.[14]

While the U.S. markets have made great progress in immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form (held mostly by retail investors) impose unnecessary risk and disproportionately large expense to the industry and to investors. In an attempt to help address this issue, BSE's rule change, along with those of the NYSE, Amex, Nasdaq, NYSE Arca, Phlx, and CHX, should help expand the use of DRS. As a result, risks, costs, and processing inefficiencies associated with the use of securities certificates should be reduced, and impediments to the perfection of the national market system should be removed. Additionally, those investors holding securities in listed securities certificates covered by the rule change that decide to hold their securities in DRS should realize the benefits of more accurate, quicker, and more cost-efficient transfers; faster distribution of sale proceeds; reduced number of lost or stolen certificates and a reduction in the associated certificate replacement costs; and consistency of owning in book-entry across asset classes.

The Commission realizes that some issuers and transfer agents may bear expenses related to complying with the rule change. In order to make an issue DRS-eligible, issuers of listed companies must have a transfer agent which is a DRS Limited Participants and may need to amend their corporate governing documents to permit the issuance of book-entry shares. The Commission believes, however, that the long-term benefits of increased efficiencies and reduced costs and risks afforded by DRS outweigh the costs that some issuers and transfer agents may incur. Furthermore, the time frames built into the proposal should allow issuers and their transfer agents sufficient time to make any necessary changes to comply with the rule change.

While the rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, it will not eliminate the ability of investors to obtain securities certificates provided the issuer has chosen to issue certificates. Such investors can continue to contact the issuer's transfer agent, either directly or through their broker-dealer, to obtain a securities certificate.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with BSE's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[15]

V. 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 with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–BSE–2006–46) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5190 Filed 3–21–07; 8:45 am]

BILLING CODE 8010–01–P

[File No. S7–13–04] (Securities Transaction Settlement Concept Release).

[10] *Id.*

[11] 15 U.S.C. 78q–1(a)(2)(A). Congress expressly envisioned the Commission's authority to extend to all aspects of the securities handling process of securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[12] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993) (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[13] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–Phlx–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[14] In 1996, the NYSE modified its listing criteria to permit listed companies to issue securities in book-entry form provided that the issue is included in DRS. Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29]. Similarly, the NASD modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue. Securities Exchange Act Release No. 39369 (November 26, 1997), 62 FR 64034 (December 3, 1997), [File No. SR–97–51]. On July 30, 2002, the Commission approved a rule change proposed by the NYSE to amend NYSE Section 501.01 of the NYSE Listed Company Manual to allow a listed company to issue securities in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders provided the company's stock is issued pursuant to a dividend reinvestment program or a stock purchase plan or is included in a DRS. Securities Exchange Act Release No. 46282 (July 30, 2002), 67 FR 50972 (August 6, 2002), [File No. SR–NYSE–2001–33].

[15] In approving the proposed rule change, the Commission considered the proposal's impact on the efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55481; File No. SR–CHX–2006–33]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change Amending Rules To Require Listed Companies To Make Securities Eligible for the Direct Registration System

March 15, 2007.

I. Introduction

On October 30, 2006, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–CHX–2006–33 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register**; on December 7, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.[3]

II. Description

The Direct Registration System (''DRS'') allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer of her choice through a facility currently administered by The Depository Trust Company (''DTC'').[4] DRS, therefore, enables an investor to have securities registered in her name on the books of the issuer without having a securities certificate issued to her and to electronically transfer her securities to her broker-dealer in order to effect a transaction without the risk, expenses, and delays associated with the use of securities certificates.

Investors holding their securities in DRS retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

To reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates to and reduce the risks, costs, and delays associated with the physical processing of securities certificates, the CHX is amending its listing standards by adding paragraph (h) to Rule 1[5] that would require certain issuers to make their securities eligible for DRS. As amended, the new rule would require that any security initially listing on CHX on or after January 1, 2007, must be eligible for a DRS that is operated by a securities depository.[6] This requirement, however, would not extend to i) securities of companies which already have securities listed on CHX, ii) securities of companies which immediately prior to such listing had securities listed on another national securities exchange, iii) derivative products, or iv) securities (other than stocks) which are book-entry only. Under the rule, on and after January 1, 2008, all securities listed on CHX must be eligible for a DRS that is operated by a securities depository.[7]

CHX understands that issuers and transfer agents may incur initial costs when making an issue DRS-eligible. As an initial matter, the issuer must have a transfer agent that is a DRS Limited Participant.[8] Transfer agents will need to meet certain DTC criteria, such as insurance and connectivity requirements in order to become DRS Limited Participants and an issuer's corporate documents, such as its bylaws or corporate charters, may need to be amended to permit the issuance of book-entry shares. CHX believes that the proposed deadlines as set forth above would allow issuers and transfer agents an appropriate amount of time to meet applicable requirements.

III. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[9] For the reasons described below, the Commission finds that CHX's rule change is consistent with Section 6(b)(5) of the Act.

The use of securities certificates has long been identified as an inefficient and risk-laden mechanism by which to hold and transfer ownership.[10] Because securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and presents the risk of certificates being lost or stolen. Many of these costs and risks are ultimately borne by investors.[11] Congress has recognized the problems and dangers that the use of certificates presents to the safe and efficient operation of the U.S. clearance and settlement system and has given the Commission the responsibility and the authority to address these issues.[12]

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

[2] Securities Exchange Act Release No. 54833 (November 29, 2006), 71 FR 71004 (December 7, 2006) [File No. SR–CHX–2006–33].

[3] Concurrent with this order, the Commission is approving similar rule changes submitted by the Boston Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc. Securities Exchange Act Release Nos. 54832 (November 29, 2006), 71 FR 71000 (December 7, 2006) [File No. SR–BSE–2006–46] and 54834 (November 29, 2006), 71 FR 71013 (December 7, 2006) [File No. SR–Phlx–2006–69]. The Commission has also granted approval to similar rule changes submitted by the New York Stock Exchange LLC (''NYSE''), American Stock Exchange LLC (''Amex''), The NASDAQ Stock Market LLC (''Nasdaq''), and the NYSE Arca, Inc. (''NYSE Arca''). Securities Exchange Act Release Nos. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR–NYSE–2006–29]; 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR–Amex–2006–40]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR–NASDAQ–2006–08]; 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) [File No. SR–NYSE Arca–2006–31].

[4] Currently, the only registered clearing agency operating a DRS is DTC. For a detailed description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[5] The exact text of the CHX proposed rule change is set forth in its filing, which can be found at *http://www.chx.com/rules/proposed_rules.htm*.

[6] Under the proposed rule, a ''securities depository'' would mean a securities depository registered as a clearing agency under Section 17A(b)(2) of the Act.

[7] Securities (other than stock) that are book-entry-only and derivative products would continue to be excluded from the DRS requirement.

[8] DTC's rules require that a transfer agent (including an issuer acting as its own transfer agent) acting for a company issuing securities in DRS must be a DRS Limited Participant. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15].

[9] 15 U.S.C. 78f(b)(5).

[10] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (Securities Transaction Settlement Concept Release).

[11] *Id.*

[12] 5 U.S.C. 78q–1(a)(2)(A). Congress expressly envisioned the Commission's authority to extend to all aspects of the securities handling process of securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents.

Consistent with its Congressional directives and in its efforts to improve efficiencies and decrease risks associated with processing securities transactions, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilization or dematerialization of securities and has encouraged the use of alternatives to holding securities in certificated form. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities [13] and that require any security listed for trading must be depository eligible if possible.[14] More recently the Commission has approved the implementation and expansion of DRS.[15]

While the U.S. markets have made great progress in immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form (held mostly by retail investors) impose unnecessary risk and disproportionately large expense to the industry and to investors. In an attempt to help address this issue, CHX's rule change, along with those of the NYSE, Amex, Nasdaq, NYSE Arca, BSE, and Phlx, should help expand the use of DRS. As a result, risks, costs, and processing inefficiencies associated with the use of securities certificates should be reduced, and impediments to the perfection of the national market system should be removed. Additionally, those investors holding securities in listed securities certificates covered by the rule change that decide to hold their securities in DRS should realize the benefits of more accurate, quicker, and more cost-efficient transfers; faster distribution of sale proceeds; reduced number of lost or stolen certificates and a reduction in the associated certificate replacement costs; and consistency of owning in book-entry across asset classes.

The Commission realizes that some issuers and transfer agents may bear expenses related to complying with the rule change. In order to make an issue DRS-eligible, issuers of listed companies must have a transfer agent which is a DRS Limited Participants and may need to amend their corporate governing documents to permit the issuance of book-entry shares. The Commission believes, however, that the long-term benefits of increased efficiencies and reduced costs and risks afforded by DRS outweigh the costs that some issuers and transfer agents may incur. Furthermore, the time frames built into the proposal should allow issuers and their transfer agents sufficient time to make any necessary changes to comply with the rule change.

While the rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, it will not eliminate the ability of investors to obtain securities certificates provided the issuer has chosen to issue certificates. Such investors can continue to contact the issuer's transfer agent, either directly or through their broker-dealer, to obtain a securities certificate. Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with CHX's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[16]

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 with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–CHX–2006–33) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5191 Filed 3–21–07; 8:45 am]

BILLING CODE 8010–01–P

See S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[13] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993) (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[14] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–Phlx–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[15] In 1996, the NYSE modified its listing criteria to permit listed companies to issue securities in book-entry form provided that the issue is included in DRS. Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29]. Similarly, the NASD modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue. Securities Exchange Act Release No. 39369 (November 26, 1997), 62 FR 64034 (December 3, 1997), [File No. SR–97–51]. On July 30, 2002, the Commission approved a rule change proposed by the NYSE to amend NYSE Section 501.01 of the NYSE Listed Company Manual to allow a listed company to issue securities in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders provided the company's stock is issued pursuant to a dividend reinvestment program or a stock purchase plan or is included in a DRS. Securities Exchange Act Release No. 46282 (July 30, 2002), 67 FR 50972 (August 6, 2002), [File No. SR–NYSE–2001–33].

[16] In approving the proposed rule change, the Commission considered the proposal's impact on the efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55482; File No. SR–Phlx–2006–69]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change Amending Rules Relating to the Direct Registration System

March 15, 2007.

I. Introduction

On October 31, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''Commission'') and on November 14, 2006, amended proposed rule change SR–Phlx–2006–69 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 7, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.[3]

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

[2] Securities Exchange Act Release No. 54834 (November 29, 2006), 71 FR 71013 (December 7, 2006) [File No. SR–Phlx–2006–69].

[3] Concurrent with this order, the Commission is approving similar rule changes submitted by the Boston Stock Exchange, Inc., and Chicago Stock Exchange, Inc. Securities Exchange Act Release Nos. 54832 (November 29, 2006), 71 FR 71000 (December 7, 2006) [File No. SR–BSE–2006–46] and 54833 (November 29, 2006), 71 FR 71004 (December 7, 2006) [File No. SR–CHX–2006–33].

Continued

II. Description

The Direct Registration System (''DRS'') allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer of her choice through a facility currently administered by The Depository Trust Company (''DTC'').[4] DRS, therefore, enables an investor to have securities registered in her name on the books of the issuer without having a securities certificate issued to her and to electronically transfer her securities to her broker-dealer in order to effect a transaction without the risk, expenses, and delays associated with the use of securities certificates.

Investors holding their securities in DRS retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

In order to reduce the risks, costs, and delays associated with the use of securities certificates, new Phlx Rule 868 will require that certain securities be eligible for DRS.[5] Rule 868 will require that on or after January 1, 2007, all securities initially listing on Phlx must be eligible for a DRS operated by a securities depository that is a clearing agency registered under Section 17A of the Act (''securities depository''). This provision will not extend to (i) Securities of companies which already have securities listed on Phlx; (ii) securities of companies which immediately prior to such listing had securities listed on another national securities exchange; (iii) derivative products,[6] or (iv) securities (other than stocks) which are book-entry-only.

Rule 868 will also require that on or after January 1, 2008, all securities listed on the Phlx must be eligible for a DRS operated by a securities depository. This provision will not extend to derivative products or securities (other than stocks) that are book-entry-only.

Issuers and their transfer agents may incur initial costs when making an issue DRS-eligible as required by this rule change. In order to make a security DRS-eligible, the issuer must have a transfer agent which is a DRS Limited Participant at DTC.[7] Transfer agents will need to meet certain DTC criteria, such as insurance and connectivity requirements, in order to become a DRS Limited Participant. Further, issuers may need to amend their corporate documents, such as their by-laws or charter, in order to permit the issuance of book-entry shares. Phlx believes that the deadlines for DRS eligibility coupled with instructive communication by Phlx to issuers, allows issuers sufficient time to make the necessary changes to comply with the rule.

III. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[8] For the reasons described below, the Commission finds that Phlx's rule change is consistent with Section 6(b)(5) of the Act.

The use of securities certificates has long been identified as an inefficient and risk-laden mechanism by which to hold and transfer ownership.[9] Because securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and presents the risk of certificates being lost or stolen. Many of these costs and risks are ultimately borne by investors.[10] Congress has recognized the problems and dangers that the use of certificates presents to the safe and efficient operation of the U.S. clearance and settlement system and has given the Commission the responsibility and the authority to address these issues.[11]

Consistent with its Congressional directives and in its efforts to improve efficiencies and decrease risks associated with processing securities transactions, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilization or dematerialization of securities and has encouraged the use of alternatives to holding securities in certificated form. Among other things, the Commission has approved the rule filings of self-regulatory organizations that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities[12] and that require any security listed for trading must be depository eligible if possible.[13] More

The Commission has also granted approval to similar rule changes submitted by the New York Stock Exchange LLC (''NYSE''), American Stock Exchange LLC (''Amex''), The NASDAQ Stock Market LLC (''Nasdaq''), and the NYSE Arca, Inc. (''NYSE Arca''). Securities Exchange Act Release Nos. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR–NYSE–2006–29]; 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR–Amex–2006–40]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR–NASDAQ–2006–08]; 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) [File No. SR–NYSE Arca–2006–31].

[4] Currently, the only registered clearing agency operating a DRS is DTC. For a detailed description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[5] The text of Phlx Rule 868 is set forth in its filing, which can be found at *http://www.phlx.com/exchange/rulefilngs/2006/S–2006–69.pdf.*

[6] For purposes of proposed Rule 868, the term ''derivative products'' means standardized options issued by The Options Clearing Corporation (''OCC'') or other securities that are issued by OCC or another limited purpose entity or trust and that are based solely on the performance of an index or portfolio of other publicly traded securities. The term ''derivative product'' does not include warrants of any type or closed-end management investment companies.

[7] DTC's rules require that a transfer agent (including an issuer acting as its own transfer agent) acting for a company issuing securities in DRS must be a DRS Limited Participant. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15].

[8] 15 U.S.C. 78f(b)(5).

[9] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04] (Securities Transaction Settlement Concept Release).

[10] *Id.*

[11] 15 U.S.C. 78q–1(a)(2)(A). Congress expressly envisioned the Commission's authority to extend to all aspects of the securities handling process of securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[12] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993) (order approving rules requiring members, member organizations, and affiliated members of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[13] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–

recently the Commission has approved the implementation and expansion of DRS.[14]

While the U.S. markets have made great progress in immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form (held mostly by retail investors) impose unnecessary risk and disproportionately large expense to the industry and to investors. In an attempt to help address this issue, Phlx's rule change, along with those of the NYSE, Amex, Nasdaq, NYSE Arca, BSE, and CHX, should help expand the use of DRS. As a result, risks, costs, and processing inefficiencies associated with the use of securities certificates should be reduced, and impediments to the perfection of the national market system should be removed. Additionally, those investors holding securities in listed securities certificates covered by the rule change that decide to hold their securities in DRS should realize the benefits of more accurate, quicker, and more cost-efficient transfers; faster distribution of sale proceeds; reduced number of lost or stolen certificates and a reduction in the associated certificate replacement costs; and consistency of owning in book-entry across asset classes.

The Commission realizes that some issuers and transfer agents may bear expenses related to complying with the rule change. In order to make an issue DRS-eligible, issuers of listed companies must have a transfer agent which is a DRS Limited Participants and may need to amend their corporate governing documents to permit the issuance of book-entry shares. The Commission believes, however, that the long-term benefits of increased efficiencies and reduced costs and risks afforded by DRS outweigh the costs that some issuers and transfer agents may incur. Furthermore, the time frames built into the proposal should allow issuers and their transfer agents sufficient time to make any necessary changes to comply with the rule change.

While the rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, it will not eliminate the ability of investors to obtain securities certificates provided the issuer has chosen to issue certificates. Such investors can continue to contact the issuer's transfer agent, either directly or through their broker-dealer, to obtain a securities certificate.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with Phlx's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[15]

V. 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 with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder. *It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Phlx–2006–69) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5189 Filed 3–21–07; 8:45 am]

BILLING CODE 8010–01–P

PSE–95–14; SR–Phlx–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on the exchange).

[14] In 1996, the NYSE modified its listing criteria to permit listed companies to issue securities in book-entry form provided that the issue is included in DRS. Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29]. Similarly, the NASD modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue. Securities Exchange Act Release No. 39369 (November 26, 1997), 62 FR 64034 (December 3, 1997), [File No. SR–97–51]. On July 30, 2002, the Commission approved a rule change proposed by the NYSE to amend NYSE Section 501.01 of the NYSE Listed Company Manual to allow a listed company to issue securities in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders provided the company's stock is issued pursuant to a dividend reinvestment program or a stock purchase plan or is included in a DRS. Securities Exchange Act Release No. 46282 (July 30, 2002), 67 FR 50972 (August 6, 2002), [File No. SR–NYSE–2001–33].

[15] In approving the proposed rule change, the Commission considered the proposal's impact on the efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Buffalo District Advisory Council; Notice of Federal Advisory Committee Management Meeting

The U.S. Small Business Administration Buffalo District Advisory Council located in the geographical area of Buffalo, New York, will hold a public Federal advisory meeting on Wednesday, April 18, 2007, starting at 10 a.m. EST.

The meeting will take place at the SBA Disaster Assistance Customer Service Center, located at 130 S. Elmwood Avenue, 5th Floor, Buffalo, New York.

The purpose of the meeting is to discuss the following topics: (1) FY 2007 Mid-year report; (2) SBA Program updates; (3) SBA's Military Reservist Economic Injury Disaster Loan (MREIDL); (4) Disaster Assistance Customer Service Center Tour and Update; (5) District Small Business Week; (6) District SBA Business Matchmaking, Awards Luncheon & Expo; (7) Roundtable Discussion on Small Business Issues.

Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, Buffalo District Office, in writing by letter or fax no later than Friday, March 30, 2007, in order to be put on the agenda. Franklin J. Sciortino, District Director, Buffalo District Office, U.S. Small Business Administration, Niagara Center, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551–4301 or fax (716) 551–4418.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–5222 Filed 3–21–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5727]

Formation of the United States Delegation to the World Radiocommunication Conference: Request for Expressions of Interest in Being on the United States Delegation

Summary: The International Telecommunication Union (ITU) World Radiocommunication Conference (WRC) will take place from October 22–November 16, 2007 in Geneva, Switzerland. As part of the preparations for the formation of the United States delegation to the World Radiocommunication Conference, the Department of State is requesting

expressions of interest in being on this delegation.

All delegation members must be United States citizens. Expressions of interest and a description of what company or organization the interested person represents and his/her area of expertise should be sent to Anne Jillson, International Communications and Information Policy, Department of State. Her e-mail address is *jillsonad@state.gov*, her fax number is 202 647–5957, and her phone number is 202 647–5205.

Expressions of interest should be received no later than April 10, 2007.

Dated: March 15, 2007.

Anne D. Jillson,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. E7–5253 Filed 3–21–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5728]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, April 5, 2007, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 11th session of the International Maritime Organization's Sub-Committee on Bulk Liquids and Gases (BLG) to be held at the Royal Horticultural Halls and Conference Centre, 80 Vincent Square, London, England from April 16th to April 20th, 2007.

The primary matters to be considered include:

—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments
—Development of guidelines for uniform implementation of the 2004 Ballast Water Management Convention
—Review of MARPOL Annex VI and the NO_X Technical Code
—Development of provisions for gas-fuelled ships
—Amendments to MARPOL Annex I for the prevention of marine pollution during oil transfer operations between ships at sea
—Oil tagging systems
—Guidelines on other technological methods verifiable or enforceable to limit SO_x emissions
—Application of requirements for the carriage of bio-fuels and bio-fuel blends
—Consideration of IACS unified interpretations
—Casualty analysis
—Work program and agenda for BLG 12

Hard copies of documents associated with the 11th session of BLG will be available at this meeting. To request further copies of documents please write to the address provided below.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Thomas Felleisen, Commandant (CG–3PSO–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1214, Washington, DC 20593–0001 or by calling (202) 372–1424.

Dated: 16 March 2007.

Michael E. Tousley,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E7–5252 Filed 3–21–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5726]

Bureau of International Security and Nonproliferation; Permanent Waiver of Missile Proliferation Sanctions Against Sectors of Chinese Government Activities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made to waive permanently the import sanction against certain activities of the Chinese government that was announced on September 19, 2003, pursuant to the Arms Export Control Act, as amended.

DATES: *Effective Date:* March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Pam Durham, Office of Missile Threat Reduction, Bureau of International Security and Nonproliferation, Department of State (202–647–4931).

SUPPLEMENTARY INFORMATION: A determination was made on September 13, 2006, pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)), that it was essential to the national security of the United States to waive for an additional six months the import sanction described in Section 73(a)(2)(C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(C)) against the activities of the Chinese government described in section 74(a)(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(a)(8)(B))—activities of the Chinese government relating to the development or production of any missile equipment or technology and activities of the Chinese government affecting the development or production of electronics, space systems or equipment, and military aircraft (see **Federal Register** Vol. 68, no. 182, Friday, Sept. 19, 2003). This action was effective on September 18, 2006.

On March 12, 2007, a determination was made pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) that it is essential to the national security of the United States to waive permanently the sanctions, effective from the date of expiration of the previous waiver (March 18, 2007).

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: March 14, 2007.

John C. Rood,

Assistant Secretary of State for International Security and Nonproliferation, Department of State.

[FR Doc. E7–5254 Filed 3–21–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2007–23639]

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Sponsor, Cargo, and Nonprimary Entitlement Funds for Fiscal Year 2007; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice; correction.

SUMMARY: The FAA is issuing a correction to the Notice published in the **Federal Register** on March 7, 2007 (72 FR 10292), Subject: Deadline for Notification to Use the Airport Improvement Program (AIP) Sponsor, Cargo, and Nonprimary Entitlement Funds for FY 2006. That Notice announced May 1, 2007, as the deadline for each airport sponsor to notify the FAA that it will use its fiscal year 2007 entitlement funds to accomplish projects identified in the Airports Capital Improvement Plan that was formulated in the spring of 2006. This correction changes the fiscal year referenced in the subject from ''2006'' to ''2007''.

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning

and Programming, Federal Aviation Administration (FAA, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7436).

Correction

In FR Doc. No. FAA–2007–23639 published on March 7, 2007 (72 FR 10292) make the following correction:

On Page 10292, in the subject correct ''Fiscal Year 2006'' to read ''Fiscal Year 2007''.

Barry L. Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 07–1391 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of commercial space transportation advisory committee open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Friday, May 18, 2007, starting at 8 a.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, DC, in the Bessie Coleman Conference Center, located on the 2nd Floor. This will be the forty-fifth meeting of the COMSTAC.

The proposed agenda for the meeting will feature the release of and briefings on the 2007 Commercial Space Transportation Forecasts, a special presentation, a report on activities in FAA's Office of Commercial Space Transportation (AST), and COMSTAC Working Group reports. An agenda will be posted on the FAA Web site at *http://ast.faa.gov.* Meetings of the COMSTAC Working Groups (Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support) will be held on Thursday, May 17, 2007. For specific information concerning the times and locations of the working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–100), Office of the Commercial Space Transportation, 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–3674; E-mail *brenda.parker@faa.gov.*

Issued in Washington, DC, March 13, 2007.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. E7–5184 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–27627]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on January 9, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 23, 2007.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–27627.

FOR FURTHER INFORMATION CONTACT: Marshall Wainright, 202–366–4842, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Fixed Residential Moving Cost Schedule.

Background: Relocation assistance payments to owners and tenants who move personal property for a Federal or federally-assisted program or project is governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). 49 Code of Federal Regulations (CFR), Part 24, is the implementing regulation for the Uniform Act. 49 CFR 24.301 addresses payments for actual and reasonable moving and related expenses. The fixed residential moving cost schedule is an administrative alternative to reimbursement of actual moving costs. This option provides flexibility for the agency and affected property owners and tenants. The FHWA requests the State Departments of Transportation (State DOTs) to analyze moving cost data periodically to assure that the fixed residential moving cost schedules accurately reflect reasonable moving and related expenses. The regulation allows State DOTs flexibility in determining how to collect the cost data in order to reduce the burden of government regulation. Updated State fixed residential moving costs are submitted to the FHWA electronically.

Respondents: State Departments of Transportation (52, including the District of Columbia and Puerto Rico).

Frequency: Once every 3 years.

Estimated Average Burden per Response: 24 hours per respondent.

Estimated Total Annual Burden Hours: 24 hours for each of the 52 State Departments of Transportation. The total is 1,248 burden hours, once every 3 years, or 416 hours annually.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 16, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–5187 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Prince George's and Charles Counties, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed multi-modal transportation improvement project in Charles and Prince George's Counties, Maryland. The purpose of the EIS is to provide information and analyses for decisions on the project in accordance with the policies and purposes of the National Environmental Policy Act.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel W. Johnson, Environmental Program Manager, Federal Highway Administration, City Crescent Building, 10 South Howard Street, Suite 2450, Telephone: (410) 779–7154.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency will prepare an environmental impact statement (EIS) to improve mobility and safety along the U.S. 301 corridor in the Waldorf area of Charles and Prince George's Counties for a distance of approximately 13 miles.

Existing and projected growth in population and development is creating traffic congestion in southern Maryland along existing US 301 between US 301/MD 5 Interchange at T.B. and Turkey Hill Road/Washington Avenue. The local roadway network will reach capacity and will be uanble to accommodate this increased travel demand. Improvements within the corridor will address safety problems and accommodate existing and projected travel demand.

Alternatives under consideration include (1) taking no action (2) widening the existing US 301 roadway (3) constructing a limited access highway on new location. Transit components and transportation system management/travel demand management (TSM/TDM) strategies would be incorporated with all of the proposed alternatives. The study will include an overview of future corridor preservation needs southward from the proposed improvement study limits.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, local agencies, private organizations, and citizens who have previously expressed or are known to have an interest in this project. Public involvement will be solicited through the project development process. A series of Public Workshops is scheduled for March 2007. Subsequently, a Public Hearing is anticipated for early 2008. The Draft EIS will be available for public and agency review and comment prior to the Public Hearing. Public notice will be given of the time and place of these meetings and the availability of the Draft EIS for review.

To ensure that the full range issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Dated: March 6, 2007.

Daniel W. Johnson,

Environmental Program Manager, Baltimore, Maryland.

[FR Doc. 07–1398 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Solicitation of Applications for Certain Federal-Aid Highway Funding Available in Fiscal Year 2007 Under Federal Highway Discretionary Grant Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of funding availability.

SUMMARY: The purpose of this notice is to solicit applications for Federal grant funding and to issue supplemental notice and information to eligible grantees concerning discretionary grant funds available for obligation in Fiscal Year 2007 under eight discretionary grant programs administered by FHWA. It seeks applications (either new or amended) to the programs that both meet the programs' respective statutory criteria and emphasize the proposed projects' highway safety and congestion reduction benefits. The FHWA will make its funding determinations through a merit-based selection process.

This notice applies to the following programs: the Ferry Boat Discretionary Program (23 U.S.C. 147), the Innovative Bridge Research and Construction Program (23 U.S.C. 503(b)), the Interstate Maintenance Discretionary Program (23 U.S.C. 118(c)), Public Lands Highway Discretionary Program (23 U.S.C. 202–204), the Highways for Life Pilot (HfL) Program (§ 1502 of Pub. L. 109–59), the Transportation Community and System Preservation Program (§ 1117 of Pub. L. 109–59), the Truck Parking Facilities Pilot Program (§ 1305 of Pub. L. 109–59), and the Delta Region Transportation Development Program (§ 1308 of Pub. L. 109–59).

DATES: Applications must be submitted by April 30, 2007, unless otherwise specified (see **SUPPLEMENTARY INFORMATION** Section D). Late-filed applications may be considered to the extent practical. This deadline generally represents an extension of approximately 30 days from the original deadline for applications.

ADDRESSES: Applications should be submitted electronically in MS Word format by eligible applicants, generally State transportation departments, by following the instructions provided under the Supplemental Action Memoranda issued by FHWA to the State DOTs for the above-referenced discretionary programs. The Supplemental Action Memoranda for the various discretionary programs are posted on the FHWA Web site: *http://www.fhwa.dot.gov/discretionary/currsol.htm.*

FOR FURTHER INFORMATION: Please address questions concerning this notice to Steve Rochlis, Office of Chief Counsel, Federal Highway Administration, U.S. Department of Transportation, via e-mail at *Steve.Rochlis@dot.gov* or (202) 366–1395, or to Thomas M. McNamara, Office of the Secretary, via e-mail at *Thomas.McNamara@dot.gov.* Questions concerning the specific grant program should be directed to the point of contact listed on the information memoranda and posted on the FHWA Web site.

SUPPLEMENTARY INFORMATION:

Electronic Access: An electronic copy of this document may be downloaded

from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

A. Background

The FHWA Administrator, acting on behalf of the Secretary, is authorized to provide Federal grant assistance for the above programs on a discretionary basis, and is seeking applications for the Ferry Boat Discretionary Program, the Innovative Bridge Research and Construction Program, the Interstate Maintenance Discretionary Program, the Public Lands Highway Discretionary Program, the Highways for Life Pilot Program, the Transportation Community and System Preservation Program, the Truck Parking Facilities Pilot Program, and the Delta Region Transportation Development Program. This notice supplements FHWA's requests for applications to all eight discretionary programs. It seeks applications (either new or amended) to the programs that both meet the programs' respective statutory criteria and emphasize the proposed projects' highway safety and congestion reduction benefits.

In a 1999 report (GAO/RCED 99–263 ''Transportation Infrastructure—FHWA Should Assess and Compare the Benefits of Projects When Awarding Discretionary Grants''), the Government Accountability Office (GAO) found that FHWA's process for considering applications for discretionary grants did not sufficiently emphasize a comparative analysis of the projects' transportation benefits. In the report, GAO urged FHWA to do more such analysis, and to ensure that FHWA funds projects that provide the greatest transportation benefits. To address the concerns outlined in the GAO report, as well as others raised during an internal review, FHWA has decided to be more strategic in its FY 2007 discretionary grant awards process by targeting its resources toward projects that provide the greatest benefits. FHWA is particularly focusing on projects with substantial benefits related to either highway safety or congestion relief and invites application of large-scale high-cost projects that provide strategic and substantial safety or congestion reduction benefits within the particular discretionary grant program.

Policies and Investments To Improve Highway Safety

Highway safety has been an increasing focus and priority for FHWA over the recent past. Targeting discretionary funding in a results-oriented comprehensive approach to safety is a means of directing limited discretionary funding to those projects that will yield tangible transportation and safety benefits. Improving highway safety is achieved most effectively through a comprehensive approach which integrates the ''4Es'' of safety: Engineering, Education, Enforcement, and Emergency Medical Systems. It allows safety professionals to consider the full range of safety tools to address problems, make the choice based on the most effective countermeasure, and implement strategies that may require not only an engineering fix but also targeted enforcement and greater public awareness.

Specific Actions Enhancing the Safety of Highway Users

Highway fatalities totaled 43,443 on our Nation's highways in 2005, up from 42,836 in 2004; according to the Fatality Analysis Reporting System (FARS). The rate of highway fatalities, measured in terms of deaths per 100 million vehicle miles traveled has remained relatively constant over the past several years at approximately 1.45; failing to maintain a steady decline in the 2000's as was seen over the previous 3 decades or more. If the fatality rate remains at the current level, the Nation would experience nearly 50,000 deaths a year by the end of this decade. In addition to the tragedy of lives lost and millions of serious injuries sustained, the economic impact to the Nation is enormous.

According to a study conducted by the National Highway Traffic Safety Administration, it is estimated that current levels of highway crashes have an annual economic impact of over $230 billion (in year 2000 dollars) in the United States,

Improving highway safety is achieved most effectively through a comprehensive approach which integrates the ''4Es'' of safety: Engineering, Education, Enforcement, and Emergency Medical Systems. It allows safety professionals to consider the full range of safety tools to address problems, make a choice based on the most effective countermeasure, and implement strategies that may require not only engineering solutions, but also targeted enforcement and greater public awareness.

Highway design, the infrastructure side of the engineering ''E'' of safety, also plays a significant role. The FHWA is focusing resources on three major crash types to improve infrastructure safety: *Roadway departure*, *intersection*, and *pedestrian* crashes. In addition, a number of cross-cutting programs support infrastructure safety, such as work zones, visibility, older and younger road users, and speed management.

Roadway Departure—Roadway departure crashes, which include vehicles leaving the roadway as well as head-on crashes, represent 59 percent of all fatalities. Two-lane rural roads are a particular concern, as vehicles have little opportunity to recover if they leave the pavement, and the opportunity for head-on collisions is greater. Barrier systems are designed to mitigate the consequences of leaving the roadway, if a hazardous roadside object cannot otherwise be removed. Barrier systems may also be applied in the median of divided roadways to physically separate traffic and prevent head-on collisions from occurring. Rumble strips (longitudinal and transverse) have proven to be a life-saving countermeasure, on shoulders of divided four-lane facilities, as centerlines on two-lane roadways, and at approaches to intersections and sharp curves.

Intersection—Intersection crashes represent 21 percent of all fatalities. This includes both signalized as well as unsignalized intersections. Intersection-related crashes represent more than 50 percent of all crashes in urban areas and 30 percent of all crashes in rural areas. Safety strategies for intersections range from simple adjustments to the signal timing to innovative intersection designs. Traditional intersection safety strategies include improving horizontal and/or vertical sight distances, adding a protected-only left turn phase, improving advance signing, and installing and improving lighting. Reducing the occurrence of red light running through camera enforcement can be an effective tool from an enforcement perspective. In addition, installation of an innovative intersection design, such as a roundabout, and the application of Intelligent Transportation System (ITS) technologies are promising for safety overall, and particularly for intersections.

Pedestrian—Pedestrian fatalities represent 11 percent of all highway fatalities. While the pedestrian safety challenge is predominantly urban in nature, some States do have rural pedestrian issues. The types of safety strategies effective at reducing pedestrian fatalities are similar to those effective for intersection fatalities. Adequate lighting can make a significant impact on pedestrian safety. Good delineation and advance signing are also important. Channeling pedestrian movements can improve safety, as the majority of pedestrian fatalities occur at mid-block locations. Traffic calming techniques that reduce

and control speed are also important to increased pedestrian safety. In addition, adequate sidewalks and walkways are critical to safe and efficient pedestrian movements.

Cross-cutting Programs—In addition to the three focus areas noted above, safety can be advanced in a number of cross-cutting areas. Work zone fatalities represent approximately 1,000 fatalities annually. Work zone safety may be increased through proper planning and phasing; use of standard signing and markings; use of technologies such as work area intrusion alarms, queue detection sensors, and speed feedback signs; and strong enforcement. Older and younger road users experience a much higher fatality rate than the general population. Improved lighting and adequate retroreflective signs and pavement markings allow all users to benefit from good roadway delineation and provide all drivers with the information needed to make safe decisions. Speed management has great potential for significantly advancing safety; this activity includes education and training needed to set appropriate speed limits, enforcement to ensure compliance with appropriate speeds, and engineering roadways to encourage safe speeds. Speed management strategies range from the application of automated enforcement to traffic calming techniques.

Behavioral Safety Issues—The safe engineering of roads and roadsides is only one part of the safety equation. Without consistent improvement in driver behavior, traffic enforcement, and emergency medical services, dramatic reductions in highway fatalities will not occur, even with engineering improvements. To address these behavioral problems, the National Highway Traffic Safety Administration works closely with State and local governments to increase public education and awareness and support targeted enforcement campaigns.

The Challenges of Highway Congestion

Transportation system congestion is one of the single largest threats to U.S. economic prosperity and the American way of life. In response to the challenges of congestion, in May 2006 the Department of Transportation established the *National Strategy to Reduce Congestion on America's Transportation Network* (the ''Congestion Initiative''). FHWA's increased emphasis on congestion reduction in its distribution of FY 2007 discretionary funding is directly in support of the Congestion Initiative, and FHWA expects that the projects funded through the eight discretionary programs described in this notice will yield tangible economic and transportation benefits that are likely to far exceed the Federal investment in each project.

Traffic congestion affects people in nearly every aspect of their daily lives—where they live, where they work, where they shop, and how much they pay for goods and services. According to 2003 figures, in certain metropolitan areas the average rush hour driver loses as many as 93 hours per year to travel delay—the equivalent of more than two weeks of work that amounts annually to a ''congestion tax'' as high as $1,598 per traveler in wasted time and fuel.[1] Nationwide, congestion imposes costs on the economy of at least $63 billion per year.[2] The costs of congestion are significantly higher when taking into account the cost of unreliability to drivers and businesses, the environmental impacts of idle-related auto emissions, increased gasoline prices and the immobility of labor markets that result from congestion.

Nationally, in a 2005 survey conducted by the National League of Cities, 35% of U.S. citizens reported traffic congestion as the most deteriorated living condition in their cities over the past five years; 85% responded that traffic congestion was as bad as, or worse than, it was in the previous year.[3] Similarly, in a 2001 survey conducted by the U.S. Conference of Mayors, 79% of Americans from ten metropolitan areas reported that congestion had worsened in the prior five years; 50% believe it has become ''much worse.''[4]

Policies and Investments To Reduce Congestion

A variety of transportation policies and investments serve to reduce congestion, including design, engineering, operational and technological improvements. The most important—albeit often misunderstood—congestion reduction measure is congestion pricing. Congestion pricing leverages the principles of supply and demand to manage traffic. It does this by charging drivers a user fee that varies by traffic volume (or as a proxy for volume—by time of day), thus managing highway resources in a manner that promotes free-flow traffic conditions on highways virtually twenty-four hours per day. Congestion pricing achieves free-flow conditions by shifting rush hour highway travel to other transportation modes or routes or to off-peak periods, taking particular advantage of the fact that many rush hour drivers on typical urban highways are not commuters. By removing a fraction of the vehicles from a congested rush hour roadway, pricing enables the system to flow much more efficiently, allowing more cars to move through the same physical space. Similar variable charges have been successfully utilized in other industries (on airline tickets, cell phone rates, and electricity, for example), and there is a consensus among economists that congestion pricing represents the single most viable approach to reducing traffic congestion.

Congestion pricing is no longer simply a theory; it has demonstrated positive results both here in the U.S. and around the world. Successful American applications of congestion pricing include California's SR–91 between Anaheim and Riverside, portions of I–15 outside of San Diego, and Express Lanes on I–394 between downtown Minneapolis and the western suburbs. The pricing of each of these facilities has enabled congestion-free rush hour commuting and proven popular with drivers of all income levels. Internationally, congestion pricing has yielded dramatic reductions in traffic congestion and increases in travel speeds in Singapore, London, and Stockholm. Notably, a small reduction in vehicles can yield dramatic improvements in traffic, as demonstrated by a British study, which projected that a 9% drop in traffic could yield a 52% drop in congestion delay.[5] This same dynamic plays out in metropolitan areas every August, as family vacations lead to a minor decrease in rush hour drivers, which substantially reduces area traffic congestion.

In all its forms, congestion pricing benefits drivers and businesses by reducing delays and stress, increasing the predictability of trip times, and allowing for more deliveries per hour. It benefits public transportation by improving transit speeds and the reliability of transit service, increasing transit ridership and lowering costs per traveler for transit providers. State and local governments benefit by improving the quality of transportation services without tax increases or large capital

[1] Texas Transportation Institute (''TTI''), 2005 Urban Mobility Report, May 2005 (*http://tti.tamu.edu/documents/mobility_report_2005.pdf*), Tables 1 and 2.

[2] TTI, 2005 Urban Mobility Report, p. 1.

[3] National League of Cities survey of cities (2005).

[4] U.S. Conference of Mayors survey on traffic congestion (2001).

[5] Department of Transport, U.K., Feasibility Study of Road Pricing in the U.K.: A Report to the Secretary of State for Transport, Road Price Steering Group, Chapter 4, Figure 3.

expenditures, providing additional revenues for funding transportation, retaining businesses and expanding the tax base. It saves lives by shortening incident response times for emergency responders. And, it benefits society as a whole by reducing fuel consumption and vehicle emissions, allowing for more efficient land use decisions, reducing housing market distortions, and increasing time available for participation in civic life.

Beyond pricing, technological advancements may be deployed to reduce urban congestion by improving system operations and safety. Examples of technological innovations that may help reduce congestion include:

- *Longitudinal control* designed to enhance spatial efficiency on existing highways, precision docking, and real-time travel information;
- *Traffic management technology,* including adaptive traffic signal control systems and the use of cameras to provide real-time information to first responders to help them determine what equipment they will need before they arrive at the site of an accident or incident; and
- *Advanced traveler information systems* that provide web or wireless access to route-specific travel time and toll information; route planning assistance using historical records of congestion by time of day; parking alerts; vehicle locator systems; or communications technologies that gather traffic- and incident-related data from a few vehicles traveling on a roadway and then publish that information to drivers via mobile phones, in-car units or dynamic message signs.

B. Discretionary Grant Applications Should Specify Safety and Congestion Reduction Benefits Associated With the Project Seeking Funding

Discretionary grant applications to any of the programs must be responsive to each program's specific statutory criteria. However, in addition to those criteria, the applicant should provide further description of the highway safety and congestion reduction benefits of the project, as follows:

1. *Highway Safety benefits.* With respect to safety, the applicant should describe the safety benefits associated with the project or activity for which funding is sought, including whether the project, activity, or improvement:

- Will result in a measurable reduction in the loss of property, injury, or life;
- Incorporates innovative safety design or operational techniques, including variable pricing for congestion reduction, electronic tolling, barrier systems, and intersection-related enhancements;
- Incorporates innovative construction work zone strategies to improve safety;
- Is located on a rural road that is in need of priority attention based on analysis of safety experience; and/or
- Is located in an urban area of high injury or fatality, and is an initiative to improve the design, operation or other aspect of the existing facility that will result in a measurable safety improvement.

2. *Congestion reduction benefits.* With respect to congestion, the applicant should describe the extent (if any) to which the project, activity, or improvement:

- Relieves congestion in an urban area or along a major transportation corridor;
- Employs operational and technological improvements that promote safety and congestion relief; and/or [6]
- Addresses major freight bottlenecks.

C. Coordination With Other Congestion Initiative Solicitations

In keeping with the Department's emphasis on congestion reduction, the Department has issued a number of other solicitations related to the Congestion Initiative. The Department encourages applicants to coordinate their responses to this Notice with any applications submitted in response to the solicitations listed below. Applicants that also apply for funding under the Urban Partnership Agreement Program (see (1) below), Intelligent Transportation System Operational Testing to Mitigate Congestion Program (see (2) below), Value Pricing Pilot Program (see (3) below), and/or Corridors of the Future Program (see (4) below) must respond separately to each solicitation from which they seek funding. However, the Department will give priority consideration in its funding decisions to parties designated as either Urban Partners or Corridors of the Future.

The related solicitations are:

(1) *Solicitation for the Urban Partnership Agreement (UPA),* published on December 8, 2006, in the **Federal Register** at 71 FR 71233. The purpose of the UPA solicitation is to solicit proposals by metropolitan areas to enter into UPAs with the Department in order to demonstrate strategies with a combined track record of effectiveness in reducing traffic congestion.

(2) *Solicitation for the Value Pricing Pilot (VPP) Program.* The VPP Program, § 1012(b) of Public Law 102–240, as amended by § 1216(a) of Public Law 105–178, and § 1604(a) of Public Law 109–59, 119 Stat. 1249, supports implementation of a variety of pricing-based approaches for managing congestion on highways. The solicitation for the VPP Program, published December 22, 2006, in the **Federal Register** at 71 FR 777084, aligns the program with the Congestion Initiative to support metropolitan areas in implementing broad congestion pricing strategies in the near term.

(3) *Solicitation for the Intelligent Transportation System Operational Testing to Mitigate Congestion (ITS–OTMC) Program.* The ITS Research and Development program, as reauthorized in SAFETEA–LU, supports the research, development and testing of ITS for a variety of purposes. The solicitation for the ITS–OTMC Program, published on December 18, 2006, in the **Federal Register** at 71 FR 75806, supports the operational testing and evaluation of advanced technologies to reduce metropolitan congestion.

(4) In addition to these solicitations, the DOT's new ''Corridors of the Future Program'' (CFP) is part of the Congestion Initiative, and is specifically designed to accelerate the development of multi-State, and possibly multi-use, transportation corridors to help reduce congestion. The primary goal of the CFP is to encourage States to leverage public and private resources to develop innovative national and regional approaches to reducing congestion, increase freight system reliability and enhance the quality of life for U.S. citizens. The CFP contributes to the objectives of the DOT corridor programs by specifically working with multi-State coalitions to identify innovative funding sources for corridors of national and regional significance in need of investment and improved operations for the purpose of reducing congestion. Eligible CFP public and private sector entities should work with their State DOT to identify and submit appropriate candidate applications for discretionary grant fund allocations under the discretionary programs discussed herein.

For more information on the DOT Congestion Initiative, please refer to *http://www.fhwa.dot.gov/congestion/index.htm* and *http://www.fightgridlocknow.gov/*.

[6] Traditional toll plazas may create traffic backups that present a safety hazard; the conversion of traditional plazas to electronic toll collection systems should greatly reduce such hazards and improve safety on toll roads. See Highway Accident Report NTSB/HAR–06/03 ''Multivehicle Collision on Interstate 90 Hampshire-Marengo Toll Plaza Near Hampshire, Illinois'' (October 1, 2003).

D. Solicitation Deadline Extension

Applications for discretionary projects were generally solicited through FHWA Division offices to the State DOTs in early January 2007, with a deadline of March 30, 2007. This solicitation extends the deadline to April 30, 2007, except for the HfL program, which shall close two weeks after the publication of this notice. By this notice, and by the dissemination of the Supplemental Action Memoranda for the discretionary programs, the FHWA is issuing new notices amending prior notices and re-soliciting applications for these programs in accordance with their statutory criteria under a merit based selection process. This notice also clarifies that project applications should specify safety and congestion reduction benefits associated with the project, improvement, or activity. The amended grant application procedures are posted at *http://www.fhwa.dot.gov/discretionary/currsol.htm* and will be distributed electronically to all FHWA Division offices and through the Division offices to the State DOTs.

The Administrator, acting on behalf of the Secretary, may amend, revise, waive or modify the terms for funding set forth in this notice at any time.

Authority: 23 U.S.C. 315.

Issued on: March 16, 2007.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E7–5161 Filed 3–21–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals Pursuant to Executive Order 13405

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of six newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13405 of June 16, 2006, ''Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus.''

DATES: The designation by the Director of OFAC of six individuals identified in this notice, pursuant to Executive Order 13405, is effective on February 27, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

Information about this designation and additional information concerning OFAC are available from 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 June 16, 2006, the President issued Executive Order 13405 (the ''Order'') pursuant to, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President declared a national emergency to address political repression, electoral fraud, and public corruption in Belarus. The Order imposes economic sanctions on persons responsible for actions or policies that undermine democratic processes or institutions in Belarus. The President identified ten individuals as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property, and interests in property, that are in, or hereafter come within, the United States or the possession or control of United States persons for persons listed in the Annex and those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(E) of Section 1. On February 27, 2007, the Director of OFAC exercised the Secretary of the Treasury's authority to designate, pursuant to one or more of the criteria set forth in Section 1, subparagraphs (a)(ii)(A) through (a)(ii)(E) of the Order, the following six individuals, whose names have been added to the list of Specially Designated Nationals and whose property and interests in property are blocked, pursuant to Executive Order 13405:

1. MIKLASHEVICH, Petr Petrovich (a.k.a. MIKLASHEVICH, Piotr Piatrovich); DOB 1954; POB Kosuta, Minsk district, Belarus; nationality Belarus; Prosecutor General (individual) [Belarus]
2. PODOBED, Yuri Nikolaevich; DOB 5 March 1962; POB Slutsk, Minsk district, Belarus; nationality Belarus; Lieutenant Colonel of the Special Riot Police in Minsk (OMON) (individual) [Belarus]
3. RADKOV, Aleksandr Mikhailovich (a.k.a. RADZKOU, Alaksandr Mikhailavich); DOB 1 July 1951; POB Votnya, Belarus; nationality Belarus; Minister of Education (individual) [Belarus]
4. RUSAKEVICH, Vladimir Vasilyevich (a.k.a. RUSAKEVICH, Uladzimir Vasilievich); DOB 13 September 1947; POB Vygonoshchi, Belarus; nationality Belarus; Minister of Information (individual) [Belarus]
5. SIVAKOV, Yury; DOB 5 August 1946; POB Onory, Kirov district, Belarus; nationality Belarus; former Minister of the Interior; former Minister of Sport and Tourism (individual) [Belarus]
6. SLIZHEVSKY, Oleg Leonidovich (a.k.a. SLIZHEUSKI, Aleh Leanidavich); nationality Belarus; Head of the Public Associations Department (individual) [Belarus]

Dated: February 27, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–5265 Filed 3–21–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for April 19–20, 2007 in the Almas Temple, adjacent to the Hamilton Crowne Plaza Hotel, at 1315 K Street, NW., Washington, DC 20005. The meeting will begin at 8:30 a.m. and end at 5 p.m. each day. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for the meeting will feature updates on the progress of the studies being conducted by the Center for Naval Analyses (CNA) and the Institute of Medicine (IOM). The Commission will receive presentations on CNA's preliminary survey results and several draft Issue Papers in various stages of development. There will be additional discussions with CNA on the topic of earned income, employment and compensation. The Commission will also receive comments from interested parties on the research topics approved for study and analysis by the Commission on October 14, 2005, and posted on the Commission's Web site during March 2007 for public comment.

Interested persons may attend and present oral statements to the Commission on April 19. Oral presentations will be limited to five

minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Commission prior to the meeting or at any time by e-mail to *veterans@vetscommission.com* or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: March 14, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–1392 Filed 3–21–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
March 22, 2007

Part II

Environmental Protection Agency

40 CFR Parts 50 and 51
Treatment of Data Influenced by Exceptional Events; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA–HQ–OAR–2005–0159; FRL–8289–5]

RIN 2060–AN40

Treatment of Data Influenced by Exceptional Events

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes a rule to govern the review and handling of air quality monitoring data influenced by exceptional events. Exceptional events are events for which the normal planning and regulatory process established by the Clean Air Act (CAA) is not appropriate. In this rulemaking action, EPA is finalizing the proposal to: Implement section 319(b)(3)(B) and section 107(d)(3) authority to exclude air quality monitoring data from regulatory determinations related to exceedances or violations of the National Ambient Air Quality Standards (NAAQS) and avoid designating an area as nonattainment, redesignating an area as nonattainment, or reclassifying an existing nonattainment area to a higher classification if a State adequately demonstrates that an exceptional event has caused an exceedance or violation of a NAAQS. The EPA is also requiring States to take reasonable measures to mitigate the impacts of an exceptional event.

DATES: This final rule is effective May 21, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0159. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the OAR Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: General questions regarding the final rule should be addressed to Mr. Larry D. Wallace, PhD, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27711; telephone (919) 541–0906, and e-mail address *wallace.larry@epa.gov.*

Questions concerning technical and analytical issues related to this final rule should be addressed to Mr. Neil Frank, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Mail Code C304–01, Research Triangle Park, NC 27711; telephone (919) 541–5560, and e-mail address *frank.neil@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Regulated Entities. This final rule will affect State and local air quality agencies. This rule may also affect Tribal air quality agencies that have implemented air quality monitoring networks or have authority to implement air quality programs.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This list gives examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in section IV of this preamble. If you have any questions regarding the applicability of this action to a particular entity, consult the people listed in the preceding section.

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II. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

ARM Approved Regional Methods.
AQS Air Quality System.
BACM Best Available Control Measures.
CAA Clean Air Act.
CAAA Clean Air Act Amendments.
EPA Environmental Protection Agency.
FEM Federal Equivalent Methods.
FIP Federal Implementation Plan.
FR **Federal Register.**
FRM Federal Reference Methods.
NAAQS National Ambient Air Quality Standards.
NEAP Natural Events Action Plan.
NEPA National Environmental Policy Act.
NTTA National Technology Transfer Advancement Act of 1995.
OAQPS Office of Air Quality Planning and Standards.
OMB Office of Management and Budget.
PM Particulate matter.
PM_{10} Particles with a nominal mean aerodynamic diameter less than or equal to 10 micrometers.
$PM_{10-2.5}$ Particles with a nominal mean aerodynamic diameter greater than 2.5 micrometers and less than or equal to 10 micrometers.
$PM_{2.5}$ Particles with a nominal mean aerodynamic diameter less than or equal to 2.5 micrometers.
RACM Reasonably Available Control Measures.
SIP State Implementation Plan.
SAFE–TEA–LU Safe Accountable Flexible Efficient-Transportation Equity Act—A Legacy for Users.
SMP Smoke Management Program.
TAR Tribal Authority Rule.
TIP Tribal Implementation Plan.
UMRA Unfunded Mandates Reform Act.
USDA U.S. Department of Agriculture.
VCS Voluntary Consensus Standards.

III. Background and Purpose of This Rulemaking

A. Legislative Requirements

We [1] are finalizing a rule to govern the review and handling of air quality monitoring data influenced by exceptional events. As discussed below, these are events for which the normal planning and regulatory process established by the CAA is not appropriate. Section 319 of the CAA, as amended by section 6013 of the Safe Accountable Flexible Efficient-Transportation Equity Act: A Legacy for Users (SAFE–TEA–LU) of 2005, required EPA to publish the proposed rule in the **Federal Register** no later than March 1, 2006.[2] Further, EPA must issue this final rule no later than 1 year from the date of proposal. The EPA published the proposed rule on March 10, 2006 (See 71 FR 12592).

In this final rule, EPA is establishing procedures and criteria related to the identification, evaluation, interpretation, and use of air quality monitoring data related to any NAAQS where States petition EPA to exclude data that are affected by exceptional events.

Section 319 defines an event as an exceptional event if the event affects air quality; is an event that is not reasonably controllable or preventable; is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and is determined by EPA to be an exceptional event. The statutory definition of exceptional event specifically excludes stagnation of air masses or meteorological inversions; a meteorological event involving high temperatures or lack of precipitation; or air pollution relating to source noncompliance.

Section 319(b)(3)(B)(i) requires a State air quality agency to demonstrate through ''reliable, accurate data that is promptly produced'' that an exceptional event occurred.[3] Section 319(b)(3)(B)(ii) requires that ''a clear causal relationship'' be established between a measured exceedance of a NAAQS and the exceptional event demonstrating ''that the exceptional event caused a specific air pollution concentration at a particular location.'' In addition, section 319(b)(3)(B)(iii) requires a public process to determine whether an event is an exceptional event. Finally, section 319(b)(3)(B)(iv) requires criteria and procedures for a Governor to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations with respect to exceedances or violations of the NAAQS.

The term exceedance refers to a measured or modeled concentration greater than the level of one or more for a pollutant. The NAAQS are also set with particular averaging periods (e.g., 3 years for ozone and $PM_{2.5}$) such that a violation of the NAAQS for ozone and $PM_{2.5}$ requires an average annual concentration level specified by appendix I and N to 40 CFR 50 to be greater than the level of the NAAQS. Public comments favored the consideration of data contributing to both exceedances and violations for data exclusion under this Rule. As discussed in section V.C, exceedances of any NAAQS will be eligible for consideration for data exclusion and any data contributing to violations of daily or sub-daily standards will also be eligible for consideration (e.g. 8-hour or 24-hour standards). Data contributing to annual violations without being exceedances themselves are considered too close to background air quality levels for exclusion under this Rule.

Section 319 also contains a set of five principles for EPA to follow in developing regulations to implement section 319:

(i) Protection of public health is the highest priority;
(ii) Timely information should be provided to the public in any case in which the air quality is unhealthy;
(iii) All ambient air quality data should be included in a timely manner in an appropriate Federal air quality database that is accessible to the public;
(iv) Each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and
(v) Air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses (42 U.S.C. 7619(b)(3)(A)).

In adopting revisions to section 319, Congress sought to provide statutory relief to States to allow them to avoid being designated as nonattainment or to avoid continuing to be designated

[1] The U.S. Environmental Protection Agency.

[2] All subsequent references to section 319 of the CAA in this proposal are to section 319 as amended by SAFE–TEA–LU unless otherwise noted.

[3] While this document refers primarily to States as the entity responsible for flagging data impacted by exceptional events, other agencies, such as local or Tribal government agencies, may also have standing to flag data as being affected by these types of events, and the criteria and procedures that are discussed in this rulemaking also apply to these entities.

nonattainment as a result of exceptional events in appropriate circumstances. To accomplish this goal, Congress enumerated certain minimum requirements for this rulemaking. In addition, Congress provided certain statutory principles for EPA to follow in promulgating regulations to exclude data affected by exceptional events.

B. Historical Experience Concerning Exceptional and Natural Events

Since 1977, EPA guidance and regulations have either implied or documented the need for a flagging system for data affected by an exceptional event. The first EPA guidance related to the exclusion or discounting of data affected by an exceptional event was an Office of Air Quality Planning and Standards (OAQPS) guidance document entitled, ''Guideline for the Interpretation of Air Quality Standards,'' Guideline No. 1.2–008 (revised February 1977).[4]

In July 1986, EPA issued the guidance entitled, ''Guideline On the Identification and Use of Air Quality Data Affected By Exceptional Events'' (the Exceptional Events Policy). The Exceptional Events Policy provided criteria for States to use in making decisions related to identifying data that have been influenced by an exceptional event.

In addition to the Exceptional Events Policy, on July 1, 1987, EPA promulgated the NAAQS for PM_{10} (particulate matter with an aerodynamic diameter of 10 micrometers or less), which also addressed the issue of excluding or discounting data affected by exceptional events.[5] Appendix K of that rule allows for special consideration of data determined to be affected by an exceptional event. Section 2.4 of appendix K authorizes EPA to discount from consideration in making attainment or nonattainment determinations air quality data that are attributable to ''an uncontrollable event caused by natural sources'' of PM_{10}, or ''an event that is not expected to recur at a given location.'' Section 2.4 of appendix K, together with EPA guidance contained in the Exceptional Events Policy, describes the steps that should be taken for flagging PM_{10} data that a State believes are affected by an exceptional or natural event.

In 1990, section 188(f) was added to the CAA. This section of the CAA provided EPA authority to waive either a specific attainment date or certain planning requirements for serious PM_{10} nonattainment areas that are affected by nonanthropogenic sources. In response to section 188(f), and in consideration of the CAA consequences for areas affected by elevated concentrations caused by natural events, in 1996 EPA issued a policy to address data affected by natural events entitled, ''Areas Affected by PM_{10} Natural Events,'' (the PM_{10} Natural Events Policy).[6]

On July 18, 1997, EPA issued a revised NAAQS for ozone and a new NAAQS addressing $PM_{2.5}$. For ozone, the revised NAAQS provided for an 8-hour averaging period (versus 1 hour for the previous NAAQS), and the level of the standard was changed from 0.12 ppm to 0.08 ppm (62 FR 38856). For the $PM_{2.5}$ NAAQS, EPA established both a new 24-hour standard and a new annual standard. In that **Federal Register**, EPA also promulgated appendices I and N to 40 CFR 50. Appendices I and N provided the methodologies for determining whether an area is in attainment of the 8-hour ozone and $PM_{2.5}$ NAAQS respectively, using ambient air quality data. Section 1.0 of appendix I, related to the ozone standard, addresses the treatment of data determined to be influenced natural events, and section 1.0(b) of appendix N, related to the $PM_{2.5}$ standard, provides that EPA may give special consideration to data determined to be affected by an exceptional or natural event.

Appendices K, I, and N, which are parts of the NAAQS for the affected pollutants as described above, provide that, while States must submit all valid ambient air quality data to EPA's Air Quality System (AQS) database for use in making regulatory decisions, in some cases it may be appropriate for EPA to exclude, discount, weight, or make adjustments to data that have been appropriately flagged from calculations in determining whether or not an area has attained the standard. These decisions are to be made on a case-by-case basis using all available information related to the event in question, and are required to be made available to the public for review. It should also be noted that, while it would be desirable to be able to adjust the daily value to exclude only those portions of the data that are attributable to the exceptional event, due to technical limitations, such subtraction has not been possible, and EPA's historical practice has been to exclude a daily measured value in its entirety when that value is found to be largely caused by an exceptional event.

Following the promulgation of the 8-hour ozone and the $PM_{2.5}$ NAAQS, EPA provided additional guidance to States on how to address data affected by exceptional and natural events.[7] That guidance directed the States to follow three specific EPA guidance documents in making determinations related to data influenced by exceptional and natural events: (1) The Exceptional Events Policy; (2) The PM_{10} Natural Events Policy; and (3) The Interim Air Quality Policy on Wildland and Prescribed Fires, Memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, May 15, 1998. The Interim Air Quality Policy on Wildland and Prescribed Fires addressed the treatment of air quality monitoring data that are affected by wildland and prescribed fires that are managed for resource benefits.[8]

IV. This Final Action

A. To Whom and to What Pollutants Does This Rule Apply?

Under the statutory scheme established by the CAA, States are primarily responsible for the administration of air quality management programs within their borders. This includes the monitoring and analysis of ambient air quality and submission of monitoring data to EPA, which are then stored in EPA's AQS database. The EPA retains an important oversight responsibility for ensuring compliance with CAA requirements. With respect to the treatment of air quality monitoring data, States are responsible for ensuring data quality and validity and for identifying measurements that they believe warrant special consideration, while EPA is

[4] ''Guideline for Interpretation of Air quality Standards,'' U.S. Environmental Protection Agency, Office of Air quality Planning and Standards, Research Triangle Park, N.C. OAQPS No. 1.2–008 (Revised February 1977). The guidance indicated the need for a data flagging system which would require the submittal of detailed information establishing that a violation was due to uncontrollable natural sources and that the information could be used in decision making related to the feasibility of modifying control strategies.

[5] **Federal Register** (52 FR 24667), July 1, 1987.

[6] Memorandum from Mary D. Nicols, Assistant Administrator for Air and Radiation, to EPA Regional Offices entitled, ''Areas Affected by PM_{10} Natural Events,'' May 30, 1996.

[7] ''Guideline on Data Handling Conventions for the PM NAAQS,'' United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA–454/R–98–017, December 1998.

[8] Following the promulgation of this rule, it is EPA's intention to begin the process to revise the ''Interim Air Quality Policy on Wildland and Prescribed Fires'' in calendar year 2007 to update the policy and to ensure that the policy is consistent with this final rulemaking action. In addition, it is EPA's intent that agricultural prescribed burning will be addressed when this policy is updated and will also address basic smoke management practices.

responsible for reviewing and approving or disapproving any requests for such consideration. Therefore, this final rule applies to all States; to local air quality agencies to whom a State has delegated relevant responsibilities for air quality management, including air quality monitoring and data analysis; and, as discussed below, to Tribal air quality agencies where appropriate. This rule governs EPA's actions in reviewing and approving or disapproving the relevant actions taken or requested by States. Where EPA implements air quality management programs on Tribal lands, this rule would govern those actions as well.

At present, only the NAAQS for ozone and particulate matter (PM) contain provisions which allow for the special handling of air quality data affected by exceptional and natural events (40 CFR part 50, appendices K, I, and N). The language of section 319 of the CAA is broad in terms of making its provisions applicable to events that ''affect air quality'' and to exceedances or violations of ''the national ambient air quality standards'' (42 U.S.C. 7619(b)(1)(A)(i), (b)(3)(B)(iv)). Thus, its provisions can apply to the NAAQS for any criteria pollutant. Because the NAAQS established for other criteria pollutants do not currently contain provisions permitting the discounting or exclusion of data due to exceptional events, we are only applying the provisions of this rule initially to ozone and PM.[9] As we review and consider the need for revisions to the NAAQS for other pollutants, we will include provisions to address exceptional events in those NAAQS in accordance with section 319, as appropriate at that time. Because issuance of a new or revised NAAQS will necessitate the initiation of the designation process, EPA believes that the NAAQS rules are an appropriate place to make provisions for exceptional events in the evaluation of air quality data. In the interim, where exceptional events result in exceedances or violations of NAAQS that do not currently provide for special treatment of the data, we intend to use our discretion as outlined under section 107(d)(3) not to redesignate affected areas as nonattainment based on these events. We also intend to use our discretion under this rule to address determinations for the ozone standard related to the treatment of data influenced by both exceptional and natural events. Currently, appendix I, only addresses the treatment of data determined to be influenced by a stratospheric ozone intrusion and other natural events, but does not address the handling of data influenced by other exceptional events.

B. How Does This Rule Relate to Indian Tribes?

Under the CAA and the Tribal Authority Rule (TAR), eligible Indian Tribes may develop and submit Tribal Implementation Plans (TIPs) for EPA approval, to administer requirements under the CAA on their reservations and other areas under their jurisdiction. However, Tribes are not required to develop TIPs or otherwise implement relevant programs under the CAA. The EPA has stated that it will continue to ensure the protection of air quality throughout the nation, including in Indian country, and will issue Federal Implementation Plans (FIPs) as necessary or appropriate to fill gaps in program implementation in affected areas of Indian country (63 FR 7254, 7265; February 12, 1998).

In cases where a Tribal air quality agency has implemented an air quality monitoring network, which is affected by emissions from exceptional events, the criteria and procedures identified in this final rule may be used to exclude or discount data for regulatory purposes. Certain Tribes may implement all relevant components of an air quality program for purposes of meeting the various requirements of this rule. In some cases, however, a Tribe may implement only portions of the relevant program and may not be in a position to address each of the procedures and requirements associated with excluding or discounting emissions data (e.g., a particular Tribe may operate a monitoring network for purposes of gathering and identifying appropriate data, but may not implement relevant programs for the purpose of mitigating the effects of exceptional events required under this rule). The EPA intends to work with Tribes on the implementation of this rule, which may include appropriate implementation by EPA of program elements ensuring that any exclusion or discounting of data in Indian country areas with air quality affected by exceptional events comports with the procedures and requirements of this rule.

C. Comments Submitted on the Proposed Rule

The proposed rule on the ''Treatment of Data Influenced by Exceptional Events'' was issued on March 10, 2006 (71 FR 12592). We received 98 letters from commenters representing 587 comments from private citizens, State and local governments, industry, environmental groups, and Federal agencies. Sections V, VI, VII, and VIII of this notice describe the primary elements and requirements concerning the process for the handling of data influenced by exceptional events. Each section summarizes the relevant issues and options discussed in the proposed rule and provides the final decisions related to the issues for each section. In this preamble, we have provided responses to certain significant comments to elaborate or provide clarification for EPA's decision on an issue discussed in the relevant section of the rule. We have developed a response to comments document which addresses all of the timely comments received on the proposed rule. Following the promulgation of this rule, the response to comments document will be placed into the docket of this rulemaking action for public review (See Docket No. EPA–HQ–OAR–2005–0159).

D. What Is an Exceptional Event?

In accordance with the language in section 319, EPA is defining the term ''exceptional event'' to mean an event that:

(i) Affects air quality;

(ii) Is not reasonably controllable or preventable;

(iii) Is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and

(iv) Is determined by EPA through the process established in these regulations to be an exceptional event.

It is important to note that natural events, which are one form of exceptional events according to this definition, may recur, sometimes frequently (e.g., western wildfires). For the purposes of this rule, EPA is defining ''natural event'' as an event in which human activity plays little or no direct causal role to the event in question. We recognize that over time, certain human activities may have had some impact on the conditions which later give rise to a ''natural'' air pollution event. However, we do not believe that small historical human contributions should preclude an event from being deemed ''natural.'' In adopting section 188(f) of part D, subpart 4, of the 1990 amendments to

[9] Section IV.G of the preamble to the Proposed Rule discussed special considerations relevant to a new NAAQS for $PM_{10-2.5}$ proposed by EPA on December 20, 2005. This proposed standard would have drawn a distinction between coarse particles of urban versus non-urban origin, which raised new issues about the handling of exceedances of the coarse particle standard caused by exceptional events. However, in EPA's final rule on the PM NAAQS, issued September 21, 2006, EPA retained the existing 24-hour PM_{10} standard instead of promulgating the proposed $PM_{10-2.5}$ standard. Thus, section IV.G of the preamble to the Proposed Rule is no longer relevant and has been removed from this Preamble.

the CAA, Congress recognized and provided for distinctions between these types of events with respect to waiver of applicable requirements and the extension of otherwise applicable attainment dates for the PM_{10} standard. In approving section 188(f) of the CAA, the House committee of jurisdiction discussed a circumstance in which recurring emissions from a source should be considered to be anthropogenic. The House report noted EPA statements that, in the cited case, high concentrations of dust from a lakebed were due to human activity, i.e., the long-term diversion of water from a lake. (See Pub. L. 101–549, CAA Amendments of 1990 House Report No. 101–290(l), May 17, 1990; and discussion of Mono Lake, California therein). Also, EPA recognized, in recently acting to retain PM_{10} as a measure of coarse particulate, that in some instances exceedances of this NAAQS ''may be caused in whole or in part, by exceptional events, including natural events such as windstorms * * *. (and that) an exceedance may be treated as an exceptional event even though anthropogenic sources such as agricultural and mining emissions contribute to the exceedance.'' (71 FR 61216; October 17, 2006).

In this final rule, EPA also defines the term ''exceedance'' with respect to compliance with the NAAQS and establishes criteria for determining when an event can be said to ''affect air quality.'' We are not finalizing more detailed requirements for determining when an event is ''not reasonably controllable or preventable'' because we believe that such determinations will necessarily be dependent on specific facts and circumstances that cannot be prescribed by rule.

E. Examples of Exceptional Events

The EPA believes that the following types of events meet the definition of exceptional events, as defined above. This means that air quality data affected by these types of events may qualify for exclusion under this rule provided that all other requirements of the rule are met. By providing the examples listed below, EPA is not determining that such events are the only types of events that may qualify for exclusion under the rule as exceptional events. Other events that meet the statutory criteria for an exceptional event as defined in this rule may also qualify for exclusion. The AQS user documentation contains a list of other similar events that may be flagged for special consideration. (*http://www.epa.gov/ttn/airs/airsaqs/manuals/qualifiers.htm*).[10]

In addition, in the sections below, we have provided responses to certain significant comments received during the comment period for the proposed rule regarding the examples of events that may meet the definition of an exceptional event in order to elaborate upon or provide clarification about what constitutes an exceptional event.

1. Chemical Spills and Industrial Accidents

Emissions that result from accidents such as fires, explosions, power outages, train derailments, vehicular accidents, or combinations of these may be flagged as an exceptional event.

Comments and Responses

Comment: Several commenters stated that ''Chemical Spills and Industrial Accidents'' should generally not be considered exceptional events. Commenters stated that most industrial accidents and chemical spills are reasonably controllable and preventable with proper planning and mitigation efforts. These commenters stated that allowing for accidents or spills that could have been avoided is inconsistent with the CAA.

Response: It is EPA's belief that air quality data that has been affected by emissions from chemical spills, industrial accidents, or structural fires may be flagged by a State as an exceptional event and reviewed by EPA for exclusion on a case-by-case basis to determine whether it meets the criteria for exceptional events as defined in this rule. In particular, data influenced by chemical spills or industrial accidents must be demonstrated to have ''affected air quality'' and must be demonstrated to be due to circumstances that were not reasonably controllable or preventable and are events that are unlikely to recur in a particular location. The EPA agrees with the commenters that industrial or point source emissions due to malfunctions or non-compliance would not be considered exceptional events and should be addressed through the normal State Implementation Planning process.

2. Structural Fires

Structural fires include any accidental fire involving a manmade structure.

Comments and Responses

Comment: Several commenters indicated that ''Structural Fires'' should generally not be considered exceptional events. Commenters stated that these types of events should be considered as emissions from anthropogenic sources and handled within the form of the respective air quality standards where a certain number of exceedances of the standards are allowed over a 3-year period. Commenters assert that structural fires, lasting for several hours, are unlikely to cause an area to reach the level of nonattainment. In cases where structural fires are determined to be the cause of a monitored violation of the NAAQS, commenters stated that EPA should adopt a case-by-case review of these events.

Response: The definition of structural fires under this rule pertains to any accidental fire involving a manmade structure. The EPA believes that structural fires could be an exceptional event under this rule, provided all other requirements of the rule are met, because they could ''affect air quality,'' could be an event that is not ''reasonably controllable'' or ''preventable,'' and could be events that are caused by human activity that are unlikely to recur at the same location. However, EPA agrees with the commenters that these types of events, as well as other similar types of events, should be reviewed on a case-by-case basis to determine whether they meet the criteria for an exceptional event as defined by this rule.

3. Exceedances Due to Transported Pollution

Transported pollution, whether national or international in origin, and whether from natural or anthropogenic sources, may cause exceedances eligible for exclusion under this rule, as long as all of the criteria and requirements related to exceptional events are met as defined in this rule. For example, States may flag, and EPA may exclude, data associated with fires occurring outside of the borders of the United States, such as forest fires in Mexico, Central America, and Canada; or transport events such as African dust and Asian dust which contribute significantly to ambient concentrations of a pollutant in an area, leading to exceedances or violations of a NAAQS. An example of interstate transported emissions which may be flagged as due to an exceptional event would be emissions due to smoke from wildfires or wildland fire use fires which cause exceedances or violations of the NAAQS at monitoring sites in other States. Other examples could include data affected by emissions from mining and agricultural activities when such emissions are subjected to long-range transport, and the criteria and

[10] The EPA will be revising the list of events contained in the AQS database following the promulgation of this rule to ensure that the list is consistent with the requirements of the rule.

requirements related to an exceptional event are met as defined in this rule. In general, events due to transported pollution may be considered on a case-by-case basis.

Comments and Responses

Comment: Several commenters expressed concern over EPA allowing the exceptional events rule to be used to exclude data that has been affected by emissions emanating from sources outside the borders of the United States.

Response: States may flag data that has been affected by sources emanating from outside the United States that meet the criteria for an exceptional event as defined under this rule, including requirements for causation and documentation. In cases where an area is impacted by emissions from sources outside of the United States which do not meet the criteria for an exceptional event under this rule, and these emissions contribute to an area being designated as nonattainment, the emissions may be addressed under section 179B of the CAA related to ''International Border Areas.'' Section 179B provides that where a State is required to submit a State Implementation Plan (SIP) to address issues related to a nonattainment designation, EPA may approve the SIP for the area provided that the plan (1) meets all the applicable requirements called for under the CAA, other than the requirement that the plan demonstrate attainment or maintenance of the NAAQS, and (2) the SIP must demonstrate that the affected area would be able to attain the standard by the applicable attainment date ''but for'' emissions emanating from outside the United States.

4. Exceedances Due to a Terrorist Attack

Emissions that result from a terrorist attack such as smoke from fires, dust, explosions, power outages, train derailments, vehicular accidents, or combinations of these may be flagged as an exceptional event.

Comments and Responses

No comments were received on this topic.

5. Natural Events

The natural events addressed by this final rule are: (1) Natural disasters and associated cleanup activities; (2) volcanic and seismic activities; (3) high wind events; (4) wildfires and wildland fire use fires; and (5) stratospheric ozone intrusions. The EPA will consider other types of natural events on a case-by-case basis.

a. Natural Disasters and Associated Clean-Up Activities

For the purpose of flagging, major natural disasters such as hurricanes and tornadoes for which State, local, or Federal relief has been granted, and clean-up activities associated with these events, may be considered exceptional events. The EPA believes that for a major natural disaster, a timeframe up to 12 months is a reasonable time period to allow for clean-up activities associated with these types of activities. In cases where the damage caused by the event is so substantial that a 12-month period is inadequate to address the clean up that is necessary, a State may submit a request to EPA for an extension of the 12-month time period. The EPA will grant requests for extensions of the time period related to such events on a case-by-case basis if the States submit adequate supporting information concerning the reason for the extension as well as the length of time being requested for the extension.

Comments and Responses

Comment: Several commenters indicated that EPA should limit the time period associated with clean-up activities due to a natural disaster. One commenter indicated that the exceptional events rule as proposed would allow States to apply the term ''natural disaster'' very broadly to include circumstances that would circumvent the intent of the CAA. For example, declaring an episode of high summer temperatures to be a natural disaster could potentially allow a State to exclude high ozone levels which commonly occur during hot weather.

Response: A time period up to 12 months for clean-up activities is permitted for major natural disasters, such as hurricanes and tornadoes, for which State, local, or Federal relief has been granted, may be flagged for exclusion as exceptional events under this rule. The clean-up activities associated with these types of events may also be flagged for exclusion as being due to an exceptional event. Given the nature of a major natural disaster, the 12-month time period allowed for clean-up activities following such disaster is a reasonable time period, and is consistent with the time period being allowed for volcanic and seismic activities under this rule. The period of high summer temperatures noted in the comment would not represent a major natural disaster, as described above, subject to the 12-month clean-up period.

b. Volcanic and Seismic Activities

Ambient concentrations of particulate matter for which volcanic or seismic activity caused or significantly contributed to high levels of particulate matter in an affected area will be treated as natural events. While generally not occurring frequently, volcanic and seismic activity can affect air quality data related to the particulate matter NAAQS for an extended period of time after an event. Volcanic activities can contribute to ambient concentrations in several ways: it may influence concentrations of particulate matter due to primary emissions (e.g., ash), and emissions of precursor pollutants (e.g., sulfur dioxide) that contribute to the secondary formation of particulate matter. Seismic activity (e.g., earthquakes) can also contribute to ambient particulate matter concentrations by shaking the ground, causing structures to collapse, and otherwise raising dust which may lead to exceedances or violations of the NAAQS.

Comments and Responses

Comment: Several commenters indicated that the rule should provide sufficient flexibility for data to be excluded where the duration of the event may last for a long period of time. An example of such an event is where volcanic activities last for several days.

Response: The EPA agrees with the commenters and notes that the rule allows for States to flag data and submit documentation related to events such as long-term volcanic and seismic activities. States may also submit requests to EPA to extend the time period up to 12 months for major natural disasters, for clean-up activities following volcanic and seismic events. States are encouraged to submit supporting information related to the reasons for the requested extension and the length of time being requested for the extension.

c. High Wind Events

High wind events are events that affect ambient particulate matter concentrations through the raising of dust or through the re-entrainment of material that has been deposited. In some locations, concentrations of coarse particles like PM_{10} are most likely affected by these types of events, although $PM_{2.5}$ standards may be exceeded under such circumstances as well. Section VII.B. also includes a discussion of this issue.

Comments and Responses

Comment: Several commenters suggested that EPA replace the term

''high winds'' with the term ''wind-generated dust'' because (1) it places the emphasis on the natural mechanism, (2) dust may become entrained at relatively low wind velocities, and (3) the change will eliminate confusion between the wind speeds associated with a natural event and wind speeds needed to qualify for a ''high wind'' exceptional event under EPA's 1986 guidance.

Response: The EPA is retaining the term ''high wind'' event because it accurately connotes the type of natural event that should be excluded under this rule, as well as the action which caused the exceedance or violation of the standard. The term also serves as an indicator concerning the level of wind which caused the exceedance or violation of the standard and indicates that it was unusually high for the affected area during the time period that the event occurred. Therefore, States must provide appropriate documentation to substantiate why the level of wind speed associated with the event in question should be considered unusual for the affected area during the time of year that the event occurred. The EPA will evaluate such instances on a case-by-case basis, including factors such as historically typical windspeed levels for the season of the year that the event is claimed.[11]

d. Wildland Fires

Federal land managers have afforded recognition to several different types of wildland fires (i.e., wildfire, wildland fire use fire and prescribed fire), depending on their causal circumstances and the role that such fires play in the affected ecosystems. Prescribed fire is addressed more fully in the following section.

The question of what is a natural versus an anthropogenic fire has particular significance when considering the impacts of wildland fires (wildfire, wildland fire use fire and prescribed fire) on air quality and how these impacts should be regarded under this rule. A ''wildfire'' is defined as an unplanned, unwanted wildland fire (such as a fire caused by lightning), and include unauthorized human-caused fires (such as arson or acts of carelessness by campers), escaped prescribed fire projects (escaped control due to unforeseen circumstances), where the appropriate management response includes the objective to suppress the fire. In contrast, a ''wildland fire use'' fire is the application of the appropriate management response to a naturally-ignited (e.g., as the result of lightning) wildland fire to accomplish specific resource management objectives in predefined and designated areas where fire is necessary and outlined in fire management or land management plans.

Using these definitions, we believe that both wildfires and wildland fire use fires fall within the meaning of ''natural events'' as that term is used in section 319. Therefore, ambient particulate matter and ozone concentrations due to smoke from a wildland fire will be considered for treatment as an exceptional event if the fire is determined to be either a wildfire or wildland fire use fire.

Comments and Responses

Comment: In general, commenters strongly supported exempting wildfires as exceptional events under the rule.

Response: The EPA acknowledges support for the proposal to classify wildfires as a potential exceptional event. As noted above, the Agency states that wildland fires will be excluded as exceptional events if they meet the criteria and requirements of the exceptional events rule.

Comment: The Agency received comments both supporting and opposing the proposal allowing wildland fire use fires to qualify as an exceptional event.

Response: After reviewing Congress' revisions to section 319, the various Agency policies cited in the proposal, and comments received, the Agency has determined that wildland fire use fires may also qualify as an exceptional event. However, these types of fires must also meet certain criteria. For example, these fires must occur on lands that have been designated in fire management or land management plans as areas where fires are necessary and desirable to accomplish specific resource management objectives.

Comment: Many commenters supported EPA's commitment to update the 1998 Interim Air Quality Policy on Wildland and Prescribed Fires to be consistent with this rule.

Response: The Agency plans to begin revising this policy in 2007 as part of its overall Fire Strategy after promulgation of this rule.

e. Stratospheric Ozone Intrusions

Stratospheric ozone intrusion is considered to be a natural event. A stratospheric ozone intrusion occurs when a parcel of air originating in the stratosphere, which is at an average height of 20 km or 12.4 miles, is transported directly to the surface of the earth. Stratospheric ozone intrusions are very infrequent, localized events of short duration. They are typically associated with strong frontal passages and, thus, may occur primarily during the spring season.

Comments and Responses

Comment: One commenter stated that EPA should update its approach to stratospheric events, establish criteria by which such events may be determined, and credit States for the impact of intrusion events on non-compliant ozone monitor readings.

Response: Stratospheric ozone intrusion is identified as a natural event under 40 CFR part 50, appendix I, for ozone, and will be considered for treatment as an exceptional event.

6. Prescribed Fire

A ''prescribed fire'' is defined as any fire ignited by management actions to meet specific resource management objectives. According to existing Federal policy, prior to ignition a prescribed fire must have an approved prescribed fire plan and must meet the National Environmental Policy Act (NEPA) requirements (where applicable)(see National Wildland Fire Coordination Group Glossary of Wildland Fire Terminology, 2003). For purposes of section 319, a prescribed fire cannot be classified as ''natural,'' given the extent of the direct human causal connection, however, a prescribed fire may meet the statutory criteria defined in section 319 of ''affect[ing] air quality,'' being ''unlikely to recur at a particular location'' and is ''not reasonably controllable or preventable.'' The determination of whether a prescribed fire can be considered an exceptional event should be made on a case-by-case basis taking into account the factors described below.

A prescribed fire carried out for resource management objectives is frequently designed to restore essential ecological processes of fire and mimic fire under natural conditions. As such, a prescribed fire's expected frequency can vary widely, depending on the natural fire return interval of a particular landscape or wildland ecosystem. The natural fire return

[11] As described elsewhere in the preamble, EPA is adopting a weight of evidence approach to demonstrate that an exceptional event caused an exceedance or violation. Therefore, in instances where the level of the wind speed results in exceedances or violations of particulate matter, for data affected by these events to be considered for exclusion under the weight of evidence approach, a clear causal relationship must be demonstrated between the exceedances measured at the air quality monitoring site and the high wind event in question. EPA will consider in the weight of evidence analysis winds that produce emissions contributed to by anthropogenic activities that have been controlled to the extent possible through use of all reasonably available reasonable and appropriate measures.

interval can range from once every year to less frequently than once in more than 200 years. Thus, in many, though not all cases, it may be possible to demonstrate that the likelihood of recurrence is sufficiently small enough to show that a prescribed fire under these conditions meets the ''unlikely to recur at a particular location'' requirement of the statutory language.

A prescribed fire may also meet the condition of ''not reasonably controllable or preventable'' by examining whether there are reasonable alternatives to the use of fire in light of the needs and objectives to be served by it. For instance, there may be a significant build-up of forest fuels in a particular area that if left unaddressed would pose an unacceptable risk of catastrophic wildfire, which could result in adverse impacts of much greater magnitude, duration, and severity than would result from careful use of prescribed fire. A particular ecosystem may also be highly dependent on a natural fire return interval to maintain a sustainable natural species composition. Alternatively, pest or disease outbreaks in an area may be such that there are no reasonable alternatives to prescribed fire. In some cases, other legal requirements may preclude the use of mechanical fuel reduction methods such as in designated wilderness or National Parks. Where such ecological conditions exist, or where mechanical or other treatments are not reasonably feasible for reasons that include, but are not limited to, a lack of access, or severe topography, we believe that prescribed fire qualifies as being ''not reasonably controllable or preventable.'' Thus, we believe that a prescribed fire, conducted by Federal, State, Tribal or private wildland managers or owners, under the conditions described above may qualify as an exceptional event.

In addition, one of the principles contained in SAFE–TEA–LU, section 6013(b)(3)(A), includes the principle that States must take necessary measures to safeguard public health regardless of the source of air pollution. We believe it reasonable to tie the qualifying criteria for an anthropogenically generated prescribed fire to State accountability for public health protection. Consistent with historical practice governed by the guidance contained in the ''Interim Air Quality Policy on Wildland and Prescribed Fires,'' issued on May 15, 1998, EPA approval of exceedances linked to a prescribed fire used for resource management purposes is contingent on the State certifying that it has adopted and is implementing a Smoke Management Program (SMP) as described in that policy. A State SMP establishes a basic framework of procedures and requirements for managing smoke from a prescribed fire managed for resource benefits. A SMP is typically developed by a State or Tribe with cooperation and participation by wildland managers, both public and private, and the general public. As reflected in the Interim Air Quality Policy on Wildland and Prescribed Fires, States are provided flexibility on the structure of a SMP. Thus, a SMP can be extensive and detailed, or simply identify the basic smoke management practices for minimizing emissions, and controlling impacts from a prescribed fire.[12] In the proposal to this rule, EPA proposed to continue the use of that approach. We also proposed to expand the criteria for contingent approval to a prescribed fire where, in lieu of a SMP, basic smoke management practices, that minimize emissions and control impacts, are being employed by burners. In order to protect public health in areas where a SMP has not been adopted, in the final rule, the Agency has elected to expand, on a case-by-case basis, the qualifying criteria by which a prescribed fire may qualify as an exceptional event. In those cases, the Agency will judge on a case-by-case basis whether the State has ensured that appropriate basic smoke management practices have been employed in determining whether the prescribed fire qualifies as an exceptional event. If an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of their approach to ensure public health is being protected and must include consideration of development of a SMP.

Comments and Responses

Comment: Several commenters supported classifying prescribed fire as qualifying as an exceptional event. However, some commenters indicated that there should be limitations placed on when this type of fire should be considered as an exceptional event. A number of commenters also disapproved of allowing prescribed fire to be considered as an exceptional event because they believe that this type of fire is anthropogenic and does not meet the statutory definition of exceptional event. Some commenters also favored expanding the criteria for contingent approval to include instances where basic smoke management practices are used in lieu of a SMP, while other commenters did not favor this expansion.

Response: The EPA believes that a prescribed fire may be excluded as an exceptional event under this rule only in cases where the event meets the criteria for an exceptional event as defined in this rule, if documentation is submitted to show that the fire meets the requirement, as described above, of ''affect[ing] air quality,'' being ''not reasonably controllable or preventable'' and ''unlikely to recur at location'' and provided the other requirements of the rule including, among others, the schedules and procedures for flagging and demonstration are met. In those instances where a prescribed fire meets the criteria for an exceptional event, the State must also provide appropriate documentation to show that a certified SMP was in place or that the burner employed basic smoke management practices and that the appropriate practices were being followed at the time that the event occurred. Because a prescribed fire is an anthropogenic source of emissions for purposes of section 319, even though it may qualify as an exceptional event, a State can attempt to limit the health impact of a prescribed fire through the thoughtful development and implementation of a SMP or ensuring that basic smoke management practices were employed that minimize emissions and control impacts from prescribed fires.

V. The Management of Air Quality Data Affected by Exceptional Events

The EPA proposed that, in order to exclude air quality data from consideration for regulatory purposes, States must follow the procedures, timelines, and other requirements described in the proposed rule. Under the Final Rule, if an event is determined to be a qualifying exceptional event according to section IV.D, a State, Tribe, or designated local agency may petition EPA to classify the event as exceptional and submit a demonstration to justify data exclusion.[13] For data exclusion, States must clearly identify, or ''flag,''

[12] Basic smoke management practices could include, among other practices, steps that will minimize air pollutant emissions during and after the burn, evaluate dispersion conditions to minimize exposure of sensitive populations, actions to notify populations and authorities at sensitive receptors and contingency actions during the fire to reduce exposure of people at such receptors, identify steps taken to monitor the effects of the fire on air quality, and identify procedures to ensure that burners are using basic smoke management practices.

[13] Although a single qualifying exceptional event may affect air quality for multiple days and at multiple monitors, the discussions below consider an individual demonstration as justifying exclusion of a single AQS data point. The EPA encourages State submittals to package demonstrations about single exceptional events to expedite the review process.

data they believe to be influenced by such events. The demonstration to justify data exclusion shall provide evidence that: (a) The event qualifies in accordance with section IV.D and with EPA policies and guidance for certain events as described in section IV.E, (b) there is a clear causal relationship between the measurement under consideration and the event that is claimed to have affected the air quality in the area, (c) the event is associated with an unusual measured concentration beyond typical fluctuations including background, and (d) that there would have been no exceedance or violation but for the event.

The SAFE–TEA–LU requirements for exclusion of data from exceptional events are: (1) The occurrence of the exceptional event must be demonstrated by reliable and accurate data; (2) the State must show that there is a ''clear causal relationship'' between the NAAQS exceedances and the event; (3) there must be a public review process related to the exceptional event determination; and (4) the rule must set criteria and procedures for States to petition EPA to exclude data directly affected by an exceptional event. The sections below describe how each of these requirements must be met.

The sections below address the flagging of data as exceptional events that are determined to have affected air quality, submittal of demonstrations to request data exclusion, public review, and the schedule and timing for these processes. After an exceptional event occurs (judged according to section IV.D) and an agency determines that the event affected ambient air quality, flagging may occur according to section V.A. Section V.B describes the evaluation of whether or not the event affected ambient air quality. Section V.C describes the necessary ''but-for'' test that data would have complied with the applicable standard but for the occurrence of the exceptional event. Section V.D explains the schedules and procedures for the flagging and demonstration submittals, section V.E discusses the applicability to hourly readings, section V.F states the requirements for determination submittals if the agency requests EPA to exclude the data from consideration for regulatory purposes, and section V.G describes the public review requirements. Some commenters suggested that all data occurring from exceptional events should be flagged, and EPA will allow these flags for informational purposes, even if the data do not qualify for exclusion. If EPA concurs on the exclusion of data from qualifying exceptional events, the data will be excluded from regulatory consideration but will still count toward data capture requirements.

A. Flagging of Data in the AQS Database

1. Background

Air quality data are required, pursuant to 40 CFR 58.16, to be submitted to EPA by each State on a calendar quarterly basis, with submissions due not later than 90 days after the end of a quarterly reporting period. Once air quality data have been submitted to EPA, it is possible to ''flag'' specific values for various purposes. ''Data flagging'' refers to the act of making a notation in a designated field of an electronic data record. The principal purpose of the data flagging system in the AQS database is to identify those air quality measurements for which special attention or treatment is warranted. These include, but are not limited to, those measurements that are influenced by exceptional events.

The preamble to the proposed rule stated: ''In the case of exceptional events, States place the initial flag on the data in the AQS database. Following an evaluation of the supporting documentation, EPA will decide whether to concur with the flag; concurrence will be marked by the placement of a second flag in the AQS database by EPA. Once EPA has concurred on the flag, the data will be excluded from regulatory decisions such as determinations of attainment or nonattainment.''

• ''While the flagging of data by the State is the first step in an exceptional events demonstration, it is insufficient by itself to allow for the exclusion of data. In order to have EPA concur on a flag, States must meet the additional requirements described below. As stated previously, the State has the responsibility to document both the occurrence of the event and the causal connection to the monitoring data under consideration. Because the initial step of flagging the data is a relatively simple one, States may flag many more days than the number of days for which they ultimately submit documentation to support exclusion.''

2. Final Rule

In the case of exceptional events, States and Tribes place the initial flag on the data in the AQS database, but EPA determines the available flags.[14] States may also delegate authority to local agencies to submit flags and documentation. In any event, States should work with their local agencies for the identification and review of exceptional events and consider requests to flag data from those agencies. At the time the flag is inserted into the AQS database, the State must also provide an initial description of the event in the AQS comment field. This initial description should include such information as the direction and distance from the event to the air quality monitor in question, as well as the direction of the wind on the day in question. The flags, and the initial event description, must be inserted into the AQS database prior to July 1st following the year in which the event occurred. Schedules for demonstrations are discussed in section V.D.

Following an evaluation of the supporting documentation, EPA will make a decision concerning whether to concur with the flag; concurrence will be marked by the placement of a second flag in the AQS database by EPA. If EPA has concurred on the flag, the data will be excluded from regulatory determinations such as determinations related to attainment or nonattainment, or determinations concerning SIP development. The EPA will use the second flag to indicate the following conditions: EPA concurrence, EPA non-concurrence, and documentation submitted with EPA decision pending.

While flagging of the data in the AQS database by the affected State, local, or Tribe authority is the first step in an exceptional events demonstration, it is insufficient in and of itself to allow for the exclusion of data. In order for EPA to concur on an exceptional events flag, States, Tribes, and local agencies must meet the additional requirements described below. As explained, the State, Tribe, or local agency has the responsibility to document the occurrence of the event in question, to demonstrate that the event qualifies as an exceptional event in accordance with section IV.D, is consistent with EPA policies and guidance for certain events as described in section IV.E, has provided for public review in accordance with section V.G, and to document the causal connection between the measurement under consideration and the event that is claimed to have affected the air quality in the area. The State, Tribe, or local agency must also demonstrate that the event is associated with an unusual measured concentration beyond typical fluctuations including background, and that there would have been no exceedance or violation ''but for'' the event. Because the initial step of

[14] It is EPA's intention, for purposes of consistency with this rule, to review the list of exceptional events that are currently in the AQS database following the promulgation of the rule.

flagging the data is a relatively simple one, States, Tribes, and local agencies may flag more days than the number of days for which they ultimately intend to submit demonstrations to justify data exclusion.

3. Comments and Responses

Comment: One commenter supported flagging data related to any fire that caused an exceedance.

Response: This Rule does not preclude a State, Tribe, or Local agency from flagging any data allegedly influenced by exceptional events. However, for the data to qualify as an exceptional event and to exclude it from regulatory decisions, the data must meet all of the criteria described in this Rule and all the procedures delineated must be followed.

B. What Does It Mean for an Event To ''Affect Air Quality''?

1. Background

It is important to recognize that any emissions-producing event has the potential to have some influence on downwind air quality. Indeed, on any given day, measured air quality at any given location will reflect the influences of a variety of activities, including both natural and anthropogenic emissions from both local as well as remote upwind sources. Given the directive in section 319(b)(3)(B)(ii), that a clear causal connection must exist between the ''measured exceedances'' and the exceptional event, EPA believes that it would be unreasonable to exclude data affected by an exceptional event simply because of a trivial contribution of an event to air quality. Furthermore, we believe that it would be unreasonable to exclude more significant, but routine background air quality impacts, as this would disregard an important part of the public's exposure to air pollution upon which EPA's air quality standards are based. The effect of such exclusion would be an inappropriate reduction in the stringency of the NAAQS, rather than providing specific relief under the circumstances provided in section 319 for which States should not be designated nonattainment or be required to prepare costly SIP control strategies.

Neither section 319, nor its legislative history, provides precise guidance on what should be considered when determining whether an event ''affects air quality'' and thus qualifies to be considered for exclusion or special treatment. However, section 319(b)(3)(B)(ii) and (iv) provides that there must be a ''clear causal relationship'' between a measured exceedance of a standard and the event to show that the event ''caused a specific air pollution concentration;'' and it must be shown that the data in question are ''directly due'' to an exceptional event. Moreover, one of the principles provided by section 319(b)(3)(A) indicates that the protection of public health is the highest priority. For these reasons, we proposed three conditions under which an event may qualify as ''exceptional'' for purposes of special regulatory consideration: Its air quality impact must (1) fall both above the level of the applicable standard (i.e., must be an ''exceedance'' as required by section 319), (2) be significantly beyond the normal fluctuating range of air quality, including background air quality concentrations, and (3) should be large enough such that without it there would have been no exceedance.

We next provided several alternative approaches to determining whether and when air quality is ''affected by'' exceptional events and requested comment on which of these approaches was most suitable for demonstrating such impacts. These approaches primarily applied to condition (2) above. Two of the approaches involved statistical comparisons of existing flagged data. The final rule most closely reflects the third proposed option with some modifications. This option considered a case-by-case evaluation of the data against historical, seasonally adjusted air quality levels. Finally, the proposed rule provided details regarding what is meant by an exceedance (1) and the ''but-for'' condition (3). These are discussed in detail in section V.C.

2. Final Rule

Under the Final Rule, the demonstration to justify data exclusion must provide a justification that: (a) The event qualifies in accordance with section IV.D. and if applicable, with EPA policies and guidance for certain events as described in section IV.E, (b) there is a clear causal relationship between the measurement under consideration and the event that is claimed to have affected the air quality in the area, (c) the event is associated with an unusual measured concentration beyond typical fluctuations including background, and (d) there would have been no exceedance or violation but for the event (discussed in section V.C). The second and third criteria establish that the event affected air quality.

The second criterion that the event caused an air quality impact may be shown through a number of methods including, but not limited to, modeling and speciation analysis. The third criterion distinguishes common events from those that are exceptional and may be accomplished through the presentation of historical evidence.

The final rule permits a case-by-case evaluation, without prescribed threshold criteria, to demonstrate that an event affected air quality. This demonstration would be based on the weight of available evidence, but must consider the historical frequency of such measured concentrations. While a State may determine the specific approach to use for such analysis, it must compare contemporary concentrations with the distribution of all measured data during the past several years. The evidence that an event affected air quality may be presented on a seasonal or other temporal basis to best compare contemporary concentrations with the distribution of historical values. For consistency with data reporting and computation of NAAQS statistics, a calendar quarter basis is suggested. Baseline data may also be defined differently for each event type (e.g., April and May data may be the most relevant information for statistical comparison with certain dust events).

The general statistical approach of using all measured data during the past several years is independent of historical flagging practices and allows States to accurately represent events not likely to recur by including all monitoring data in analyses.

In addition, the magnitude of the measured concentration on days affected by exceptional events relative to historical, temporally adjusted air quality levels can guide the level of necessary analysis and documentation to demonstrate that the event affected air quality. For extremely high concentrations relative to historical values (e.g., concentrations greater than the 95th percentile), a lesser amount of documentation or evidence may be required to demonstrate that the event affected air quality. The closer the event concentration is to typical levels (e.g., values less than the historical 75th percentile), the stronger the necessary evidence would have to be to justify exclusion of data for regulatory purposes. This weight of evidence approach is most nearly analogous to our historical treatment of exceptional events.

3. Comments and Responses

Comment: One commenter noted that EPA's proposed rule concedes that the third option would ''provide the least definitive guidance to assist States in their evaluations,'' and ''may make it

difficult for EPA regions to be consistent when determining whether to concur on a flag.'' Moreover, ''the case-by-case approach allows for consideration of days with ambient concentrations which are not necessarily among the highest concentrations that have been historically observed. While such days are unlikely to impact short-term standards, discounting such days can certainly have an impact on an annual average concentration.'' The commenter asserted that EPA's description of the proposed case-by-case evaluation makes the case for rejecting that option because it fails to provide the guidance mandated by section 319, and is so vague as to be arbitrary.

Response: The EPA disagrees with the commenter that this option fails to provide guidance and is so vague as to be arbitrary. The EPA has explained above the criteria that it will use in making its case-by-case evaluations. The commenter's concern that the event must represent concentrations that are not typically observed is addressed by the third criterion that the event must be associated with an unusual measured concentration beyond typical fluctuations including background. Demonstration of the magnitude of the measured concentrations with respect to historical frequency under similar conditions will provide a new level of consistency across monitoring locations.

Comment: If an area exceeds the NAAQS, one commenter stated that use of a 95th percentile criterion better ensures that the definition of an exceptional event is met (i.e., unlikely to recur at a particular location).

Response: The EPA recognizes that extreme concentrations (e.g., corresponding to values greater than the 95th percentile of historical values) are more likely associated with exceptional events. With the final rule, we are not assuming that such values are definitely exceptional. In fact, some extreme concentrations may be associated with various emission sources and atmospheric conditions which are unrelated to a causal connection to the claimed exceptional event. Instead, the frequency of occurrence relative to historical concentrations would be used as an important part of the overall weight of evidence to demonstrate the exceptional nature of the claimed air quality impact.

C. Use of a ''But For'' Test

1. Background

There may be instances in which exceptional events may have a significant impact on air quality on days when concentrations are already above the applicable standard in the absence of the influence of such events. In such cases, it is important to preserve and consider all valid air quality data influenced by such activities, which properly fall within the responsibilities of States to manage for purposes of air quality attainment and maintenance. For this reason, we proposed to require that air quality data may not be excluded except where States show that exceedances or violations of applicable standards would not have occurred ''but for'' the influence of exceptional events.

In other words, to the extent that it is possible to determine that the resulting air quality concentrations and appropriate design values for an area would be above the level of the standards even without the influence of the exceptional event, the air quality data for the day(s) in question should not be excluded. However, consideration of the impacts of exceptional events on air quality values for control strategy planning purposes may be appropriate, and States are encouraged to consult with the appropriate EPA regional office to further discuss this issue.

2. Final Rule

The EPA will maintain the proposed ''but-for'' requirement that air quality data may not be excluded except where States, Tribes, or local agencies show that exceedances or violations of applicable standards would not have occurred ''but for'' the influence of exceptional events. Through analyses, it is possible to demonstrate that an exceedance or violation would not have occurred but for the event [See sample ''but-for'' analysis in memo to docket, Husar *et al.* 2006 (*http://www.regulations.gov*, EPA–HQ–OAR–2003–0061–0733 thru 0733.5)]. This analysis does not require a precise estimate of the estimated air quality impact from the event. The weight of evidence demonstration can present a range of possible concentrations which is not as technically demanding as justifying a specific adjustment to a measured value.

Because there are two standards for $PM_{2.5}$, clarification is needed regarding the measurements that contributed to an exceedance or a violation that are eligible to be excluded. This rule is limited to values above the annual standard for $PM_{2.5}$ because this simplifies the process for determining which values are eligible for flagging according to the intent of section 319. The short-term $PM_{2.5}$ NAAQS is based on a 3-year average of the annual 98th percentile of 24-hour values. Therefore, it is possible that one or two of these annual concentration values may be below the level of the NAAQS while the 3-year average is above the level of the NAAQS. Because three annual 98th percentile concentration values are included in the determination of a short-term $PM_{2.5}$ NAAQS violation, individual measurements below the NAAQS may contribute to a violation.

On the other hand, the annual $PM_{2.5}$ NAAQS is also a standard based on a 3-year average. However, violations of the annual standard that are caused by measurements which are not exceedances of that standard will be difficult to distinguish from typical air quality concentrations including background. To accommodate the 3-year form of the $PM_{2.5}$ NAAQS, this rule will allow measurements whose concentrations are greater than the level of the annual NAAQS to be flagged as being affected by exceptional events for the purposes of contributing to an exceedance or violation of the $PM_{2.5}$ NAAQS. Thus, we provide the following clarification that individual measured values greater than the annual $PM_{2.5}$ NAAQS will be considered ''exceedances'' under this rule and therefore eligible to be considered for exclusion for comparisons to either the annual or 24-hour NAAQS.

3. Comments and Responses

Comment: One commenter stated that, while some of those measurements may not individually be above the NAAQS, taken together they might be sufficient to put an area in violation of an annual standard. Any ''but for'' determination must take into account the aggregate of exceptional events that occurred within the applicable NAAQS period.

Response: The rule acknowledges that it is possible that an event can affect multiple days. The ''but for'' provision allows for data exclusion if but for the entire event there would have been no exceedance or violation. Therefore, for those events that can be shown to affect air quality on multiple consecutive days, measurements for the entire period are eligible for data exclusion, provided that at least one measurement day during the episode is an exceedance as defined by this rule and the air quality impact on each day are considered exceptional.

Comment: One commenter cautioned EPA about using the phrase ''to the extent it is possible to determine'' because a ''bright line'' distinction between the contribution from natural and anthropogenic sources often does not exist.

Response: We agree with this comment and for this reason we will permit a weight of evidence-based

approach to demonstrate that there would not have been an exceedance or violation but for the event.

D. Schedules and Procedures for Flagging and Requesting Exclusion of Data

1. Background

In establishing procedures and time tables for States to request, and EPA to grant, exclusion of data affected by exceptional events, we are guided by two competing considerations: Ensuring States have adequate time and opportunity to compile and evaluate all relevant and available information in support of such requests; and making determinations in a timely manner so that all pertinent and valid air quality data would be appropriately considered in regulatory determinations. To assist EPA in determining the best approach to managing the data flagging process and submissions of demonstrations for the final rule, we proposed three alternatives for public review and comment. Public comments showed that each option had desirable aspects, and these are incorporated into the final rule.

2. Final Rule

A multi-step process will be established for identification of data and submission of demonstrations. The process is designed to ensure that States, Tribes, and local agencies have adequate opportunity to compile and present evidence of exceptional and natural events but also ensures timely submittals in order to make regulatory decisions and ensure the protection of human health through NAAQS determinations. The steps include State flagging, annual State submission of an initial event description, State submission of a demonstration to justify data exclusion and EPA review followed by approval or disapproval. Where air quality in an area is influenced by a relatively small set of emission sources with well-defined emission profiles and limited pollutant species, a demonstration that an air quality measurement influenced by a particular event merits exclusion may be relatively simple to make. In other cases, such as where the number and types of sources contributing to measured air quality concentrations are extremely complex and varied, making it more difficult to distinguish between the effects of routine activities and unusual ones, more time and effort will be needed for a State, Tribe, or local agency to provide an adequate demonstration in support of its request.

States, Tribes, and local agencies are encouraged to flag the data that they believe to be affected by exceptional events at the time of submission of the air quality data to EPA's AQS database, in accordance with the schedule described in 40 CFR 58.16, which is generally no later than 90 days after the end of the calendar quarter. This includes both flagging of data and insertion of the initial event description into the AQS comment field. This constitutes notification of the appropriate EPA Regional Office concerning the State's intention to seek exclusion of data. This approach would ensure that the flagging process remains consistent with the timeline set forth in rules governing data submission requirements. The EPA recognizes that laboratory analyses may delay these submissions and therefore is extending the required time period for submission to 180 days after the end of the calendar year (i.e., all flags, along with initial event descriptions, for a calendar year must be reported by July 1 of the following year).

We encourage States, Tribes, and local agencies to submit the demonstration to justify data exclusion annually for exceedances of short-term NAAQS by July 1. However, the demonstration to justify data exclusion must also be submitted no later than 12 months prior to a regulatory decision. For all flagged events, the demonstration to justify data exclusion must be submitted within 3 years of the calendar quarter following an event, but no later than 12 months prior to a regulatory decision. This period should be used primarily to support NAAQS compliance with annual averages and violations of the short-term standard that were not anticipated. For nonattainment designations, this would occur with the Governor's letter recommending the list of nonattainment areas. We also recognize that special circumstances could dictate more expedited data delivery, flagging, and minimal demonstrations (e.g., $PM_{2.5}$ designations using 2002–2004 data). The submitted demonstration to justify data exclusion as well as the EPA responses and the rationale for the EPA decision will be made publicly available through EPA. The reason for providing the 3-year timeframe is that for ozone and PM, decisions regarding whether or not an area is attaining the applicable standard are based on the most recent 3 years of air quality data. Providing 3 years for submission of demonstrations would provide States, Tribes, and local agencies with an opportunity to evaluate whether the influence of one or more exceptional events will be relevant to determinations of attainment or nonattainment before undertaking the effort of preparing and submitting demonstrations.

Once EPA receives a State's demonstration, EPA generally will undertake to review the demonstration and provide a concurrence or nonconcurrence on the flag in the AQS database within 60 days. The EPA expects that, in most cases, this time period should be enough time to review and provide a concurrence or non-concurrence related to a State's request to exclude data affected by an exceptional event. However, for more complex demonstrations, EPA may require additional time to make its decision and will notify the State of the additional time required.

3. Comments and Responses

Comment: One commenter supported arguments on why the proposed rule must include a procedure for retrospective flagging that addresses the full set of the State's needs so that the end result is that the State can flag any and all events impacted by natural events.

Response: With the Final Rule, EPA requires annual submittal of flags. States may, if they so choose, submit them sooner. This schedule ensures that data are collected and retained shortly after the event and identification of potential (non-routine) events is done in a timely fashion to ensure that appropriate corrective actions can be taken. States would only maintain minimal documentation supporting the decision to flag the data. The full demonstrations, however, can come later, in order to allow States time to focus efforts on those events that are determined to have an impact on attainment. The Agency notes that the Exceptional Events Rule does not apply to routine natural events that are part of background air quality.

Comment: One commenter was concerned that a State may have failed to flag data impacted by a natural event because the data values were below the current NAAQS, only to find the State threatened with nonattainment after NAAQS revisions.

Response: For data collected before the effective date of this rule, States may include a demonstration to justify data exclusion with the Governor's recommendation letter on nonattainment areas, provided that there was notice and opportunity for public comment. After considering this and other comments, for $PM_{2.5}$ data collected during calendar years 2004–2006, that the State identifies as resulting from an exceptional event,

EPA is permitting the State to flag and submit an initial description of the event provided that these are submitted no later than October 1, 2007. In cases where the State is able to show that this time period is inadequate, a State may submit a request for an extension and EPA will grant this request for an extension up to but no later than December 1, 2007. This procedure should accommodate States concerned about potential $PM_{2.5}$ nonattainment areas using the 2004–2006 data sets. The EPA may consider a similar exemption of the schedules for submittal of data for future revision of standards.

Comment: One commenter stated that EPA should also make allowances for those situations when a State neglects to flag a value or submit documentation within the required timeframes. In these cases, the commenter asserted that EPA should provide some type of petitioning process.

Response: If a State fails to meet the schedule for flagging or document submittal, late petitions will not be considered. Policy decisions, SIP planning, and dissemination of data should not be delayed or altered based on a State's failure to submit documentation or follow the regulatory procedures in a timely manner.

E. Exclusion of Entire 24-Hour Value as Opposed to a Partial Adjustment of the 24-Hour Value

1. Background

In general, EPA's historical practice has been to exclude a daily measured value in its entirety when an exceptional event causes that value, and we retained this approach in the proposed rule. With this approach, a determination is made that emissions from the event are largely responsible for the resultant ambient air pollutant concentration. For example, if the observed concentration is 200 μg/m^3 for $PM_{2.5}$ and is associated with a nearby forest fire, then EPA is likely to concur with the claim that the event was responsible for the ambient concentration. The measured value would be excluded in its entirety from the data used to judge attainment (as per 40 CFR 50, appendix N), although the measurement would still count towards meeting minimum data capture requirements.

We believe it would be desirable to adjust the daily value to exclude only those portions of the data that are attributable to the exceptional event in question, and to retain the remainder of the day's measurement if appropriate and accurate methods were available to make such adjustments. For example, if an area affected by a wildfire had a measured 24-hour $PM_{2.5}$ concentration of 50 μg/m^3 and the estimated event impact was 30 μg/m^3, then the expected value that would have occurred but for the event would have been 20 μg/m^3. Normal air quality for this location might be 16 μg/m^3 and, therefore, the ''but-for'' concentration of 20 μg/m^3 is above average. Discounting the entire event day could, therefore, inappropriately bias a determination of nonattainment with the annual $PM_{2.5}$ NAAQS (currently set at 15 μg/m^3). We are currently seeking to develop and evaluate new analytical methods that would allow us to discount only the portion of the daily value attributable to the exceptional event. However, at present, we are not aware of the existence of precise and universally applicable techniques that are administratively and technically feasible and that could support partial adjustment of air quality data except perhaps in limited cases, such as where the number and type of pollutant species and contributing sources are relatively less complex or potentially when sufficient spatial, temporal, meteorological and chemical data are available [See memo to docket, Husar *et al.* 2006, (*http://www.regulations.gov,* EPA–HQ–OAR–2003–0061–0733 thru 0733.5)]. When we determine that techniques for adjustment of air quality data are sufficiently well-demonstrated for use in exceptional events determinations, we will publish a notice of proposed rulemaking to seek comment on the appropriateness and scope of such use and its impact on the requirements set forth in this rule for determining an exceptional event.

2. Final Rule

We are retaining in this rule EPA's historical practice to exclude a daily measured value in its entirety when that value is found to be caused by a qualifying exceptional event that affected air quality in accordance with the conditions described in sections V.B and V.D. If precise and universally applicable techniques that are administratively and technically feasible and that could support partial adjustment of air quality data become available in the future, EPA will, through a rulemaking, propose, and as appropriate, finalize a technique for partial adjustment of data as well as any other matters in this rule which may be affected by the availability of this technology.

One exception may be made to this exclusion of the entire daily value for monitoring locations with hourly measurements by Federal Reference Methods (FRM), Federal Equivalent Methods (FEM), and/or Approved Regional Methods (ARM) where such data are submitted routinely to AQS. For example, in cases where stratospheric ozone intrusion occurs, those hourly (but not sub-hourly) measurements affected by the intrusion may be excluded in order to calculate the ozone measurements for the day. The individual hours are to be excluded however, if the resulting calculated NAAQS averaging time value exceeds the level of the standard, not just if the individual hourly values exceed that level. Thus, in the case of ozone, the resulting 8-hour average must exceed 0.08 ppm, and the resulting 24-hour average must exceed 15.0 μg/m^3 for $PM_{2.5}$. Incomplete data substitution protocols shall also be considered when evaluating the original and revised NAAQS averaging time value. In other words, an 8-hour ozone period is considered valid when fewer than six valid hours are present if one half the minimum detection limit can be substituted for the missing hours and the resultant 8-hour value still exceeds 0.08 ppm; a daily (24-hour) $PM_{2.5}$ value is considered valid when fewer than eighteen valid hours are present if zeroes can be substituted for the missing hours and the resultant 24-hour value still exceeds 15.0 μg/m^3.

3. Comments and Responses

Comment: One commenter supported value adjustment rather than exclusion when, and only when, such adjustment can be accomplished by the application of various quantitative or semi-quantitative approaches. When this is not possible, the value in question should be replaced with a long-term seasonal mean value.

Response: The EPA will consider such analyses as part of the weight of evidence to judge ''but-for,'' but will not make quantitative adjustments to reported measured values because EPA does not believe sufficient quantitative methods are available at this time.

F. What Should States Be Required To Submit in Their Exceptional Events Demonstrations?

1. Background

Section 319 requires that, in order to have a flagged value excluded from regulatory determinations, a State must make an affirmative demonstration that an event occurred (as shown by reliable and accurate data that is promptly produced) and that there is a clear causal relationship between measured exceedances or violations of a standard and the exceptional event in question to

''demonstrate that the exceptional event caused a specific air pollution concentration'' (42 U.S.C. 7619(b)(3)(B)(ii), (iv)). Section 319 also indicates that regulations promulgated under the section should provide for criteria and procedures to exclude air quality monitoring data ''directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.''

Therefore, after flagging data in the AQS database, States are expected to develop appropriate documentation to support each individual flag. As a general matter, we believe that such demonstrations should include documentation showing that the event in fact occurred and that emissions related to the event were transported in the direction of the monitor(s) where measurements were recorded; the size of the area affected by the transported emissions; the relationship in time between the event, transport of emissions, and recorded concentrations; and, as appropriate, pollutant species-specific information supporting a causal relationship between the event and the measured concentration. The latter information could be based on available data provided by routine speciation, monitoring networks, or from selective laboratory analysis of archived particulate matter filters for the day thought to be impacted by specific events. In certain situations, such data might be useful for evaluation of impacts from exceptional events, e.g., to distinguish between impacts caused by natural fires versus impacts caused by industrial sources. States also need to show that appropriate mitigation actions were taken at the time that the event occurred, or after an event occurred in order to protect public health.

The following examples are intended to further illustrate the kinds of information that States could consider in preparing their demonstrations:

- Information demonstrating the occurrence of the event and its subsequent transport to the affected monitors. This could include, for instance, documentation from land owners/managers, satellite-derived pixels (portions of digital images) indicating the presence of fires; satellite images of the dispersing smoke and smoke plume transport or trajectory calculations (calculations to determine the direction of transport of pollutant emissions from their point of origin) connecting fires with the receptors.
- Identification of the spatial pattern of the affected area (the size, shape, and area of geographic coverage). This could include, for instance, the use of satellite or surface measurement data.
- Information about temporal patterns (e.g., the time and duration of an event in relation to measured downwind concentrations, air quality trends over time and space). This could include, for instance, observed sequential concentration spikes at multiple locations in a downwind direction.
- Identification of the chemical composition of measured concentrations. This could include, for instance, organic or crustal material in excess of typically observed quantities to differentiate from other high concentration events.
- High wind speeds relative to historically typical levels for the season of the year in which the claimed event occurred.

This list is not exhaustive and not all of these kinds of information and/or documentation will need to be provided in every instance. A particular instance may require more or less documentation, depending on the particular facts or circumstances in that instance. The simplest demonstrations could consist of newspaper accounts or satellite images to demonstrate that an event occurred together with daily and seasonal average ambient concentrations to demonstrate an unusually high ambient concentration level, which is clearly indicative of an exceptional impact. Such is the case with events such as volcanic eruptions and nearby forest fires. In one instance, we determined that wildfires upwind of the San Diego area very likely caused high concentrations of particulate matter measured in October 2003 based on the actual physical damage caused by fire to the ambient monitor. Depending on the nature of the event, meteorological conditions, severity and spatial extent of measured ambient concentrations (including relevant chemical components when available) relative to what typically occurs in the area, and on emissions of pollutants from the exceptional event which have similar characteristics to those of other sources in the area, additional showings could be required on a case-by-case basis. In particular, we anticipate that significantly more effort will be needed to establish that an exceptional event caused a particular concentration in an urban area in which there are numerous and diverse sources and complex meteorology and topography, and where the emissions from the event in question may well be similar to those from other sources contributing to measured concentrations, as compared to an area that has relatively few sources, simple terrain and less complex meteorology, and where emissions associated with the event are both substantially greater than and different in composition from those of other nearby sources.

2. Final Rule

The demonstration to justify data exclusion will address specific monitor readings reported to the AQS database. As stated in the previous sections, a complete demonstration shall justify that: (a) The event qualifies in accordance with section IV.D. and with EPA policies and guidance for certain events as described in section IV.E, (b) there is a clear causal relationship between the measurement under consideration and the event that is claimed to have affected the air quality in the area, (c) the event is associated with an unusual measured concentration beyond typical fluctuations including background, (d) there would have been no exceedance or violation but for the event, and (e) the State has provided an opportunity for the public to comment as required under section V.G. The level of documentation may vary by the type of event and can be guided in part by the relative magnitude of the observed concentrations. To obtain concurrence, EPA must determine that the demonstration is complete and provides a reasonable technical demonstration.

Because of the variability in the nature of exceptional events and the resulting demonstration requirements, States should consult with the appropriate EPA Regional Office early in the process of preparing their demonstrations. We are not specifying what will be required as a minimum level of documentation in all cases because facts and circumstances will vary significantly based on, among other things, geography, meteorology and the relative complexity of source contributions to measured concentrations in any particular location. We believe, however, that at a minimum, the elements of such a demonstration should include a showing that an event occurred at a time when meteorological conditions were conducive to transporting emissions from the event downwind to the monitor recording a high concentration of one or more criteria pollutants. Acceptable documentation will be determined through consultation with the EPA regional offices. However, certain minimum requirements (e.g., ''but for'' test) will be necessary as discussed in the earlier sections of this rule.

3. Comments and Responses

Comment: In cases where high wind data cannot be found, one commenter stated that EPA should use a ''weight of evidence'' approach, and should recognize that not accepting a demonstration that such exceedances are exceptional events is equivalent to a determination that the exceedances were caused by recurring anthropogenic sources.

Response: The EPA agrees that a weight of evidence approach is the most appropriate for demonstrations of exceptional impact.

Comment: One commenter asserted that States should be allowed to choose not to submit any demonstration, if the flagged value does not impact a regulatory determination or if more detailed investigation indicates that the value may not have been caused by an exceptional event after all. In these cases, the agency should have the option to remove the flag.

Response: We agree that the flag can be removed in these circumstances or left for informational purposes only.

Comment: One commenter stated that EPA must provide a reasonable explanation and documentation for their decision to deny any request for the flagging of data.

Response: The EPA regional offices will work with the States, Tribes, and local agencies to ensure that proper documentation is submitted to justify data exclusion. The EPA will make the response and associated explanation publicly available.

Comment: One commenter stated that EPA must establish a technically-based appellate process for States to follow when Regional Offices do not concur with a data flag.

Response: The EPA does not believe that an appellate process is necessary because we anticipate that the States and Regional Offices will be working closely through the data and documentation submission process.

G. Public Availability of Air Quality Data and Demonstrations Related to Exceptional Events

1. Background

Section 40 CFR part 58.16 of EPA's air quality monitoring rules state that all ambient air quality data and associated quality assurance data, including metadata records and information specified by the AQS Data Coding Manual *epa.gov/ttn/airs/airsaqs/manuals/manuals.htm* must be reported to EPA via AQS. This information includes exceptional event flags.

2. Final Rule

We are requiring that all relevant flagged data, along with the reasons for the data being flagged, and a demonstration that the flagged data are caused by exceptional events be made available by the State for 30 days of public review and comment. The State or designated local agency should consider the public comments prior to the final demonstration being submitted to EPA for a decision concerning whether to exclude the data from regulatory consideration. Notice and availability of such data and demonstrations must be adequate and consistent with States' administrative procedures governing similar submissions. The EPA does not require that public hearings be held on exceptional events demonstrations but leaves this matter to the States' discretion consistent with their administrative procedures. With the submission of the demonstration, the State should document that the public comment process was followed.

3. Comments and Responses

Comment: One commenter stated that any new rules related to the flagging of exceptional events should be consistent with prior EPA policies and provide sufficient time for States to engage the public in the process prior to data being flagged in the AQS.

Response: The EPA believes that the data demonstration requirements of the final rule provide sufficient time to engage the public. Not only does the final rule require that the public be accorded an opportunity to comment on the State's findings, but in some instances there will be further opportunities for public review and comment at the time that EPA proposes to base specific actions, *e.g.*, approval or disapproval of SIP revisions. Thus, we do not believe that additional public review and comment provisions are necessary or appropriate.

VI. Additional Requirements

Pursuant to section 319, EPA is finalizing this rule to address data that has been influenced by exceptional events. Also, EPA is finalizing one of four options put forth in the proposed rule to address the issue of whether, and to what extent, States are required to adopt specific mitigation plans or measures to protect the public from emissions due to exceptional events. Section 319 states that in promulgating regulations under the section, EPA shall follow certain, enumerated principles and that regulations must contain certain requirements. Section 319(b)(3)(A) contains five principles, including the principle that each State ''must take necessary measures to safeguard public health regardless of the source of air pollution.'' In order to address this principle, EPA is finalizing its proposal to exclude trivial and more routine air quality impacts from qualifying as an exceptional event and is also finalizing a ''but for'' test as a precondition to qualification as an exceptional event (See: section V.C above).

A. Requirements for States To Provide Public Notification, Public Education, and Appropriate and Reasonable Measures To Protect Public Health

1. Background

The EPA proposed one approach and took comments on three alternative options concerning what actions a State should take in anticipation of, or in response to, the occurrence of an exceptional event. The options that were proposed ranged from being very detailed and prescriptive to being very flexible and less prescriptive in terms of the actions that States should take to mitigate the impact of an exceptional event on the public. While EPA does not believe that section 319(b)(3)(A) explicitly requires, in and of itself, that States must develop mitigating measures or plans, EPA solicited comment in the proposed rule on whether this subparagraph supports the use of other legal authority to require mitigating actions or plans when an exceptional event occurs, and solicited comment on issues regarding its legal authority to require mitigation measures and plans, and the legal basis for not requiring mitigation measures or plans.

Option 1 in the proposed rule provided that in cases where exceedances of a NAAQS are caused by an exceptional event, once a State becomes aware that an exceptional event is occurring, is predicted to occur, or has occurred, the State must take reasonable and appropriate actions to:

- Provide notice to the public of the event. This may include, but is not limited to, using the media to alert the public of the event.
- Provide public education concerning the potential health risks associated with being exposed to high ambient concentrations of pollutant(s) related to the event. This may include, but is not limited to, providing information to sensitive populations related to the health risks associated with the event.
- Take appropriate and reasonable measures to abate or minimize the exposure of the public to high

concentrations of air pollution associated with the exceptional event. This may include, but is not limited to, taking reasonable and appropriate actions to implement control measures on significant contributing anthropogenic sources to reduce potential exposure of the public to emissions associated with natural events. States must review the need to implement controls on contributing anthropogenic sources on a case-by-case basis. For example, in the case of volcanic or seismic activity, this may include, but is not limited to, providing for prompt clean-up of the ash deposits related to the event to prevent re-entrainment.

Under option 1, EPA also proposed that, where a State is requesting that air quality data be excluded as an exceptional event, the State must submit, as a part of its demonstration, appropriate documentation to show that the State provided public notice and public education concerning the event in question, and that the State took reasonable and appropriate measures to abate or minimize the exposure of the public to the emissions from the event, where appropriate.

Option 2 in the proposed rule provided that, States are required to adopt a general mitigation plan to address exceptional events before the occurrence of an event as a part of the State's SIP required under section 110(a)(1) of the CAA. Section 110(a)(1) requires States to adopt and submit to EPA, within 3 years following the promulgation of a new or revised NAAQS, a plan which provides for the implementation, maintenance, and enforcement of the standard in each air quality region within the State. Under this option, States would be required to develop and adopt the general requirements and procedures necessary for the implementation of a mitigation plan to address exceptional events as a part of its section 110(a)(1) SIP to address a new or revised NAAQS. The general plan related to exceptional events would include provisions providing for public notice, public education related to an event, and provide a requirement for a State to take reasonable and appropriate measures to mitigate the public health impacts of an exceptional event. Under this option, in cases where control measures are required to address the impacts associated with an exceptional event, the State would be required to implement appropriate measures on an episodic basis, meaning in response to a specific event that affects the air quality of a particular area.

Option 3 in the proposed rule required that, where appropriate, EPA would require a State to develop and implement a mitigation plan for an area following the occurrence of an exceptional event. This is in contrast to option 2 above, which would require each State to adopt a plan under section 110(a)(1) of the CAA which would contain the general provisions of a mitigation plan in advance of the occurrence of any exceptional event. Under option 3, the mitigation plan would only be developed by the State following the occurrence of an exceptional event for which the State requested exclusion of the air quality data, and would not be submitted as a part of the SIP. The mitigation plan would be required to address the actions that would be taken by the State related to future similar events. The mitigation plan under this option would have the same provisions as required of plans developed under Option 2 above, including the requirements to notify the public that an event is expected to occur, or is occurring, or has occurred, to provide for public education related to the health effects associated with the event, and to identify the actions that would be taken by the State to mitigate the impact of any recurrence of the event on public health.

Option 4 provided that EPA would not require a State to develop and implement a mitigation plan for exceptional events, or to take specific mitigation measures as described in options 1–3 in order for EPA to exclude data from regulatory consideration. This approach proposed to allow States to have the maximum degree of flexibility in determining what actions should be taken to mitigate the impacts of exceptional events, e.g., public notification, public education, efforts to reduce exposures, or other necessary measures to safeguard public health. Thus, under this proposed option States would not be obligated to take any particular actions to mitigate exposures such as those contained in Option 1, to develop and implement a formal mitigation plan as part of the SIP such as those contained in Option 2, or to develop a more formal plan with requirements not a part of the SIP such as those contained in Option 3.

2. Final Rule

The EPA is adopting a modified version of Option 1 from the proposed rule, as described above. This option does not require States to submit formal mitigation plans; however, States must provide public notice, public education, and must provide for implementation of reasonable measures to protect public health when an event occurs.

3. Comments and Responses

Comment: Several commenters supported option 1 because they stated that it provides more flexibility for States to determine the appropriate measures to be implemented related to the occurrence of an exceptional event. Other commenters supported option 1 for well defined, well understood events that are non-recurring or unlikely to recur. The majority of the commenters who commented on option 2 strongly opposed that option. The commenters indicated that option 2 would waste scarce local resources in developing a mitigation plan. Other commenters stated that issues concerning exceptional events should be dealt with outside the SIP process and section 110 of the CAA. With regard to Option 3, one commenter indicated that a preemptive plan similar to a Natural Events Action Plan (NEAP) (which includes Reasonably Available Control Measures (RACM)/Best Available Control Measures (BACM) is necessary to mitigate the poor air quality impacts associated with exceptional events. The commenter stated that BACM, not RACM, must be implemented on all contributing anthropogenic sources related to an exceptional event. Several commenters supported option 3 for addressing public health impacts related to recurring natural events. The commenters stated that mitigation plans should include BACM for contributing anthropogenic sources, not RACM. The majority of commenters who commented on option 4 stated that they supported the implementation of option 4 because it allows States the most flexibility for developing and tailoring programs for public notification of exceptional events, the implementation of education programs on exceptional events, and implementation of reasonable measures to protect public health.

Response: States have an inherent responsibility to protect its citizens and as such to provide appropriate and reasonable actions to mitigate the impact of exceptional events on the public health. This includes alerting the public when such events occur, providing public education concerning the health effects of such events, and implementing reasonable measures to mitigate the impact of such events on public health. Consistent with this inherent responsibility, it is EPA's belief that States are in a better position to make decisions concerning what actions should be taken to protect the public when an exceptional event occurs. This

being the case, States should have the necessary flexibility to take appropriate actions when exceptional events occur. The EPA is adopting a modified version of its proposed preferred option 1, which requires States to provide public notification, public education, and provides that States should take ''reasonable and appropriate measures'' to protect public health related to the occurrence of an event. Because States are inherently responsible for the public health of its citizens, and are capable of making the determinations of what actions should be taken to mitigate the impact of such events on the public when they occur. The EPA has modified option 1 from the proposed rule and will not be requiring States to submit documentation concerning the actions that it took to mitigate the impact of exceptional events, in order for EPA to exclude data from regulatory consideration. As proposed in option 1, States may still make determinations regarding reasonable measures in a particular instance, which may or may not include the implementation of control measures on contributing anthropogenic sources related to an event, and are not limited to any particular measure. Therefore, under this option the implementation of RACM or BACM is not required, but a State has the necessary flexibility to determine if, and what, controls should be implemented following an event, as well as the level of control that is required. The EPA believes that this modified option 1 provides suitable flexibility to allow States to take those actions that it deems necessary and appropriate to protect public health. While section 319, as revised by SAFE–TEA–LU, does not specifically provide that States must implement mitigation plans, in developing the exceptional events rule, EPA is required to consider the enumerated principles including the principle that States must take necessary measures to protect public health regardless of the source of air pollution. Therefore, under the modified version of option 1 adopted in this final rule, States must take reasonable and appropriate actions to protect public health.

Comment: Several commenters stated that the exceptional events rule should be consistent with the current requirements under existing policies with respect to the need for a NEAP to address recurring natural events such as high wind events.

Response: The EPA believes that it is advantageous for States to keep NEAPs in place that are currently being implemented in order to address the public health impacts associated with recurring natural events such as high wind events. However, following the promulgation of this rule, States will no longer be required to keep NEAPs in place that were not approved as a part of a SIP for an area. Where a NEAP, as well as BACM, has been approved as a part of a nonattainment SIP for an area, the NEAP, as well as the associated BACM, must remain in place. States may, however, submit a request to EPA to remove the NEAP and BACM from the SIP. The request must contain an approvable demonstration, as required by section 110(l), which shows that the removal of the NEAP and BACM will not interfere with any applicable requirement concerning attainment or maintenance of the NAAQS for an area, reasonable further progress, or any other applicable requirement for the area.

VII. Special Treatment of Certain Exceptional Events Under This Final Rule

As stated in section IV.D above, this final rule applies to data affected by natural events (which are a subset of exceptional events) at air quality monitoring sites where it has been determined that concentrations due to these events have caused, or substantially contributed to, exceedances of the NAAQS in an affected area. This final rule applies to several types of natural events, including, but not limited to, volcanic and seismic activities, natural disasters, high wind events, certain fires, and stratospheric ozone intrusions. It also applies to transported pollution originating from national and international sources that otherwise meets the criteria and requirements for exceptional events. Some types of exceptional events have unusual characteristics that require special consideration in the context of this final rulemaking. We discuss each of these special issues, and the necessary accommodations, below.

A. Volcanic and Seismic Activities

1. Background

Volcanic and seismic activities may affect air quality for an extended period of time after the initial occurrence of the event in question. Therefore, EPA believes that it is appropriate to consider an extended timeframe for flagging and exclusion of data associated with such events. Specifically, EPA believes that emissions attributed to anthropogenic activities associated with clean-up that re-entrain volcanic ash and dust from seismic activity during the first year (12 months) following an event will be treated as due to the natural event.

2. Final Rule

The EPA is finalizing its proposal with regards to volcanic and seismic activities. The EPA will allow up to 12 months for the clean-up of ash deposits due to volcanic/seismic events. During that time period, emissions of re-entrained dust due to anthropogenic activities associated with cleanup may be treated as exceptional events. In cases where the damage caused by the event is so substantial that a 12-month period is inadequate to address the clean-up that is necessary, a State may submit a request for an extension of the 12-month time period to EPA. As stated elsewhere in this rule, EPA will grant requests for extensions of the time period related to such events on a case-by-case basis. States are encouraged to submit supporting information concerning the reason for the extension and the length of time being requested for the extension.

B. High Wind Events

1. Background

Where high wind events result in exceedances or violations of the particulate matter standards, EPA proposed that they be treated as natural events if there is a clear causal relationship demonstrated between the exceedances measured at the air quality monitoring site and the high wind event in question, and if anthropogenic activities which contribute to particulate matter emissions in conjunction with the high wind event are reasonably well-controlled.

2. Final Rule

The EPA's final rule concerning high wind events states that ambient particulate matter concentrations due to dust being raised by unusually high winds will be treated as due to uncontrollable natural events where (1) the dust originated from nonanthropogenic sources, or (2) the dust originated from anthropogenic sources within the State, that are determined to have been reasonably well-controlled at the time that the event occurred, or from anthropogenic sources outside the State. These events are also discussed in section IV.E.5.c above. In cases where anthropogenic sources are determined to have contributed to exceedances or violations due to high wind events at air quality monitoring sites, per our decision in this rulemaking concerning the action that States must take to mitigate the impact of exceptional events on public

health (See section VI above), States must take reasonable and appropriate measures to mitigate the impact associated with the event on public health. As stated in section VI of this rule, States have the flexibility to implement reasonable measures to protect public health when an exceptional event occurs. These actions may or may not include the implementation of controls on contributing anthropogenic sources related to an event. However, where anthropogenic sources have contributed to the exceedances of the PM NAAQS at an air quality monitoring site due to a high wind event, a State must take reasonable and appropriate measures to protect public health.

Since the conditions that cause or contribute to high wind events vary from area to area with soil type, precipitation, and the speed of wind gusts, States should provide appropriate documentation which indicates what types of circumstances contributed to the exceedances or violations at the monitoring site in question.[15] In this rule, EPA is not identifying a specific wind speed which should be considered when making a determination concerning whether an event should qualify as exceptional. Instead, EPA is requiring that States submit appropriate documentation which demonstrates why a particular event should be considered exceptional for the affected area. The EPA will review the documentation submitted by States concerning high wind events and will make decisions concerning whether to exclude the data as being influenced by an exceptional event on a case-by-case basis.

C. Stratospheric Ozone Intrusion

1. Background

Consideration of stratospheric ozone intrusions applies only to the 8-hour ozone standard. The occurrence of such intrusions are extremely difficult to measure or document given currently measured meteorological parameters and the locations of these measurements. The infrequency, short durations, and localized nature of such events makes it difficult to use currently available, general meteorological data, which are usually collected at isolated locations such as airports, to determine whether a stratospheric ozone intrusion has occurred. The EPA believes that it is important to differentiate between stratospheric ozone intrusion, which is an exceptional event for the purpose of flagging data, and other non-exceptional meteorological events. Although data have been identified in the past showing the result of stratospheric ozone intrusion, no standard definition or criteria have been established for concrete identification. Therefore, EPA's determination of whether a stratospheric ozone intrusion has occurred is a case-by-case decision based on reasonable judgment considering the season of the year, time of day, persistence, duration, type and severity of accompanying meteorological conditions associated with the ozone measurement in question, and other data showing that conditions were not conducive to local high ozone production but for this intrusion.

2. Final Rule

The EPA is finalizing its rule as proposed. The EPA's determination of whether a stratospheric ozone intrusion has occurred will be made on a case-by-case basis based on reasonable judgment considering the criteria as noted above. It is our intention to review this type of exceptional event during the next review of the NAAQS for ozone. A review of historical data related to the flagging of stratospheric ozone intrusion as an exceptional event shows that the event has only been flagged on a few isolated occasions.

VIII. Treatment of Fireworks Displays

A. Background

The EPA proposed to treat emissions due to fireworks displays in a manner similar to exceptional events. Some national and/or cultural traditions, such as July 4th Independence Day and the Chinese New Year, have long included fireworks displays as important elements of their observances. While this issue is not specifically covered in CAA section 319, EPA believes that Congress did not intend to require EPA to consider air quality violations associated with such cultural traditions in regulatory determinations.

We are not aware of any information showing adverse air quality impacts caused by individual use of fireworks in relatively small quantities. However, analyses of monitoring data collected on July 4th and July 5th indicates that large fireworks displays, in combination with other sources, can in some circumstances be potentially significant sources of air pollutant emissions. For this reason, States are encouraged to take reasonable precautions to minimize exposures to emissions from fireworks displays, to explore the use of lower emitting fireworks, as well as to manage associated activities that may also have significant air quality impacts in the areas where these events are held. Such precautions may include alerting the public to the potential for short-term air quality impacts that may result from the discharge of fireworks at large displays, monitoring prevailing winds, and locating displays downwind of concentrations of people. For these reasons, where States can show that the use of fireworks displays was integral to significant traditional national, ethnic, or other cultural events, we proposed that air quality data associated with such events could be excluded similar to exceptional events under this rule.

B. Final Rule

The EPA is finalizing the approach as stated in the proposed rule to treat emissions from fireworks similar to the treatment of exceptional events in the final rule provided that the event meets the other criteria as stated in this rulemaking. For example, the event must be determined to have affected air quality. Where a State can show that the use of fireworks is significantly integral to traditional national, ethnic, or other cultural events (e.g., July Fourth celebrations, Chinese New Year celebrations, Diwali, etc.), EPA will exclude data from regulatory determinations for monitoring stations whose exceedances or violations has been determined to be caused by emissions from fireworks displays on a case-by-case basis. As stated in other parts of the rule, States must assure that reasonable measures were taken to protect the public from the emissions created by the fireworks display. Under this rule, States are also strongly encouraged to institute educational programs that alert the public to the

[15] Section 319(b)(1)(B) states: ''In this subsection, the term 'exceptional event' does not include (i) stagnation of air masses or meteorological inversions; (ii) a meteorological events involving high temperatures or a lack of precipitation; or (iii) air pollution relating to source noncompliance.'' In terms of the exclusion related to ''a meteorological event involving high temperatures or a lack of precipitation'' EPA believes that this statutory language prohibits EPA from treating a typical dry day(s) or a dry season for an area as an exceptional event. However, EPA believes that Congress did not intend that the above quoted language to prevent a State from submitting compelling documentation which shows that severe drought conditions may have contributed to an exceptional event, but instead was designed to prevent the indiscriminate exclusion of data on days characterized by ''high temperature and a lack of precipitation.'' Therefore, EPA is permitting States to submit documentation which shows that ''severe drought'' conditions may have contributed to the occurrence of a high wind event. The documentation must, however, be compelling enough to show that the conditions present at the time of the event were more substantial than a typical dry day(s) or dry season for the area in question, but were related to severe drought conditions. The EPA will review this information and make decisions concerning the exclusion of the data related to the event on a case-by-case basis.

health effects associated with exposure to emissions from fireworks displays.

C. Comments and Responses

Comment: The majority of commenters who commented on this issue agreed that emissions from fireworks should be treated as an exceptional event. However, some commenters disagreed with EPA's proposal to treat fireworks as an exceptional event. Several commenters believed that fireworks are neither an exceptional event nor a natural event and that EPA should not make provisions for fireworks to be excluded as an exceptional event.

Response: In considering the intent of the SAFETEA–LU legislation, it is EPA's belief that Congress did not intend to prohibit the exclusion of data affected by emissions from fireworks related to celebrations of national or cultural traditions. It is EPA's belief that data influenced by fireworks displays should be subject to the same provisions as other exceptional events identified under this rule. Therefore, the mitigation actions described in section VI.A above would also apply to emissions related to fireworks displays.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it raises novel legal or policy issues arising out of legal mandates. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden. The information being requested under this rule is consistent with current requirements related to information needed to verify the authenticity of monitoring data submitted to EPA's AQS database, and to justify data that has been flagged as being affected by exceptional or natural events. However, the OMB has previously approved the information collection requirements regulations for ambient air monitoring contained in 40 CFR part 58, subparts A through E, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2060–0084, EPA ICR number 940.17. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means that total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in the CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For the purpose of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominate in its field.

Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See, *Michigan* v. *EPA,* 213 F.3d 663, 668–69 (DC Cir., 2000), *cert. den.,* 532 U.S. 903 (2001). This rule would not establish requirements applicable to small entities. Instead, this rule provides the criteria necessary for State, local, or Tribal air quality agencies to meet in order to properly flag data as being influenced by an exceptional or natural event. The rule also provides information concerning what action should be taken by a State, local, or Tribal air quality agency to protect public health during and following an exceptional or natural event. Because affected States would have discretion to implement controls on sources that may need to be regulated due to anthropogenic contribution in the area determined to be influenced by an exceptional or natural event, EPA could not predict the effect of the rule on small entities.

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

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the

development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. This action simply provides the criteria for State, local, or Tribal air quality agencies to flag data to be discounted for regulatory purposes that is being influenced by exceptional or natural events. Thus, this rule is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

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

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This final rule does not have ''Tribal implications'' as specified in Executive Order 13175. The rule provides information concerning what action should be taken by a State, local, or Tribal air quality agency implementing relevant air quality programs to protect public health once EPA has provided a concurrence on data that has been flagged as being influenced by an exceptional or natural event. The CAA and the Tribal Authority Rule (TAR) give Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt through the Tribal Implementation Plan (TIP).

This rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented a TIP related to the PM or the 8-hour ozone NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply. However, even though we found that this rule does not have Tribal implications, we nevertheless were aware of Tribes that had an interest in this rule. Therefore, we conducted communications and outreach related to the rule with the Tribes through discussions via conference calls with the Tribal Association. We also provided information to the Tribes on the rule via the Quarterly Tribal Air Newsletter.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this rule present a disproportionate risk or safety risk to children. The rule provides information concerning what action should be taken by a State, local, or Tribal air quality agency to protect public health once EPA has provided a concurrence on data that has been flagged as being influenced by an exceptional or natural event.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

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

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

J. Congressional Review Act

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

Register. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 21, 2007.

K. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by May 21, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA Section 307(b)(2).

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, National parks, Wilderness areas.

40 CFR Part 51

Environmental protection, Air pollution control, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: March 14, 2007.

Stephen L. Johnson,

Administrator.

■ In consideration of the foregoing, the Environmental Protection Agency amends 40 CFR parts 50 and 51 as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Amend § 50.1 to add paragraphs (j) and (k) to read as follows:

§ 50.1 Definitions.

* * * * *

(j) *Exceptional event* means an event that affects air quality, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event, and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. It does not include stagnation of air masses or meteorological inversions, a meteorological event involving high temperatures or lack of precipitation, or air pollution relating to source noncompliance.

(k) *Natural event* means an event in which human activity plays little or no direct causal role.

(l) *Exceedance with respect to a national ambient air quality standard* means one occurrence of a measured or modeled concentration that exceeds the specified concentration level of such standard for the averaging period specified by the standard.

■ 3. Add § 50.14 to read as follows:

§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.

(a) *Requirements.* (1) A State may request EPA to exclude data showing exceedances or violations of the national ambient air quality standard that are directly due to an exceptional event from use in determinations by demonstrating to EPA's satisfaction that such event caused a specific air pollution concentration at a particular air quality monitoring location.

(2) Demonstration to justify data exclusion may include any reliable and accurate data, but must demonstrate a clear causal relationship between the measured exceedance or violation of such standard and the event in accordance with paragraph (c)(3)(iii) of this section.

(b) *Determinations by EPA.* (1) EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a State demonstrates to EPA's satisfaction that an exceptional event caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section.

(2) EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a State demonstrates to EPA's satisfaction that emissions from fireworks displays caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Such data will be treated in the same manner as exceptional events under this rule, provided a State demonstrates that such use of fireworks is significantly integral to traditional national, ethnic, or other cultural events including, but not limited to July Fourth celebrations which satisfy the requirements of this section.

(3) EPA shall exclude data from use in determinations of exceedances and NAAQS violations, where a State demonstrates to EPA's satisfaction that emissions from prescribed fires caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section provided that such emissions are from prescribed fires that EPA determines meets the definition in § 50.1(j), and provided that the State has certified to EPA that it has adopted and is implementing a Smoke Management Program or the State has ensured that the burner employed basic smoke management practices. If an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected and must include consideration of development of a SMP.

(4) [Reserved]

(c) *Schedules and Procedures.* (1) Public notification.

(i) All States and, where applicable, their political subdivisions must notify the public promptly whenever an event occurs or is reasonably anticipated to occur which may result in the exceedance of an applicable air quality standard.

(ii) [Reserved.]

(2) Flagging of data.

(i) A State shall notify EPA of its intent to exclude one or more measured exceedances of an applicable ambient air quality standard as being due to an exceptional event by placing a flag in the appropriate field for the data record of concern in accordance with the schedules for submission of data to the AQS database in 40 CFR 58.16.

(ii) Flags placed on data in accordance with this section shall be deemed informational only, and the data shall not be excluded from determinations with respect to exceedances or violations of the national ambient air quality standards unless and until, following the State's submittal of its demonstration pursuant to paragraph (c)(3) of this section and EPA review, EPA notifies the State of its concurrence by placing a concurrence flag in the appropriate field for the data record in the AQS database.

(iii) Flags placed on data as being due to an exceptional event together with an initial description of the event shall be submitted to EPA not later than July 1st of the calendar year following the year in which the flagged measurement occurred, except as allowed under paragraph (c)(2)(iv) of this section.

(iv) For $PM_{2.5}$ data collected during calendar years 2004–2006, that the State identifies as resulting from an

exceptional event, the State must notify EPA of the flag and submit an initial description of the event no later than October 1, 2007. EPA may grant an extension, if a State requests an extension, and permit the State to submit the notification of the flag and initial description by no later than December 1, 2007.

(v) When EPA sets a NAAQS for a new pollutant, or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging data for the initial designation of areas for those NAAQS.

(3) *Submission of demonstrations.*

(i) A State that has flagged data as being due to an exceptional event and is requesting exclusion of the affected measurement data shall, after notice and opportunity for public comment, submit a demonstration to justify data exclusion to EPA not later than the lesser of, 3 years following the end of the calendar quarter in which the flagged concentration was recorded or, 12 months prior to the date that a regulatory decision must be made by EPA. A State must submit the public comments it received along with its demonstration to EPA.

(ii) A State that flags data collected during calendar years 2004–2006, pursuant to paragraph (c)(2)(iv) of this section, must adopt the procedures and requirements specified in paragraph (c)(3)(i) of this section and must include a demonstration to justify the exclusion of the data not later than the submittal of the Governor's recommendation letter on nonattainment areas.

(iii) The demonstration to justify data exclusion shall provide evidence that:

(A) The event satisfies the criteria set forth in 40 CFR 50.1(j);

(B) There is a clear causal relationship between the measurement under consideration and the event that is claimed to have affected the air quality in the area;

(C) The event is associated with a measured concentration in excess of normal historical fluctuations, including background; and

(D) There would have been no exceedance or violation but for the event.

(iv) With the submission of the demonstration, the State must document that the public comment process was followed.

(v) [Reserved.]

(A) [Reserved]

PART 51—NATIONAL PRIMARY AND SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS

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

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

■ 5. Adding Subpart Y consisting of § 51.930 to read as follows:

Subpart Y—Mitigation Requirements

§ 51.930 Mitigation of Exceptional Events.

(a) A State requesting to exclude air quality data due to exceptional events must take appropriate and reasonable actions to protect public health from exceedances or violations of the national ambient air quality standards. At a minimum, the State must:

(1) Provide for prompt public notification whenever air quality concentrations exceed or are expected to exceed an applicable ambient air quality standard;

(2) Provide for public education concerning actions that individuals may take to reduce exposures to unhealthy levels of air quality during and following an exceptional event; and

(3) Provide for the implementation of appropriate measures to protect public health from exceedances or violations of ambient air quality standards caused by exceptional events.

(b) [Reserved]

[FR Doc. E7–5156 Filed 3–21–07; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
March 22, 2007

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 4, 13, 22, et al.

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2007–0002, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–16; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–16. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–16 and specific FAR case number(s). For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–16

Item	Subject	FAR case	Analyst
I	Implementation of Wage Determinations OnLine (WDOL)	2005–033	Woodson.
II	Termination or Cancellation of Purchase Orders	2005–029	Jackson.
III	Contracts with Religious Entities (Interim)	2006–019	Woodson.
IV	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items.	2006–012	Jackson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–16 amends the FAR as specified below:

Item I—Implementation of Wage Determinations OnLine (WDOL) (FAR Case 2005–033)

This final rule implements the Department of Labor (DOL) Wage Determinations OnLine (WDOL) Internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 98, 98a, and 99 are deleted from FAR Part 53. This final rule also incorporates new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office publication of general wage determinations.

Item II—Termination or Cancellation of Purchase Orders (FAR Case 2005–029)

The rule revises the Federal Acquisition Regulation (FAR) to correct the inadvertent omission of an appropriate reference in FAR Part 13.302–4(a) for termination for cause of those purchase orders that have been accepted in writing. This FAR revision is a correction to a reference and not a change to the contract termination options available in 52.212–4(l) or (m). If a purchase order that has been accepted in writing by the contractor is to be terminated, contracting officers have the option to terminate for cause as well as terminate for convenience.

Item III—Contracts with Religious Entities (FAR Case 2006–019) (Interim)

This interim rule amends FAR Subpart 22.8, Equal Employment Opportunity, and the associated clause at 52.222–26, Equal Opportunity, to add an exemption for religious entities to the prohibition of discrimination on the basis of religion. Executive Order (E.O.) 13279 amended Section 204 of E.O. 11246 to permit religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities remain subject to other Equal Employment Opportunity requirements. When awarding a contract to a religious entity that contains the clause at FAR 52.222–26, Equal Opportunity, the requirements of the clause with respect to employment of individuals of a particular religion to perform work connected with the carrying on of the contractor's activities do not apply to a contractor that is a religious corporation, association, educational institution, or society.

Item IV—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2006–012)

The final rule revises the Federal Acquisition Regulation (FAR) to update the required contract clauses that implement provisions of law or executive orders for acquisitions of commercial items.

Dated: March 15, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-16 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-16 is effective March 22, 2007.

Dated: March 7, 2007.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: March 14, 2007.

Roger D. Waldron,

Acting Senior Procurement Executive, General Services Administration.

Dated: March 7, 2007.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 07–1359 Filed 3–21–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 22, 47, 52, and 53

[FAC 2005–16; FAR Case 2005–033; Item I; Docket 2007–0001, Sequence 1]

RIN 9000–AK47

Federal Acquisition Regulation; FAR Case 2005–033; Implementation of Wage Determinations OnLine (WDOL)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt the interim rule published in the **Federal Register** at 71 FR 36930, June 28, 2006, as a final rule without change. This final rule amends the Federal Acquisition Regulation (FAR) to implement the Wage Determinations OnLine (WDOL) Internet website as the source for Federal contracting agencies to obtain wage determinations issued by the Department of Labor (DOL) for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA).

DATES: Effective Date: March 22, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–16, FAR case 2005–033. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 36930, June 28, 2006. The interim rule amended FAR Part 22 to implement Wage Determinations Online (WDOL) Internet Website (*http://www.wdol.gov*) as the source for Federal contracting agencies to obtain wage determinations issued by the Department of Labor (DOL) for service contracts subject to the Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule incorporated new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminated FAR references to the Government Printing Office (GPO) publication of general wage determinations.

The interim rule eliminated the requirement for the contracting officer to submit a copy of collective bargaining agreements (CBAs) to the DOL for the purpose of obtaining a wage determination under Section 4(c) of the SCA, unless directed by the DOL to do so. The rule also deleted the FAR clause at 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA), because the WDOL process makes it unnecessary. Additionally, the rule revised FAR clause 52.222–49, Service Contract Act—Place of Performance Unknown, to make conforming changes to FAR references, and deleted Standard Forms 98, 98a, and 99 from FAR Part 53 in their entirety.

Comment. In response to the interim rule, one comment was received. The commenter was concerned with the risk of issuing the most current wage determination and allowing offerors to amend their proposal after the source selection decision is made but prior to award, noting the possible impact on the proposed price and source selection decision. The commenter recommended revising the language for contracting by negotiation in FAR 22.1012–1(c) to be similar to contracting for sealed bidding or allow the contracting officer to incorporate a wage determination after award similar to the language provided in FAR clause 52.222–30, Davis Bacon Act—Price Adjustment (None or Separately Specified Method).

The Councils considered the comment to be outside the scope of the rule and referred the comment to the Department of Defense Labor Committee for their review and input. Therefore, the councils have agreed to implement the interim rule as written without changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule involves internal Government processes between the DOL and Federal contracting agencies. During the design phase of WDOL.gov, the WDOL Task Force coordinated with a number of labor organizations, contractors, the Contract Services Association, and various Federal contracting agencies to address and satisfy any concerns about the effect of the rule on all interested parties, including small entities. The only comment received on the interim rule was determined to be outside the scope of the rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 22, 47, 52, and 53

Government procurement.

Dated: March 15, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 4, 22, 47, 52, and 53, which was published in the **Federal Register** at 71 FR 36930, June 28, 2006, is adopted as a final rule without change.

[FR Doc. 07–1358 Filed 3–21–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 2005–16; FAR Case 2005–029; Item II;Docket 2006–0020, Sequence 21]

RIN 9000–AK46

Federal Acquisition Regulation; FAR Case 2005–029, Termination or Cancellation of Purchase Orders

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to correct the inadvertent omission of an appropriate reference pertaining to the termination for cause procedures for purchase orders that have been accepted in writing.

DATES: *Effective Date*: March 22, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–16, FAR case 2005–029. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to amend FAR 13.302–4 by reinstating the appropriate coverage for termination for cause of commercial purchase orders. For commercial purchase orders that have been accepted in writing by the contractor, current references to FAR 12.403(d) and FAR 52.212–4(l) as stated in 13.302–4(a) address termination for convenience. The current FAR language at 13.302–4(a) was established under FAC 97–3, published in the **Federal Register** at 62 FR 64912 on December 9, 1997, and became effective on February 9, 1998. This change constituted a complete rewrite and reorganization of FAR Part 13. Previously, FAR Part 13 identified both termination for cause as well as for convenience as the termination methods available to contracting officers. Furthermore, FAR 12.403 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause, and makes no distinction based on the dollar value of the commercial item contract, nor the contractual method utilized to procure the commercial item. Therefore, this final rule amends FAR Part 13.302–4(a) by reinstating the appropriate coverage for and references to termination for cause of commercial purchase orders.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 14445 on March 22, 2006. The 60–day comment period for the proposed rule ended May 22, 2006. One respondent provided a comment. This comment is discussed below.

Public Comment

Comment: The commenter suggests that the words ''in writing by the contractor'' be deleted. The commenter asserts that the beginning of performance of work under a purchase order should be recognized as contractor acceptance of the purchase order, which in most cases, begins on the date of award.

Response: The scope of this case is the correction of an administrative error to re-establish the FAR language for termination for cause procedures for purchase orders that have been accepted in writing. To revise the case now to include all purchase orders, whether accepted in writing or not, would exceed the scope of what was published in the proposed rule. The Councils recognize that this issue requires additional review and will set up a separate case to address it.

Summary of Changes

FAR 13.302–4(a) is revised to reinstitute references to procedures for termination for cause as well as termination for convenience under FAR 12.403 and 52.212–4(l) or (m).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not change the Government's existing termination rights but merely clarifies those rights by correcting an inadvertent error in the FAR.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: March 15, 2007

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION METHODS

■ 1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 13.302–4 by revising paragraphs (a)(1) and (b)(2) to read as follows:

13.302–4 Termination or cancellation of purchase orders.

(a) * * *

(1) 12.403 and 52.212–4(l) or (m) for commercial items; or

* * * * *

(b) * * *

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the action as a termination prescribed in paragraph (a) of this subsection.

[FR Doc. 07–1356 Filed 3–21–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 2005–16; FAR Case 2006–019; Item III Docket 2006–0020, Sequence 12]

RIN 9000–AK66

Federal Acquisition Regulation; FAR Case 2006–019, Contracts with Religious Entities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 11246, as amended, Equal Employment Opportunity, to incorporate the exemption for religious entities prescribed in E.O. 13279.

DATES: *Effective Date*: March 22, 2007.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before May 21, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–16, FAR case 2006–019, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–019) and click on the ''Submit'' button. Please include any personal and/or business information inside the document.

You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field. Select the ''Submit'' button.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–16, FAR case 2006–019, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. Please cite FAC 2005–16, FAR case 2006–019. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Part 22 to implement Executive Order (E.O.) 11246, as amended, to incorporate the exemption for religious entities prescribed in E.O. 13279. E.O. 11246, as amended, prohibits Government contractors and subcontractors, and Federally assisted construction contractors and subcontractors from discriminating in employment, and requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin. Section 4 of E.O. 13279 amended Section 204 of E.O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. E.O. 11246, as amended, permits religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities are not exempt from other requirements of the Executive order.

The Department of Labor (DOL) implemented the exemption at 41 CFR part 60–1, Obligations of Contractors and Subcontractors, in the **Federal Register** at 68 FR 56392 on September 30, 2003. The FAR incorporates the DOL exemptions at 41 CFR part 60–1 at FAR 22.807. This rule adds the exemption for religious entities to FAR 22.807(b) and the associated clause at FAR 52.222–26, Equal Opportunity, to maintain consistency with DOL rules. Under FAR 22.807(b), the exemption applies even though a contract or subcontract contains the clause at FAR 52.222–26. When awarding a contract to a religious entity that contains the clause at FAR 52.222–26, Equal Opportunity, the requirements of the clause with respect to employment of individuals of a particular religion to perform work connected with the carrying on of the contractor's activities do not apply to a contractor that is a religious corporation, association, educational institution, or society.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act,5 U.S.C. 601, *et seq.*, because this rule only aligns the FAR with the DOL exemption for consistency and clarity. The DOL stated in the **Federal Register** at 68 FR 56392 on September 30, 2003, that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 22 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–16, FAR case 2006–019), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The rule does not affect any certification, representation, or other proposal submission requirements.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to ensure compliance with Executive Order 11246 and consistency with the Department of Labor regulations. Contracting officers need to be aware of the exemption for religious entities and to understand when and how to apply it. This will avoid confusion and potential disagreements between the Government and religious entities competing for Federal contracts. The Executive order was published on December 16, 2002 and the DOL regulations went into effect on October 30, 2003. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: March 15, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 22 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 2. Amend section 22.807 by adding paragraph (b)(7) to read as follows:

22.807 Exemptions

* * * * *

(b) * * *

(7) *Contracts with religious entities.* Pursuant to E.O. 13279, Section 202 of E.O. 11246, shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in the order.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 3. Amend section 52.212–5 by—

■ a. Revising the date of the clause to read ''(MAR 2007)''; and

■ b. Removing from paragraphs (b)(17) and (e)(1)(ii) ''(APR 2002)'' and adding ''(MAR 2007)'' in its place.

52.213–4 [Amended]

■ 4. Amend section 52.213–4 by—

■ a. Revising the date of the clause to read ''(MAR 2007)'';

■ b. Removing from paragraph (a)(1)(iii) ''(APR 2002)'' and adding ''(MAR 2007)'' in its place; and

■ c. Removing from paragraph (a)(2)(vi) ''(SEPT 2006)'' and adding ''(MAR 2007)'' in its place.

■ 5. Amend section 52.222–26 by—

■ a. Revising the date of the clause to read ''(MAR 2007)'';

■ b. Redesignating paragraphs (b)(1) through (b)(11), and (c) as paragraphs (c)(1) through (c)(11), and (d), respectively; removing paragraph (b) introductory text and adding paragraphs (b)(1) and (b)(2); and

■ c. Removing from newly designated paragraph (c)(10) ''paragraphs (b)(1) through (11) of''.

The revised text reads as follows:

52.222–26 Equal Opportunity.

* * * * *

(b)(1) If, during any 12–month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60–1.5).

* * * * *

52.244–6 [Amended]

■ 6. Amend section 52.244–6 by—

■ a. Revising the date of the clause to read ''(MAR 2007)''; and

■ b. Removing from paragraph (c)(1)(ii) ''(MAY 2002)'' and adding ''(MAR 2007)'' in its place.

[FR Doc. 07–1357 Filed 3–21–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–16; FAR Case 2006–012; Item IV; Docket 2006–0020, Sequence 24]

RIN 9000–AK51

Federal Acquisition Regulation; FAR Case 2006–012, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update the required contract clauses that implement provisions of law or executive orders for acquisitions of commercial items.

DATES: *Effective Date*: March 22, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–16, FAR case 2006–012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with Section 8002 of Public Law 103–355 (41 U.S.C. 264, note), contract clauses applicable to acquisitions of commercial items are limited, to the maximum extent practicable, to clauses that are—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

The FAR clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, incorporates, by reference, the contract clauses that the contracting officer may select to implement provisions of law or executive orders for acquisitions of commercial items. The FAR clause at 52.219–16, Liquidated Damages—Subcontracting Plan, is a contract clause that is required to implement 15 U.S.C. 637(d)(4)(F)(i). However, the FAR clause 52.219–16 is not included in the list of clauses for commercial contracts in FAR 52.212–5. The rule incorporates the FAR clause 52.219–16 in the list of clauses for commercial contracts that the contracting officer may select.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 42344, July 26, 2006. The Councils received no comments on the proposed rule. Therefore, the Councils have adopted the proposed rule as final without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space

Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing language and does not change existing policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: March 15, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 52.212–5 by revising the date of the clause; redesignating paragraphs (b)(10) through (b)(35) as (b)(11) through (b)(36), respectively, and adding a new paragraph (b)(10) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS— COMMERCIAL ITEMS (MAR 2007)

* * * * *

(b) * * *

__(10) 52.219–16, Liquidated Damages—Subcontracting Plan (JAN 1999) (15 U.S.C. 637(d)(4)(F)(i)).

* * * * *

[FR Doc. 07–1360 Filed 3–21–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2007–0002, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–16; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–16 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–16 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–16

Item	Subject	FAR case	Analyst
I	Implementation of Wage Determinations OnLine (WDOL)	2005–033	Woodson.
II	Termination or Cancellation of Purchase Orders	2005–029	Jackson.
III	Contracts with Religious Entities (Interim)	2006–019	Woodson.
IV	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items.	2006–012	Jackson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–16 amends the FAR as specified below:

Item I—Implementation of Wage Determinations OnLine (WDOL) (FAR Case 2005–033)

This final rule implements the Department of Labor (DOL) Wage Determinations OnLine (WDOL) Internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 98, 98a, and 99 are deleted from FAR Part 53. This final rule also incorporates new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office publication of general wage determinations.

Item II—Termination or Cancellation of Purchase Orders (FAR Case 2005–029)

The rule revises the Federal Acquisition Regulation (FAR) to correct the inadvertent omission of an appropriate reference in FAR Part 13.302–4(a) for termination for cause of those purchase orders that have been accepted in writing. This FAR revision is a correction to a reference and not a change to the contract termination options available in 52.212–4(l) or (m). If a purchase order that has been accepted in writing by the contractor is to be terminated, contracting officers have the option to terminate for cause as well as terminate for convenience.

Item III—Contracts with Religious Entities (FAR Case 2006–019) (Interim)

This interim rule amends FAR Subpart 22.8, Equal Employment Opportunity, and the associated clause at 52.222–26, Equal Opportunity, to add an exemption for religious entities to the prohibition of discrimination on the basis of religion. Executive Order (E.O.) 13279 amended Section 204 of E.O. 11246 to permit religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities remain subject to other Equal Employment Opportunity requirements. When awarding a contract to a religious entity that contains the clause at FAR 52.222–26, Equal Opportunity, the requirements of the clause with respect to employment of individuals of a particular religion to perform work connected with the carrying on of the contractor's activities do not apply to a contractor that is a religious corporation, association, educational institution, or society.

Item IV—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2006–012)

The final rule revises the Federal Acquisition Regulation (FAR) to update the required contract clauses that implement provisions of law or executive orders for acquisitions of commercial items.

Dated: March 15, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 07–1355 Filed 3–21–07; 8:45 am]

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Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 100
Criteria and Procedures for Proposed Assessment of Civil Penalties; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AB51

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises MSHA's existing civil penalty assessment regulations and implements the civil penalty provisions of the Mine Improvement and New Emergency Response (MINER) Act of 2006.

This final rule will increase mine operator compliance with the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended by the MINER Act, and the agency's safety and health standards and regulations, thereby improving safety and health for miners.

DATES: *Effective Date:* This final rule is effective April 23, 2007.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, *silvey.patricia@dol.gov*, 202–693–9440 (telephone), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background
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I. Background

On September 8, 2006, MSHA published a proposed rule to revise its civil penalty regulations (71 FR 53054). MSHA received written comments in response to the proposed rule. In addition, the agency held six public hearings on September 26, 2006 in Arlington, Virginia, September 28, 2006, in Birmingham, Alabama, October 4, 2006, in Salt Lake City, Utah, October 6, 2006, in St. Louis, Missouri, October 17, 2006, in Charleston, West Virginia, and October 19, 2006, in Coraopolis, Pennsylvania. The comment period closed on October 23, 2006. On October 26, 2006, MSHA reopened and extended the comment period to November 9, 2006 (71 FR 62572). MSHA reopened the comment period to restate and clarify language in the proposed rule pertaining to the proposed deleting of the existing single penalty assessment provision. MSHA clarified that violations that would have been processed under the single penalty provision of the existing rule would, under the proposed rule, be processed under the regular assessment provision.

In addition, MSHA reopened the comment period to provide interested persons additional time to comment on an issue that was raised at the public hearings in Charleston, West Virginia, and Pittsburgh, Pennsylvania, pertaining to safety and health conferences. MSHA stated that it intended to include a requirement in the final rule that a request for a safety and health conference be in writing and include a brief statement of the reason why each citation or order should be conferenced.

The section-by-section analysis of the final rule addresses issues raised by comments and testimony.

II. Discussion of the Final Rule

A. General Discussion

This final rule results in an across-the-board increase in penalties from the existing regulations; however, penalties increase more significantly for large mine operators, operators with a history of repeated violations of the same standard and for operators whose violations involve high degrees of negligence or gravity. The higher penalties in the final rule are intended to increase the incentives for mine operators to prevent and correct violations.

MSHA notes that under the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996, the Agency is required to review and, as warranted, adjust penalties based on inflation at least every four years. On June 15, 2006, the MINER Act was enacted and amended section 110 of the Mine Act raising the maximum civil penalty to $220,000 for violations that are deemed to be flagrant. This final rule codifies the maximum penalty of $220,000 for flagrant violations. In addition, the MINER Act established minimum penalties of $2,000 and $4,000 for unwarrantable failure violations, and minimum penalties for failure to timely notify violations. Although this final rule does not increase the $60,000 maximum civil penalty for non-flagrant violations, the effect of the across-the-board penalty increases from the existing regulations is tantamount to an inflation adjustment. Due to these penalty increases, the penalties in this final rule will not be adjusted under the Inflation Adjustment Act until 2011.

MSHA received numerous comments in support of and opposed to the proposed rule. Many commenters stated that the proposed penalty increases were unnecessary because between 1990 and 2005, both injuries and fatalities have steadily declined. Other commenters stated that the proposed increased penalties will not induce greater compliance with the Mine Act or MSHA's safety and health standards and regulations. Some of these commenters stated that the proposed increases will merely result in operators diverting money from safety and health programs to penalty payments. Other commenters expressed concern that MSHA did not provide evidence that increased penalties would result in increased compliance and requested that MSHA immediately release all of the citation and accident history data necessary to do a thorough analysis of the premise underlying the Agency's proposal. One commenter stated the example that in the year following MSHA's increase in penalties in 2003, the number of citations actually increased by approximately 10%, from 110,038 to 121,225, and that that trend continued in 2005, when the number of citations again increased to 128,225. MSHA used 2005 assessed violation data as the baseline for its calculations of the

impact of both the proposed and final rules. The Agency has placed this 2005 violation data in the rulemaking record.

Although some commenters stated that increasing penalties will not result in increased compliance by operators, MSHA's experience shows that penalties are an important tool in reducing fatalities, injuries, illnesses, and violations. The Supreme Court recognized that civil penalties provide a ''deterrence'' that necessarily infrequent inspections cannot generate. *National Independent Coal Operators' Ass'n* v. *Kleppe,* 423 U.S. 388, 401 (1976) (speaking of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act)).

The Agency recognizes that civil penalties alone may not significantly affect compliance with the Mine Act and MSHA's safety and health standards and regulations or reduce the number of mining accidents and injuries. The reductions in accidents and injuries that have been achieved since the civil penalty regulation was originally implemented are the result of a combination of factors such as stronger enforcement, changes in mining technology, improved training, accident reduction initiatives, compliance assistance activities, better safety and health programs and more attention to them on the part of mine management and miners, and the continued issuance of citations and orders and related civil penalties.

In addition, the Agency recognizes that the citations and orders are issued to induce miner operators to correct hazardous conditions thus reducing miners' exposure. Experience and data show that far greater resources are associated with the correction of hazardous conditions than payment of a civil penalty. Correcting the hazardous condition may require an interruption in production or other scheduled activities, necessitating change in personnel and equipment.

Nonetheless, civil penalties have contributed to improvements in fatalities and accident and injury rates in the mining industry. MSHA reviewed the Agency's accident and injury statistics for metal and nonmetal mines from 1973 to 2005. Since 1977, the year that the civil penalty sanction was applied to metal and nonmetal mining operations, the incidence rate for fatal injuries declined, and the incidence rate for the total of fatal injuries, non-fatal days lost injuries, and no days lost injuries also declined.

In October 1977, when Congress discussed adopting mandatory civil penalties for metal and nonmetal mines under the Mine Act, the Senate Committee on Human Resources (Committee) discussed the relative improvements in rates of fatal and serious non-fatal occurrences in the coal industry, where civil penalties had been mandatory since 1970, versus the non-coal segment of the industry, where there had been no provision for civil penalties, mandatory or permissive. Comparing the fatal and disabling injury rates between coal mines and metal and nonmetal mines for the years 1966 through 1976, the Committee found that the comparison:

> suggests clearly that even if the civil penalty system under the Coal Act has not been totally effective in implementation, the presence of the civil penalty sanction has resulted in substantial improvements which are not noted in the non-coal segment of the industry under the Metal Act.

S. Rep. No. 95–181, at 41 (1977).

MSHA's approach under this final rule is consistent with the intent of the drafters of the Mine Act. One of the goals of revising the civil penalty regulations in this final rule is to place more emphasis on the most severe violations, such as those contributing to accidents and injuries, and the most severe violators, such as those operators who exhibit high levels of negligence. MSHA has achieved this goal by revising the point tables for Negligence and Gravity-Severity and -Likelihood, so that the more severe violations will receive civil penalties at levels more likely to induce the operator's compliance.

Penalties are one of many tools that Congress approved to ensure ''a safe and healthful'' workplace for miners. Congress's intent was that civil penalties under the Mine Act be used to ''induce those officials responsible for the operation of a mine to comply with the Act and its standards.'' S. Rep. No. 95–181, at 41. Civil penalties were singled out by the sponsors of the Mine Act as ''the mechanism for encouraging operator compliance with safety and health standards.'' 123 Cong. Rec. 4388 (1977) (Feb. 11, 1977) (statement of Sen. Williams).

MSHA has structured the final rule so that increased penalties will induce operators to be more proactive in their approach to miner safety and health and will lead to overall safety and health improvements. Increasing penalties is consistent with Congress's intent that penalties:

> be of an amount which is sufficient to make it more economical for an operator to comply with the Act's requirements than it is to pay the penalties assessed and continue to operate while not in compliance.

S. Rep. No. 95–181, at 41.

In response to comments that stated that the proposed penalty increases were unnecessary because injuries and fatalities have steadily declined since 1990, MSHA notes that the Mine Act has resulted in significant improvements in the health and safety of miners. Nevertheless, a review of MSHA's historical data shows a high number of fatal accidents in 2006—47 fatalities in coal mines and 25 fatalities in metal and nonmetal mines—and a rising number of violations in the past three years, including a rising number of violations of the same standard and a rise in the number of serious violations.

Several commenters supported increased penalties, but stated that the proposed increases were not sufficiently high to provide operators with enough compliance incentive. In support of this statement, these commenters provided the example that a violation that receives 50 points under the existing regulations would only receive the minimum penalty under the penalty conversion table in the proposed rule. MSHA notes that points assigned in the penalty tables for each of the statutory criteria have been changed in the proposed rule and, that this change prevents accurate comparisons between points assigned in the penalty tables under the existing regulation with the penalty conversion table in the proposed rule. Using the commenters' example, the 774 violations that received 50 penalty points under the penalty tables of the existing regulation received an average penalty of $636 (including a 30% discount for good faith, where applicable). These same violations would receive an average of 93 penalty points under the penalty tables in the proposed rule and would receive an average penalty of $2,134 (including a 10% discount for good faith, where applicable).

Several commenters stated that the proposed penalty increases were too high. These commenters provided MSHA with specific examples comparing penalties under the existing rule with projected penalties under the proposed rule. MSHA is impressed with the specific examples they submitted which included thoughtful analysis and attention to detail. MSHA has analyzed these examples using its data for 2005 assessed violations. MSHA notes that its data is comprised of all violations that were assessed in 2005. Some commenters may have submitted specific examples that relied on the issuance date rather than the assessment date of the violation. MSHA's analysis shows the following for some of the specific examples submitted by commenters.

1. Jim Walter Resources, Inc., (JWR) submitted summary estimates for Mine Number 4 and Mine Number 7. Regarding Mine Number 4, JWR stated that total penalties for 2005 were $97,288 and projected that penalties under the proposal would be $421,521, an increase of 333%. MSHA's analysis shows that total penalties assessed in 2005 for this mine were $128,540 and that the amount under the proposed rule would be $421,128, an increase of 228%. Under the final rule, the total penalties would be $344,423 or an increase of 168%.

Regarding Mine Number 7, JWR stated that total penalties for 2005 were $55,131 and projected that penalties under the proposal would be $286,389, representing an increase of 419%. MSHA's analysis shows that total penalties assessed in 2005 for this mine were $65,775 and that the amount under the proposed rule would be $378,907, an increase of 476%. Under the final rule, the total penalties would be $333,559 which is an increase of 407%. MSHA notes that the increase in penalties for Mine Number 7 as compared to Mine Number 4 is predominantly attributable to the difference in the number of penalty points for violations per inspection day. In addition, as stated above, MSHA's analysis is based on violations that were assessed in 2005 even though the violation may have been issued in a different year.

2. Peabody Energy (Peabody) provided projections of penalties for ''typical'' § 75.400 violations stating that if the single penalty is eliminated and penalties are solely based on points, large operators will be at an extreme disadvantage due to their sheer size and production. In each example, the size of the mine is over two million tons, the size of controlling entity is over 10 million tons, the history consists of a VPID exceeding 2.1 and more than 20 violations of the same standard, and the gravity consists of one person potentially affected. The first example involves a non-significant and substantial (non-S&S) violation: moderate negligence, ''unlikely'' occurrence, and ''lost work days or restricted duty.'' Peabody projected that under the proposed rule this violation would incur 106 penalty points for an initial proposed penalty of $4,440, which would be offset by a $444 reduction for timely abatement, resulting in a total penalty of $3,996.

The second example involves an S&S violation: moderate negligence, ''reasonably likely'' to occur, and ''lost work days or restricted duty.'' Peabody projected that under the proposed rule this violation would incur 126 penalty points for an initial proposed penalty of $21,993, which would be offset by a $2,199 reduction for timely abatement, resulting in a total penalty of $19,794.

The third example involves an S&S violation: High negligence, ''reasonably likely'' to occur, and ''lost work days or restricted duty.'' Peabody projected that under the proposed rule this violation would incur 141 penalty points for an initial proposed penalty of $60,000 which would be offset by a $6,000 reduction for timely abatement, resulting in a total penalty of $54,000.

MSHA reviewed its 2005 assessment violation data for all § 75.400 violations issued for Peabody's largest mines in 2005. MSHA calculated the average total penalty points and average proposed penalties under the existing, proposed, and final rules for Peabody mines that received maximum points for mine size. The results of MSHA's analysis are shown in the following table.

FY2005 75.400 Violations Issued to Peabody Energy Coal Mines Receiving Maximum Size Points	Existing Rule Average Points		Proposed Rule Average Points		Final Rule Average Points	
	Non S&S	S&S	Non S&S	S&S	Non S&S	S&S
Average of Mine Size Points	9	10	20	20	15	15
Average of Controller Size Points	5	5	5	5	10	10
Average of Violation Per Insp Day Points	7	6	7	5	8	6
Average of Repeat Violation Points	0	0	19	17	13	12
Average of Negligence Points	15	15	20	20	20	20
Average of Gravity Likelihood Points	2	5	10	30	10	30
Average of Gravity Injury (Severity) Points	3	3	4	5	4	5
Average of Gravity Persons Points	2	2	2	3	2	3
Average Total Points*	43	47	87	106	82	102
Average Proposed Penalty*	68	576	874	3,996	586	2,902

*Average points and penalty amounts for existing rule are based on actual point and penalty amounts.

*Average points and penalty amounts for proposed/final rules are based on proposed changes in points and penalty amounts.

*All proposed rule and final rule penalties are assumed to get good faith reductions

MSHA's analysis shows that under the existing rule, the total average points for all non-S&S § 75.400 violations was 43, resulting in an average proposed penalty of $68. MSHA's analysis revealed total average points for all S&S § 75.400 violations of 47, resulting in an average proposed penalty of $576.

Under the proposed rule, MSHA's analysis shows that the total average points for all non-S&S § 75.400 violations was 87, resulting in an average proposed penalty of $874, which includes the ''good faith'' reduction. MSHA's analysis revealed total average points for all S&S § 75.400 violations of 106, resulting in an average proposed penalty was $3,996, which includes the ''good faith'' reduction.

Under the final rule, MSHA's analysis shows that the total average points for all non-S&S § 75.400 violations was 82, resulting in an average proposed penalty of $586. MSHA's analysis revealed total average points for all S&S § 75.400 violations of 102, resulting in an average proposed penalty of $2,902, which includes the ''good faith'' reduction.

Peabody also submitted a fourth example showing the ''cheapest typical non-S&S'' violation. In this example, the size of mine is over two million tons, the size of controlling entity is over 10 million tons, the history consists of a VPID exceeding 2.1 and five or fewer repeat violations in the last 15 months, moderate negligence, an ''unlikely'' occurrence, a severity of ''lost work days or restricted duty,'' and one person potentially affected. Peabody projected that, under the proposed rule, such a violation would incur 86 penalty points for an initial proposed penalty of $897 which would be offset by a $90 reduction for timely abatement, resulting in a total penalty of $807. MSHA's analysis of an average non-S&S violation for Peabody mines with maximum points for mine size shows that under the existing rule, the average proposed penalty was $68, under the proposed rule, the average proposed penalty was $874, and under the final rule, the average proposed penalty was $586.

3. Pennsylvania Coal Association stated that the removal of the single penalty assessment will greatly increase penalties for non-S&S violations that present no real degree of hazard. Pennsylvania Coal gave the example that under the proposal, a section 104(a), non-S&S violation with moderate negligence, 1.1 violations per inspection day, production over two million tons per year, an unlikely likelihood of occurrence, a severity of lost work days, and two persons potentially affected would receive a penalty of $512, more than 8 times the $60 single penalty under the existing rule. Under MSHA's analysis, assuming three points for size of the controlling entity, the penalty for this violation would be $212 under the proposed rule, or $190 with the ''good faith'' reduction, an increase of 216%. Under the final rule, assuming five points for size of the controlling entity, the penalty for this violation would be $196 or $176 with the ''good faith'' reduction.

Pennsylvania Coal further stated that it believed that penalties under the proposal would result in an increase of 10 times over the existing penalties for commonly cited violations. Pennsylvania Coal provided the example that if the severity of the injury in the foregoing violation were permanently disabling and there was a ''repeat'' history of 10 points, the penalty would increase to $1,140. Under MSHA's analysis, assuming three points for size of the controlling entity, the penalty for this violation would be $473 under the proposed rule, or $425 with the ''good faith'' reduction, an increase of 7 times over the existing penalty. Under the final rule, assuming five points for size of the controlling entity, the penalty would be $651 or $586 with the ''good faith'' reduction.

After analyzing the commenters' projected penalties, MSHA agrees that the penalty increases can be substantial under the proposed rule; however, in many instances, the increases are not as great as commenters projected. This is due to a number of reasons including data based on issued rather than assessed violations, and use of hypothetical violations with sometimes incomplete data. The Agency believes that the penalty increases in the final rule are consistent with Congressional intent and are at an appropriate level to increase operator compliance with the Mine Act and MSHA's safety and health standards and regulations.

MSHA discussed the regulatory impact analysis in support of the proposed rule in Section IV of the preamble to the proposed rule. The analysis of costs contained three inadvertent errors: (1) MSHA used the wrong employment size for a few independent contractor violations; (2) there was a small error in the formula for calculating the history for repeat violations; and (3) violation history penalty points were improperly assigned to operators with fewer than 10 violations over the previous 15-month period. The net effect of these errors was to underestimate the impact of costs of the proposal by about 2%. These errors have been corrected in MSHA's analysis of the final rule. A more detailed explanation is provided later in Section III (Executive Order 12866) of this preamble, and any data referenced by MSHA in support of the proposed rule reflect the corrections.

Some commenters expressed concern that MSHA does not use the Small Business Administration (SBA) definition of small business, creating an unfair trade disadvantage for crushed stone, sand, and gravel mines, which tend to be smaller mines. In analyzing the impact of a rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established such an alternative definition and hence is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impact of agency rules on a subset of mines with 500 or fewer employees, i.e., those with fewer than 20 employees, which MSHA and the mining community traditionally have referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Because of these factors, their costs of complying with MSHA's rules and the impact of the agency's rules on them also will tend to be different. It is for this reason that ''small mines,'' traditionally defined by MSHA as those employing fewer than 20 workers, are of special concern to MSHA. In addition, for this final rule, MSHA has examined the cost on mines with five or fewer employees to ensure that they are not significantly and adversely impacted by the final rule.

In the final rule, MSHA has carefully evaluated all of the comments and concerns. The Agency has revised some of the proposed provisions to reflect many of the commenters' concerns. MSHA's primary objective continues to be to develop and issue a final rule which promotes operator compliance with the Mine Act and MSHA's standards and regulations and thereby reduces violations and injuries, illnesses and fatalities in mines. By establishing more serious consequences for noncompliance with the Mine Act and MSHA's safety and health standards and regulations, the highest penalties under this final rule are directed towards those mine operators who continually allow hazardous conditions to exist. The final rule aims to direct mine operators who violate the Mine Act and MSHA's safety and health standards and regulations toward a more proactive approach to miner safety and health.

B. Section-by-Section Analysis

Scope and Purpose (§ 100.1)

Final § 100.1, like the existing rule, sets forth the scope and purpose of the final rule. It provides the criteria and procedures that MSHA uses to propose civil penalties under sections 105 and 110 of the Mine Act. Final § 100.1, like the existing rule, provides that the purpose of this rule is to: establish a fair and equitable procedure for the application of the statutory criteria in determining proposed penalties for violations; maximize the incentives for mine operators to prevent and correct hazardous conditions; and assure the prompt and efficient processing and collection of penalties.

Some commenters suggested that the final rule should be limited to the specific penalties mandated by the

MINER Act and that MSHA either should withdraw the proposed rule or delay promulgating a final rule and appoint an advisory committee to evaluate other aspects of the proposed rule before moving forward. In addition, some commenters expressed the opinion that Congress's silence in the MINER Act with respect to civil penalties other than those specifically mentioned indicated that Congress generally was satisfied with MSHA's existing penalty regulations. These commenters stated that MSHA should follow the clear and unmistakable direction provided by Congress and limit the final rule to only those penalty provisions included in the MINER Act. Other commenters opposed the appointment of an advisory committee to review civil penalties stating that it would be only a delay tactic.

Although Congress mandated only certain penalties under the MINER Act, it did so by amending the Mine Act and providing the Secretary with additional tools ''to improve the safety of mines and mining.'' PL 109–236, 120 Stat. 493 (June 15, 2006). MSHA has determined that there would be no benefit for miner safety and health by convening an advisory committee. The final rule is consistent with both the Mine Act and MINER Act's goals to improve miner safety and health through the use of effective civil penalties. In response to comments, and consistent with the MINER Act, under the final rule, operators who exhibit a lack of commitment to miner safety and health will receive the greatest increase in penalties.

Some commenters opposed the proposed rule's across-the-board penalty increases, stating that this was a one-size-fits-all approach that unfairly penalized operators with good safety records. Specifically, a number of sand and gravel operators commented that the proposed increases should be limited to coal mines because disasters in coal mines generated changes in the MINER Act. These commenters further stated that coal mines pose greater health and safety hazards to miners and that such mines experience a higher number of violations. Some small sand and gravel operations further commented that the proposed increases were excessively high and would put them out of business. These commenters provided no specific data in support of their conclusion. Under the final rule, MSHA estimates that metal and nonmetal operators, which include small sand and gravel operators, with one to five employees would average a yearly increase of $149 per mine, compared to $213 for those with one to 20 employees.

Under the final rule, like the existing rule, the size of the mining operation and the effect of a penalty on an operator's ability to continue in business are two of the statutory factors taken into consideration in determining penalties. MSHA's goal for this final rule is that all mine operators, consistent with the statutory purpose, will be in compliance with the Mine Act and Agency safety and health standards and regulations. In addition, consistent with the MINER Act, the Agency projects that operators who are the worst safety and health offenders will experience the largest penalty increases under the final rule.

One commenter expressed concern that the proposed rule did not provide equitable procedures for the application of the statutory criteria in determining proposed penalties because the proposed rule treated small mines differently from large mines and because it treated coal mines differently from metal and non-metal mines. MSHA does not agree that its application of the mine size penalty criteria is inequitable. Under the final rule, like the existing rule, the points and the penalties increase as the size of the operator or its parent company grows. In doing so, MSHA is assuring optimal consistency in accordance with Congressional intent in applying the statutory criteria pertaining to the size of the operator's business.

Historically, MSHA has treated coal mining operations differently from metal and nonmetal mining operations when determining size for purposes of assigning civil penalty points. This historical distinction was based on both Agency experience and mining industry conditions. MSHA has found that measuring the size of coal mining operations by tonnage produced is a reasonable indicator of the size of the business for coal operations. Tonnage produced, however, is not usually a useful indicator of size for metal and nonmetal mining operations because of the vast differences in commodities mined and methods of mining within that segment of the mining industry. In some instances, large volumes of material are mined for only a few ounces of a marketable commodity; in others, nearly one hundred percent of the mined material is marketable. In addition, the costs of production and the market prices may vary markedly within the metal and nonmetal industry. Thus, an annual tonnage measurement of metal and nonmetal operations would not enable MSHA to fairly evaluate the economic impact of the proposed penalty on each operator. MSHA's experience is that tonnage produced has proven to be effective for measuring the size of coal mining operations and annual hours worked has proven to be effective for measuring the size of metal and nonmetal operations.

No substantive changes to proposed § 100.1 were made in the final rule. Final § 100.1 adopts the language in the proposed rule.

Applicability (§ 100.2)

Final § 100.2, like the existing rule, sets forth the applicability of the final rule and provides that the criteria and procedures in this part are applicable to all proposed assessments of civil penalties for violations of the Mine Act and the standards and regulations promulgated pursuant to the Mine Act, as amended. Final § 100.2, like the existing rule, further provides that MSHA shall review each citation and order and shall make proposed assessments of civil penalties.

MSHA received no significant comments regarding proposed § 100.2. Final § 100.2 adopts the language in the proposed rule.

Determination of Penalty; Regular Assessment (§ 100.3)

(a) General

This section of the final rule addresses the determination of a penalty amount under the regular assessment provision. Final § 100.3(a)(1) is derived from existing § 100.3(a), and provides the criteria for determining penalty assessments. The final rule, like the proposal, makes several non-substantive, clarifying changes. It divides existing § 100.3(a) into two paragraphs designated as § 100.3(a)(1) and (a)(2).

Final § 100.3(a)(1), like the proposed rule, provides that the operator of any mine in which a violation of a mandatory health or safety standard occurs or who violates any other provision of the Mine Act shall be assessed a civil penalty of not more than $60,000. It further provides that each occurrence of a violation of a mandatory safety or health standard may constitute a separate offense. In addition, it provides that the amount of the proposed civil penalty shall be based on the criteria set forth in sections 105(b) and 110(i) of the Mine Act. These criteria are:

(1) The appropriateness of the penalty to the size of the business of the operator charged;

(2) The operator's history of previous violations;

(3) Whether the operator was negligent;

(4) The gravity of the violation;

(5) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and

(6) The effect of the penalty on the operator's ability to continue in business.

MSHA received no comments on proposed § 100.3(a)(1) and final § 100.3(a)(1) adopts the language in the proposed rule.

Final § 100.3(a)(2), substantively unchanged from the existing rule, sets forth the process for determining a penalty under the regular assessment provision. Under paragraph (a)(2), a regular assessment is determined by first assigning the number of penalty points to the violation by using the criteria and tables set forth in this section. The total number of penalty points is then converted into a dollar amount under the penalty conversion table in paragraph (g) of this section. If applicable, the amount of the penalty will be adjusted for good faith as provided under paragraph (f) of this section, and/or the operator's ability to continue in business as provided under paragraph (g) of this section.

Several commenters suggested that MSHA replace the proposed point system with alternative methods for computing penalties. For example, one commenter suggested that MSHA consider an alternative to the regular assessment process in which each violation would have a designated baseline penalty. Under this suggested approach, factors such as an operator's history and negligence, and the gravity of the violation would be used to increase the penalty, but the baseline penalty would not be reduced because of an operator's size, good faith in abatement, or ability to continue in business. MSHA has evaluated this suggested alternative and determined that it is not in accord with the intent of the drafters of the Mine Act because it does not appropriately consider the statutory factors when determining penalties. Therefore, final § 100.3(a)(2) retains the proposed regular assessment structure and language.

(b) Appropriateness of the Penalty to the Size of the Operator's Business

Final § 100.3(b) is derived from existing § 100.3(b). Like the existing rule, final § 100.3(b) continues to provide that the appropriateness of the penalty to the size of the operator's business is calculated by using both the size of the mine and the size of the controlling entity of the mine. In addition, final paragraph (b) continues to provide that the terms ''annual tonnage'' and ''annual hours worked'' mean coal produced and hours worked, respectively, in the previous calendar year. It also continues to provide that where a full year of data is not available, the coal produced or hours worked is prorated on an annual basis. Finally, it increases the maximum number of points that can be accrued under this criterion, from 15 points under the existing rule to 25 points.

MSHA proposed editorial, clarifying changes to this provision. MSHA proposed adding the statement that the size of coal mines and their controlling entities is measured by coal production, the size of metal and nonmetal mines and their controlling entities is measured by hours worked, and the size of independent contractors is measured by the total hours worked at all mines. No comments were received regarding this proposed clarification. Therefore, final § 100.3(b) adopts the additional statement as proposed.

Although final § 100.3(b) retains the proposed 25 maximum number of points under the size criterion, allocation of points based on the size of coal mines, metal and nonmetal mines, controlling entities, and independent contractors is different from the proposed rule. Under final § 100.3(b), the maximum number of points based on the size of coal mines and metal and nonmetal mines is reduced from the proposed 20 points to 15 points, and the maximum number of points for controlling entities of coal mines and metal and nonmetal mines is increased from the proposed five points to 10 points. Accordingly, the total maximum number of points for the size of a coal or metal or nonmetal mining operation is 25. In addition, the maximum number of points for independent contractors is increased from 20 to 25 points.

MSHA received numerous comments both in support of and against point increases based on mine size. Commenters opposed to giving consideration to size expressed concern that, under the proposed rule, nearly a quarter of all coal mines and more than half of all metal and nonmetal mines were receiving fewer points merely because of size even though many health and safety violations are cited at such smaller operations. In addition, commenters expressed concern that larger operations would receive excessive points under the proposed rule even though larger mines typically have more comprehensive safety programs than smaller mines. This final rule is responsive to many of these concerns.

With respect to comments pertaining to the proposed increase in points for mine size, the Mine Act specifically requires that the size of an operator's business be considered in determining the amount of a penalty. In response to comments, however, MSHA has made several changes to the mine size point tables in the final rule. First, MSHA created more categories for the annual tonnage range for smaller coal mines and the annual hours worked range for smaller metal and nonmetal mines.

In addition, MSHA raised the penalty points for the smallest coal mine size from zero points to one point. This is because coal mines in the smallest mine size, according to annual tonnage, include preparation plants that report no production, although many employ 20 or more workers. Therefore, MSHA determined that it would further the purpose of this rulemaking to increase points in this size range. As a result of these changes, smaller coal mines would tend to receive more size penalty points on average under the final rule as compared with the proposed rule. For example, a small coal mine with coal production between 0 and 7,500 tons will receive one point under the final rule as opposed to 0 points under the proposed rule.

Under final § 100.3(b), MSHA has increased the maximum number of points from 10 under the existing rule to 15 for the largest coal operations and metal and nonmetal operations. MSHA proposed increased points for larger operations because in order to provide an equal deterrent, the penalties must be higher for larger mines (with potentially higher revenue) in order to provide an equal deterrent. In addition, the Agency anticipated that higher penalties would be needed to help induce these operations, with more complex management structures, to take notice of and correct safety and health violations. Accordingly, final § 100.3(b) increases the maximum number of points from 10 under the existing rule to 15 (as opposed to the 20 points in the proposal).

With respect to independent contractors, MSHA proposed to increase the maximum number of penalty points from 10 to 20 to assure that the amount of the penalty is an appropriate economic inducement of future compliance by the independent contractor. This was accomplished by doubling the number of penalty points for any given number of annual hours worked. MSHA has reviewed the violations assessed in 2005 pertaining to independent contractors and determined that the maximum number of points for independent contractor size should be raised from 20 in the proposed rule to 25 in the final rule.

Under the final rule, all mine operators are subject to a maximum of 25 points for size. MSHA reviewed the violations that were assessed in 2005 and found that for most employment sizes, operator penalties were at least 50% higher, and in some cases more than 100% higher, than the penalties received by independent contractors. MSHA has concluded, from its review of penalties under the proposed rule, that some significant part of the discrepancy between operator and independent contractor penalties was due to the fact that operators received a maximum of 25 penalty points for size while independent contractors received a maximum of 20 penalty points for size. Accordingly, MSHA has increased the maximum size penalty points for independent contractors to 25 points.

In addition, as was done for operators, MSHA has created more categories capturing the annual hours worked range for smaller independent contractors. As a result, smaller independent contractors would tend to receive more penalty points for size on average under the final rule than under the proposed rule. For example, an independent contractor with 5,001 to 10,000 annual hours worked would receive two penalty points for size under the final rule as compared to zero penalty points for size under the proposed rule.

In reallocating the points for size for independent contractors, MSHA evaluated the violations that were assessed in 2005 and compared the number of violations per contractor with the given contractor size points under the existing rule, proposed rule, and final rule. MSHA's primary concern was to ensure that the average penalties per violation for independent contractors of any given employment size would be similar to the average penalties for coal and metal and nonmetal operators of a similar employment size.

In addition, MSHA received comments both in support of and against the Agency's request for comments pertaining to whether greater weight should be placed on the size of controlling entities. Proposed § 100.3(b) retained the existing maximum of five points for controlling entities; however, MSHA specifically requested comments on whether, in considering the size of the operator, greater weight should be placed on the size of the controlling entity. Some commenters supported placing greater weight on controlling entities so that smaller individual mines that are owned and controlled by larger entities would receive higher penalties. Those commenters stated, however, that for purposes of assessing a sufficiently high penalty that would get the attention of the controlling entity, an accurate measure of the controlling entity's size should be revenues, and not annual tonnage or hours worked, because many controlling entities could be involved in a number of industries and businesses that are not mining-related. Other commenters who supported placing greater weight on controlling entities questioned whether it would be a workable provision. Those commenters were concerned that because the mining industry is so fluid, tracking such information may be all but impossible, overly burdensome, and too labor intensive, and therefore beyond the agency's ability to administer.

Some commenters opposed placing greater weight on the controlling entity. Some of those commenters stated that the Mine Act only specifies the size of the operator as a penalty criterion, and such specification implies that the size of some other entity in the corporate chain should not be a consideration in calculating the size of the penalty. Other commenters opposed placing greater weight on the controlling entity because it would create a financial disadvantage for small operations owned by larger companies and thereby promote an adverse competitive environment in local markets.

MSHA agrees with comments in support of placing greater weight on controlling entities and accordingly has increased the maximum controller size penalty points from five to 10. Congress specifically required that the size not only of the particular mine involved in the violation, but the size of the operator's ''business'' is to be taken into account. MSHA has historically interpreted this statutory provision to include both the size of the mine and the size of the entity that controls the mine. Business judgments affecting the health and safety of miners are made at various levels of an organization's structure. Penalties are intended to encourage management at all levels to respond positively to the health and safety concerns affecting miners. In addition, Congress expressed its intent to place the responsibility for compliance with the Mine Act on those who control or supervise the operation of mines as well as on those who operate them. S. Rep. No. 95–181, at 40–41. Upper-level management decisions such as those affecting capital expenditures, the basic nature and scope of a corporate safety and health program, the hiring of top mine management officials, and other policy matters have a profound effect upon safety and health conditions at individual mines. Thus, penalties should be increased for controlling entities in order to influence all levels of decisionmaking. Further, the Mine Act specifically requires consideration be given to the size of the operator's business. MSHA reallocated the points for controlling entities and coal and metal and nonmetal mine size to achieve a more equitable distribution of points.

MSHA does not think that the specific comment that opposed placing greater weight on the controlling entity because it would create a financial disadvantage for small operations owned by larger companies is accurate. The comment assumes that fines assessed against smaller operations owned by larger entities are not reflected in the overall profit margin of the controlling entity.

In addition, for the same reasons stated in the above discussion concerning measuring the size of coal mines and metal and nonmetal mines, MSHA will continue to measure the size of controlling entities under this final rule as it does under the existing rule. The size of a controlling entity for coal mines is measured by annual tonnage and the size of a controlling entity for metal and nonmetal mines is measured by annual hours worked. MSHA intends to continue its existing practice of considering only the mining operations in which a controlling entity is involved in when determining the size of the controlling entity. This method has been effective as a proxy for revenue and the data are readily available to MSHA through the existing reporting requirements under 30 CFR part 50.

Final § 100.3(b) modifies the points for size from the proposed rule. Relative to the existing rule, final § 100.3(b) increases the points for the size according to the following tables.

Table II-1 -- Size of Coal Mine: Annual Tonnage of Mine

Annual tonnage of mine	Existing Rule Penalty Points
0 to 15,000	0
Over 15,000 to 30,000	1
Over 30,000 to 50,000	2
Over 50,000 to 100,000	3
Over 100,000 to 200,000	4
Over 200,000 to 300,000	5
Over 300,000 to 500,000	6
Over 500,000 to 800,000	7
Over 800,000 to 1.1 million	8
Over 1.1 million to 2 million	9
Over 2 million	10

Annual tonnage of mine	Final Rule Penalty Points
0 to 7,500	1
Over 7,500 to 10,000	2
Over 10,000 to 15,000	3
Over 15,000 to 20,000	4
Over 20,000 to 30,000	5
Over 30,000 to 50,000	6
Over 50,000 to 70,000	7
Over 70,000 to 100,000	8
Over 100,000 to 200,000	9
Over 200,000 to 300,000	10
Over 300,000 to 500,000	11
Over 500,000 to 700,000	12
Over 700,000 to 1,000,000	13
Over 1,000,000 to 2,000,000	14
Over 2,000,000	15

Table II—2 -- Size of Controlling Entity: Coal Mine

Annual tonnage	Existing Rule Penalty Points
0 to 100,000	0
Over 100,000 to 700,000	1
Over 700,000 to 1.5 million	2
Over 1.5 million to 5 million	3
Over 5 million to 10 million	4
Over 10 million	5

Annual tonnage	Final Rule Penalty Points
0 to 50,000	1
Over 50,000 to 100,000	2
Over 100,000 to 200,000	3
Over 200,000 to 300,000	4
Over 300,000 to 500,000	5
Over 500,000 to 700,000	6
Over 700,000 to 1,000,000	7
Over 1,000,000 to 3,000,000	8
Over 3,000,000 to 10,000,000	9

Over 10,000,000	10

Table II-3 -- Size of Metal and Nonmetal Mine: Annual Hours Worked at Mine

Annual hours worked at mine	Existing Rule Penalty Points
0 to 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

Annual hours worked at mine	Final Rule Penalty Points
0 to 5,000	0
Over 5,000 to 10,000	1
Over 10,000 to 20,000	2
Over 20,000 to 30,000	3
Over 30,000 to 50,000	4
Over 50,000 to 100,000	5
Over 100,000 to 200,000	6
Over 200,000 to 300,000	7
Over 300,000 to 500,000	8
Over 500,000 to 700,000	9
Over 700,000 to 1,000,000	10
Over 1,000,000 to 1,500,000	11
Over 1,500,000 to 2,000,000	12
Over 2,000,000 to 3,000,000	13
Over 3,000,000 to 5,000,000	14

Over 5,000,000	15

Table II-4 -- Size of Controlling Entity: Metal/Nonmetal Mine

Annual hours worked	Existing Rule Penalty Points
0 to 60,000	0
Over 60,000 to 400,000	1
Over 400,000 to 900,000	2
Over 900,000 to 3 million	3
Over 3 million to 6 million	4
Over 6 million	5

Annual hours worked	Final Rule Penalty Points
0 to 50,000	0
Over 50,000 to 100,000	1
Over 100,000 to 200,000	2
Over 200,000 to 300,000	3
Over 300,000 to 500,000	4
Over 500,000 to 1,000,000	5
Over 1,000,000 to 2,000,000	6
Over 2,000,000 to 3,000,000	7
Over 3,000,000 to 5,000,000	8
Over 5,000,000 to 10,000,000	9
Over 10,000,000	10

Table II-5 -- Size of Independent Contractor: Annual Hours Worked at All Mines

Annual hours worked at all mines	Existing Rule Penalty Points
0 to 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2

Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

Annual hours worked at all mines	Final Rule Penalty Points
0 to 5,000	0
Over 5,000 to 7,000	2
Over 7,000 to 10,000	4
Over 10,000 to 20,000	6
Over 20,000 to 30,000	8
Over 30,000 to 50,000	10
Over 50,000 to 70,000	12
Over 70,000 to 100,000	14
Over 100,000 to 200,000	16
Over 200,000 to 300,000	18
Over 300,000 to 500,000	20
Over 500,000 to 700,000	22
Over 700,000 to 1,000,000	24
Over 1,000,000	25

(c) History of Previous Violations

Final § 100.3(c) is derived from existing § 100.3(c). Final § 100.3(c), like the proposed rule, provides that an operator's history of previous violations is based on both the total number of violations and the number of repeat violations of the same citable provision of a standard in a preceding 15-month period. Final § 100.3(c) clarifies that the repeat aspect of the history criterion in paragraph (c)(2) applies to operators only after an operator has received 10 violations, and to independent contractor operators only after an independent contractor has received 6 violations. In addition, only assessed violations that have been paid or finally adjudicated, or have become final orders of the Federal Mine Safety and Health Review Commission (Commission), will be included in determining an operator's history.

Proposed § 100.3(c) clarified the existing provision by adding the phrase ''or have become final orders of the Commission'' in the second sentence of this paragraph to reflect MSHA's intent that only violations which have become final be included in an operator's history. In addition, the proposal made several substantive changes to existing § 100.3(c). An operator's history of violations under existing § 100.3(c) was based solely on the overall number of violations cited against an operator during a preceding 24-month period. Under the proposal, the period of time would be shortened to 15 months and an operator's history of violations would include two components: the total number of violations and the number of repeat violations in that 15-month period.

MSHA received numerous comments with respect to these proposed changes. Several commenters opposed the 15-month period. These commenters expressed concern that the proposed 15-month period would deprive MSHA of critical information about an operator's past safety record, particularly for aggregate mining operations that are seasonal or intermittent, and could result in lower penalties, particularly for repeat violators. One commenter criticized MSHA for not publishing data that the Agency used to determine that the effect of the shorter time period would have a negligible effect on an independent contractor's history. On the other hand, many commenters supported the shorter time period because it provided a more current or

more realistic indication of an operator's compliance.

MSHA has determined that the proposed 15-month period will provide the Agency with sufficient data to accurately evaluate an operator's compliance record, including any trend, even for mining operations that are inspected on a less-frequent basis, e.g., seasonal or intermittent operations. MSHA reviewed violations that were assessed in 2005 and determined that because it takes approximately three months for a penalty assessment to become a final order of the Commission, the proposed 15-month period would provide the Agency with at least one full year of data for coal and metal and nonmetal operations, and for independent contractors.

The shortened timeframe of 15 months provides MSHA with a more recent compliance history than the 24-month period under the existing rule. In addition, MSHA believes that operators who violate the Mine Act and MSHA's health and safety standards and regulations should receive penalties for those violations as close as practicable to the time the violation occurs in order to provide a more appropriate incentive for changing compliance behavior.

For coal and metal and nonmetal operations, the data would be normalized by the amount of inspection time resulting in data comparable to that of the 24-month period under the existing rule. MSHA analyzed the data for operator violations that were assessed in 2005 to determine the impact of changing to a 15-month period. For coal and metal and nonmetal operator violations that were assigned history penalty points in 2005, and had a minimum of 10 violations during the 15-month period, the average penalty points using a preceding 24-month period was 7.5 per violation. Using a preceding 15-month period, the average was 7.6 penalty points per violation.

For independent contractors, there is a negligible difference between calculating an independent contractor's history of violations under the proposed rule and under the existing rule. This is so because it generally takes up to three months for a violation to become a final order and, therefore, the 15-month period provides MSHA with at least one full year of data from which to calculate violation history. MSHA reviewed violations that were assessed in 2005, which show that there were 3,844 contractors that were issued at least one citation in the 24-month period from January 1, 2004 to December 31, 2005. Using the same number of months and the annualized calculation that is used to determine violation history in the existing rule, these contractors were issued an average of 2.3 violations per year with a median of one violation per year during this time frame. Using the 15-month period without annualizing the number of violations as proposed, these same contractors were issued an average of 2.9 violations with a median of one violation during the 15-month period between October 1, 2004 and December 31, 2005.

Several commenters expressed concern with the Agency's proposal to use violations that have become final orders of the Commission, stating that this will encourage operators to increase penalty contests to avoid counting the violation in an operator's history. MSHA included the insertion of the phrase ''final orders of the Commission'' to clarify the Agency's practice, in existence since 1982, to use only violations that have become final orders of the Commission in determining an operator's history of violations. This practice will continue to provide a measure of fairness by not including in an operator's history those violations that are in the adjudicatory process which may ultimately be dismissed or vacated. As each penalty contest becomes final, however, the violation will be included in an operator's history as of the date it becomes final.

In consideration of all comments, final § 100.3(c) retains the final order language and shortens the period of time from 24 to 15 months for determining an operator's history of violations as proposed.

Several commenters expressed confusion regarding the number of violations that would trigger application of the repeat violation provision in proposed paragraph (c)(2). MSHA intends that the repeat violation provision in final paragraph (c)(2) would only apply to contractors after an operator has received 10 violations, and to independent contractor operators only after an independent contractor has received 6 violations. Therefore, final § 100.3(c) includes clarifying language.

Final § 100.3(c)(1) is a new paragraph derived from existing § 100.3(c). Final § 100.3(c)(1), like the proposed rule, provides that history penalty points are assigned on the basis of the number of violations per inspection day (VPID) for coal operations and metal and nonmetal operations. Under final paragraph (c)(1), penalty points are not assigned to coal operations and metal and nonmetal operations that receive fewer than 10 violations in a preceding 15-month period. For independent contractors, final § 100.3(c)(1), like the proposed rule, provides that penalty points are assigned on the basis of the total number of violations at all mines. Penalty points are not assigned to independent contractors with fewer than 6 violations. The maximum number of points that an operator may receive for this criterion is 25 points.

Most commenters supported the proposed continuation of using VPID to calculate points for coal and metal and nonmetal operator's history of violations, stating that VPID provides the truest measure of an operator's compliance. Some of these commenters, however, requested that MSHA clarify its definition of an inspection day. These commenters stated that MSHA's method of determining inspection days is different between coal mines and metal and nonmetal mines, which affects how points are computed.

MSHA's definition of VPID (Violations per Inspection Day) is calculated by taking the total number of assessed violations at a mine for a specified period that have either been paid or have become a final order of the Commission and dividing it by the total number of inspection days at the mine during the same specified period. There is no functional difference between a violation that an operator pays and a final order of the Commission.

Prior to April 2005, MSHA used different definitions of an inspection day for coal and metal and nonmetal mines. For coal mines, each mine visit by each Authorized Representative of the Secretary (AR) was considered a separate inspection day. For metal and nonmetal mines, the total time for each inspection event was divided by five hours to determine the number of inspection days for that event. For both coal and metal and nonmetal operations, the number of inspection days were then summed for the specified period. In April 2005, MSHA began its transition to use the per-visit method previously used only for coal mines for all types of mines. MSHA currently calculates inspection days for assessment purposes by counting one inspection day for each AR that spends any on-site inspection time during any calendar day. Supervisory and trainee time is excluded from the inspection day calculation as are non-inspection activities. The same method is used for all coal, metal, and nonmetal mines.

Some commenters expressed concern that the proposed new provision that history penalty points not be assigned to coal operations and metal and nonmetal operations with fewer than 10 violations in a preceding 15-month period essentially amounted to a free pass for small mines and constituted selective enforcement of the Mine Act. MSHA

projects that this new provision would work similar to existing § 100.4(b), which excludes from excessive history mines having 10 or fewer assessed violations in a preceding 24-month period. In making a decision to include the new provision in the proposed rule, MSHA considered various factors, such as small, seasonal, and intermittent operations, all of which may result in an operation having a low number of inspection days during the specified period. For such operations, even though the total number of violations may be low, i.e., three violations in a preceding 15-month period, the VPID could easily be greater than the highest VPID level, or 2.1, and the operator would receive the maximum number of 25 points. To avoid the inequitable result of subjecting any mining operation with only a few violations in a preceding 15-month period to an unrealistically high VPID, MSHA concludes that the new provision, under which penalty points are not assigned to coal operations and metal and nonmetal operations with fewer than ten violations in a preceding 15-month period, is necessary. Therefore, the final rule includes the proposed language.

Several commenters suggested, as an alternative to the proposal, that the final rule include a provision that history penalty points not be assigned to independent contractors with fewer than 10 violations in a preceding 15-month period. In considering this suggestion, MSHA reviewed its violation data which showed that between October 1, 2004 and December 31, 2005, approximately 500 contractors would have received history penalty points for 6 or more violations during a 15-month period. This number would be reduced, however, to approximately 200 if contractors with fewer than 10 violations were not assessed history points. Stated differently, under MSHA's violation data, 11% of the independent contractor violations would have received history penalty points for six or more violations during a previous 15-month period. This percentage would be reduced, however, to approximately 6% if contractors with fewer than 10 violations were not assessed history points. Although there was strong support for the suggested alternative, MSHA has decided that the alternative does not further the purpose of this rulemaking and that the Agency will retain the proposed language that penalty points not be assigned to independent contractors with fewer than 6 violations in a preceding 15-month period.

MSHA specifically requested comments as to whether the Agency should adopt the proposed approach for calculating an independent contractor's history of violations by using the total number of assessed violations at all mines during a preceding 15-month period, or whether the Agency should use an annualized 2-year average as it does under the existing rule. Under the existing rule, the number of violations for independent contractors is based on an annual average of all violations over a two year period at all mines. MSHA received several comments expressing skepticism with the Agency's statement that only a minimal increase in the average assessment issued to independent contractors would result by eliminating the annualized average. In addition, some commenters suggested that MSHA use VPIDs when computing contractor history. These commenters stated that contractors are required to have a single MSHA contractor ID number for nationwide operations, and that if working daily at multiple mine sites across the country, that contractor is likely to be inspected far more frequently than the average mine operator. These commenters concluded that MSHA's proposal lacks an adequate foundation and results in unfair treatment of independent contractors.

VPID cannot be used to calculate a contractor's history of violations because MSHA does not record inspection time for contractors. As explained above, MSHA tracks contractor violations by counting total violations within a specified period. Although MSHA received some comments critical of the proposed method, it has proved to be both successful and practical in calculating a contractor's violation history under the existing rule.

The proposed rule increased the maximum number of points under this criterion from 20 under the existing regulation to 25 points. The final rule retains the proposed 25 maximum points; however, MSHA raised penalty points for independent contractors with 8 to 50 violations during the previous 15-month period, relative to what was proposed. The additional increase in points reflects MSHA's desire to increase points for independent contractors so as to reduce the discrepancy in penalties between operators and independent contractors.

Tables II–6 and II–7 compare the existing and final penalty point scales for coal and metal and nonmetal operators and independent contractors.

Table II-6 -- History of Previous Violations: Mine Operators

Violations per inspection day	Existing Rule Penalty Points
0 to 0.3	0
Over 0.3 to 0.5	2
Over 0.5 to 0 7	4
Over 0.7 to 0.9	6
Over 0.9 to 1.1	8
Over 1.1 to 1.3	10
Over 1.3 to 1.5	12
Over 1.5 to 1.7	14
Over 1.7 to 1.9	16
Over 1.9 to 2.1	18
Over 2.1	20

Mine Operator's Overall History of Violations Per Inspection Day	Final Rule Penalty Points
0 to 0.3	0
Over 0.3 to 0.5	2
Over 0.5 to 0 7	5
Over 0.7 to 0.9	8
Over 0.9 to 1.1	10
Over 1.1 to 1.3	12
Over 1.3 to 1.5	14
Over 1.5 to 1.7	16
Over 1.7 to 1.9	19
Over 1.9 to 2.1	22
Over 2.1	25

Table II-7 -- History of Previous Violations: Independent Contractors

Number of violations	Existing Rule Penalty Points
0 to 5	0
Over 5 to 10	2
Over 10 to 15	4
Over 15 to 20	6
Over 20 to 25	8
Over 25 to 30	10
Over 30 to 35	12
Over 35 to 40	14
Over 40 to 45	16
Over 45 to 50	18
Over 50	20

Independent Contractor's Overall History of Number of Violations	Final Rule Penalty Points
0 to 5	0
6	1
7	2
8	3
9	4
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
Over 29	25

In the proposal, the Agency added a new component to the history criterion to target operators who allowed the same violations to recur, without correcting the underlying root cause. The new § 100.3(c)(2), like the proposal,

adds repeat violations of the same citable provision of a standard to an operator's history of violations and could account for a maximum of 20 penalty points. Under the final rule, an operator would not receive repeat penalty points until that operator had a minimum of 6 repeat violations in a preceding 15-month period.

In response to MSHA's request for comments on this proposal, many commenters opposed it because they believed that it counted some violations twice, once in the overall violation history and again in the repeat violation category, merely for the purpose of increasing penalties. In addition, some of these commenters stated that MSHA's many broad performance-oriented standards are sometimes applied to multiple conditions that are in reality, quite different and that, in these circumstances, operators would be unfairly penalized for repeat violations which were intended to cover only the same or similar conditions. Also, some commenters expressed concern that increased penalties for repeat violations would be unfair in situations in which an MSHA inspector issues multiple citations for multiple violations of the same hazard.

Although some commenters opposed the repeat violation provision as being unfair and redundant, other commenters supported it. MSHA believes that this new provision is consistent with and responsive to Congress's desire to curb repeat violations. Reporting on the bill that became the Mine Act, the Senate Committee on Human Resources stated:

> In evaluating the history of the operator's violations in assessing penalties, it is the intent of the Committee that repeated violations of the same standard, particularly within a matter of a few inspections, should result in the substantial increase in the amount of the penalty to be assessed. Seven or eight violations of the same standard within a period of only a few months should result, under the statutory criteria, in an assessment of a penalty several times greater than the penalty assessed for the first such violation.

S. Rep. No. 95–181, at 43.

MSHA analyzed violation data for the 15-month period from January 1, 2005, through March 31, 2006. These data showed that often inspectors issued citations for the same safety and health hazards at the same operation within a specified period of time. From these data, the Agency concludes that once a condition is identified, these operators are correcting that particular condition without addressing the root cause of the problem. This new provision is aimed at preventing these types of occurrences and thereby providing a systematic improvement to miner safety and health.

Some of the commenters who supported the proposed repeat violation provision expressed concern that it was too narrowly construed because it only counted violations of the same subsection of an MSHA standard. One commenter provided the example that violations for combustible materials under 30 CFR 75.400 should not be dissected into the specific nature of the combustible material, i.e., paper, coal dust, wood, etc., when considering repeat status. Another commenter suggested, as an alternative, that MSHA retain its discretion to use broader categories of violations of standards in determining whether a company is a repeat violator.

MSHA does not agree that the repeat provision should include broader categories of violations. MSHA analyzed violation data for the 15-month period from January 1, 2005, through March 31, 2006. MSHA's analysis, interpreting ''same standard'' to mean ''same citable provision,'' showed that 698 of the 10,227 mines with violations had at least 6 violations of the same citable provision of a standard. Further, 99 of the 698 mines had more than 20 violations of the same citable provision during the 15-month period. Limiting repeat violations to the same citable provision targets those operators who show a repeated lack of commitment to miner safety and health; this is precisely the type of behavior that the Agency seeks to change.

MSHA specifically requested comments on whether, in determining penalty points for repeat violations, the Agency should factor in the number of inspection days during which the repeat violations were cited.

Several commenters opposed factoring in the number of inspection days when counting violations under this provision. Most commenters, however, supported using repeat violations per inspection day (RPID) to calculate repeat violations. These commenters expressed concern that operators of large mines generally receive more violations than smaller mines solely because larger mines have a greater number of inspections and, therefore, calculating repeat violations using RPID would provide a level of fairness missing from the proposed rule. The application of RPID to the new repeat provision would account for increased inspector presence in large mines and would place all mines on a more equitable basis. Therefore, this final rule incorporates a new repeat violations table which applies RPID to the calculation for coal and metal and nonmetal operations. Under this table, repeat points apply only where there have been a minimum of 6 repeat violations. In addition, for the same reasons as stated previously, MSHA will not apply the repeat criterion until a coal and metal and nonmetal operator has received a minimum of 10 violations within a preceding 15-month period.

RPID cannot be used to calculate repeat violations for independent contractors because MSHA does not record inspection time for contractors. Therefore, the final rule, like the proposed rule, uses the total number of violations in a 15-month period for establishing repeat violation history for independent contractors. Although MSHA received some comments critical of the proposal with respect to independent contractors, the Agency's historical method of calculating history for independent contractors has proved to be both successful and practical.

The final rule revises the proposed table for repeat violations for independent contractors by raising the penalty points for contractors with 6 to 20 repeat violations during the previous 15-month period. Under the final rule, an independent contractor will receive the maximum 20 points for 15 or more repeat violations during the previous 15-month period. These revisions reflect MSHA's desire to increase points for independent contractors, so as to reduce the discrepancy in penalties between operators and independent contractors. The final rule, therefore, retains the proposed provision for repeat violations for independent contractors.

MSHA requested comments on whether all violations should be used to calculate repeat violations, or whether only S&S violations should be used. Many commenters stated it is unfair to count non-S&S violations in the repeat violations provision because it would subject operators to significantly higher penalties for repeated violations that have little or nothing to do with miner safety and health, such as repeated violations of paperwork standards or merely technical violations.

Other commenters, however, stated that MSHA should look at all violations, including non-S&S citations, in calculating penalties for repeat violations because even non-S&S violations can adversely affect miner safety and health. MSHA agrees. The final rule includes all violations, both S&S and non-S&S, in the calculation of repeat violation history. Even though the violations that were assessed in 2005 show that two-thirds of all violations were non-S&S violations, non-S&S violations of technical

standards and low-gravity violations have the potential to pose a health or safety danger to miners. By excluding non-S&S violations from this provision, MSHA would not be taking a proactive approach to advancing miner safety and health; non-S&S violations can lead to S&S violations and even greater hazards to miners. In addition, including non-S&S violations would be consistent with Congress's intent that penalties must provide an effective deterrent against all offenders, and particularly against offenders with records of past violations, regardless of whether they are S&S or non-S&S.

Some commenters who opposed the proposed repeat violation provision stated that, if the provision is adopted, MSHA should avoid retroactive application of the provision by not including violations that occurred before promulgation of the final rule. These commenters stated that, had they known that violations that occurred prior to the final rule could be used to trigger significantly higher penalties, they would have contested those violations to avoid inclusion under the repeat violations provision. Final paragraph (c)(2) does not apply the repeat violation provision retroactively. The repeat violation provision under paragraph (c)(2), like the total number of violations provision under paragraph (c)(1), imposes higher penalties for violations that occur after publication of this final rule. MSHA, however, has the authority to consider violations which occurred before promulgation of this final rule as part of an operator's history of violations, when determining penalties for violations that occur after issuance of the final rule. In taking this action, MSHA would not be impairing operator rights, increasing an operator's liability for past violations, or imposing new duties with respect to violations that have already occurred. Rather, MSHA would be taking past violations into consideration in determining a penalty for a violation that occurred after promulgation of this final rule. MSHA, however, plans to pay particular attention to any circumstances resulting in an unfair penalty increase. Under such circumstances, MSHA may process the violation under the special assessment provision to determine a more appropriate penalty.

Penalty points for the number of repeat violations for coal and metal and nonmetal operations are presented in Table II–8. Penalty points for the number of repeat violations for independent contractors are presented in Table II–9.

Table II-8 -- History of Previous Violations-Repeat Violations Coal and Metal and Nonmetal Operators with a Minimum of 6 Repeated Violations

Number of Repeat Violations Per Inspection Day	Final Rule Penalty Points
0 to 0.01	0
Over 0.01 to 0.015	1
Over 0.015 to 0.02	2
Over 0.02 to 0.025	3
Over 0.025 to 0.03	4
Over 0.03 to 0.04	5
Over 0.04 to 0.05	6
Over 0.05 to 0.06	7
Over 0.06 to 0.08	8
Over 0.08 to 0.10	9
Over 0.10 to 0.12	10
Over 0.12 to 0.14	11
Over 0.14 to 0.16	12
Over 0.16 to 0.18	13
Over 0.18 to 0.20	14
Over 0.20 to 0.25	15
Over 0.25 to 0.3	16
Over 0.3 to 0.4	17
Over 0.4 to 0.5	18
Over 0.5 to 1.0	19
Over 1.0	20

Table II-9 -- History of Previous Violations: Repeat Violations for Independent Contractors.

Number of Repeat Violations of the Same Standard	Final Rule Penalty Points
5 or fewer	0
6	2
7	4
8	6
9	8
10	10
11	12
12	14
13	16
14	18
More than 14	20

(d) Negligence

Final § 100.3(d), derived from the existing rule, provides for evaluating the degree of negligence involved in a violation under five categories: No negligence, low negligence, moderate negligence, high negligence, and reckless disregard. Under the final rule, like the proposal, no negligence receives 0 points, low negligence receives 10 points, moderate negligence receives 20 points, high negligence receives 35 points, and reckless disregard receives 50 points. Moderate negligence, high negligence, and reckless disregard receive increasingly higher penalty points under the final rule. Penalty points for these latter categories also are higher than those in the existing rule, reflecting MSHA's intent to target operators who exhibit an increasing lack of commitment to and disregard for miner safety and health.

Several commenters agreed with the proposed points increase for the three highest levels of negligence. Several commenters opposed the proposed increases as being excessive and stated that the degrees of negligence are subjective and are often evaluated inconsistently by MSHA inspectors.

MSHA expanded the levels of negligence from three to five in 1982, in response to comments recommending more definite criteria for the assignment of penalty points to an operator's negligence. 47 FR 22286, 22289–90 (May 21, 1982). In so doing, MSHA intended that five levels of negligence would allow inspectors to more appropriately consider all of the facts and circumstances surrounding a violative condition or practice. Although negligence evaluations can be subjective, the five levels of negligence permit MSHA inspectors to exercise independent judgment based on the circumstances surrounding the violation and to make appropriate decisions with respect to the nature or existence of mitigating circumstances. Negligence is defined in the rule and in the negligence section of the ''Citation and Order Writing Handbook for Coal Mines and Metal and Nonmetal Mines'' at *http://www.MSHA.gov.* The Handbook provides guidance to MSHA compliance personnel when issuing or reviewing citations and orders, and is intended to achieve consistent enforcement.

MSHA disagrees with the comments that the increase in penalty points for negligence is excessive. The increase in penalty points included in the final rule is in accord with the Mine Act's requirement to consider an operator's negligence when assessing penalties. This aspect of the final rule was designed so that higher penalties would be assigned to operators who exhibit increasingly higher levels of negligence, i.e., a lack of care towards protection of miners from safety and health hazards. MSHA intends that the final rule's increase in penalty points for the negligence criterion will result in increased compliance with the Mine Act and MSHA's safety and health standards and regulations and a greater commitment to safety and health on the part of mine operators. No changes were made to the proposal; the final rule adopts the proposed language.

Table II–10 shows the penalty points for negligence under the existing and final rule.

Categories	Existing Rule Penalty Points	Final Rule Penalty Points
No negligence (The operator exercised diligence and could not have known of the violative condition or practice.)	0	0
Low negligence (The operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances.)	10	10
Moderate negligence (The operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.)	15	20
High negligence (The operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances.)	20	35
Reckless Disregard (The operator displayed conduct which exhibits the absence of the slightest degree of care.)	25	50

(e) Gravity

Final § 100.3(e) is derived from the existing provision and, like the proposal, provides that the gravity or seriousness of a violation is determined by three factors: (1) The likelihood of occurrence of an event, (2) the severity of injury or illness if the event has occurred or were to occur, and (3) the number of persons potentially affected. The final rule, like the proposal, increases penalty points assigned under this provision for each of the three gravity factors as follows: (1) Points for likelihood of occurrence increase from 10 to 50; (2) points for severity of injury or illness increase from 10 to 20; and (3) points for the number of persons potentially affected increase from 10 to 18. The total maximum points is increased from 30 to 88 under the final gravity criterion.

Several commenters supported the proposed increased points for gravity. One commenter suggested that the proposed points for the severity and persons potentially affected should have increased at the same rate as the likelihood factor. Another commenter, who supported increased points for gravity in general, expressed concern that the factor pertaining to persons potentially affected is routinely understated by MSHA inspectors, and results in fewer penalty points and thus a lower penalty than what should be assessed.

Other commenters opposed the increase in points for gravity. These commenters expressed concern that MSHA essentially eliminated the distinction between S&S and non-S&S violations from a penalty perspective. These commenters gave the example that a non-S&S violation with an unlikely likelihood and a fatal severity would receive 30 gravity points whereas an S&S violation with a reasonably likely likelihood and a lost workdays severity would receive 35 gravity points.

MSHA disagrees with comments stating that proposed increased points for gravity are excessively high. Increased points for gravity are directed at operators whose mines experience the more serious mine safety and health hazards. Increased points, which result in increased penalties, should encourage these operators to place greater emphasis on immediately correcting the more serious violations

because they pose the greatest safety and health risk to miners.

The Agency does not believe that this aspect of the final rule results in a blurred distinction between S&S and non-S&S violations. MSHA reviewed violations that were assessed in 2005 and projects that S&S violations would receive an average penalty of $1,385 under the final rule and non-S&S violations would receive an average penalty of $207.

Moreover, MSHA's intent is to place much more emphasis on the overall gravity of a violation. To achieve this goal, each of the three gravity point tables is revised to increase the points for likelihood, severity, and persons potentially affected. In doing so, the Agency allocated twice as many points for a permanently disabling injury than an injury that resulted only in lost work days. MSHA also doubled the number of points for a fatal injury, as compared with a permanently disabling injury. This approach to increasing gravity points for severity is reasonable and necessary because MSHA believes that, while all three components of the gravity determination are important in determining risk, the likelihood or probability of an injury occurring should carry more weight in the overall penalty determination.

For likelihood, MSHA made the increase in gravity points between levels more pronounced as the likelihood of an injury increased. An unlikely situation has some potential to result in an injury, and a reasonably likely situation has a higher potential for an injury to occur. MSHA's position is that those violations with any degree of likelihood should receive more points and, as the likelihood increases, the number of associated points should increase significantly. The Agency considers a situation that resulted in a ''highly likely'' or ''occurred'' likelihood as a worst-case scenario deserving significantly higher points.

Regarding MSHA inspectors' evaluation of the number of persons potentially affected, MSHA continues to evaluate inspector citations to determine where improvements can be made. The ''number of persons potentially affected'' is a topic covered in the gravity section of the ''Citation and Order Writing Handbook for Coal Mines and Metal and Nonmetal Mines'' at *http://www.MSHA.gov.* The Handbook provides guidance to MSHA compliance personnel when issuing or reviewing citations and orders, and is intended to achieve consistent enforcement. MSHA has identified the ''number of persons potentially affected'' as an area that needs to be emphasized in both new and refresher inspector training. In an effort to improve inspector performance and consistency in this area, the Agency has undertaken a number of initiatives. It is emphasizing this area in inspector training, placing greater emphasis on this issue in staff meetings at all levels—headquarters and field, and improving enforcement oversight.

Final § 100.3(e) adopts the language in the proposed rule.

Tables II–11, II–12, and II–13 show the existing and final penalty points for gravity.

Table II-11--Gravity: Likelihood

Likelihood of occurrence	Existing Rule Penalty Points	Final Rule Penalty Points
No likelihood	0	0
Unlikely	2	10
Reasonably likely	5	30
Highly likely	7	40
Occurred	10	50

Table II-12--Gravity: Severity

Severity of injury or illness if the event has occurred or were to occur	Existing Rule Penalty Points	Final Rule Penalty Points
No lost work days (All occupational injuries and illnesses as defined in 30 CFR Part 50 except those listed below.)	0	0
Lost work days or restricted duty (Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.)	3	5
Permanently disabling (Any injury or illness which would be likely to result in the total or partial loss of the use of any member or function of the body.)	7	10
Fatal (Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.)	10	20

Table II-13--Gravity: Persons Potentially Affected

Number of persons potentially affected if the event has occurred or were to occur	Existing Rule Penalty Points
0	0
1	1
2	2
3	4
4 to 5	6
6 to 9	8
More than 9	10

Number of persons potentially affected if the event has occurred or were to occur	Final Rule Penalty Points
0	0
1	1
2	2
3	4
4	6
5	8
6	10
7	12
8	14
9	16
10 or more	18

(f) Demonstrated Good Faith of the Operator in Abating the Violation

Final § 100.3(f), like the proposal, decreases the amount of the reduction of the penalty, where the operator abates the violation within the time set by the inspector, from 30% under the existing rule to 10% under this final rule. In addition, the final rule, like the proposal, eliminates the existing provision which adds 10 points where an operator does not abate the violation within the specified time period.

As stated throughout this rulemaking, MSHA takes the demonstrated good faith of the operator in abating the violation into consideration because it is one of the statutory criteria to be used in determining civil penalties under the Mine Act. Several commenters supported the proposed decrease in the ''good faith'' reduction from 30% to 10%, but others opposed the decrease, stating that MSHA should retain the existing 30% reduction because any smaller amount would be a disincentive for operators to promptly abate violations.

MSHA does not anticipate that changing the good faith reduction from 30% to 10% would adversely affect miner health and safety or the prompt abatement of violations. Based on 2005 assessed violation data, mine operators realized a $5.7 million decrease in proposed civil penalty assessments due to the 30% good faith reduction. MSHA projects that the 10% good faith reduction in the final rule will result in a $4.7 million decrease in proposed penalty assessments, although the Agency acknowledges that total penalties increase significantly under the final rule. MSHA believes that the $4.7 million decrease under the final rule provides an incentive equivalent to that in the existing rule for mine operators to abate violations in a timely manner.

The strongest incentive for abatement under the final rule is a withdrawal order issued under section 104(b) of the Mine Act. The Mine Act requires that the inspector set a ''reasonable time'' for abatement for all violations, regardless of severity. The inspector sets the abatement time based on the nature of the hazard and the corrective actions needed. Should the mine operator fail to abate the hazard within the prescribed time, the inspector will issue a withdrawal order closing the affected

area of the mine. In 2006, MSHA used this regulatory tool and issued 1,200 withdrawal orders that resulted in closure of the area of the mine affected by the violation.

All mine operators should take their responsibilities for mine safety and health seriously and promptly abate all violations of the Mine Act and MSHA's safety and health standards and regulations. The Agency also takes seriously its responsibility to administer the civil penalty provisions in the Mine Act in accordance with the statutory criteria. Congress intended that MSHA provide some consideration to mine operators who, when issued a citation for a violation of a safety and health standard, correct that violation within the time set by the inspector. In recognition of the statutory intent, the final rule includes an appropriate ''good faith'' reduction. MSHA continues to believe that operators should take prompt corrective action, regardless of the amount of the monetary incentive, in order to avoid the prolonged existence of a violative or dangerous condition in the mine. In the event, however, that an operator does not abate a violation within the time set by the inspector, MSHA believes that the Mine Act's provisions for withdrawal orders and daily penalties, discussed below, provide an adequate compliance incentive. For these reasons, and in response to comments, the final rule retains the 10% ''good faith'' reduction, as proposed.

Some commenters opposed eliminating the 10 additional points under the existing rule where an operator does not abate the violation within the time specified, while others supported the proposed elimination of 10 additional points. In retaining this aspect of the proposal, the Agency intends that the Mine Act's following two sanctions for an operator's failure to correct violations within the time set by the inspector be applied: (1) issuance of a withdrawal order under § 104(b) of the Mine Act,; and (2) application of the daily penalty under § 110(b) of the Act. MSHA believes that these two sanctions are adequate tools for the Agency to use to address the circumstances in which an operator does not abate the violation within the time specified by the MSHA inspector.

Final § 100.3(f) adopts the language in the proposed rule.

(g) Penalty Conversion Table

Final § 100.3(g), like the proposal, provides the penalty conversion table used to convert total penalty points to a dollar amount. The final rule, like the proposal, retains the statutory maximum penalty of $60,000. In addition, it establishes a new minimum penalty of $112, up from $72 in the existing rule.

The proposed rule converted points to dollars as follows: for 60 points or fewer, the minimum dollar amount was $112. Each additional point above 60 up to 133 caused the dollar value to increase by a fixed 8.33%. The dollar value assigned for 133 points was $38,387. At 133 points, the dollar value increased by approximately $3,070 for each additional penalty point. The maximum number of points was 140 and the maximum dollar value was $60,000.

MSHA received some comments stating that the $112 minimum penalty was too low. The final rule retains the $112 minimum penalty, which is a 56% increase from the minimum penalty under the existing rule, and which MSHA believes represents a reasonable adjustment upward from the $60 minimum penalty under the existing penalty regulations.

Several commenters stated that penalties under the proposed rule could result in lower penalties than under the existing regulations. One commenter provided the example that under the existing regulations 89 points are required before MSHA imposes a fine of more than $25,000, while under the proposed regulations, 128 points would be required before MSHA would impose a fine of more than $25,000. As stated earlier in this preamble, to accurately determine a penalty under the proposed rule one cannot do a side-by-side comparison of existing to proposed penalties without also considering how the point tables have changed.

Although MSHA projects that the vast majority of violations will receive an increase in penalties under this final rule, MSHA's analysis of violations that were assessed in 2005 shows that a small percentage of violations—5%, or 5,858 of the 116,673 total violations—would receive a lower penalty under the final rule than under the existing regulations. Of the violations that would receive a lower penalty, approximately 3,485 result from use of the 15-month period and the 10-violation threshold for assigning penalty points under violation history. MSHA believes that the penalty reductions in these cases are appropriate in that they generally reflect an improvement in the most recent violation history or a small number of safety and health hazards.

The remaining 2%, approximately 2,400 violations, involve a reduction in the penalty for other reasons. Of these, 945 are violations which were assessed under the special assessment provision of the existing rule, but would receive a regular assessment under the final rule. As mentioned, however, in any circumstance in which MSHA's regular assessment may result in anomalies or inequitable results, MSHA may choose to apply the special assessment provision of this final rule to assure that the penalty is appropriate. Another 671 are violations which, under the final rule, would not receive the 10-point penalty for failure to abate under the existing rule. As stated previously, MSHA believes that the Mine Act's two sanctions for an operator's failure to correct violations within the time set by the inspector—the issuance of a withdrawal order under § 104(b) of the Mine Act and the daily penalty under § 110(b) of the Act—are adequate tools for the Agency to use to address the circumstances in which an operator does not abate the violation within the time specified by the MSHA inspector. The final 757 violations involve a lowering of the penalty by a negligible amount.

Final § 100.3(g) adopts the language in the proposed rule.

Table III-14 -- Existing and final penalty point conversion tables.

Points	Penalty Amount Under Existing Rule	Penalty Amount Under Final Rule
0	$72	$112
1	$72	$112
2	$72	$112
3	$72	$112
4	$72	$112
5	$72	$112
6	$72	$112
7	$72	$112
8	$72	$112
9	$72	$112
10	$72	$112
11	$72	$112
12	$72	$112
13	$72	$112
14	$72	$112
15	$72	$112
16	$72	$112
17	$72	$112
18	$72	$112
19	$72	$112
20	$72	$112
21	$80	$112
22	$87	$112
23	$94	$112
24	$101	$112
25	$109	$112
26	$120	$112
27	$131	$112
28	$142	$112
29	$153	$112
30	$164	$112
31	$178	$112
32	$193	$112

33	$207	$112
34	$221	$112
35	$237	$112
36	$254	$112
37	$273	$112
38	$291	$112
39	$310	$112
40	$327	$112
41	$354	$112
42	$383	$112
43	$409	$112
44	$437	$112
45	$463	$112
46	$500	$112
47	$536	$112
48	$629	$112
49	$749	$112
50	$878	$112
51	$1,033	$112
52	$1,198	$112
53	$1,376	$112
54	$1,566	$112
55	$1,769	$112
56	$2,003	$112
57	$2,252	$112
58	$2,515	$112
59	$2,793	$112
60	$3,086	$112
61	$3,419	$121
62	$3,770	$131
63	$4,137	$142
64	$4,521	$154
65	$4,856	$167
66	$5,099	$181
67	$5,342	$196
68	$5,585	$212
69	$5,828	$230
70	$6,071	$249
71	$6,374	$270
72	$6,678	$293
73	$6,981	$317
74	$7,285	$343
75	$7,588	$372
76	$7,892	$403
77	$8,499	$436

78	$9,106	$473
79	$9,713	$512
80	$10,321	$555
81	$11,535	$601
82	$12,749	$651
83	$13,963	$705
84	$15,177	$764
85	$16,392	$828
86	$18,213	$897
87	$20,642	$971
88	$23,070	$1,052
89	$25,498	$1,140
90	$27,927	$1,235
91	$30,355	$1,337
92	$33,391	$1,449
93	$36,427	$1,569
94	$39,462	$1,700
95	$42,498	$1,842
96	$45,533	$1,995
97	$48,569	$2,161
98	$51,605	$2,341
99	$54,640	$2,536
100	$60,000	$2,748
101		$2,976
102		$3,224
103		$3,493
104		$3,784
105		$4,099
106		$4,440
107		$4,810
108		$5,211
109		$5,645
110		$6,115
111		$6,624
112		$7,176
113		$7,774
114		$8,421
115		$9,122
116		$9,882
117		$10,705
118		$11,597
119		$12,563
120		$13,609
121		$14,743
122		$15,971

123		$17,301
124		$18,742
125		$20,302
126		$21,993
127		$23,825
128		$25,810
129		$27,959
130		$30,288
131		$32,810
132		$35,543
133		$38,503
134		$41,574
135		$44,645
136		$47,716
137		$50,787
138		$53,858
139		$56,929
140 or more		$60,000

(h) Effect on Operator's Ability To Remain in Business

Final § 100.3(h), like the proposal, provides that MSHA presumes that the operator's ability to continue in business will not be affected by payment of a civil penalty. In addition, like the proposal, it provides that MSHA may adjust the penalty if the operator submits information to MSHA concerning the operation's financial status which shows that payment of the penalty will adversely affect the operator's ability to continue in business.

In the proposal, MSHA made several non-substantive editorial changes for clarity.

Several commenters expressed concern that the proposed increase in penalties would put small operations out of business. Many of these commenters requested a variance from the penalty regulations. In addition, one commenter stated that MSHA should not take an operator's ability to continue in business into consideration when determining a penalty. This commenter expressed concern that an operator that cannot afford to pay its penalties should not operate at all.

MSHA takes an operator's ability to continue in business into consideration because it is one of the statutory criteria to be used in determining civil penalties under the Mine Act. Under this final rule, as in the existing rule, MSHA may adjust the penalty if the operator demonstrates that the amount of the penalty will adversely affect the operator's ability to continue in business. A variance cannot be granted, however, because under the Mine Act, MSHA may modify only the application of a safety standard.

Final § 100.3(h) adopts the language in the proposed rule.

Unwarrantable Failure (§ 100.4)

Final § 100.4, like the proposal, deletes the single penalty assessment provision in existing § 100.4. The existing single penalty assessment provided for a $60 penalty for certain non-S&S violations, *i.e.*, those violations that were not reasonably likely to result in reasonably serious injury or illness, that were abated within the time set by the inspector, and that did not involve an operator with an excessive history of violations.

MSHA received numerous comments on the proposed deletion of the single penalty assessment provision. Some commenters supported deleting the single penalty assessment because they stated that these violations were often perceived as insignificant and accepted as the cost of doing business. Some of these commenters provided examples of operators receiving $60 single penalties for violations pertaining to accumulations of combustible material, roof control problems, and ventilation problems, where it was cheaper to pay the $60 penalty than to correct the underlying violative condition.

Other commenters opposed deleting the single penalty assessment. Those commenters stated that the single penalty is generally reserved for non-S&S violations that have little or no safety consequences and, therefore, these violations should receive minimal penalties. Most of the commenters opposed to deleting the single penalty assessment expressed concern that operators would be required to spend disproportionate amounts of time and resources on violations having minimal impact on safety and health. In addition, some commenters expressed concern that deleting the single penalty assessment will result in increased contests and litigation. After careful review of all comments, an examination of Agency data, and based upon Agency experience, MSHA has decided that the single penalty assessment should not be included in the final rule.

As mentioned earlier, the agency has structured a civil penalty regulation which focuses on reducing all mine safety and health hazards—both non-S&S and S&S. MSHA believes that every violation has the potential to contribute to hazardous or unhealthful conditions and should be individually assessed a civil penalty that is commensurate with the severity of the violation. Also, MSHA's experience and data reveal that often non-S&S violations, if left uncorrected, will lead to more hazardous situations. For this reason, MSHA is deleting the single penalty assessment provision in an effort to prompt the mining community to pay attention to, and promptly abate, all violations.

Non-S&S violations are not always trivial violations deserving nominal penalties. Accurate recordkeeping, good housekeeping, and meaningful training are essential elements of an effective safety and health program in the workplace. For example, an operator's failure to properly train a miner in first aid is often classified as a non-S&S violation; however, such a violation sometimes can result in fatal consequences.

Moreover, a violation that is not reasonably likely to result in a reasonably serious injury or illness may eventually result in a serious injury or illness if it is not corrected. By deleting the single penalty assessment provision, the Agency believes that mine operators will focus more attention on identifying and correcting the root causes of mine safety and health hazards. These non-S&S violations should not be viewed as an insignificant part of the cost of doing business. Rather, they should be evaluated under the regular assessment provision so that the operator's size, history, negligence, and the gravity of the violation can be taken into consideration in determining the amount of the penalty assessment. Operators with a low history of violations, violations that truly involve minor or technical violations, that pose less serious threats to health and safety, that involve low or no negligence, and that are abated within the time set by the inspector, likely will receive a total of 60 points or fewer and a penalty of only $100 (including application of the ''good faith'' reduction) under the regular assessment provision of this final rule.

Some commenters requested that MSHA include empirical data and projections pertaining to deleting the single penalty assessment provision. MSHA, using violations that were assessed in 2005, converted penalties assessed under the single penalty provision of the existing rule to penalties under the regular assessment provision of this final rule. MSHA found that the $60 penalties assessed under the single penalty provision would range from $100 (assuming application of the ''good faith'' reduction) to $14,343 for metal and nonmetal mines and from $112 to $21,442 for coal mines. The Agency is providing this information for illustrative purposes only. The highest ranges of penalties occurred for one coal violation and for one metal/nonmetal violation and are anomalies. MSHA does not expect non-S&S violations to result in penalties of this level under the final rule; however, in the event that a regular assessment produces an inappropriate result, the penalty would be processed under the special assessment provision. Under the final rule, MSHA estimates the average non-S&S penalty would be $192.

In addition, under the final rule, MSHA projects that 44% of violations (32% for coal and 59% for metal and nonmetal mines) would receive the minimum penalty (including application of the ''good faith'' reduction). This compares with 64% of violations (58% for coal and 72% for metal and nonmetal mines) that received the single penalty under the existing rule.

Based on the Agency's evaluation of the violations that were assessed in 2005 and the Agency's experience gained under the existing single penalty provision, MSHA believes that deleting the single penalty assessment will encourage compliance with the Mine Act and MSHA's safety and health standards and regulations and prompt abatement of violations.

For the foregoing reasons, the single penalty assessment provision is deleted from this final rule.

Final § 100.4 is a new provision which replaces existing § 100.4 pertaining to the single penalty assessment. Final § 100.4, like the proposal, implements Section 8(a)(1)(B) of the MINER Act related to minimum unwarrantable failure penalties. It establishes a minimum penalty of $2,000 for any citation or order issued under section 104(d)(1) of the Mine Act, and establishes a minimum penalty of $4,000 for any order issued under section 104(d)(2) of the Mine Act.

Commenters generally were in agreement with the proposed provision. Some commenters, however, expressed concern that the statutory minimum penalties of $2,000 and $4,000 would become default penalties. They stated that these penalties should either be the statutory minimum amount or the amount assessed under the regular assessment formula, whichever is greater. MSHA agrees. Under the final rule, penalties for unwarrantable failure violations processed through the regular assessment provision will receive at least the minimum amount as specified in the MINER Act. Unwarrantable failure violations processed as regular assessments which generate a penalty greater than the statutory minimum will receive that penalty. As appropriate, unwarrantable failure violations also may continue to be processed under the special assessment provision.

Final § 100.4 adopts the language of the proposed rule.

Determination of Penalty; Special Assessment (§ 100.5)

Final § 100.5, like the proposed rule, is derived from existing § 100.5, and, like the proposal, provides for a special assessment for those violations which MSHA believes should not be processed under the regular assessment provision. It also removes the second sentence in existing § 100.5(a) which states that:

> Although an effective penalty can generally be derived by using the regular assessment formula and the single assessment provision, some types of violations may be of such a nature or seriousness that it is not possible to determine an appropriate penalty under these provisions.

In addition, this provision, like the proposal, removes the existing list of eight categories of violations that MSHA reviews for possible special assessment.

MSHA received numerous comments on the Agency's proposal to delete the eight categories of violations which are reviewed for special assessment in the existing rule. Some commenters supported processing most violations under the regular assessment provision, stating that the existing special assessment process sometimes results in extended periods between the issuance of a citation or order and the issuance of the penalty. These commenters indicated that MSHA has sometimes taken over one year to issue a penalty under the special assessment provision, and stated that penalties would be processed in a timelier manner under the proposal. Other commenters supported the proposal, stating that it would remove arbitrary penalties from being issued under the special assessment provision.

Some commenters opposed the proposal. They expressed concern that processing violations that fall in the eight categories in the existing rule as regular assessments would result in lower penalties. Some of these commenters stated that the final rule should levy heavy penalties on blatant violations and operators who flout the law, and that eliminating the eight categories of violations that receive consideration for special assessments under the existing rule will create confusion for companies by eliminating certainty about when they will be subject to special assessments. Other commenters who opposed the proposal expressed concern that MSHA would exercise unfettered discretion in assessing any violation under the special assessment provision.

MSHA agrees with the commenters who stated that processing most violations under the regular assessment provision will enhance the consistency

and timeliness of the assessment process. One of MSHA's goals for this rulemaking is to improve the effectiveness and efficiency of the civil penalty process. As stated in the preamble to the proposed rule, the existing special assessment provision has resulted in a time-consuming and resource-intensive process. For violations specially assessed in 2005, it took an average of 168 days from the date a violation was terminated to the date the assessment was mailed. Under the regular assessment, such violations generally are assessed within 70 days of the termination date. MSHA strongly believes that penalties issued closer to the issuance of the citation or order will have a more meaningful, behavior-changing effect on mine operators.

In addition, because MSHA is retaining its discretion to determine which types of violations would be reviewed for special assessment, removal of the eight categories of violations will not limit the Agency's authority to waive the regular assessment if the Agency determines that a special assessment is appropriate for any type of violation. Indeed, as stated in the preamble to the proposed rule, MSHA never intended the existing eight categories to be an exhaustive list of the types of violations that could be assessed under the special assessment provision. This final rule clarifies the Agency's intent. Further, as stated throughout this rulemaking, by removing the specific list of violations, MSHA will be able to focus its enforcement resources on more field enforcement activities, as opposed to administrative review activities.

MSHA projects that the regular assessment provision will provide an appropriate penalty for most violations. By way of illustration, using data for violations that were assessed in 2005, MSHA compared the penalty for 2,698 of the 3,189 violations assessed under the special assessment provision to the penalty that would have been assessed under the regular assessment provision of this final rule. The Agency excluded violations that involved a fatality and those issued to agents of the mine operator from this comparison because those violations would continue to be processed as special assessments under the final rule. MSHA found that the penalty for these 2,698 violations would have increased by approximately 98% under the regular assessment provision of this final rule. Nevertheless, MSHA expects that there will be circumstances in which the regular assessment provision of this final rule will not provide an appropriate penalty for particular violations. The Agency found, in reviewing violations that were assessed in 2005, approximately 35% of all violations issued under the special assessment provision of the existing rule would have received a lower penalty under the regular assessment provision of this final rule. MSHA intends to apply the special assessment provision of this final rule for those violations where the regular assessment does not provide an appropriate penalty. Consistent with a commenter's request, MSHA intends to review the special assessment provision in the future to determine whether it is achieving its purpose or whether changes are needed. MSHA monitors, on a monthly basis, the number of assessments under the existing special assessment provision. MSHA intends to continue this monitoring and to analyze the monitoring results. In addition, as stated previously, MSHA intends to continue to process violations involving a fatality and those issued to agents of the mine operator as special assessments. MSHA will also process flagrant violations, violations for failure to timely notify MSHA, and timely abate violations, and smoking violations, as listed under sections 100.5(c) through (f) as special assessments.

Final § 100.5(a) adopts the language of the proposed rule.

Final § 100.5(b), like the proposal, contains non-substantive changes for clarity. It removes the reference to existing § 100.4(b) because the single penalty provision is deleted in this final rule. MSHA received no comments on this proposal and made no changes to it. Therefore, final § 100.5(b) adopts the language of the proposed rule.

Final § 100.5(c), like the proposal, remains unchanged from existing § 100.5(c). It provides that any operator who fails to correct a violation for which a citation has been issued under section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than $6,500 for each day during which such failure or violation continues.

One commenter stated that MSHA should apply the maximum daily penalty of $6,500 while abatement work is being performed and it should continue to be applied every day until all such work is completed. MSHA will continue to enforce the daily penalty in accordance with the Mine Act, which provides for a ''reasonable time'' for abatement. The final rule adopts the language used in the proposal.

Final § 100.5(d), like the proposed rule, remains unchanged from existing § 100.5(d). This provision pertains to penalties for miners who violate standards related to smoking and smoking materials. MSHA received a few comments on this proposal. They suggested that MSHA increase the maximum penalty that could be assessed against a miner for a smoking violation. One commenter suggested an increase from $275 to $500 and another commenter suggested an increase to $220,000, similar to the maximum penalty for flagrant violations. The maximum penalty for miners who violate standards related to smoking or smoking materials, however, is established by statute, and can be adjusted only for inflation unless specifically adjusted by Congress. Therefore, the final rule retains the language of existing paragraph (d) as proposed.

Final § 100.5(e), like the proposal, implements the provision of the MINER Act pertaining to penalties for flagrant violations. Under the MINER Act, violations that are deemed to be flagrant may be assessed a civil penalty of not more than $220,000. The proposal, which adopted the definition in the MINER Act, defined a ''flagrant'' violation as a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.

Several commenters stated that the proposed language with respect to flagrant violations was too vague. They suggested that flagrant violations be limited to repeated violations of the same standard that were issued under Section 104(d) of the Mine Act, characterized as involving reckless disregard. They further suggested that flagrant violations be limited to violations that have been finally adjudicated. MSHA considered these suggestions in developing this final rule and has determined that it would be most beneficial to miner's safety and health to retain the proposed language. In addition, the proposed language mirrors the MINER Act. Violations that are deemed to be flagrant would be subject to a penalty of up to $220,000 under the special assessment provision of this final rule.

Several commenters expressed concern that proposed § 100.5(e) wrongly applied the penalty for flagrant violations to violations under section 110(a) of the Mine Act. They stated that Congress adopted penalties for flagrant violations by amending section 110(b) of the Mine Act, which pertains to penalties assessed to operators who have failed to correct a violation. They asserted that Congress intended the

penalty for flagrant violations to apply only to failures to correct a violation under section 110(b).

Section 1301 of the Pension Protection Act contains technical amendments to the MINER Act. Public Law No. 109–280 (Aug. 17, 2006). The provision for criminal penalties was moved from section 110(a)(2) of the Mine Act and is now the new section 110(d). Section 110(b) of the Mine Act now has two sub-subsections. Section 110(b)(1) provides for assessment of a daily civil penalty for violations that have not been corrected. Section 110(b)(2) provides for assessment of a civil penalty of not more than $220,000 for violations that are deemed to be flagrant.

For a number of reasons, MSHA believes that a flagrant violation under section 110(b)(2) is not limited to a violation that an operator has failed to correct under section 110(b)(1). First, section 110(b)(1) specifically applies to failure to correct a ''violation for which a citation has been issued.'' In contrast, section 110(b)(2) applies to failure to eliminate a ''known violation,'' and does not specify that a ''known violation'' must be a violation which has been cited.

Second, the Senate Report accompanying the MINER Act discusses flagrant violations without any reference to section 110(b) and without any indication that a flagrant violation must be a violation which has been cited. S. Rep. No. 109–365 (Dec. 6, 2006).

Third, section 110(b)(2) applies to failure to eliminate violations ''under this section'' (emphasis added) that are deemed to be flagrant. Section 110(b)(2) cannot be read as applying only to violations under section 110(b) because section 110(b) is a subsection, not a section. Instead, Section 110(b)(2) must be read as applying to violations under the section in which it appears—i.e., section 110—including section 110(a).

Fourth, section 110(b)(2) is, by virtue of its designation as a sub-subsection separate and distinct from section 110(b)(1), a provision distinct and independent from section 110(b)(1). That designation suggests that section 110(b)(2) is not limited to violations encompassed by section 110(b)(1).

Finally, it would be illogical to limit flagrant violations to violations which have been cited. Plainly, failure to eliminate a violation which is known to the operator but which has not been cited by MSHA—perhaps because MSHA has not conducted an inspection since the violation arose—can be just as dangerous, and just as deserving of an enhanced penalty, as a violation which is known to the operator and which has been cited.

Accordingly, the proposal has been modified. Final § 100.5(e) includes a reference to section 110(b)(2) of the Mine Act.

Final § 100.5(f), like the proposal, implements the penalty provisions of the MINER Act pertaining to prompt incident notification. Under the MINER Act, an operator who fails to provide timely notification to the Secretary, in the event of a death, or an injury or entrapment with reasonable potential to cause death, under section 103(j) (relating to the 15-minute requirement) shall be assessed a civil penalty of not less than $5,000 and not more than $60,000.

One commenter expressed concern that proposed § 100.5(f) would be applied to all violations under part 50.10, stating that for example, violations for failure to report a fire or hoist problems would be included. Final § 100.5(f), like the proposed rule, implements the penalty provisions of the MINER Act pertaining to prompt incident notification. In this regard, final § 100.5(f) is applicable only to the following events: the failure to notify MSHA of a death, or an injury or entrapment which has a reasonable potential to cause death.

Several commenters stated that this proposed provision is counterproductive and could inhibit first responders from time-critical stabilization of a victim. They suggested adding language, for example, that in a case in which delay has the potential to cause additional injuries, or the victim of an accident requires first aid, the 15 minutes shall begin upon stabilization of the site and the victim. This same issue was raised during the rulemaking concerning MSHA's Emergency Mine Evacuation Final Rule published on December 8, 2006. In the preamble to that rule, MSHA addressed the issue in the following manner:

> If a situation were to arise involving extenuating circumstances, such as an operator having to choose between saving someone's life and notifying MSHA, enforcement discretion would take those circumstances into account. MSHA does not expect that an operator who has to make a decision between rendering life-saving assistance and calling MSHA would be penalized for providing that assistance.

71 FR 71430 (Dec. 8, 2006). MSHA supports the foregoing conclusion.

No changes were made to proposed § 100.5(f) and the final rule adopts the proposed language.

Procedures for Review of Citations and Orders; Procedures for Assessment of Civil Penalties and Conferences (§ 100.6)

Final § 100.6, like the proposed rule, contains requirements and administrative procedures for review of citations and orders.

Final § 100.6(a), like the proposal, contains the provision in existing 100.6(a) that all parties, i.e., the operator and miners or their representatives, shall have the opportunity to review each citation and order with MSHA. In addition, it incorporates existing § 100.6(c), which provides that the decision to grant a request for a conference is within MSHA's discretion. MSHA received no comments on the proposed reorganization of § 100.6(a). Therefore, the final rule adopts the language in the proposal.

Final § 100.6(b), like the proposal, is derived from existing § 100.6(b). MSHA proposed modifying the existing provision by reducing the period, from 10 days to five days, within which an operator could submit additional information or request a safety and health conference with the District Manager or designee.

In addition, at the last two public hearings during this rulemaking, the Agency stated in its opening statement that it intended to include a requirement that a request for a safety and health conference be in writing and include a brief statement as to why each citation or order should be conferenced. The Agency requested comment on this issue. To allow all parties an opportunity to comment on this issue, MSHA reopened the comment period to this rulemaking and specifically requested comments as to whether a request for a safety and health conference should be in writing and whether such a request should include a brief statement of the reason why each citation or order should be conferenced.

A few commenters supported the proposed reduction of the period within which an operator could submit additional information or request a safety and health conference. One commenter stated that the proposal would result in a more effective civil penalty system because penalties would be assessed closer in time to the issuance of the citation.

Almost all commenters, however, opposed the proposed reduction in the time period for requesting a safety and health conference. They stated that they would not have sufficient time to evaluate a citation or order and determine the appropriate course of action to take. In addition, they stated

that delays in scheduling conferences often cause delays in the issuance of penalties. Several commenters noted that conferences sometimes are not held until several months after a request has been made because MSHA's Conference and Litigation Representatives (CLRs) have a backlog of conferences.

After receiving comments, MSHA decided not to reduce the 10-day period within which a party may submit additional information or request a safety and health conference. In making this decision, the Agency believes that the safety and health of miners is improved when, after an inspection, operators and miners or their representatives are afforded an ample opportunity to discuss safety and health issues with the MSHA District Manager or designee.

MSHA received one comment in support of and several comments opposed to the proposed requirement that a request for a safety and health conference be in writing and include a brief statement of the reason why each citation or order should be conferenced. Commenters opposed to the proposal stated that a requirement that conference requests be in writing would cause extreme difficulties for the operator and ultimately result in discouraging the conference process. Specifically, these commenters stated that the proposed requirement places an unnecessary burden on operators who have limited administrative resources to thoroughly investigate citations and orders and gather documentation within a limited amount of time pertaining to each citation and order.

One commenter generally agreed with the proposal that the request for a safety and health conference be in writing and include a brief statement as to why each citation or order should be conferenced, but stated that the requirement should not be mandatory. Several commenters stated that some MSHA districts currently require safety and health conference requests to be in writing. One commenter mistakenly believed that the existing regulations require that safety and health conference requests be in writing.

After reviewing all comments, MSHA has decided to include in the final rule the proposed requirement that the request for a safety and health conference be in writing and include a brief statement as to why each citation should be conferenced. In making this decision, MSHA anticipates that this provision will assist parties requesting a conference to focus on the issues to be discussed at the conference. It is not MSHA's intent under this proposal to require operators and/or miners' representatives to provide a large amount of documentation. Rather, it is MSHA's intent that operators and/or miners' representatives provide a concise statement concerning the reason the requesting parties wish to discuss each violation. MSHA notes that the Agency does not intend to limit discussion at the safety and health conference to the specific points raised in the written statement.

MSHA projects that this proposed provision will lead to a more meaningful and effective conference for all parties. Also, it will help expedite the conference process by providing the District Manager with necessary information prior to conducting the conference, including information that may assist the District Manager in deciding whether to grant a conference. Therefore, the final rule includes the requirement that a request for a safety and health conference be in writing and include a brief statement as to why each citation should be conferenced.

Final 100.6(c), like the proposal, is derived from and remains unchanged from existing § 100.6(d). MSHA received no comments on this proposal.

Final 100.6(d), like the proposal, is derived from existing §§ 100.6(e), (f), and (g). The final rule remains substantively unchanged from the proposed rule. MSHA received no comments on the proposal.

Notice of Proposed Penalty; Notice of Contest (§ 100.7)

Final § 100.7, like the proposal, is derived from existing 100.7, and provides for procedures applicable to a notice of proposed penalty and notice of penalty contest. Final paragraph (a) sets out the circumstances under which a notice of proposed penalty will be served on the parties, and final paragraph (b) sets out the procedures for contesting a notice of proposed penalty, and final order of the Commission.

The final rule, like the proposal, includes editorial changes for clarity, but remains substantively unchanged from the existing provision. Proposed paragraph (a) stated that a notice of proposed penalty will be issued and served by certified mail. MSHA is interpreting ''certified mail'' to include delivery methods such as Federal Express that offer proof of delivery. The existing provision is therefore amended to include the equivalent of certified mail as a means of service of the notice of proposed penalty.

Proposed § 100.7(b) deleted from the regulatory text the following: (1) The reference to a return mailing card that is used to request a hearing before the Commission, (2) the reference to providing instructions for returning the card to MSHA, and (3) the provision that MSHA will immediately advise the Commission of the contest and also advise the Office of the Solicitor of the contest. MSHA proposed these deletions because the Agency is no longer using a return mailing card. Instead, MSHA currently provides a statement that lists violations being assessed, instructions for paying or contesting assessments, and MSHA contact information to facilitate an operator's request for a hearing. MSHA intends to continue this practice. In addition, MSHA intends to continue to advise the Office of the Solicitor and the Commission of the notices of penalty contest. MSHA has determined that this manner of operator notification of contested assessments does not constitute an Information collection activity by MSHA.

Several commenters stated that MSHA should include in this rule a provision to force operators to pay assessed penalties. They expressed concern that uncollected fines send a message to all operators that MSHA is not serious about Mine Act enforcement. One commenter stated that it is within the Secretary's authority to pursue such operators aggressively, that MSHA should do so, and that if MSHA believes that it has insufficient authority to do this, MSHA should submit legislative proposals to strengthen its ability to enforce the law.

MSHA vigorously collects penalties and takes its collection activities seriously. In fact, for the 10-year period from 1997 through 2006, MSHA issued over $239 million in civil penalties and has collected nearly $175 million of that. In addition, MSHA notes that each agency that collects civil monetary penalties must have a policy to send delinquency letters to employers who have not made payments on the assessed penalties. According to the Debt Collection Improvement Act of 1996, once the debt has been delinquent for 180 days, the debt should be sent to the U.S. Department of Treasury for collection. MSHA has the authority to refer delinquent civil penalty debt to Treasury and, on a weekly basis, refers unpaid debt to Treasury. Furthermore, MSHA has explored innovative ways to legally force operators to pay penalties and to deal aggressively with those who do not. Further suggestions related to collection activities, however, are beyond the scope of this rulemaking.

No changes were made to proposed § 100.7 and the final rule adopts the proposed language.

Service (§ 100.8)

Final § 100.8, like the proposal, is substantively unchanged from the existing rule. It provides that service of proposed civil penalties will be made at the mailing address of record for an operator and miners' representative, that penalty assessments may be mailed to a different address if MSHA is notified in writing of the new address, and that operators who fail to file a notification of legal identity under 30 CFR part 41 will be served at their last known business address. Like the proposed rule, specific references to part 40 (Representative of Miners) and part 41 (Notification of Legal Identity) have been changed from existing § 100.8 to indicate that they are parts contained in Chapter I of Title 30 CFR. MSHA received no comments on this proposal.

No changes were made to proposed § 100.8 and the final rule adopts the proposed language.

III. Executive Order 12866

Executive Order 12866 as amended by Executive Order 13258 (Amending Executive Order 12866 on Regulatory Planning and Review) requires that regulatory agencies assess both the costs and benefits of regulations. To comply with Executive Order 12866, MSHA has prepared a Regulatory Economic Analysis (REA) for the final rule. The REA contains supporting data and explanation for the summary materials presented in sections III–VI of this preamble, including the covered mining industry, costs and benefits, feasibility, small business impact, and paperwork. The REA is located on MSHA's Web site at *http://www.msha.gov/regsinfo.htm.* A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances.

Executive Order 12866 classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. MSHA has determined that, based on the REA, the final rule would not have an annual effect of $100 million or more on the economy and, therefore, would not be an economically significant regulatory action under Section 3, paragraph (f) of Executive Order 12866. MSHA, however, has concluded that the final rule is otherwise significant under Executive Order 12866 because it raises novel legal or policy issues.

A. Population at Risk

Based on 2005 data, the final rule will apply to the entire mining industry, covering all 14,666 mine operators and 6,585 independent contractors in the United States, as well as the 261,449 miners and 83,267 contract workers they employ.

B. Costs

In order to derive and explain the cost impact of the final rule on the mining industry, MSHA has divided its analysis into three sections: (1) The baseline—the total number and monetary amount of civil penalty assessments proposed by MSHA in 2005; (2) the impact of the final rule on civil penalty assessments under the assumption that mine operators and independent contractors take no actions, in response to increased proposed penalty assessments, to improve compliance with MSHA standards and regulations; and (3) the impact of the final rule on the number and amount of civil penalty assessments taking into account the anticipated response of mine operators and independent contractors to increase compliance with MSHA standards and regulations and thereby reduce the number of civil penalty assessments they otherwise would receive. There is an additional cost in the final rule associated with a new requirement that mine operators request a safety and health conference in writing and include a brief statement of the reason why each citation or order should be conferenced.

It is important to note the nature of the increase in civil penalties as it impacts the mining industry. For most MSHA rules, the estimated impact reflects the cost to the mining industry of achieving compliance with the rule. For this final rule, the estimated impact consists of two parts: (1) Increased payments for penalties and (2) expenses incurred to increase compliance with MSHA standards and regulations so as to reduce the number and amount of civil penalties otherwise received. This analysis assumes, in the baseline against which the impacts of the rulemaking will be compared, a certain amount of non-compliance with current MSHA standards and regulations. Therefore, compliance efforts made in response to increased penalties are a cost shown in the final rule. This analysis reflects additional expenditures associated with improved compliance.

1. Baseline

The first step in estimating the impact of the final rule is to establish a baseline: the number and monetary amount of civil penalty assessments in the absence of the final rule. For this purpose, MSHA chose all violations that were assessed in 2005. Table III–1 shows the number of civil penalty assessments issued in 2005, disaggregated by employment size for coal and metal and nonmetal (M/NM) operations, and independent contractors at coal and metal and nonmetal operations.[1]

[1] The total number of violations for 2005 is the same as was presented in the analysis in support of the proposed rule. A few dozen independent contractor violations, however, were misclassified by employment size in that analysis. These have been corrected in MSHA's analysis of the final rule.

Table III-1. Baseline Number of Violations Assessed - 2005

Employment Size	Mine		Contractor		Total Violations Assessed
	Coal	M/NM	Coal	M/NM	
1-5	2,741	12,528	2,848	1,605	19,722
6-19	9,063	16,125	761	1,050	26,999
20-500	43,428	17,685	1,466	1,185	63,764
501+	4,432	1,672	18	66	6,188
All Sizes	59,664	48,010	5,093	3,906	116,673

The employment size categories being used are 1–5 employees, 6–19 employees, 20–500 employees, and more than 500 employees. These categories are relevant for the analysis of impact in Section V of this preamble, to determine whether small mines, as defined by the SBA and MSHA, will be significantly impacted by the final rule.

Of the 116,673 civil penalty assessments issued in 2005, 113,484, or approximately 97.3%, were single penalty or regular assessments. The remaining 3,189, or 2.7%, were special assessments.

As can be calculated from Table III–1, there were approximately 25% more coal violations than metal and nonmetal violations in 2005, even though there were more than 3½ times as many metal and nonmetal operators and independent contractors as there were coal operators and independent contractors. One reason for the larger number of coal violations is that there are approximately three times as many underground coal mines as underground metal and nonmetal mines. There are a number of circumstances surrounding underground mines which tend to result in a greater number of violations. They are required to be inspected more often, and conditions are generally more dangerous and subject to change. Another reason for more coal violations is that coal mines are, on average, larger operations than metal and nonmetal mines, and larger mines tend to receive more violations, on average, than smaller mines. The average coal mine operator employed approximately three times as many miners as the average metal and nonmetal operator in 2005.

The amount used for each 2005 civil penalty assessment in the baseline was the penalty proposed by MSHA. Table III–2 shows, by employment size, the total baseline dollar amount of civil penalties proposed by MSHA in 2005 for coal and metal and nonmetal mining operations and for independent contractors at coal and metal and nonmetal mines.

Table III-2. Baseline Total of Proposed Civil Penalty Assessments for 2005

Employment Size	Mine		Contractor		Total Assessed Penalties
	Coal	M/NM	Coal	M/NM	
1-5	$463,277	$1,887,443	$303,374	$196,722	$2,850,816
6-19	$1,492,545	$2,535,563	$88,219	$112,762	$4,229,089
20-500	$11,010,009	$3,890,799	$313,795	$193,451	$15,408,054
501+	$1,706,750	$634,888	$5,775	$14,876	$2,362,289
All Sizes	$14,672,581	$8,948,693	$711,163	$517,811	$24,850,248

Table III–2 reveals that total civil penalty assessments in 2005 were substantially larger—more than 50% larger—for coal mines than for metal and nonmetal mines. The larger aggregate penalty assessment for coal mines is due to the larger number of violations issued to coal mines and the increased average penalty per violation. Coal violations tend to be more serious, on average, than metal and nonmetal violations (e.g., 40% of coal violations are S&S, versus 23% for metal and nonmetal violations).

Of the $24.9 million in civil penalties proposed by MSHA in 2005, $16.6 million, or approximately 67%, were from single penalty and regular assessments. The remaining $8.2 million were from special assessments. Of this amount, approximately $0.3 million were issued to agents of mine operators and another $1.5 million were issued for violations involving a fatality.

Table III–3 displays the baseline average dollar amount of a proposed civil penalty in 2005 disaggregated by employment size for coal and metal and nonmetal mining operations and for independent contractors at coal and metal and nonmetal mines. The average penalty assessment for a violation in 2005 was $213. For a single penalty assessment, the average penalty was $60. For a regular penalty assessment, the average penalty was $316. For a special assessment, the average penalty was $2,574. For special assessments issued to agents of the mine operator, the average assessment was $582; for special assessments involving a fatality, the average penalty was $27,181; and for all other special assessments, the average penalty was $2,385.

Table III-3. Baseline Average Proposed Civil Penalty Assessment per Violation in 2005

Employment Size	Mine		Contractor		Average of All Violations
	Coal	M/NM	Coal	M/NM	
1-5	$169	$151	$107	$123	$145
6-19	$165	$157	$116	$107	$157
20-500	$254	$220	$214	$163	$242
501+	$385	$380	$321	$225	$382
All Sizes	$246	$186	$140	$133	$213

Table III–3 shows that the average proposed penalty assessment in 2005 generally tended to increase as mine size increased. The result is consistent, particularly for mine operators with 20 or more employees.

Table III–3 also indicates that the difference in average penalties between coal and metal and nonmetal mining operations of a given employment size and between independent contractors for a given employment size at coal and metal and nonmetal mines is generally small.

2. Impact If No Compliance Response to Increased Penalties

With the baseline established, the next task in the cost analysis is to determine the impact of the final rule on civil penalty assessments under the assumption that mine operators and independent contractors take no actions, in response to increased proposed penalty assessments, to increase compliance with MSHA standards and regulations. This task is an intermediate step in determining the total cost impact of the final rule, as MSHA's assumption in III.B.3 of this preamble is that mine operators and independent contractors will change their compliance behavior in response to increased penalties.

Given the assumption of no compliance response by mine operators and independent contractors, the number of violations would not change in response to the final rule. They would remain the same as presented in Table III–1 for the baseline. The type of the violations, however, will change under the final rule. In the analysis, all 2005 regular and single penalty assessments will be issued as regular assessments under the final rule. MSHA assumed that most unwarrantable failure violations would be processed as regular assessments, but would receive at least the minimum penalty amounts required in the MINER Act. MSHA also assumed that violations issued to agents, those involving a fatality and processed as a special assessment in 2005, those involving failure to promptly notify MSHA, and those determined to be flagrant will be processed as special assessments under the final rule. For purposes of this analysis, MSHA further assumed that all other 2005 special assessments will be processed as regular assessments. Thus, under the final rule, MSHA estimates that the number of special assessments will decline by 85%, from 3,189 to 491. MSHA anticipates that, under the final rule, the regular assessment provision will generally provide an appropriate penalty for most violations previously processed as special assessments. Equally significant, this will allow MSHA to focus its enforcement resources on more field enforcement activities, as opposed to administrative review activities.

Tables III–4 and III–5 show the estimated total dollar amount and average dollar amount, respectively, of civil penalties under the final rule, assuming no compliance response by mine operators and independent contractors.[2] Table III–6 shows, relative to the baseline, the estimated percentage increase of civil penalties (both total and average) under the final rule, assuming no compliance response by mine operators and independent contractors. All of these tables are disaggregated by employment size, coal and metal and nonmetal mining operations, and independent contractors at coal and metal and nonmetal mines.

[2] The analysis in support of the proposed rule had a minor error in the formula for calculating history for repeat violations of the same standard, the effect of which was to slightly underestimate the impact of the proposed rule. The analysis also improperly assigned history points to operators with fewer than 10 violations over a previous 15-month period, the effect of which was to slightly overestimate the impact of the proposed rule. These errors have been corrected in MSHA's analysis of the final rule. The corrected estimate of total civil penalties under the proposed rule, assuming no compliance response by industry, is $70.0 million (rather than $68.5 million); the average civil penalty is $600 (rather than $587); and the percentage increase of civil penalties is 182% (rather than 176%).

Table III-4. Total Proposed Civil Penalty Assessments Under Final Rule, Assuming No Compliance Response

Employment Size	Mine		Contractor		Total Assessed Penalties
	Coal	M/NM	Coal	M/NM	
1-5	$767,042	$3,012,830	$481,319	$411,043	$4,672,234
6-19	$3,084,550	$4,351,900	$185,137	$216,073	$7,837,660
20-500	$39,453,598	$8,511,820	$813,547	$586,656	$49,365,621
501+	$5,720,223	$1,664,345	$19,356	$66,223	$7,470,147
All Sizes	$49,025,413	$17,540,895	$1,499,359	$1,279,995	$69,345,662

Table III-5. Average Proposed Civil Penalty Assessment per Violation Under Final Rule, Assuming No Compliance Response

Employment Size	Mine		Contractor		Average of All Violations
	Coal	M/NM	Coal	M/NM	
1-5	$280	$240	$169	$256	$237
6-19	$340	$270	$243	$206	$290
20-500	$908	$481	$555	$495	$774
501+	$1,291	$995	$1,075	$1,003	$1,207
All Sizes	$822	$365	$294	$328	$594

Table III-6. Percentage Increase in Total and Average Proposed Civil Penalty Assessments Under Final Rule, Assuming No Compliance Response

Employment Size	Mine		Contractor		Average Percentage Increase All Violations
	Coal	M/NM	Coal	M/NM	
1-5	66%	60%	59%	109%	64%
6-19	107%	72%	110%	92%	85%
20-500	258%	119%	159%	203%	220%
501+	235%	162%	235%	345%	216%
All Sizes	234%	96%	111%	147%	179%

As indicated in these tables, MSHA estimates that total civil penalty assessments will increase under the final rule, assuming no compliance response, from $24.9 million to $69.3 million, an increase of $44.5 million, or 179%. Approximately $2.5 million, or 4%, will come from special assessments. Of the $44.5 million increase, approximately $1.9 million will result from the minimum penalty provisions for unwarrantable violations in the MINER Act. In its analysis of 2005 data, MSHA found one violation which met the failure to provide timely notification provision in the MINER Act. For this category of violations, the MINER Act imposes a penalty of $5,000 to $60,000. The particular violation, however, had already received a special assessment in excess of $5,000. Thus, MSHA did not adjust penalty totals to account for this provision of the MINER Act.

MSHA has determined that flagrant violations will be processed under the special assessment provision. As stated in the final rule, MSHA will use the definition for flagrant violation in the MINER Act, but the Agency cannot estimate, at this point in the rulemaking process, the specific impact of this new requirement in the MINER Act. The Agency does, however, anticipate that penalties will increase due to this provision.

MSHA estimates that the average penalty assessment will increase under the final rule, assuming no compliance response, from $213 (shown in Table III–3) to $594 (shown in Table III–5), an increase of 179% (shown in Table III–

6). Consistent with Congressional intent, the average penalty generally increases as mine size or contractor size increases (shown in Table III–5).

For purposes of the analysis, special assessments that would be processed as special assessments under the final rule were assumed to receive the same penalty, unless they would be impacted by the minimum penalty provisions of the MINER Act. The average penalty for special assessments issued to agents of the mine operator is estimated to increase by 367% under the final rule. All of this increase is due to the application of the minimum penalty provisions for unwarrantable violations in the MINER Act.

For purposes of analysis, MSHA assumes that all specially assessed violations, except those involving fatalities, agents, failure to timely notify MSHA, and flagrant violations, would be processed as regular assessments under the final rule. In the analysis, the average penalty increased by 98% for those 2005 special assessments that would be processed as regular assessments under the final rule.

3. Impact With Improved Compliance Response to Increased Penalties

MSHA intends and expects that increased penalty assessments will lead to efforts by mine operators and independent contractors to increase compliance with MSHA standards and regulations and ultimately to fewer violations and improved mine safety and health. MSHA assumes that each violation is associated with a probability of occurrence that declines as penalty assessments rise. To estimate this impact, MSHA assumes that, at the margin, each 10% increase in penalty for a violation is associated with a 3% decrease in its probability of occurrence.[3]

In economic terms, this is equivalent to assuming an elasticity of –0.3 between the number of violations and the dollar size of penalties. This elasticity of –0.3 was assumed by MSHA in its regulatory economic analysis for the 2003 direct final rule to adjust civil penalties for inflation.

MSHA has applied this assumption to each assessed violation in the 2005 database. For most violations, the final rule will result in a penalty increase. Accordingly, MSHA has computed a reduction (or in rare cases, an increase) in the probability of the violation's occurrence. The reduction is larger as the penalty increases.

Tables III–7 and III–8 estimate the improved compliance response of the industry to increased penalty assessments.[4] Table III–7 provides estimates for mine operators and Table III–8 provides estimates for independent contractors. Tables III–7 and III–8 show, by employment size, by coal and metal and nonmetal mining operations, and by independent contractors at coal and metal and nonmetal mines, the number of violations and the dollar amount of penalties in the 2005 database under the existing rule. Further, using the assumption that the elasticity of response is –0.3 for each violation, Tables III–7 and III–8 estimate the new reduced number of violations and the increased penalties associated with these violations under the final rule. Taking into account the mining industry's improved compliance response, MSHA estimates that, were the final rule in effect in 2005, total violations would have declined from 116,673 to 93,422, or a reduction of approximately 20%.

[3] MSHA included this sentence in the preamble and PREA for the proposed rule without the qualifying phrase ''at the margin.'' The phrase was added to address one commenter's erroneous conclusion that the sentence implied [according to MSHA's model] that a 99% decrease in the probability of a violation could be achieved by a 330% increase in penalties. As MSHA indicated in both the PREA for the proposed rule and the REA for this final rule, MSHA's constant elasticity formula, $P = AQ(1/\varepsilon)$ (where P = the penalty amount, Q = the number of violations, A is an arbitrary parameter, and ε = elasticity = –0.3) can be used to derive $(Q2/Q1) = (P2/P1)(-0.3)$. Thus, for example, an increase in a penalty from $60 to $100 would be associated with a reduction in the frequency of that violation from 1.0 to 0.86 (a 14% reduction). And a 330% increase in a penalty would be associated with a reduction in the frequency of that violation, not of 99%, but of 35%.

[4] The analysis in support of the proposed rule had a minor error in the formula for calculating history for repeat violations of the same standard, the effect of which was to slightly underestimate the impact of the proposed rule. The analysis also improperly assigned history points to operators with fewer than 10 violations over a previous 15-month period, the effect of which was to slightly overestimate the impact of the proposed rule. These errors have been corrected in MSHA's analysis of the final rule. The corrected estimate of total civil penalties under the proposed rule, after improved compliance response by industry, is $46.3 million (rather than $45.8 million in the proposal); the additional expenditures to improve compliance are $9.2 million (rather than $9.0 million); and the percentage increase after improved compliance response, is 86% (rather than 84%).

Table III-7. Impact of Final Rule on Coal and Metal and Nonmetal Operators Given Improved Compliance Response to Increased Penalty Assessments

Impact on Coal Mine Operators						
Mine Employment Size	Existing Rule Number of Violations	Existing Rule Proposed Penalties	Final Rule Number of Violations	Final Rule Proposed Penalties	Increase in Penalties	Additional Expenditures to Improve Compliance
1-5	2,741	$463,277	2,443	$614,479	$151,202	$64,801
6-19	9,063	$1,492,545	7,773	$2,319,422	$826,877	$354,376
20-500	43,428	$11,010,009	31,949	$25,160,777	$14,150,768	$6,064,615
501+	4,432	$1,706,750	3,051	$3,726,434	$2,019,684	$865,579
All Sizes	59,664	$14,672,581	45,216	$31,821,111	$17,148,530	$7,349,370
Impact on Metal/Nonmetal Mine Operators						
Mine Employment Size	Existing Rule Number of Violations	Existing Rule Proposed Penalties	Final Rule Number of Violations	Final Rule Proposed Penalties	Increase in Penalties	Additional Expenditures to Improve Compliance
1-5	12,528	$1,887,443	11,148	$2,436,219	$548,776	$235,190
6-19	16,125	$2,535,563	14,103	$3,407,749	$872,186	$373,794
20-500	17,685	$3,890,799	14,082	$6,114,139	$2,223,340	$952,860
501+	1,672	$634,888	1,189	$1,145,273	$510,385	$218,736
All Sizes	48,010	$8,948,693	40,522	$13,103,381	$4,154,688	$1,780,580

Table III-8. Impact of Final Rule on Coal and Metal and Nonmetal Independent Contractors Given Improved Compliance Response to Increased Penalty Assessments

Impact on Coal Independent Contractors						
Contractor Employment Size	Existing Rule Number of Violations	Existing Rule Proposed Penalties	Final Rule Number of Violations	Final Rule Proposed Penalties	Increase in Penalties	Additional Expenditures to Improve Compliance
1-5	2,848	$303,374	2,560	$393,119	$89,745	$38,462
6-19	761	$88,219	650	$139,732	$51,513	$22,077
20-500	1,466	$313,795	1,209	$548,085	$234,290	$100,410
501+	18	$5,775	13	$13,077	$7,302	$3,130
All Sizes	5,093	$711,163	4,432	$1,094,013	$382,850	$164,078
Impact on Metal/Nonmetal Independent Contractors						
Contractor Employment Size	Existing Rule Number of Violations	Existing Rule Proposed Penalties	Final Rule Number of Violations	Final Rule Proposed Penalties	Increase in Penalties	Additional Expenditures to Improve Compliance
1-5	1,605	$196,722	1,370	$316,750	$120,028	$51,441
6-19	1,050	$112,762	892	$166,448	$53,686	$23,008
20-500	1,185	$193,451	943	$369,680	$176,229	$75,527
501+	66	$14,876	47	$40,596	$25,720	$11,023
All Sizes	3,906	$517,811	3,252	$893,474	$375,663	$160,999

The ''Increase in Penalties'' column represents the increase in penalties, relative to the baseline, for remaining violations. The increase in proposed penalty assessments is approximately $17.1 million for coal mine operators,

$0.4 million for coal independent contractors, $4.2 million for metal and nonmetal mine operators, and $0.4 million for metal and nonmetal independent contractors. The increase for all operators, $22.1 million, reflects the total increase in penalties for the final rule, taking into account mine operators' improved compliance behavior.

To reduce the number of violations in response to the increased penalty assessments, MSHA assumes that mines will increase expenditures to improve compliance with MSHA safety and health standards. (The REA for the final rule provides an explanation of how expenditures are calculated.) The column, ''Additional Expenditures to Improve Compliance,'' represents MSHA's estimate of these expenditures. These estimates are based on the same assumption that the elasticity of response is −0.3 and the additional assumption that the increased compliance activities will be undertaken by the mining industry to avoid increased penalties.

Table III–9 summarizes the impact of the final rule by mining sector and indicates that the combined impact of additional expenditures to improve compliance and the increase in penalties, given improved compliance is $31.5 million a year.

Table III-9. Total Impact of Final Rule, Both With No Compliance Response and With Improved Compliance Response to Increased Penalty Assessments

No Compliance Response - Same Number of Violations						
Mining Sector	Existing Rule Proposed Penalties	Final Rule Proposed Penalties, Same Compliance	Increase in Penalties, Same Compliance	Additional Expenditures to Improve Compliance (None)	Total Cost Increase, Same Compliance	% Increase in Total Cost, Same Compliance
Coal	$15,383,744	$50,524,772	$35,141,028	$0	$35,141,028	228%
Metal	$1,396,682	$3,527,234	$2,130,552	$0	$2,130,552	153%
Nonmetal	$594,888	$1,122,694	$527,806	$0	$527,806	89%
Sand & Gravel	$3,113,522	$5,206,593	$2,093,071	$0	$2,093,071	67%
Stone	$4,361,412	$8,964,369	$4,602,957	$0	$4,602,957	106%
Total	$24,850,248	$69,345,662	$44,495,414	$0	$44,495,414	179%

Improved Compliance Response - Reduced Number of Violations						
Mining Sector	Existing Rule Proposed Penalties	Final Rule Proposed Penalties, Improved Compliance	Increase in Penalties, Improved Compliance	Additional Expenditures to Improve Compliance	Total Cost Increase, Improved Compliance	% Increase in Total Cost, Improved Compliance
Coal	$15,383,744	$32,915,124	$17,531,380	$7,513,449	$25,044,829	163%
Metal	$1,396,682	$2,410,136	$1,013,454	$434,337	$1,447,791	104%
Nonmetal	$594,888	$873,542	$278,654	$119,423	$398,076	67%
Sand & Gravel	$3,113,522	$4,122,806	$1,009,284	$432,550	$1,441,835	46%
Stone	$4,361,412	$6,590,371	$2,228,959	$955,268	$3,184,227	73%
Total	$24,850,248	$46,911,979	$22,061,731	$9,455,028	$31,516,759	127%

4. Impact of Increased Cost of Safety and Health Conferences

Section 100.6 of 30 CFR allows all parties to request a safety and health conference with the district manager and designee. The final rule includes a new requirement in § 100.6(b) that the request for a safety and health conference be in writing and include a brief statement of the reason why each citation or order should be conferenced.

MSHA data indicate that 9,287 violations were conferenced in 2005–4,567 by coal operators and contractors, and 4,720 by metal and nonmetal operators and contractors.[5] For purposes of estimating costs, MSHA assumes that the annual number of safety and health conference requests will be the same, after the final rule takes effect (the reduced number of violations due to increased penalties and improved compliance offset by the additional incentive, due to increased penalties, to request a safety and health conference). Table III–10 shows the estimated number of written requests for a safety and health conference to review a violation, disaggregated by employment size, coal and metal and nonmetal operations, and independent contractors at coal and metal and nonmetal mines.

Table III-10: Number of Violations for Which a Safety and Health Conference is Requested*

Employment Size	Mine		Contractor		Total Number
	Coal	M/NM	Coal	M/NM	
1-5	193	1,139	201	146	1,679
6-19	639	1,466	54	95	2,254
20-500	3,063	1,608	103	108	4,882
501+	313	152	1	6	472
All Sizes	4,209	4,365	359	355	9,288

* Estimates of the total number of violations for which a conference is requested are based on MSHA conference and violation data for 2005.

MSHA estimates that it would take approximately 9 minutes per violation for a mine supervisor to prepare a written request for a safety and health conference. Because each request for a safety and health conference bundles together an average of between three and four violations, the 9 minutes per violation is equivalent to between 27 and 36 minutes to prepare a written request for each safety and health conference. The hourly wage rate for a coal supervisor is $63.39; the hourly wage rate for a metal and nonmetal supervisor is $47.10.[6] MSHA estimates that it will cost, on average, approximately $1 to submit each written request (by mail, fax, or e-mail). Based on this information, each written request for a conference would cost approximately $10.51 for a coal operator or contractor and $8.06 for a metal and nonmetal operator or contractor. Table III–11 provides MSHA's estimate of the annual costs for coal and metal and nonmetal mine contactors and operators to make written requests for conferences.

Table III-11: Total Annual Costs to Make Written Requests for a Safety and Health Conference*

Employment Size	Mine		Contractor		Total Cost
	Coal	M/NM	Coal	M/NM	
1-5	$2,032	$9,185	$2,111	$1,177	$14,505
6-19	$6,719	$11,823	$564	$770	$19,875
20-500	$32,194	$12,966	$1,087	$869	$47,116
501+	$3,285	$1,226	$13	$48	$4,573
All Sizes	$44,230	$35,200	$3,776	$2,864	$86,069

* (Total cost for written request) = (total # of violations reviewed in conference) x [(# of hours per violation needed to make a written request for a conference) x (hourly wage rate for a supervisor) + (submission cost for a request)].

[5] Typically, multiple violations are combined into a single safety and health conference request. In 2005, the 4,567 coal violations were reviewed in 1,585 safety and health conferences, and the 4,720 M/NM violations were reviewed in 1,123 safety and health conferences. In the text, the costs for a safety and health conference are estimated per violation, not per conference.

[6] Data from pp. 6, B3 of U.S. Coal Mines Salaries, Wages, and Benefits—2005 Survey Results, Western Mine Engineering Inc.; pp. 8, B2 of U.S. Metal and Industrial Mineral Mine Salaries, Wages, and Benefits—2005 Survey Results, Western Mine Engineering Inc.; and MSHA calculations.

C. Benefits

The benefits of the final rule are the reduced number of injuries and fatalities that would result from improved compliance with MSHA's health and safety standards and regulations in response to increased penalty assessments. MSHA projects that increased penalties will induce mine operators to reduce all safety and health violations. The reduction in all violations, and particularly S&S violations, or those reasonably likely to result in reasonably serious injury or illness, will reduce the number and severity of injuries and illnesses.

IV. Feasibility

MSHA has concluded that the requirements of the final rule are technologically and economically feasible.

A. Technological Feasibility

The final rule is a regulation, not a standard. It does not involve activities on the frontiers of scientific knowledge. The mining industry has been complying with the adjudication and payment of civil penalties for decades. MSHA concludes, therefore, that the final rule is technologically feasible.

B. Economic Feasibility

MSHA estimates that the yearly increased compliance costs and penalty assessments for coal mines as a result of the final rule will be $25.1 million dollars, which is equal to approximately 0.09 percent of coal mine sector revenues of $26.7 billion in 2005. MSHA estimates that the yearly increased compliance costs and penalty assessments for metal and nonmetal mines as a result of the final rule will be $6.5 million dollars, which is equal to approximately 0.01 percent of metal and nonmetal mine sector revenues of $51.5 billion in 2005. Penalty assessment estimates for both coal and metal and nonmetal include MSHA's assumption that mine operators will change their behavior and improve compliance as a result of increased penalties, and thereby receive fewer violations. Since the total estimated increased penalty assessments for both the coal and metal and nonmetal mine operators are well below one percent of their estimated revenue, MSHA concludes that the final rule is economically feasible for the mining industry.

V. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the final rule on small entities. Based on that analysis, MSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a final rule on small entities, MSHA must use the Small Business Administration's (SBA) definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternate definition, and hence is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees (13 CFR 121.201).

MSHA has also examined the impact of agency rules on a subset of mines with 500 or fewer employees—mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA's rules and the impact of the agency's rules on them will also tend to be different. It is for this reason that ''small mines,'' as traditionally defined by MSHA as those employing fewer than 20 workers, are of special concern to MSHA. In addition, for this final rule, MSHA has examined the cost on mines with five or fewer employees to ensure that this subset of mines is not significantly and adversely impacted by the final rule.

This analysis complies with the legal requirements of the RFA for an analysis of the impact on ''small entities'' while continuing MSHA's traditional definition of ''small mines.'' Both the final rule and this analysis also reflect MSHA's concern for mines with five or fewer employees. MSHA concludes that it can certify that the final rule will not have a significant economic impact on a substantial number of small entities. MSHA has determined that this is the case for mines with fewer than 20 employees and mines with 500 or fewer employees. In its detailed factual basis below, MSHA will also show the impact of the final rule on mines with five or fewer employees.

B. Factual Basis for Certification

MSHA's analysis of the economic impact on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated costs of a rule for small entities to the estimated revenue. When estimated costs are less than one percent of estimated revenue (for the size categories considered), MSHA believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. If estimated costs are equal to or exceed one percent of revenue, it tends to indicate that further analysis may be warranted.

Normally, the analysis of the costs or economic impact of a rule assumes that mine operators are in 100% compliance with a rule. Under the assumption that mine operators are in 100% compliance with all of MSHA's rules, there would be no cost of compliance with the final rule, since no mine operator would be liable for civil penalties. For purposes of analyzing the effects on small mines, MSHA reverses this usual assumption and instead analyzes the increased penalty assessments for mines not in compliance with the agency's safety and health standards and regulations.

Total underground and surface coal production was 368 million tons and 765 million tons, respectively. The 2005 price of underground and surface coal was $36.42 and $17.37 per ton, respectively.[7] Thus, total estimated coal revenue in 2005 was $26.7 billion ($13.4 billion for underground and $13.3 billion for surface production). Using the same approach, the estimated 2005 coal revenue by employment size category is estimated to be approximately $75 million for mines with 1–5 employees, $657 million for mines with 1–19 employees, and $20.5 billion for mines with 1–500 employees.

For metal and nonmetal mines, the total 2005 estimated revenue generated by the metal and nonmetal industry ($51.5 billion)[8] was divided by the total number of employee hours to arrive at the average revenue per hour of employee production ($165.19). The $165.19 was multiplied by employee hours in specific mine size categories to arrive at estimated revenue for these categories. This approach was used to determine the estimated revenue for the metal and nonmetal mining industry

[7] The average price for underground and surface coal of $36.42 and $17.37 per ton, respectively, comes from the U.S. Department of Energy, Energy Information Administration, ''Annual Coal Report 2005,'' Table 28, October 2006.

[8] U.S. Department of the Interior, U.S. Geological Survey, ''Mineral Commodity Summaries 2006,'' p. 8, January 2006

because MSHA does not collect data on metal and nonmetal production. The 2005 metal and nonmetal revenue is estimated to be approximately $3.4 billion for mines with 1–5 employees, $15.6 billion for mines with 1–19 employees, and $46.5 billion for mines with 1–500 employees.

Table V–1 below shows that when dividing the increase in penalties and safety and health conference costs by the revenue in each mine size category, the cost of the rule for coal mines is 0.46% of revenue for mines with 1–5 employees, 0.25% of revenue for mines with 1–19 employees, and 0.11% of revenue for mines with 1–500 employees. Table V–1 also shows the penalty and cost increase as a percentage of revenue for all coal mines to be 0.09%.

Table V–1 also shows that when dividing the increase in penalties and safety and health conference costs by the revenue in each mine size category, the cost of the rule for metal and nonmetal mines is 0.03% of revenue for mines with 1–5 employees, 0.01% of revenue for mines with 1–19 employees, and 0.01% of revenue for mines with 1–500 employees. Table V–1 shows the penalty and cost increase as a percentage of revenue for all metal and nonmetal mines to be 0.01%.

For coal mines, Table V–1 further shows that the final rule will result in an average increase in costs and penalties per mine of: $619 for mines with 1–5 employees; $1,405 for mines with 1–19 employees; and $10,821 for mines with 500 or fewer employees. For metal and nonmetal mines, Table V–1 shows that the final rule will result in an average increase in costs and penalties per mine of: $149 for mines with 1–5 employees; $213 for mines with 1–19 employees; and $457 for mines with 500 or fewer employees.

Table V-1. Increase in Costs and Penalties Due to Final Rule Compared to Mine Revenue, by Mine Size

Employment Size	Number of Mines	Increase in Penalties and Compliance Costs	Estimated Revenue (Millions)	Increase in Costs and Penalties Per Mine	Penalty and Cost Increases as % of Revenue
Coal Mines					
1-5 employees	563	$348,353	$75	$619	0.46%
1-19 employees	1,146	$1,610,478	$657	$1,405	0.25%
1-500 employees	2,051	$22,193,841	$20,492	$10,821	0.11%
All sizes	2,065	$25,092,834	$26,709	$12,151	0.09%
M/NM Mines					
1-5 employees	6,469	$965,796	$3,384	$149	0.03%
1-19 employees	10,820	$2,301,064	$15,607	$213	0.01%
1-500 employees	12,580	$5,742,855	$46,480	$457	0.01%
All sizes	12,601	$6,509,994	$51,500	$517	0.01%

As shown in Table V–1, when applying MSHA's and SBA's definitions of small mines, yearly costs of the final rule are substantially less than one percent of estimated yearly revenue, well below the level suggesting that the rule might have a significant economic impact on a substantial number of small entities. Accordingly, MSHA has certified that the final rule will not have a significant economic impact on a substantial number of small entities that are covered by the rule.

VI. Paperwork Reduction Act of 1995

This final rule contains no information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

Revised paragraph (b) in § 100.6 requires that a request for a safety and health conference be in writing and include a brief statement of the reason that each citation or order should be conferenced. MSHA views this new provision as an administrative action that is not subject to the PRA.

VII. Other Regulatory Considerations

A. Unfunded Mandates Reform Act of 1995

The final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor does it increase private sector expenditures by more than $100 million annually; nor does it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

The final rule will have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, § 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The final rule will not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

The final rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. The final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. MSHA has determined that the final rule meets the

applicable standards provided in § 3 of Executive Order 12988.

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

The final rule will have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Executive Order 13132: Federalism

The final rule 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.'' Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

G. Executive Order 13175: Consultation and Coordination With Indian Governments

The final rule does not have ''tribal implications'' because it does not ''have substantial direct effects 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.'' Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

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

The final rule has been reviewed for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. Insofar as the final rule will result in added yearly compliance costs and civil penalty assessments of approximately $25.1 million to the coal mining industry, relative to annual revenue of $26.7 billion in 2005, it is not a ''significant energy action'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy * * * (including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further Agency action or analysis.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: March 15, 2007.

Richard E. Stickler,

Assistant Secretary for Mine Safety and Health.

■ For the reasons set out in the preamble and under the authority of the Mine Safety and Health Act of 1977, as amended, Chapter I of Title 30, Code of Federal Regulations, part 100 is revised to read as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

Sec.

100.1 Scope and purpose.
100.2 Applicability.
100.3 Determination of penalty amount; regular assessment.
100.4 Unwarrantable failure.
100.5 Determination of penalty amount; special assessment.
100.6 Procedures for review of citations and orders; procedures for assessment of civil penalties and conferences.
100.7 Notice of proposed penalty; notice of contest.
100.8 Service.

Authority: 30 U.S.C. 815, 820, 957.

§ 100.1 Scope and purpose.

This part provides the criteria and procedures for proposing civil penalties under sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Mine Act). The purpose of this part is to provide a fair and equitable procedure for the application of the statutory criteria in determining proposed penalties for violations, to maximize the incentives for mine operators to prevent and correct hazardous conditions, and to assure the prompt and efficient processing and collection of penalties.

§ 100.2 Applicability.

The criteria and procedures in this part are applicable to all proposed assessments of civil penalties for violations of the Mine Act and the standards and regulations promulgated pursuant to the Mine Act, as amended. MSHA shall review each citation and order and shall make proposed assessments of civil penalties.

§ 100.3 Determination of penalty amount; regular assessment.

(a) *General.* (1) Except as provided in § 100.5(e), the operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, as amended, shall be assessed a civil penalty of not more than $60,000. Each occurrence of a violation of a mandatory safety or health standard may constitute a separate offense. The amount of the proposed civil penalty shall be based on the criteria set forth in sections 105(b) and 110(i) of the Mine Act. These criteria are:

(i) The appropriateness of the penalty to the size of the business of the operator charged;

(ii) The operator's history of previous violations;

(iii) Whether the operator was negligent;

(iv) The gravity of the violation;

(v) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and

(vi) The effect of the penalty on the operator's ability to continue in business.

(2) A regular assessment is determined by first assigning the appropriate number of penalty points to the violation by using the appropriate criteria and tables set forth in this section. The total number of penalty points will then be converted into a dollar amount under the penalty conversion table in paragraph (g) of this section. The penalty amount will be adjusted for demonstrated good faith in accordance with paragraph (f) of this section.

(b) *The appropriateness of the penalty to the size of the business of the operator charged.* The appropriateness of the penalty to the size of the mine operator's business is calculated by using both the size of the mine cited and the size of the mine's controlling entity. The size of coal mines and their controlling entities is measured by coal production. The size of metal and nonmetal mines and their controlling entities is measured by hours worked. The size of independent contractors is measured by the total hours worked at all mines. Penalty points for size are assigned based on Tables I to V. As used in these tables, the terms ''annual tonnage'' and ''annual hours worked'' mean coal produced and hours worked in the previous calendar year. In cases where a full year of data is not available, the coal produced or hours worked is

prorated to an annual basis. This criterion accounts for a maximum of 25 penalty points.

Table I—Size of Coal Mine

Annual tonnage of mine	Penalty Points
0 to 7,500	1
Over 7,500 to 10,000	2
Over 10,000 to 15,000	3
Over 15,000 to 20,000	4
Over 20,000 to 30,000	5
Over 30,000 to 50,000	6
Over 50,000 to 70,000	7
Over 70,000 to 100,000	8
Over 100,000 to 200,000	9
Over 200,000 to 300,000	10
Over 300,000 to 500,000	11
Over 500,000 to 700,000	12
Over 700,000 to 1,000,000	13
Over 1,000,000 to 2,000,000	14
Over 2,000,000	15

Table II—Size of Controlling Entity—Coal Mine

Annual tonnage	Penalty Points
0 to 50,000	1
Over 50,000 to 100,000	2
Over 100,000 to 200,000	3
Over 200,000 to 300,000	4
Over 300,000 to 500,000	5
Over 500,000 to 700,000	6
Over 700,000 to 1,000,000	7
Over 1,000,000 to 3,000,000	8
Over 3,000,000 to 10,000,000	9
Over 10,000,000	10

Table III—Size of Metal/Nonmetal Mine

Annual hours worked at mine	Penalty Points
0 to 5,000	0
Over 5,000 to 10,000	1
Over 10,000 to 20,000	2
Over 20,000 to 30,000	3
Over 30,000 to 50,000	4
Over 50,000 to 100,000	5
Over 100,000 to 200,000	6
Over 200,000 to 300,000	7
Over 300,000 to 500,000	8
Over 500,000 to 700,000	9
Over 700,000 to 1,000,000	10
Over 1,000,000 to 1,500,000	11
Over 1,500,000 to 2,000,000	12
Over 2,000,000 to 3,000,000	13
Over 3,000,000 to 5,000,000	14
Over 5,000,000	15

Table IV—Size of Controlling Entity—Metal/Nonmetal Mine

Annual hours worked	Penalty Points
0 to 50,000	0
Over 50,000 to 100,000	1
Over 100,000 to 200,000	2
Over 200,000 to 300,000	3
Over 300,000 to 500,000	4
Over 500,000 to 1,000,000	5
Over 1,000,000 to 2,000,000	6
Over 2,000,000 to 3,000,000	7
Over 3,000,000 to 5,000,000	8
Over 5,000,000 to 10,000,000	9
Over 10,000,000	10

Table V—Size of Independent Contractor

Annual hours worked at all mines	Penalty Points
0 to 5,000	0
Over 5,000 to 7,000	2
Over 7,000 to 10,000	4
Over 10,000 to 20,000	6
Over 20,000 to 30,000	8
Over 30,000 to 50,000	10
Over 50,000 to 70,000	12
Over 70,000 to 100,000	14
Over 100,000 to 200,000	16
Over 200,000 to 300,000	18
Over 300,000 to 500,000	20
Over 500,000 to 700,000	22
Over 700,000 to 1,000,000	24
Over 1,000,000	25

(c) *History of previous violations.* An operator's history of previous violations is based on both the total number of violations and the number of repeat violations of the same citable provision of a standard in a preceding 15-month period. Only assessed violations that have been paid or finally adjudicated, or have become final orders of the Commission will be included in determining an operator's history. The repeat aspect of the history criterion in paragraph (c)(2) of this section applies only after an operator has received 10 violations or an independent contractor operator has received 6 violations.

(1) Total number of violations. For mine operators, penalty points are assigned on the basis of the number of violations per inspection day (VPID)(Table VI). Penalty points are not assigned for mines with fewer than 10 violations in the specified history period. For independent contractors, penalty points are assigned on the basis of the total number of violations at all mines (Table VII). This aspect of the history criterion accounts for a maximum of 25 penalty points.

Table VI—History of Previous Violations-Mine Operators

Mine Operator's Overall History of Violations Per Inspection Day	Penalty Points
0 to 0.3	0
Over 0.3 to 0.5	2
Over 0.5 to 0 7	5
Over 0.7 to 0.9	8
Over 0.9 to 1.1	10
Over 1.1 to 1.3	12
Over 1.3 to 1.5	14
Over 1.5 to 1.7	16
Over 1.7 to 1.9	19
Over 1.9 to 2.1	22
Over 2.1	25

Table VII—History of Previous Violations-Independent Contractors

Independent Contractor's Overall History of Number of Violations	Penalty Points
0 to 5	0
6	1
7	2
8	3
9	4
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
Over 29	25

(2) Repeat violations of the same standard. Repeat violation history is based on the number of violations of the same citable provision of a standard in a preceding 15-month period. For coal and metal and nonmetal mine operators with a minimum of six repeat violations, penalty points are assigned on the basis of the number of repeat violations per inspection day (RPID) (Table VIII). For independent contractors, penalty points are assigned on the basis of the number of violations at all mines (Table IX). This aspect of the history criterion accounts for a maximum of 20 penalty points (Table VIII).

Table VIII-History of Previous Violations-Repeat Violations for Coal and Metal and Nonmetal Operators with a Minimum of 6 Repeat Violations

Number of Repeat Violations Per Inspection Day	Final Rule Penalty Points
0 to 0.01	0
Over 0.01 to 0.015	1
Over 0.015 to 0.02	2
Over 0.02 to 0.025	3
Over 0.025 to 0.03	4
Over 0.03 to 0.04	5
Over 0.04 to 0.05	6
Over 0.05 to 0.06	7
Over 0.06 to 0.08	8
Over 0.08 to 0.10	9
Over 0.10 to 0.12	10
Over 0.12 to 0.14	11
Over 0.14 to 0.16	12
Over 0.16 to 0.18	13
Over 0.18 to 0.20	14
Over 0.20 to 0.25	15
Over 0.25 to 0.3	16
Over 0.3 to 0.4	17
Over 0.4 to 0.5	18
Over 0.5 to 1.0	19
Over 1.0	20

Table IX-History of Previous Violations-Repeat Violations for Independent Contractors

Number of Repeat Violations of the Same Standard	Final Rule Penalty Points
5 or fewer	0
6	2
7	4
8	6
9	8
10	10
11	12
12	14
13	16
14	18
More than 14	20

(d) *Negligence.* Negligence is conduct, either by commission or omission, which falls below a standard of care established under the Mine Act to protect miners against the risks of harm. Under the Mine Act, an operator is held to a high standard of care. A mine operator is required to be on the alert for conditions and practices in the mine that affect the safety or health of miners and to take steps necessary to correct or prevent hazardous conditions or practices. The failure to exercise a high standard of care constitutes negligence. The negligence criterion assigns penalty points based on the degree to which the operator failed to exercise a high standard of care. When applying this criterion, MSHA considers mitigating circumstances which may include, but are not limited to, actions taken by the operator to prevent or correct hazardous conditions or practices. This criterion accounts for a maximum of 50 penalty points, based on conduct evaluated according to Table X.

Table X—Negligence

Categories	Penalty Points
No negligence (The operator exercised diligence and could not have known of the violative condition or practice.)	0
Low negligence (The operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances.)	10
Moderate negligence (The operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.)	20
High negligence (The operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances.)	35
Reckless disregard (The operator displayed conduct which exhibits the absence of the slightest degree of care.)	50

(e) *Gravity.* Gravity is an evaluation of the seriousness of the violation. This criterion accounts for a maximum of 88 penalty points, as derived from the Tables XI through XIII. Gravity is determined by the likelihood of the occurrence of the event against which a standard is directed; the severity of the illness or injury if the event has occurred or was to occur; and the number of persons potentially affected if the event has occurred or were to occur.

Table XI—Gravity: Likelihood

Likelihood of occurrence	Penalty Points
No likelihood	0
Unlikely	10
Reasonably likely	30
Highly likely	40
Occurred	50

Table XII—Gravity: Severity

Severity of injury or illness if the event has occurred or were to occur	Penalty Points
No lost work days (All occupational injuries and illnesses as defined in 30 CFR Part 50 except those listed below.)	0
Lost work days or restricted duty (Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.)	5
Permanently disabling (Any injury or illness which would be likely to result in the total or partial loss of the use of any member or function of the body.)	10
Fatal (Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.)	20

Table XIII—Gravity: Persons Potentially Affected

Number of persons potentially affected if the event has occurred or were to occur	Penalty Points
0	0
1	1
2	2
3	4
4	6
5	8
6	10
7	12
8	14
9	16
10 or more	18

(f) *Demonstrated good faith of the operator in abating the violation.* This criterion provides a 10% reduction in the penalty amount of a regular assessment where the operator abates the violation within the time set by the inspector.

(g) *Penalty conversion table.* The penalty conversion table is used to convert the total penalty points to a dollar amount.

Table XIV—Penalty Conversion Table

Points	Penalty ($)
60 or fewer	112
61	121
62	131
63	142
64	154
65	167
66	181
67	196
68	212
69	230
70	249
71	270
72	293
73	317
74	343
75	372
76	403
77	436
78	473
79	512
80	555
81	601
82	651
83	705
84	764
85	828
86	897
87	971
88	1,052
89	1,140
90	1,235
91	1,337
92	1,449
93	1,569
94	1,700
95	1,842
96	1,995
97	2,161
98	2,341
99	2,536
100	2,748
101	2,976
102	3,224
103	3,493

Points	Penalty ($)
104	3,784
105	4,099
106	4,440
107	4,810
108	5,211
109	5,645
110	6,115
111	6,624
112	7,176
113	7,774
114	8,421
115	9,122
116	9,882
117	10,705
118	11,597
119	12,563
120	13,609
121	14,743
122	15,971
123	17,301
124	18,742
125	20,302
126	21,993
127	23,825
128	25,810
129	27,959
130	30,288
131	32,810
132	35,543
133	38,503
134	41,574
135	44,645
136	47,716
137	50,787
138	53,858
139	56,929
140 or more	60,000

(h) The effect of the penalty on the operator's ability to continue in business. MSHA presumes that the operator's ability to continue in business will not be affected by the assessment of a civil penalty. The operator may, however, submit information to the District Manager concerning the financial status of the business. If the information provided by the operator indicates that the penalty will adversely affect the operator's ability to continue in business, the penalty may be reduced.

§ 100.4 Unwarrantable failure.

(a) The minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act shall be $2,000.

(b) The minimum penalty for any order issued under section 104(d)(2) of the Mine Act shall be $4,000.

§ 100.5 Determination of penalty amount; special assessment.

(a) MSHA may elect to waive the regular assessment under § 100.3 if it determines that conditions warrant a special assessment.

(b) When MSHA determines that a special assessment is appropriate, the proposed penalty will be based on the six criteria set forth in § 100.3(a). All findings shall be in narrative form.

(c) Any operator who fails to correct a violation for which a citation has been issued under section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than $6,500 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty which shall not be more than $275 for each occurrence of such violation.

(e) Violations that are deemed to be flagrant under section 110(b)(2) of the Mine Act may be assessed a civil penalty of not more than $220,000. For purposes of this section, a flagrant violation means ''a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.''

(f) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than $5,000 and not more than $60,000 for the following accidents:

(1) The death of an individual at the mine, or

(2) An injury or entrapment of an individual at the mine which has a reasonable potential to cause death.

§ 100.6 Procedures for review of citations and orders; procedures for assessment of civil penalties and conferences.

(a) All parties shall be afforded the opportunity to review with MSHA each citation and order issued during an inspection. It is within the sole discretion of MSHA to grant a request for a conference and to determine the nature of the conference.

(b) Upon notice by MSHA, all parties will have 10 days within which to submit additional information or request a safety and health conference with the District Manager or designee. A conference request may include a request to be notified of, and to participate in, a conference initiated by another party. A conference request must be in writing and must include a brief statement of the reason why each citation or order should be conferenced.

(c) When a conference is conducted, the parties may submit any additional relevant information relating to the violation, either prior to or at the conference. To expedite the conference, the official assigned to the case may contact the parties to discuss the issues involved prior to the conference.

(d) MSHA will consider all relevant information submitted in a timely manner by the parties with respect to the violation. When the facts warrant a finding that no violation occurred, the citation or order will be vacated. Upon conclusion of the conference, or expiration of the conference request period, all citations that are abated and all orders will be promptly referred to MSHA's Office of Assessments. The Office of Assessments will use the citations, orders, and inspector's evaluation as the basis for determining the appropriate amount of a proposed penalty.

§ 100.7 Notice of proposed penalty; notice of contest.

(a) A notice of proposed penalty will be issued and served by certified mail, or the equivalent, upon the party to be charged and by regular mail to the representative of miners at the mine after the time permitted to request a conference under § 100.6 expires, or upon the completion of a conference, or upon review by MSHA of additional information submitted in a timely manner.

(b) Upon receipt of the notice of proposed penalty, the party charged shall have 30 days to either:

(1) Pay the proposed assessment. Acceptance by MSHA of payment tendered by the party charged will close the case.

(2) Notify MSHA in writing of the intention to contest the proposed penalty. When MSHA receives the notice of contest, it advises the Federal Mine Safety and Health Review Commission (Commission) of such notice. No proposed penalty which has been contested before the Commission shall be compromised, mitigated or settled except with the approval of the Commission.

(c) If the proposed penalty is not paid or contested within 30 days of receipt, the proposed penalty becomes a final order of the Commission and is not subject to review by any court or agency.

§ 100.8 Service.

(a) All operators are required by part 41 (Notification of Legal Identity) of this chapter to file with MSHA the name and address of record of the operator. All representatives of miners are required by part 40 (Representative of Miners) of this chapter to file with MSHA the mailing address of the person or organization acting in a representative capacity. Proposed penalty assessments delivered to those addresses shall constitute service.

(b) If any of the parties choose to have proposed penalty assessments mailed to a different address, the Office of Assessments must be notified in writing of the new address. Delivery to this address shall also constitute service.

(c) Service for operators who fail to file under part 41 of this chapter will be upon the last known business address recorded with MSHA.

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Federal Register

Thursday,
March 22, 2007

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 561 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on November 25, 2005 (70 FR 71194).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513–MIB, 1849 C Street, NW., Washington, DC 20240. *Telephone number:* (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska.

The list does not include any additional new tribes. The updates are limited to several tribal name changes. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. We will continue to list the tribe's former name for several years before dropping the former name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: March 7, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
  Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
  Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California

Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California (formerly the Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California)
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Tribes, Oregon (formerly the Klamath Indian Tribe of Oregon)
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota

Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Tribe, Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Tribe, California (formerly the Potter Valley Rancheria of Pomo Indians of California)
Prairie Band of Potawatomi Nation, Kansas
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington

Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California)
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation, Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Native Village of Afognak (formerly the Village of Afognak)
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (formerly the Native Village of Chignik)
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly the Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Kasigluk Traditional Elders Council (formerly the Native Village of Kasigluk)
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village

Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly the Native Village of Toksook Bay)
Native Village of Nunam Iqua (formerly the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak)
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

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Thursday,
March 22, 2007

Part VI

The President

Proclamation 8114—To Implement Modifications to the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 8114 of March 19, 2007

To Implement Modifications to the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 5002 of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (Division D, Title V of Public Law 109–432)(the ''HOPE Act''), which amends the Caribbean Basin Economic Recovery Act (Title II of the Trade and Development Act of 2000, Public Law 106–200)(CBERA), provides that preferential tariff treatment may be provided to certain articles that are imported directly from Haiti into the customs territory of the United States, provided the President determines that Haiti meets the eligibility requirements of section 213A(d) of CBERA, as amended (19 U.S.C. 2703a(d)), and Haiti is meeting the conditions regarding enforcement of circumvention set forth in section 213A(e) of CBERA, as amended (19 U.S.C. 2703a(e)(1)).

2. Section 6002 of the Africa Investment Incentive Act of 2006 (Division D, Title VI of Public Law 109–432) amends section 112 of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Public Law 106–200)(AGOA) to modify the preferential tariff treatment accorded to designated lesser developed beneficiary sub-Saharan African countries.

3. Pursuant to section 213A(d) of CBERA, as amended (19 U.S.C. 2703a(d)), I have determined that Haiti meets the eligibility requirements set forth in section 213A(d)(1).

4. Pursuant to section 213A(e) of CBERA, as amended (19 U.S.C. 2703a(e)), I have determined that Haiti is meeting the conditions set forth therein.

5. In order to implement the tariff treatment provided under section 213A of CBERA, as amended (19 U.S.C. 2703a), and section 112(b)(8) and 112(c) of AGOA, as amended (19 U.S.C. 3721(b)(8) and (c)), it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS).

6. Title I, subtitles A and B of the Tax Relief and Health Care Act of 2006 (Public Law 109–432)(the ''Tax Relief Act'') suspended or reduced duties on certain articles that were identified under provisions of the HTS in effect on December 20, 2006. Presidential Proclamation 8097 of December 27, 2006, modified the HTS to conform it to the International Convention on the Harmonized Commodity Description and Coding System. Modifications to the HTS are necessary to reflect accurately the suspension or reduction of duties that were enacted in the Tax Relief Act.

7. Section 604 of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

8. I have determined that it is appropriate to authorize the Secretary of the Treasury to perform the functions specified in section 213A(f) of CBERA, as amended (19 U.S.C. 2703a(f)).

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including section 604 of the 1974 Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to provide the tariff treatment provided for in section 213A of CBERA, as amended (19 U.S.C. 2703a), the HTS is modified as provided in Annex I to this proclamation.

(2) In order to implement the tariff treatment provided for in section 112(b)(8) and section 112(c) of AGOA, as amended (19 U.S.C. 3721(b)(8) and (c)), the HTS is modified as provided in Annex II to this proclamation.

(3) In order to provide the tariff treatment provided for in Title I, subtitles A and B of the Tax Relief Act, and to make technical corrections to previously proclaimed provisions, the HTS is modified as provided in Annex III to this proclamation.

(4) The modifications to the HTS set forth in the annexes to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the respective annex.

(5) The Secretary of the Treasury is hereby authorized to perform the functions assigned to the President in section 213A(f) of CBERA, as amended (19 U.S.C. 2703a(f)).

(6) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of March, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

Billing code 3195–01–P

ANNEX I

IMPLEMENTATION OF HAITIAN HEMISPHERIC OPPORTUNITY THROUGH PARTNERSHIP ENCOURAGEMENT ACT OF 2006

A. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 4, 2007, in order to give effect to the provisions of the Haitian Hemispheric Opportunity Through Partnership Encouragement (HOPE) Act of 2006, subchapter XX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) is modified by inserting in numerical sequence the following new U.S. note and tariff provision, with the material inserted in the columns labeled "Heading/Subheading", "Article Description" and "Rates of Duty 1 Special":

"6. Implementation of the Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006.

(a) For purposes of heading 9820.85.44, any product of Haiti described in such heading and classifiable in subheading 8544.30.00 of the tariff schedule that is imported directly from Haiti into the customs territory of the United States shall be eligible for the duty treatment provided therein during the period from December 20, 2006, through December 19, 2011, inclusive, provided that--

(i) the cost or value of the materials produced in Haiti or one or more of the countries set forth in subdivision (b) of this note, or any combination thereof, plus

(ii) the direct costs of processing operations (as defined in general note 7(b) to the tariff schedule) performed in Haiti or the United States, or both,

is not less than 50 percent of the declared customs value of such product.

(b) For purposes of subdivision (a)(i) of this note, the countries included are the United States, Israel, Canada, Mexico, Jordan, Singapore, Chile, Australia, Morocco, Bahrain, El Salvador, Honduras, Nicaragua, Guatemala, Dominican Republic and designated beneficiary countries enumerated in general notes 11, 16 or 17 to the tariff schedule."

"9820.85.44	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships, the foregoing the product of Haiti and entered under the terms of U.S. note 6 to this subchapter		Free"

B. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2007, subchapter XX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) is modified by inserting in numerical sequence the following new provisions, with the material in the new headings inserted in the columns labeled "Heading/Subheading", "Article Description" and "Rates of Duty 1 Special":

1. U.S. note 6(b) to such subchapter (as added by section A of this annex) is modified by redesignating the text set forth in such paragraph as subdivision (i); by deleting "subdivision (a)(i)" and by inserting in lieu thereof "subdivisions (a)(i) and (c)"; and by inserting in lieu thereof the following new subdivision:

"(ii) For purposes of this note, an applicable 1-year period shall comprise the time period starting on December 20 in the years 2006, 2007, 2008, 2009 or 2010 and ending on December 19 in the succeeding year."

2. U.S. note 6 is further modified by inserting the following new provisions at the end thereof:

"(c) Apparel articles of a producer or entity controlling production that are imported directly from Haiti under the terms of heading 9820.61.25 shall enter the United States free of duty during an applicable 1-year period specified in subdivision (c)(ii), subject to the limitations set forth in this note, provided that such apparel articles are wholly assembled, or are knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape and yarns, only if, for each entry in the applicable 1-year period, the sum of--

(i) the cost or value of the materials produced in Haiti or one or more countries enumerated in subdivision (b) of this note, or any combination thereof, plus

(ii) the direct costs of processing operations (as defined in general note 7(b) to the tariff schedule) performed in Haiti or one or more countries enumerated in subdivision (b) of this note, or any combination thereof,

is not less than the applicable percentage (as defined in subdivision (f) of this note) of the declared customs value of such apparel articles.

(d) In calculating cost or value under subdivision (c)(i) of this note, there shall be deducted the cost or value of--

(i) any foreign materials that are used in the production of the apparel articles in Haiti; and

(ii) any foreign materials that are used in the production of the materials described in subdivision (c)(i).

(e) For purposes of heading 9820.61.30--

(i) In the initial applicable 1-year period beginning on December 20, 2006, the requirements under subdivision (c) relating to applicable percentage may also be met for articles of a producer or an entity controlling production that enter during such initial applicable 1-year period by aggregating--

(A) the cost or value of materials under subdivision (c)(i), and

(B) the direct costs of processing operations under subdivision (c)(ii),

of all apparel articles for that producer or entity controlling production that are wholly assembled, or are knit-to-shape, in Haiti and are entered during such initial applicable 1-year period.

(ii) In each applicable 1-year period beginning on December 20 during the years 2007, 2008, 2009 and 2010, the requirements under subdivision (c)(i) relating to applicable percentage may also be met for articles of a producer or an entity controlling production that enter during such applicable 1-year period by aggregating--

(A) the cost or value of materials under subdivision (c)(i), and

(B) the direct costs of processing operations under subdivision (c)(ii),

of all apparel articles for that producer or entity controlling production that are wholly assembled, or are knit-to-shape, in Haiti and are entered during the preceding applicable 1-year period.

(iii) In calculating cost or value under subdivision (e)(i) or (e)(ii), there shall be deducted the cost or value of--

(A) any foreign materials that are used in the production of the apparel articles in Haiti; and

(B) any foreign materials that are used in the production of the materials described in subdivision (e)(i)(A) or (e)(ii)(A), as the case may be.

(iv) (A) The entry of a woven apparel article receiving preferential treatment under heading 9820.62.05 is not included in an annual aggregation under subdivision (e)(i) or (e)(ii).

(B) Entries of articles receiving preferential treatment under heading 9820.62.12 are not included in an annual aggregation under subdivision (e)(i) or (e)(ii) unless the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entries in such aggregation.

(C) Entries of apparel articles that receive preferential treatment under any provision of the tariff schedule other than this note, or that are subject to the rate of duty set forth in the general subcolumn of rate of duty column 1 of the tariff schedule, are not included in an annual aggregation under subdivision (e)(i) or (e)(ii) unless the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entries in such aggregation.

(f) For purposes of this note--

(i) the term "applicable percentage" means--

(A) 50 percent or more during the applicable 1-year periods beginning on December 20 in 2006, 2007 or 2008;

(B) 55 percent or more during the applicable 1-year period beginning on December 20, 2009; and

(C) 60 percent or more during the applicable 1-year period beginning on December 20, 2010.

(ii) the term "foreign material" means a material produced in a country other than Haiti or any country enumerated in subdivision (b) of this note.

(iii) For purposes of determining the applicable percentage under subdivision (c), (e)(i) or (e)(ii) of this note, there may be included in that percentage--

(A) the cost of fabrics or yarns to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under general note 12(t) to the tariff schedule; and

(B) the cost of fabrics or yarns that are designated as not being available in commercial quantities for purposes of--

(1) heading 9820.11.27;

(2) heading 9819.11.24;

(3) heading 9821.11.10; or

(4) heading 9822.05.01,

without regard to the source of the fabrics or yarns.

(g) The preferential treatment accorded under headings 9820.61.25, 9820.61.30 and 9820.62.12 shall be extended, during each of the applicable 1-year periods set forth in the table below, to not more than the corresponding percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the most recent 12-month period for which data are available and published in the *Federal Register* by the Committee for the Implementation of Textile Agreements:

Applicable 1-year period	Percentage
December 20, 2006-December 19, 2007	1 percent
December 20, 2007-December 19, 2008	1.25 percent
December 20, 2008-December 19, 2009	1.5 percent
December 20, 2009-December 19, 2010	1.75 percent
December 20, 2010-December 19, 2011	2 percent.

No preferential treatment shall be provided under this subdivision after the close of December 19, 2011.

(h) In the case of apparel articles classifiable in chapter 62 of the tariff schedule (other than articles classifiable in subheading 6212.10), as in effect on December 20, 2006, that do not qualify for preferential treatment under subdivision (c) of this note because they do not meet the percentage requirements under subdivision (c), (d), (e)(i) or (e)(ii) of this note, the preferential treatment under subdivision (c) or (e)--

(i) shall be extended, in addition to the quantities permitted under subdivision (g) to--

(A) not more than 50,000,000 square meter equivalents of such apparel articles during the applicable 1-year period from December 20, 2006 through December 19, 2007;

(B) not more than 50,000,000 square meter equivalents of such apparel articles during the applicable 1-year period from December 20, 2007 through December 19, 2008; and

(C) not more than 33,500,000 square meter equivalents during the applicable 1-year period from December 20, 2008 through December 19, 2009; and

(ii) may not be extended to such apparel articles after the close of December 19, 2009.

(i) The preferential treatment provided under heading 9820.62.12 shall be extended to any article classifiable in subheading 6212.10 of the tariff schedule, if the article is both cut and sewn or otherwise assembled in Haiti or the United States, or both, without regard to the source of the fabric or components from which the article is made, and if Haiti has met the requirements of 213A(d) and (e) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703A(d) and (e)), subject to the limitations provided in subdivision (g) of this note."

3. The following new headings are inserted in numerical sequence:

"9820.61.25	Apparel articles (other than goods described in heading 9820.61.30 or 9820.62.05) described in U.S. note 6(c) to this subchapter and imported directly from Haiti during an applicable 1-year period specified in U.S. note 6(b)(ii) to this subchapter, subject to the limitations provided in U.S. note 6(g) to this subchapter...	Free	
9820.61.30	Apparel articles (other than goods described in heading 9820.61.25 or 9820.62.05) described in U.S. note 6(e) to this subchapter and imported directly from Haiti during an applicable 1-year period specified in U.S. note 6(b)(ii) to this subchapter, subject to the limitations provided in U.S. note 6(g) to this subchapter...	Free	
9820.62.05	Apparel articles of chapter 62 to the tariff schedule, under the terms of U.S. note 6(h) to this subchapter, the foregoing imported directly from Haiti during an 1-year period specified in U.S. note 6(b)(ii) to this subchapter in an aggregate quantity not to exceed the quantity specified in such U.S. note 6(h).....	Free	

9820.62.12	Brassieres of subheading 6212.10, under the terms of U.S. note 6(i) to this subchapter, the foregoing imported directly from Haiti during an applicable 1-year period specified in U.S. note 6(b)(ii) to this subchapter, subject to the limitations provided in U.S. note 6(g) to this subchapter		Free"

ANNEX II

IMPLEMENTATION OF THE AFRICAN INVESTMENT INCENTIVE ACT OF 2006

A. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2006, subchapter XIX of chapter 98 of the Harmonized Tariff Schedule of the United States is modified as follows:

(1) by inserting in the second table set forth in U.S. note 2(b) to such subchapter (pertaining to subheading 9819.11.12) immediately after the year "2007" the expression ", and each 1-year period thereafter through September 30, 2012 "; by deleting from such table the figure "1.6071" and by inserting in lieu thereof "3.5 "; and by modifying the sentence set forth immediately below such table to read as follows:

> "Such apparel articles described in subheading 9819.11.12 shall, during the 12-month periods enumerated above, be allowed to enter regardless of the country of origin of the fabric or yarn used to make such articles, subject to any limitations imposed by the President in a proclamation published in the *Federal Register*."

(2) by inserting the following new U.S. note 5:

"5. (a) For purposes of subheadings 9819.15.10 through 9819.15.42 and the superior text thereto, subject to the provisions of this note, apparel articles are eligible for entry under these provisions if:

(i) under the terms of this note, they contain a fabric or yarn produced in beneficiary sub-Saharan African countries that has been determined by the United States International Trade Commission (USITC) to be available in commercial quantities for use in lesser developed sub-Saharan African beneficiary countries, pursuant to the terms of section 112(c) of the African Growth and Opportunity Act (AGOA), as amended (19 U.S.C. 3721(c)), and

(ii) they are entered in an aggregate quantity not to exceed the quantity, in square meter equivalents (SMEs), specified pursuant to this note for an applicable 1-year period from October 1 in any calendar year through September 30 of the next calendar year, inclusive, under the terms of such section 112(c),

provided that all other requirements of this note and applicable Customs regulations are met. For the purposes of this note, apparel articles contain a fabric or yarn specified in such subdivision if each article, or the component of each such article that determines the article's classification for tariff purposes, is considered to be an article or component of that fabric or yarn. The USITC will determine and announce, in notices published in the *Federal Register* under the terms of section 112(c)(2), the aggregate quantity of each fabric or yarn covered by a previous affirmative USITC determination that was used to produce apparel articles in lesser developed sub-Saharan African beneficiary countries enumerated in U.S. note 2(d) to this subchapter that were entered into the United States during each applicable 1-year period starting on October 1 in a year and ending on September 30 in the subsequent year. No apparel articles shall be entered under subheadings 9819.15.10 through 9819.15.42 after the close of September 30, 2012.

(b) For purposes of subheading 9819.15.10, denim articles provided for in subheading 5209.42.00 shall be deemed to have been determined by the USITC to be in abundant supply in an amount of 30,000,000 SMEs for the 1-year period beginning on October 1, 2006 and continuing through September 30, 2007, and apparel articles of chapters 61 or 62 that each contain such denim articles, in an aggregate quantity not to exceed such amount, shall be eligible for entry under such subheading. The USITC shall determine and announce in the *Federal Register* the quantity of such denim articles that is commercially available for use in such lesser developed sub-Saharan African beneficiary countries to produce apparel articles during each subsequent applicable 1-year period and any modifications of the aggregate quantity of apparel articles eligible for entry under such

subheading during any such subsequent applicable 1-year period, as required by section 112 of the AGOA.

(c) For purposes of subheadings 9819.15.15 through 9819.15.42, inclusive, apparel articles that each contain a fabric or yarn determined by the USITC to be available in commercial quantities shall be entered under the appropriate subheading specified in any notice published by the USITC in the *Federal Register* to reflect its affirmative determinations under section 112 of the AGOA, in order to carry out the terms of subsection (c)(2) of such section.

(d) The USITC will determine, in notices published in the *Federal Register* under the terms of section 112(c)(2), the aggregate quantity of each fabric or yarn covered by an affirmative USITC determination that--

(i) is available in commercial quantities for use by lesser developed beneficiary sub-Saharan African countries for an applicable 1-year period beginning on October 1 of each year and ending on September 30 of the following year, and

(ii) was used to produce apparel articles in a lesser developed sub-Saharan African beneficiary country enumerated in U.S. note 2(d) to this subchapter that were entered into the United States during each 1-year period starting on October 1 in each year following the USITC's affirmative determination for such fabric or yarn and ending on September 30 in the subsequent year.

(e) If a fabric or yarn is determined to be available in commercial quantities under such section 112 in an applicable 1-year period, and for 2 consecutive applicable 1-year periods the quantities determined to be commercially available are not used in the production of apparel articles receiving preferential treatment under the terms of this note that were entered during those 2 applicable 1-year periods, then beginning in the succeeding applicable 1-year period the apparel articles containing that fabric or yarn are ineligible for preferential treatment under this note in any succeeding applicable 1-year period and shall not be eligible for entry under this note, unless the USITC has determined that the quantity of the fabric or yarn determined to be commercially available in such lesser developed beneficiary sub-Saharan African countries for that applicable 1-year period has already been used in the production of apparel articles receiving preferential treatment under this note that were entered in that applicable 1-year period. Further, the President may by proclamation provide that apparel articles otherwise eligible for preferential treatment under this note that contain a fabric or yarn determined by the USITC to be available in commercial quantities may not receive such preferential treatment under the terms of section 112(c)(2)(D)(i) of the AGOA. No apparel articles shall be entered under subheadings 9819.15.10 through 9819.15.42 after the close of September 30, 2012."

(3) by inserting in numerical sequence the following new provisions and superior text, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1 Special", respectively:

	"Apparel articles of chapter 61 or 62, wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries enumerated in U.S. note 2(d) to this subchapter and of a type described in U.S. note 5 to this subchapter, if entered under the terms of such note:	
9819.15.10	Of denim of subheading 5209.42.00	Free
9819.15.15	Of the first fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free

	[Apparel...:]		
9819.15.18	Of the second fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free	
9819.15.21	Of the third fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free	
9819.15.24	Of the fourth fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free	
9819.15.27	Of the fifth fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free	
9819.15.30	Of the sixth fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free	
9819.15.33	Of the seventh fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free	
9819.15.36	Of the eighth fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free	

	[Apparel...]		
9819.15.39	Of the ninth fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free	
9819.15.42	Of the tenth fabric or yarn which the United States International Trade Commission is produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser-developed Saharan Africa and specified in a notice published in the *Federal Register*	Free"	

B. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after December 20, 2006, subchapter XIX of chapter 98 of the Harmonized Tariff Schedule of the United States is modified as follows: by inserting in numerical sequence the following new provision and superior text, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1 Special", respectively:

"9819.11.33	Textile articles classifiable under chapters 50 through 60, inclusive, or chapter 63 of the tariff schedule, the foregoing articles that are products of a lesser developed beneficiary sub-Saharan African country (as defined in U.S. note 2(d) to this subchapter) and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components or components knit-to-shape that are the product of one or more such countries	Free"	

ANNEX III

TECHNICAL AND CONFORMING CHANGES IN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

A. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after February 3, 2007, the Harmonized Tariff Schedule of the United States (HTS) is modified as follows:

1. The provisions of chapter 99 of the HTS that are enumerated in the first column of the table set forth below are modified by deleting the number in the second column of such table and by inserting in lieu thereof the number in the third column of such table:

9902.01.41	2930.90.90	2930.90.91
9902.01.60	2930.90.90	2930.90.91
9902.01.65	2922.29.80	2922.29.81
9902.02.25	8527.99.50	8527.99.20
9902.02.37	2922.29.60	2922.29.61
9902.02.69	2930.90.90	2930.90.91
9902.05.12	2922.29.80	2922.29.81
9902.05.15	2922.29.60	2922.29.61
9902.05.29	2918.90.43	2918.99.43
9902.10.27	2005.90.55	2005.99.55
9902.10.30	2005.90.55	2005.99.55
9902.10.37	3808.30.15	3808.93.15
9902.10.41	2922.22.10	2922.29.03
9902.10.47	3907.99.00	3907.99.01
9902.10.54	2918.90.20	2918.99.20
9902.10.55	3808.30.15	3808.93.15
9902.10.57	3808.30.15	3808.93.15
9902.10.63	8708.99.73	8708.94.75
9902.10.75	2851.00.00	2853.00.00
9902.10.81	3808.30.15	3808.93.15
9902.10.92	8708.39.50	8708.30.50
9902.10.93	8708.40.20	8708.40.11
9902.11.04	3824.90.9190	3824.90.92
9902.11.05	3808.20.15	3808.92.15
9902.11.35	2922.29.60	2922.29.61
9902.11.44	3808.30.15	3808.93.15
9902.11.48	3808.30.15	3808.93.15
9902.11.49	3808.30.15	3808.93.15
9902.11.64	3808.30.15	3808.93.15
9902.12.03	3808.20.50	3808.92.50
9902.12.45	3808.20.15	3808.92.15
9902.12.51	3808.20.15	3808.92.15
9902.12.52	3808.30.15	3808.93.15
9902.12.53	3808.20.15	3808.92.15
9902.12.55	3808.30.15	3808.93.15
9902.12.56	3824.90.91	3824.90.92
9902.12.61	3808.30.15	3808.93.15

9902.12.80	3808.20.15	3808.92.15
9902.13.26	3808.30.15	3808.93.15
9902.13.27	3808.30.15	3808.93.15
9902.13.31	3808.20.15	3808.92.15
9902.13.43	3808.30.15	3808.93.15
9902.13.45	3808.30.15	3808.93.15
9902.13.60	2918.90.20	2918.99.20
9902.13.76	3808.30.15	3808.93.15
9902.13.77	3808.30.15	3808.93.15
9902.13.97	3808.20.28	3808.92.28
9902.22.04	2918.90.50	2918.99.50
9902.22.05	2918.90.50	2918.99.50
9902.22.27	2930.90.90	2930.90.91
9902.22.43	3824.90.91	3824.90.92
9902.22.47	6402.99.18	6402.99.31
9902.22.53	6402.30.30	6402.91.05
9902.22.61	3824.90.91	3824.90.92
9902.22.71	3824.90.91	3824.90.92
9902.22.90	3206.49.50	3206.49.60
9902.22.91	3808.20.15	3808.92.15
9902.22.94	2918.90.20	2918.99.20
9902.22.96	2931.00.25	2931.00.26
9902.23.16	3824.90.91	3824.90.92
9902.23.22	3907.99.00	3907.99.01
9902.23.25	2918.90.20	2918.99.20
9902.23.26	2918.90.20	2918.99.20
9902.23.35	8525.40.80	8525.80.50
9902.23.36	8525.40.80	8525.80.50
9902.23.38	8509.80.00	8509.80.50
9902.23.39	8509.80.00	8509.80.50
9902.23.48	8509.80.00	8509.80.50
9902.23.52	8528.21.70	8528.59.30
9902.23.53	8528.21.39	8528.49.40
9902.23.54	8528.21.29	8528.49.30
9902.23.55	8528.22.00	8528.49.80
9902.23.77	6402.99.20	6402.99.33
9902.23.78	6402.99.20	6402.99.33
9902.23.79	6402.99.20	6402.99.33
9902.23.90	2916.39.75	2916.39.76
9902.23.93	3824.90.91	3824.90.92
9902.23.94	3907.99.00	3907.99.01
9902.23.95	3907.99.00	3907.99.01
9902.24.11	3926.90.98	3926.90.99
9902.24.34	2925.19.90	2925.19.91
9902.24.35	3808.10.25	3808.50.10
9902.24.42	3808.30.15	3808.93.15
9902.24.56	3808.20.15	3808.92.15
9902.24.60	2918.90.43	2918.99.43
9902.24.62	2919.00.50	2919.90.50
9902.24.74	3808.30.20	3808.93.20

9902.24.79	3808.20.15	3808.92.15
9902.24.80	3808.20.15	3808.92.15
9902.24.85	3808.20.15	3808.92.15
9902.25.06	2930.90.90	2930.90.91
9902.25.10	3808.30.15	3808.93.15
9902.25.12	2827.60.50	2827.60.51
9902.25.32	8708.40.10	8708.40.11
9902.25.38	3808.20.15	3808.92.15
9902.25.41	3808.20.15	3808.92.15
9902.25.68	2930.90.44	2930.90.43
9902.25.77	8708.99.70	8708.80.65
9902.25.78	4601.91.20	4601.92.20
9902.25.79	8708.29.10	8708.95.05
9902.29.81	2918.90.20	2918.99.20
9902.32.55	2930.90.90	2930.90.91
9902.33.60	3808.30.15	3808.93.15
9902.38.69	3808.30.15	3808.93.15
9902.84.10	8477.59.80	8477.59.01
9902.98.08	8509.80.00	8509.80.50

2. Subheading 8402.12.00 is modified by deleting "A" from the "Rates of Duty 1 Special" subcolumn and by inserting in lieu thereof "A*".

3. Subheadings 8528.72.72 and 8528.72.97 are each modified by inserting, in the parenthetical expression following the "Free" rate of duty in the "Rates of Duty 1 Special" subcolumn the symbol "AU," in alphabetical sequence.

4. Subheading 8528.73.00 is modified by inserting, in the parenthetical expression following the "Free" rate of duty in the "Rates of Duty 1 Special" subcolumn the symbols "AU," and "MA," in alphabetical sequence.

5. General note 4(d) is modified by deleting "0302.69.10" and by inserting in lieu thereof "0302.69.11".

6. General note 25(m) is modified by inserting in item (96) "8542," before "8548.90.01".

7. The following new subheading is inserted in numerical sequence, with the article description at the same level of indentation as that of subheading 8480.71.10 and with the material inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1 General" and "Rates of Duty 2", respectively:

"8480.71.40	For the manufacture of semiconductor devices	Free		35%"

8. Heading 9902.12.52 (as modified above) is further modified by inserting before "3808.93.15" the expression "3808.50.10 or".

9. Subheading 8708.99.52 is redesignated as subheading 8708.99.53.

10. Subheading 2908.91.00 is modified by deleting "A+" and by inserting in lieu thereof "A".

11. Subheading 2908.19.60 is modified by inserting in alphabetical sequence in the parenthetical expression following the "Free" duty rate in the Rates of Duty 1 Special subcolumn the symbol "L,".

B. Effective with respect to goods of Bahrain, under the terms of general note 30 to the HTS, that are entered, or withdrawn from warehouse for consumption, on or after August 30, 2006, annex II to Presidential Proclamation 8039 of July 27, 2006, is modified by striking "5702.10.80" and "5702.30.80" and by inserting in lieu thereof "5703.10.80" and "5703.30.80".

C. Effective with respect to goods of a party to the Agreement as defined in general note 29(a) to the HTS that are entered, or withdrawn from warehouse for consumption, on or after each of the dates in the first column below, the rate of duty shown in the Rates of Duty 1 Special subcolumn in subheading 9915.04.13 followed by the symbol "P+" in parentheses is modified by deleting the rate shown in such subcolumn on such date and by inserting in lieu thereof the rate of duty shown in the second column below:

January 1, 2020	$1.36/kg
January 1, 2021	$1.32/kg
January 1, 2022	$1.28/kg
January 1, 2023	98.3¢/kg
January 1, 2024	85.5¢/kg
January 1, 2025 and thereafter	Free

D. Effective with respect to goods of Australia, under the terms of general note 28 to the HTS, that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2023, subheading 2106.90.66 is modified by deleting from the Rates of Duty 1 Special subcolumn the rate of duty "See 9913.04.25 (AU)" and by inserting in lieu thereof "See 9822.04.25 (AU)".

E. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2007, general note 4(d) is modified by deleting "8402.20.00 Romania"; and subheading 8402.20.00 is modified by deleting from the parenthetical expression in the Rates of Duty 1 Special subcolumn the symbol "A*," and by inserting in lieu thereof "A,".

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H.R. 521/P.L. 110–12
To designate the facility of the United States Postal Service located at 2633 11th Street in Rock Island, Illinois, as the

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